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STANDING FOR CRIME VICTIMS

by Jay Howell

“Standing” is the legal term used to describe the requirement that a person have a sufficient interest in the outcome of a case or a controversy in order to make a claim or appear in court. If the person has a sufficient interest in the case or controversy, then he or she is said to have “standing” to assert their rights.

The issue of standing comes up in a variety of legal settings. The victim or the prosecutor may want to apply to the court concerning the victim’s right to restitution, or the victim’s right to be present and heard at the sentencing of the accused. In the past in such situations, the first inquiry of the court has often been to ask whether or not the victim, or the State Attorney in their stead, has the legal standing to apply to the court.

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While the Florida Constitution grants crime victims the right to be informed, to be present, and to be heard, when relevant, at all crucial stages of criminal proceedings, there has been considerable confusion in our courts concerning the rights of crime victims to directly apply to the court for assistance in enforcing their rights. After all, the cases are entitled "The State of Florida vs. the Defendant." The state is represented by the State Attorney. The Defendant is represented by his own counsel. What role, and more particularly what right, does the crime victim have to approach the court for assistance? Trial and appellate courts throughout Florida have attempted to severely limit the enforcement of crime victims' rights and have placed overly harsh restrictions on the ability of the prosecutor to request court assistance for crime victims. One court went so far as to prohibit the prosecutor from requesting that restitution be paid by the defendant to the victim that he had violently injured

Because of this confusion, we have been working for several years to include a statutory provision in our laws that simply declares that crime victims have "standing" to assert their legal rights in criminal cases. If crime victims were not allowed this limited access to our courts, then the hard-fought statutory constitutional changes for crime victims would have less than their full and intended meaning.

Behind the leadership of Senator Burt Saunders (R) of Naples, the 1999 Florida legislature finally declared that the crime victim, including the next of kin of a homicide victim, or the State Attorney (with the consent of the victim), **shall have standing** to assert the crime victim's rights provided in our statutes and our Florida Constitution. If the issue of standing appears to be overly legalistic or far removed from reality, it is of utmost importance to crime victims. With this new law, the person whose life has been most

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dramatically affected by the crime will have the ability to approach the court and ask the judge to enforce their rights, to protect them from retaliation, and to assure their participation in the criminal justice process.

Now it is clear that the victims themselves, or the prosecutor on their behalf, can make direct requests to the court for the enforcement of these fundamental participatory rights. This is **not** to say that the victim will in any way assume the role of the prosecutor. The decision to charge an individual with a crime will remain solely the responsibility of the Office of the State Attorney. The sentencing recommendation by the State of Florida will similarly remain under the exclusive authority of the prosecuting attorney.

Standing does **not** mean that the name of the victim will appear in the formal title of any criminal case. Our system of independent and objective prosecution for criminal acts will remain as it has been. However, crime victims will finally have a legal foundation from which to apply to our courts for the enforcement of their basic rights.

This new law amended §960 of our Florida Statutes and took effect on January 1, 2000. It was identified in the 1999 legislature as Committee Substitute for House Bill 1779.