

MAXIMIZING RECOVERY FOR SEXUAL ABUSE VICTIMS

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Why do we do what we do?

First, because we care. Everyone who represents crime victims does so because something drew you to this line of work. If you did not truly care, then it would just be frustrating, disappointing and unfulfilling. And, second, because we can. As attorneys, we have great power to help people who cannot help themselves. Yes, our profession has been the butt of many jokes. Trial attorneys have been under attack for a long time for being exploitative, selfish ambulance chasers. However, in the world of crime victim representation the vast majority of attorneys do what they do for all the right reasons - because they care and because they can, and they will put themselves on the line and will use their knowledge and legal skill to assist those people whose lives have been damaged due to the bad acts of others.

People think of us as civil attorneys. There was a time when we thought of ourselves that way, mainly because that was just the label that others decided. There came a point in time when we realized that the role we played in the lives of crime victims could not be restricted to that of a civil attorney. Yes, we are trial attorneys that handle civil cases. And we do not represent criminal defendants. But many of the causes we champion and the cases we take are not and cannot become civil cases. If that is the case, then why take them? Because we care, and because we can. And through our work in those pro bono cases, we have met great people, we have helped a lot of great people, and also through pro bono work we have been referred some of our biggest civil cases.

One message that we want to stress is for more attorneys to get involved representing crime victims even in situations where there is no civil action. In deciding whether to take a case or a client, do not exclusively look at the chances of financial discovery. Instead, consider other compelling factors such as: the innocence or vulnerability of the victim, the egregiousness of the crime, the degree of harm done, and the extent to which you can help to correct the wrong that was done. While anyone can be a victim of a crime, predators tend to specifically seek out particularly vulnerable people. What makes them vulnerable? Age, disability, lack of familial support, trust, being alone, substance abuse, financially poor, unable to defend himself/herself, and otherwise unequal bargaining power. These are the people that we represent, and who need us to help even the playing field.

I. TWO MAIN TYPES OF SEXUAL ABUSE CIVIL ACTIONS

A. Direct Civil Actions Against the Perpetrators:

1. Considerations before filing Against the Perpetrator:

- a. Has the criminal case completed? (Don't give the criminal defense attorney a cheap defense).
 - b. Is the Defendant collectable? Somewhat different analysis than when deciding whether to sue an uninsured person for negligence, such as a MVA), because Defendants find money to pay in these types of cases, in order to prevent public exposure, avoid the stigma, or to "make things right".
 - c. Will insurance cover this? (e.g. Negligent Transmission of Herpes case – has gone both ways).
 - d. Can a lawsuit be avoided? (It will be difficult on your client, and if a settlement can be reached without a lawsuit, then it should be).
2. Typical Common Law Counts: Battery, Intentional Infliction of Emotional Distress, False Imprisonment, Intentional or Negligent transmission of STD, Negligence per se (molestation, lewd and lascivious counts).
 3. Typical Statutory Counts: F.S. §796.09, 18 USC 2255 (minimum recovery entitlement).

B. Civil Actions Against 3rd parties whose Negligence allowed the crime:

1. Negligent Entrustment (Gun/Rape case)
2. Negligent Supervision, Hiring, Training of Employees (when crime committed by employee)
3. Negligent Security (Failure to protect against foreseeable criminal acts) (if sexual assault, prior felony opportunistic crimes – other Sexual Battery, Robbery, Kidnapping - are necessary)
4. Punitive Damages Punitive against a company – F.S. §768.72 (3) (if company allows employee to continue working, then they have "ratified" the conduct)

**IF YOU DECIDE THERE IS NO CIVIL CASE, YOU CAN STILL HELP THE VICTIM (See F.S. §914.17, §960.001, 18 USC 3771)
Remember, it is not about you!**

II. AFTER DECIDING TO TAKE THE CASE, WHAT DO YOU DO NOW?

You MUST simultaneously do what is best for your client and the case:

Which means:

A. PRE-SUIT INVESTIGATION/WORK UP:

1. **Work with the Prosecutors and the Police – Make sure you don't do anything that will jeopardize the criminal investigation or prosecution (be careful taking statements or depositions, do not give criminal defense attorney a defense);**
2. Get your client to victim services or trauma services at the State Attorney's Office or through the investigating Police Agency.
 - a. It is free, good for the client, and good for the case because it gives additional support for your client and a "neutral" expert
 - b. Start gathering all of your clients records (health and medical, school, psychological records) – you want to know everything you can before filing suit.
3. Get your Psychologist (who specializes in sexual abuse!) on board early – ask for an assessment and a treatment evaluation
4. Stress the importance of your client regularly seeing the trauma therapist
5. Help your client apply for Crime Victim's Compensation (phone number is: 850-414-3300)
6. Do not have your client sign a Retainer that contains financial incentive before the criminal case has completed. Again, don't give the criminal this cheap defense.

B. FILING SUIT:

1. **Pre-Suit Discussion: Before filing, discuss the pros and cons in depth, and make sure that your client understands:**
 - a. that he or she needs to maintain contact with you (get as many methods of contacting your client as possible)
 - b. that the discovery process will be invasive and could be tough
2. **Names v. Pseudonyms**
 - a. **Plaintiff** – You probably want to file under a pseudonym. Most courts will allow it.
 - b. **Defendant** – You might want to file under a pseudonym, if: he doesn't believe you will file suit, and you think he will settle the case for fair value once the

case is filed but before he is publicly exposed. Sometimes you lose leverage for early settlement when you expose him early.

- My inclination is to expose him early, and detail the bad facts in the complaint for the world to see. Your client is empowered, the Court knows about the Defendant, and if the Defendant calls to settle, you can always offer to agree to allow a redacted complaint to replace the originally filed complaint in the court file so that the defendant feels that he gains something by settling.
- Also, witnesses come out of the woodwork when you expose the name of the Defendant.

C. **EXAMPLE MOTION TO PROCEED ANONYMOUSLY:**

COMES NOW the Plaintiff, Jane Doe, by and through her undersigned counsel and moves this Court to enter an Order granting Plaintiff permission to proceed in this action under the pseudonym "Jane Doe" and as grounds would state as follows:

1. As outlined in detail in the Complaint, the Plaintiff, Doe, was sexually abused by the Defendant when she was very young.
2. The abuse caused much embarrassment, humiliation, and psychological trauma for the Plaintiff, Doe.
3. This embarrassment, humiliation and psychological trauma would be greatly exacerbated if her name was revealed publicly as the subject of the alleged abuse.
4. The subject matter of the Complaint clearly contains highly sensitive and intimate information about the Plaintiff, Doe.
5. During the criminal investigation of the Defendant and up and through this point in time, the identity of all of Doe has been protected, as all parties recognize the highly sensitive subject matter of the charges and the need to protect the privacy interest of the Plaintiff, Doe's true identity.
6. The Defendant has been provided in the past with the true identity of the Plaintiff, Doe.
7. In this civil action, the Defendant will be provided with the Plaintiff, Doe's true identity; therefore, he will know the identity of the Plaintiff, Doe., and will not be prejudiced by the non-disclosure of Doe's true identity.
8. There is a great need, in this case, to protect intimate information about the Plaintiff, Doe, and to protect her privacy interest.

D. **MEMORANDUM OF LAW:**

Despite the general presumption against anonymous or pseudonymous pleadings, it is common for this presumption to be overcome in certain types of cases, and courts have discretion to permit such pleading in appropriate circumstances. See *Doe v. Del Rio*, 241 F.R.D. 154, 157 (S.D.N.Y. 2006) (citing *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993)). The courts typically grant such requests for pseudonymity in matters of a sensitive and highly personal nature. *Id.* at 157 (citing [Heather K. v. City of Mallard](#), 887 F.Supp.1249, 1255 (N.D.Iowa 1995)). In deciding whether to permit pseudonymous pleadings, courts must balance "the Plaintiff's right to privacy and security against the public's interest

in identification of the litigants and the harm to the defendant stemming from suppression of Plaintiff's name." *Doe v. Smith*, 105 F.Supp.2d 40, 44 (E.D.N.Y. 1999). The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the customary presumption of openness in judicial proceedings. *Free Speech v. Reno*, 1999 WL 47310, at 2 (S.D.N.Y. Feb. 1, 1999). In undertaking this balance, courts typically consider such factors as whether the plaintiff would be compelled to disclose intimate information, whether the plaintiff would be compelled to admit her intention to engage in illegal conduct, whether the plaintiff would risk injury if identified, whether the party defending the suit would be prejudiced by the non-disclosure of the plaintiff's name, the age of the plaintiff whose identity is being suppressed, the extent to which the identity of the plaintiff has been kept confidential, as well as the interest the public has in knowing the names of the litigants. 241 FRD at 157.

The Supreme Court has implicitly recognized pseudonyms in abortion cases, with minimal discussion. *Roe v. Wade*, 410 U.S. 113, 120-121, 93 S.Ct. 705 (1973); *See also, E.E.O.C. v. ABM Industries, Inc.*, 249 F.R.D. 588 (E.D. Cal. 2008). Likewise, pseudonym filing is typically accepted by the courts in other cases where the nature of the pleading unveils highly sensitive information and detail about the plaintiff, such that the non-disclosure of the party's name is necessary to protect her from harassment, injury, ridicule, or personal embarrassment. *Does v. Advanced Textile Corp.*, 214 F.3d 1058, 1067-1068 (9th Cir. 2000) (citing *United States v. Doe*, 655 F.2d 920; *E.E.O.C.*, 249 F.R.D. at 588).

In this case, it is clear from the allegations in the Complaint that the information is of a highly sensitive nature – i.e., allegations involving sexual abuse of a minor. The Defendant will not be prejudiced in any way by this pseudonym pleading, as he has been provided with her name in the past. While the public does have a right to the openness of judicial proceedings, the right to know the true identity of the Plaintiff, Doe., is greatly outweighed by Doe's privacy interest in this case. Of course, other than the identity of the then minor, all other aspects of the case will still be available to the public.

WHEREFORE, the Plaintiff, Doe, moves this Court to enter an Order granting this Motion, and thus allowing her to proceed in this litigation under the Doe pseudonym.

E. Start with Verdict Form and Jury Instructions and work backwards (Example – puzzle)

This will focus your discovery and investigation and not allow you to get distracted.

F. DISCOVERY IN SEX ABUSE CASES:

1. FROM DEFENDANT:

- a. **Written Discovery Direct Case:** Defendant will invoke the 5th; the exception being negligent transmission of STD, where you can ask “pressure questions” – those Q’s defendant does not want to answer.

- (Example of a Pressure Interrogatory in that type of case: List separately the names, address and phone number of all females, excluding Jane Doe, with whom you have had sexual activity since first time you had sexual intercourse, (by year)up through your current age. Describe the nature of

the sexual activity, the date(s) and whether you received money or other consideration from the person.)

- b. Find the witness with no dog in the fight: ex-employee, ex-girlfriend (take out newspaper ad, go to unemployment office)

2. **FROM PLAINTIFF:**

- a. Prepare him/her for what the defense will likely be permitted to do:
 1. Ask about all traumatic experiences, sexual and otherwise
 2. Talk to boyfriends and girlfriends about intimate things
 3. Surveillance
 4. Pressure Interrogatory or deposition question

III. State v. Federal

- A. Under the Federal Rules of Evidence, specifically 414, in a child molestation case, other allegations of child molestation are automatically admissible (subject only to a 403 prejudice exclusion if the prejudice substantially outweighs probative value). So typically you are going to automatically get all other allegations in if you are in federal court.
- B. Federal Rule of Evidence 412 (Rape Shield), although with some causes of action, Defendants get around this, at least in the Discovery phase.

IV. WHAT MAKES SEX ABUSE CASES DIFFERENT FROM REPRESENTING OTHER CRIME VICTIMS?

LESS EVIDENCE

The type of injury typically leads these victims to re-victimize themselves, place themselves in vulnerable positions allowing them to be exploited. They have a great loss of self-esteem and self worth, long term psychological issues, and often self-medicate and have drug abuse problems.

More so than any other type of case, be ready for a lifetime commitment to each client! Your relationship will not end when the case ends.

V. APPLICABLE RULES AND STATUTES:

Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition

(a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
- (2) evidence offered to prove a victim's sexual predisposition.

(b) Exceptions.

(1) *Criminal Cases.* The court may admit the following evidence in a criminal case:

- (A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
- (B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and
- (C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) *Civil Cases.* In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) Procedure to Determine Admissibility.

(1) *Motion.* If a party intends to offer evidence under [Rule 412\(b\)](#), the party must:

- (A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;
- (B) do so at least 14 days before trial unless the court, for good cause, sets a different time;
- (C) serve the motion on all parties; and
- (D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) *Hearing.* Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) Definition of "Victim." In this rule, "victim" includes an alleged victim.

Rule 413. Similar Crimes in Sexual-Assault Cases:

(a) Permitted Uses. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the Defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) **Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule.

(d) **Definition of “Sexual Assault.”** In this rule and Rule 415, “sexual assault” means a crime under federal law or under state law (as “state” is defined in 18 U.S.C. § 513) involving:

- (1) any conduct prohibited by 18 U.S.C. chapter 109A;
- (2) contact, without consent, between any part of the defendant’s body — or an object — and another person’s genitals or anus;
- (3) contact, without consent, between the defendant’s genitals or anus and any part of another person’s body;
- (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
- (5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).

USCS Fed Rules Evid R 414

Rule 414. Similar Crimes in Child-Molestation Cases

(a) **Permitted Uses.** In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

(b) **Disclosure to the Defendant.** If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses’ statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) **Effect on Other Rules.** This rule does not limit the admission or consideration of evidence under any other rule.

(d) **Definition of Child and Child Molestation.** In this rule and Rule 415:

- (1) child means a person below the age of 14; and
- (2) child molestation means a crime under federal law or under state law (as state is defined in [18 U.S.C. § 513](#)) involving:
 - (A) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;
 - (B) any conduct prohibited by 18 U.S.C. chapter 110;
 - (C) contact between any part of the defendant’s body--or an object--and a child’s genitals or anus;
 - (D) contact between the defendant’s genitals or anus and any part of a child’s body;
 - (E) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(F) an attempt or conspiracy to engage in conduct described in subparagraphs (A)-(E).

Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation

(a) Permitted Uses. In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules [413](#) and [414](#).

(b) Disclosure to the Opponent. If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses' statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

Fla. Stat. § 768.735

§ 768.735. Punitive damages; exceptions; limitation

- (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not apply to any civil action based upon child abuse, abuse of the elderly under chapter 415, or abuse of the developmentally disabled. Such actions are governed by applicable statutes and controlling judicial precedent. This section does not apply to claims brought pursuant to *s. 400.023* or *s. 429.29*.
- (2) (a) In any civil action based upon child abuse, abuse of the elderly under chapter 415, or abuse of the developmentally disabled, and involving the award of punitive damages, the judgment for the total amount of punitive damages awarded to a claimant may not exceed three times the amount of compensatory damages awarded to each person entitled thereto by the trier of fact, except as provided in paragraph

(b). This subsection does not apply to any class action.

(b) If any award for punitive damages exceeds the limitation specified in paragraph (a), the award is presumed to be excessive and the defendant is entitled to remittitur of the amount in excess of the limitation unless the claimant demonstrates to the court by clear and convincing evidence that the award is not excessive in light of the facts and circumstances that were presented to the trier of fact.

(c) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s.768.74 in determining the reasonableness of an award of punitive damages which is less than three times the amount of compensatory damages.

(d) The jury may not be instructed or informed as to the provisions of this section.
- (3) This section is remedial in nature and shall take effect upon becoming a law.

Fla. Stat. § 768.72

§ 768.72. Pleading in civil actions; claim for punitive damages

- (1) In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.
- (2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:
 - (a) Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.
 - (b) Gross negligence means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.
- (3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:
 - (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
 - (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or
 - (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.
- (4) The provisions of this section shall be applied to all causes of action arising after the effective date of this act.

Fla. Stat. § 914.17

§914.17. Appointment of advocate for victims or witnesses who are minors or persons with mental Retardation

- (1) A guardian ad litem or other advocate shall be appointed by the court to represent a minor in any criminal proceeding if the minor is a victim of or witness to child abuse or neglect, or if the minor is a victim of a sexual offense or a witness to a sexual offense committed against another minor. The court may appoint a guardian ad litem or other advocate in any other criminal proceeding in which a minor is involved as either a victim or a witness. The guardian ad litem or other advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the minor at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. It is the duty of the guardian ad litem or other advocate to perform the following services:
 - (a) To explain, in language understandable to the minor, all legal proceedings in which the minor shall be involved;
 - (b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the minor's ability to understand and cooperate with any court proceeding; and
 - (c) To assist the minor and the minor's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the minor is involved.
- (2) An advocate shall be appointed by the court to represent a person with mental retardation as defined in *s. 393.063* in any criminal proceeding if the person with mental retardation is a victim of or witness to abuse or neglect, or if the person with mental retardation is a victim of a sexual offense or a witness to a sexual offense committed against a minor or person with mental retardation. The court may appoint an advocate in any other criminal proceeding in which a person with mental retardation is involved as either a victim or a witness. The advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the person with mental retardation at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. It is the duty of the advocate to perform the following services:
 - (a) To explain, in language understandable to the person with mental retardation, all legal proceedings in which the person shall be involved;
 - (b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the person with mental retardation's ability to understand and cooperate with any court proceedings; and
 - (c) To assist the person with mental retardation and the person's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the person with mental retardation is involved.
- (3) Any person participating in a judicial proceeding as a guardian ad litem or other advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

Fla. Stat. § 92.56

§ 92.56. Judicial proceedings and court records involving sexual offenses

(1) (a) The confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to *s. 119.071(2)(h)* must be maintained in court records pursuant to *s. 119.0714(1)(h)* and in court proceedings, including testimony from witnesses.

(b) If a petition for access to such confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status of such information shall be maintained by the court if the state or the victim demonstrates that:

1. The identity of the victim is not already known in the community;
2. The victim has not voluntarily called public attention to the offense;
3. The identity of the victim has not otherwise become a reasonable subject of public concern;
4. The disclosure of the victim's identity would be offensive to a reasonable person; and
5. The disclosure of the victim's identity would:

- a. Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
- b. Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
- c. Cause severe emotional or mental harm to the victim;
- d. Make the victim unwilling to testify as a witness; or
- e. Be inappropriate for other good cause shown.

(2) A defendant charged with a crime described in chapter 794 or chapter 800, or with child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to *s. 119.0714(1)(h)* or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information may not be construed to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child pornography as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

(4) The protection of this section may be waived by the victim of the alleged offense in a writing filed with the court, in which the victim consents to the use or release of identifying information during court proceedings and in the records of court proceedings.

- (5) This section does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense described in chapter 794 or chapter 800, or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827, but the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).
- (6) A willful and knowing violation of this section or a willful and knowing failure to obey any court order issued under this section constitutes contempt.

Fla. Stat. § 90.5035

§ 90.5035. Sexual assault counselor-victim privilege

- (1) For purposes of this section:
 - (a) A rape crisis center is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.
 - (b) A sexual assault counselor is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.
 - (c) A trained volunteer is a person who volunteers at a rape crisis center, has completed 30 hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.
 - (d) A victim is a person who consults a sexual assault counselor or a trained volunteer for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.
 - (e) A communication between a sexual assault counselor or trained volunteer and a victim is confidential if it is not intended to be disclosed to third persons other than:
 - 1. Those persons present to further the interest of the victim in the consultation, examination, or interview.
 - 2. Those persons necessary for the transmission of the communication.
 - 3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor or the trained volunteer is consulted.
- (2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor or trained volunteer in the course of that relationship.
- (3) The privilege may be claimed by:

- (a) The victim or the victim's attorney on his or her behalf.
- (b) A guardian or conservator of the victim.
- (c) The personal representative of a deceased victim.
- (d) The sexual assault counselor or trained volunteer, but only on behalf of the victim. The authority of a sexual assault counselor or trained volunteer to claim the privilege is presumed in the absence of evidence to the contrary.

Fla. Stat. § 960.001

§ 960.001. Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems

- (1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in *s. 943.10(4)* shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and *s. 16(b), Art. I of the State Constitution* and are designed to implement the provisions of *s. 16(b), Art. I of the State Constitution* and to achieve the following objectives:

(a) *Information concerning services available to victims of adult and juvenile crime.* -- As provided in *s. 27.0065*, state attorneys and public defenders shall gather information regarding the following services in the geographic boundaries of their respective circuits and shall provide such information to each law enforcement agency with jurisdiction within such geographic boundaries. Law enforcement personnel shall ensure, through distribution of a victim's rights information card or brochure at the crime scene, during the criminal investigation, and in any other appropriate manner, that victims are given, as a matter of course at the earliest possible time, information about:

- 1. The availability of crime victim compensation, when applicable;
- 2. Crisis intervention services, supportive or bereavement counseling, social service support referrals, and community-based victim treatment programs;
- 3. The role of the victim in the criminal or juvenile justice process, including what the victim may expect from the system as well as what the system expects from the victim;
- 4. The stages in the criminal or juvenile justice process which are of significance to the victim and the manner in which information about such stages can be obtained;
- 5. The right of a victim, who is not incarcerated, including the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, and the next of kin of a homicide victim, to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with constitutional rights of the accused, as provided by *s. 16(b), Art. I of the State Constitution*;

6. In the case of incarcerated victims, the right to be informed and to submit written statements at all crucial stages of the criminal proceedings, parole proceedings, or juvenile proceedings; and

7. The right of a victim to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved to the extent that this right does not interfere with the constitutional rights of the accused.

(b) *Information for purposes of notifying victim or appropriate next of kin of victim or other designated contact of victim.* -- In the case of a homicide, pursuant to chapter 782; or a sexual offense, pursuant to chapter 794; or an attempted murder or sexual offense, pursuant to chapter 777; or stalking, pursuant to *s. 784.048*; or domestic violence, pursuant to *s. 25.385*:

1. The arresting law enforcement officer or personnel of an organization that provides assistance to a victim or to the appropriate next of kin of the victim or other designated contact must request that the victim or appropriate next of kin of the victim or other designated contact complete a victim notification card. However, the victim or appropriate next of kin of the victim or other designated contact may choose not to complete the victim notification card.

2. Unless the victim or the appropriate next of kin of the victim or other designated contact waives the option to complete the victim notification card, a copy of the victim notification card must be filed with the incident report or warrant in the sheriff's office of the jurisdiction in which the incident report or warrant originated. The notification card shall, at a minimum, consist of:

- a. The name, address, and phone number of the victim; or
- b. The name, address, and phone number of the appropriate next of kin of the victim; or
- c. The name, address, and phone number of a designated contact other than the victim or appropriate next of kin of the victim; and
- d. Any relevant identification or case numbers assigned to the case.

3. The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact within 4 hours following the release of the defendant on bail or, in the case of a juvenile offender, upon the release from residential detention or commitment. If the chief administrator, or designee, is unable to contact the alleged victim or appropriate next of kin of the alleged victim or other designated contact by telephone, the chief administrator, or designee, must send to the alleged victim or appropriate next of kin of the alleged victim or other designated contact a written notification of the defendant's release.

4. Unless otherwise requested by the victim or the appropriate next of kin of the victim or other designated contact, the information contained on the victim notification card must be sent by the chief administrator, or designee, of the appropriate facility to the subsequent correctional or residential commitment facility following the sentencing and incarceration of the defendant, and unless otherwise requested by the victim or the

appropriate next of kin of the victim or other designated contact, he or she must be notified of the release of the defendant from incarceration as provided by law.

5. If the defendant was arrested pursuant to a warrant issued or taken into custody pursuant to s. 985.101 in a jurisdiction other than the jurisdiction in which the defendant is being released, and the alleged victim or appropriate next of kin of the alleged victim or other designated contact does not waive the option for notification of release, the chief correctional officer or chief administrator of the facility releasing the defendant shall make a reasonable attempt to immediately notify the chief correctional officer of the jurisdiction in which the warrant was issued or the juvenile was taken into custody pursuant to s. 985.101, and the chief correctional officer of that jurisdiction shall make a reasonable attempt to notify the alleged victim or appropriate next of kin of the alleged victim or other designated contact, as provided in this paragraph, that the defendant has been or will be released.

(c) Information concerning protection available to victim or witness. -- A victim or witness shall be furnished, as a matter of course, with information on steps that are available to law enforcement officers and state attorneys to protect victims and witnesses from intimidation. Victims of domestic violence shall also be given information about the address confidentiality program provided under s. 741.403.

(d) Notification of scheduling changes. -- Each victim or witness who has been scheduled to attend a criminal or juvenile justice proceeding shall be notified as soon as possible by the agency scheduling his or her appearance of any change in scheduling which will affect his or her appearance.

(e) Advance notification to victim or relative of victim concerning judicial proceedings; right to be present.

-- Any victim, parent, guardian, or lawful representative of a minor who is a victim, or relative of a homicide victim shall receive from the appropriate agency, at the address found in the police report or the victim notification card if such has been provided to the agency, prompt advance notification, unless the agency itself does not have advance notification, of judicial and postjudicial proceedings relating to his or her case, including all proceedings or hearings relating to:

1. The arrest of an accused;
2. The release of the accused pending judicial proceedings or any modification of release conditions; and
3. Proceedings in the prosecution or petition for delinquency of the accused, including the filing of the accusatory instrument, the arraignment, disposition of the accusatory instrument, trial or adjudicatory hearing, sentencing or disposition hearing, appellate review, subsequent modification of sentence, collateral attack of a judgment, and, when a term of imprisonment, detention, or residential commitment is imposed, the release of the defendant or juvenile offender from such imprisonment, detention, or residential

commitment by expiration of sentence or parole and any meeting held to consider such release.

A victim, a victim's parent or guardian if the victim is a minor, a lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or a victim's next of kin may not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify, unless, upon motion, the court determines such person's presence to be prejudicial. The appropriate agency with respect to notification under subparagraph 1 is the arresting law enforcement agency, and the appropriate agency with respect to notification under subparagraphs 2 and 3 is the Attorney General or state attorney, unless the notification relates to a hearing concerning parole, in which case the appropriate agency is the Parole Commission. The Department of Corrections, the Department of Juvenile Justice, or the sheriff is the appropriate agency with respect to release by expiration of sentence or any other release program provided by law. Any victim may waive notification at any time, and such waiver shall be noted in the agency's files.

(f) Information concerning release from incarceration from a county jail, municipal jail, juvenile detention facility, or residential commitment facility. -- The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility shall, upon the request of the victim or the appropriate next of kin of a victim or other designated contact of the victim of any of the crimes specified in paragraph (b), make a reasonable attempt to notify the victim or appropriate next of kin of the victim or other designated contact prior to the defendant's or offender's release from incarceration, detention, or residential commitment if the victim notification card has been provided pursuant to paragraph (b). If prior notification is not successful, a reasonable attempt must be made to notify the victim or appropriate next of kin of the victim or other designated contact within 4 hours following the release of the defendant or offender from incarceration, detention, or residential commitment. If the defendant is released following sentencing, disposition, or furlough, the chief administrator or designee shall make a reasonable attempt to notify the victim or the appropriate next of kin of the victim or other designated contact within 4 hours following the release of the defendant. If the chief administrator or designee is unable to contact the victim or appropriate next of kin of the victim or other designated contact by telephone, the chief administrator or designee must send to the victim or appropriate next of kin of the victim or other designated contact a written notification of the defendant's or offender's release.

(g) Consultation with victim or guardian or family of victim.

1. In addition to being notified of the provisions of [s. 921.143](#), the victim of a felony involving physical or emotional injury or trauma or, in a case in which the victim is a minor child or in a homicide, the guardian or family of the victim shall be consulted by the state attorney in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought as a result of such crime, including the views of the victim or family about:

- a. The release of the accused pending judicial proceedings;
- b. Plea agreements;
- c. Participation in pretrial diversion programs; and

d. Sentencing of the accused.

2. Upon request, the state attorney shall permit the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report prior to the sentencing hearing if one was completed. Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim shall be redacted from the copy of the report. Any person who reviews the report pursuant to this paragraph must maintain the confidentiality of the report and shall not disclose its contents to any person except statements made to the state attorney or the court.

3. When an inmate has been approved for community work release, the Department of Corrections shall, upon request and as provided in s. 944.605, notify the victim, the victim's parent or guardian if the victim is a minor, the lawful representative of the victim or of the victim's parent or guardian if the victim is a minor, or the victim's next of kin if the victim is a homicide victim.

(h) *Return of property to victim.* -- Law enforcement agencies and the state attorney shall promptly return a victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it. The trial or juvenile court exercising jurisdiction over the criminal or juvenile proceeding may enter appropriate orders to implement the provisions of this subsection, including allowing photographs of the victim's property to be used as evidence at the criminal trial or the juvenile proceeding in place of the victim's property when no substantial evidentiary issue related thereto is in dispute.

(i) *Notification to employer and explanation to creditors of victim or witness.* -- A victim or witness who so requests shall be assisted by law enforcement agencies and the state attorney in informing his or her employer that the need for victim and witness cooperation in the prosecution of the case may necessitate the absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of his or her cooperation with law enforcement agencies or a state attorney, is subjected to serious financial strain shall be assisted by such agencies and state attorney in explaining to the creditors of such victim or witness the reason for such serious financial strain.

(j) *Notification of right to request restitution.* -- Law enforcement agencies and the state attorney shall inform the victim of the victim's right to request and receive restitution pursuant to s. 775.089 or s. 985.437, and of the victim's rights of enforcement under ss. 775.089(6) and 985.0301 in the event an offender does not comply with a restitution order. The state attorney shall seek the assistance of the victim in the documentation of the victim's losses for the purpose of requesting and receiving restitution. In addition, the state attorney shall inform the victim if and when restitution is ordered. If an order of restitution is converted to a civil lien or civil judgment against the defendant, the clerks shall make available at their office, as well as on their website, information provided by the Secretary of State, the court, or The Florida Bar on enforcing the civil lien or judgment.

(k) Notification of right to submit impact statement. -- The state attorney shall inform the victim of the victim's right to submit an oral or written impact statement pursuant to s. 921.143 and shall assist in the preparation of such statement if necessary.

(l) *Local witness coordination services.* -- The requirements for notification provided for in paragraphs (c), (d), and (i) may be performed by the state attorney or public defender for their own witnesses.

(m) *Victim assistance education and training.* -- Victim assistance education and training shall be offered to persons taking courses at law enforcement training facilities and to state attorneys and assistant state attorneys so that victims may be promptly, properly, and completely assisted.

(n) *General victim assistance.* -- Victims and witnesses shall be provided with such other assistance, such as transportation, parking, separate pretrial waiting areas, and translator services in attending court, as is practicable.

(o) *Victim's rights information card or brochure.* -- A victim of a crime shall be provided with a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law.

(p) *Information concerning escape from a state correctional institution, county jail, juvenile detention facility, or residential commitment facility.* -- In any case where an offender escapes from a state correctional institution, private correctional facility, county jail, juvenile detention facility, or residential commitment facility, the institution of confinement shall immediately notify the state attorney of the jurisdiction where the criminal charge or petition for delinquency arose and the judge who imposed the sentence of incarceration. The state attorney shall thereupon make every effort to notify the victim, material witness, parents or legal guardian of a minor who is a victim or witness, or immediate relatives of a homicide victim of the escapee. The state attorney shall also notify the sheriff of the county where the criminal charge or petition for delinquency arose. The sheriff shall offer assistance upon request. When an escaped offender is subsequently captured or is captured and returned to the institution of confinement, the institution of confinement shall again immediately notify the appropriate state attorney and sentencing judge pursuant to this section.

(q) *Presence of victim advocate during discovery deposition; testimony of victim of a sexual offense.* -- At the request of the victim or the victim's parent, guardian, or lawful representative, the victim advocate designated by state attorney's office, sheriff's office, or municipal police department, or one representative from a not-for-profit victim services organization, including, but not limited to, rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups shall be permitted to attend and be present during any deposition of the victim. The victim of a sexual offense shall be informed of the right to have the courtroom cleared of certain persons as provided in [s. 918.16](#) when the victim is testifying concerning that offense.

(r) *Implementing crime prevention in order to protect the safety of persons and property, as prescribed in the State Comprehensive Plan.* -- By preventing crimes that create victims or further harm former victims, crime prevention efforts are an essential part of providing effective service for victims and witnesses. Therefore, the agencies identified in this subsection may

participate in and expend funds for crime prevention, public awareness, public participation, and educational activities directly relating to, and in furtherance of, existing public safety statutes. Furthermore, funds may not be expended for the purpose of influencing public opinion on public policy issues that have not been resolved by the Legislature or the electorate.

(s) *Attendance of victim at same school as defendant.* -- When the victim of an offense committed by a juvenile is a minor, the Department of Juvenile Justice shall request information to determine if the victim, or any sibling of the victim, attends or is eligible to attend the same school as the offender. However, if the offender is subject to a presentence investigation by the Department of Corrections, the Department of Corrections shall make such request. If the victim or any sibling of the victim attends or is eligible to attend the same school as that of the offender, the appropriate agency shall notify the victim's parent or legal guardian of the right to attend the sentencing or disposition of the offender and request that the offender be required to attend a different school.

(t) Use of a polygraph examination or other truth-telling device with victim. -- No law enforcement officer, prosecuting attorney, or other government official shall ask or require an adult, youth, or child victim of an alleged sexual battery as defined in chapter 794 or other sexual offense to submit to a polygraph examination or other truth-telling device as a condition of proceeding with the investigation of such an offense. The refusal of a victim to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

(u) Presence of victim advocates during forensic medical examination. -- At the request of the victim or the victim's parent, guardian, or lawful representative, a victim advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.

(2) The secretary of the Department of Juvenile Justice, and sheriff, chief administrator, or any of their respective designees, who acts in good faith in making a reasonable attempt to comply with the provisions of this section with respect to timely victim notification, shall be immune from civil or criminal liability for an inability to timely notify the victim or appropriate next of kin of the victim or other designated contact of such information. A good faith effort shall be evidenced by a log entry noting that an attempt was made to notify the victim within the time period specified by this section.

(3) (a) A copy of the guidelines and an implementation plan adopted by each agency shall be filed with the Governor, and subsequent changes or amendments thereto shall be likewise filed when adopted.

(b) A copy of a budget request prepared pursuant to chapter 216 shall also be filed for the sole purpose of carrying out the activities and services outlined in the guidelines.

(c) The Governor shall advise state agencies of any statutory changes which require an amendment to their guidelines.

(d) The Executive Office of the Governor shall review the guidelines submitted pursuant to this section:

1. To determine whether all affected agencies have developed guidelines which address all appropriate aspects of this section;

2. To encourage consistency in the guidelines and plans in their implementation in each judicial circuit and throughout the state; and
3. To determine when an agency needs to amend or modify its existing guidelines.

(e) The Executive Office of the Governor shall issue an annual report detailing each agency’s compliance or noncompliance with its duties as provided under this section. In addition, the Governor may apply to the circuit court of the county where the headquarters of such agency is located for injunctive relief against any agency which has failed to comply with any of the requirements of this section, which has failed to file the guidelines, or which has filed guidelines in violation of this section, to compel compliance with this section.

- (4) The state attorney and one or more of the law enforcement agencies within each judicial circuit may develop and file joint agency guidelines, as required by this section, which allocate the statutory duties among the participating agencies. Responsibility for successful execution of the entire guidelines lies with all parties.
- (5) Nothing in this section or in the guidelines adopted pursuant to this section shall be construed as creating a cause of action against the state or any of its agencies or political subdivisions.
- (6) Victims and witnesses who are not incarcerated shall not be required to attend discovery depositions in any correctional facility.
- (7) The victim of a crime, the victim’s parent or guardian if the victim is a minor, and the state attorney, with the consent of the victim or the victim’s parent or guardian if the victim is a minor, have standing to assert the rights of a crime victim which are provided by law or s. 16(b), Art. I of the State Constitution.
- (8) For the purposes of this section, a law enforcement agency or the office of the state attorney may release any information deemed relevant to adequately inform the victim if the offense was committed by a juvenile. Information gained by the victim pursuant to this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.
- (9) As used in this section, the term “chief administrator” includes the appropriate chief correctional officers of a county jail or municipal jail, and the appropriate chief administrator of a juvenile detention facility or residential commitment facility.

18 USCS § 1591

Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

- (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
- (2) benefits, financially or by receiving anything of value, from [participation in a venture](#) which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, [coercion](#) described in subsection (e)(2), or any combination of such

means will be used to cause the person to engage in a [commercial sex act](#), or that the person has not attained the age of 18 years and will be caused to engage in a [commercial sex act](#), shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or [coercion](#) described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 25 years, or both.

(e) In this section:

(1) The term “[abuse or threatened abuse of law or legal process](#)” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “[coercion](#)” means—

(A) threats of [serious harm](#) to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in [serious harm](#) to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term “[commercial sex act](#)” means any sex act, on account of which anything of value is given to or received by any person.

(4) The term “[participation in a venture](#)” means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1).

(5) The term “[serious harm](#)” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(6) The term “[venture](#)” means any group of two or more individuals associated in fact, whether or not a legal entity.

(Added [Pub. L. 106–386, div. A, § 112\(a\)\(2\)](#), Oct. 28, 2000, [114 Stat. 1487](#); amended [Pub. L. 108–21, title I, § 103\(a\)\(3\)](#), Apr. 30, 2003, [117 Stat. 653](#); [Pub. L. 108–193, § 5\(a\)](#), Dec. 19, 2003, [117 Stat. 2879](#); [Pub. L. 109–248, title II, § 208](#), July 27, 2006, [120 Stat. 615](#); [Pub. L. 110–457, title II,](#)

[§ 222\(b\)\(5\)](#), Dec. 23, 2008, [122 Stat. 5069](#); [Pub. L. 114–22, title I](#), §§ 108(a), 118(b), May 29, 2015, [129 Stat. 238](#), 247; [Pub. L. 115–164, § 5](#), Apr. 11, 2018, [132 Stat. 1255](#); [Pub. L. 115–392, § 11\(1\)\(C\)](#), Dec. 21, 2018, [132 Stat. 5255](#).)

18 USCS § 1595

Civil Remedy

(a) An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b) (1) Any civil action filed under subsection (a) shall be stayed during the pendency of any [criminal action](#) arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a “[criminal action](#)” includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under subsection (a) unless it is commenced not later than the later of—

(1) 10 years after the cause of action arose; or

(2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

(d) In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates section 1591, the attorney general of the State, as *parens patriae*, may bring a civil action against such person on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(Added [Pub. L. 108–193, § 4\(a\)\(4\)\(A\)](#), Dec. 19, 2003, [117 Stat. 2878](#); amended [Pub. L. 110–457, title II, § 221\(2\)](#), Dec. 23, 2008, [122 Stat. 5067](#); [Pub. L. 114–22, title I, § 120](#), May 29, 2015, [129 Stat. 247](#); [Pub. L. 115–164, § 6](#), Apr. 11, 2018, [132 Stat. 1255](#).)

18 USCS § 2255

§ 2255. Civil remedy for personal injuries

(a) In general. Any person who, while a minor, was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this [title \[18 USCS § 2241\(c\), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423\]](#) and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney’s fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$ 150,000 in value.

(b) Statute of limitations. Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability[.]

18 USCS § 3771

§ 3771. Crime victims' rights

(a) Rights of crime victims. A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) Rights afforded.

(1) In general. In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding.

The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) Habeas corpus proceedings.

(A) In general. In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

(B) Enforcement.

- (i) In general. These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).
- (ii) Multiple victims. In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) Limitation. This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) Definition. For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) Best efforts to accord rights.

(1) Government. Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) Advice of attorney. The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) Notice. Notice of release otherwise required pursuant to this chapter [this section] shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and limitations.

(1) Rights. The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter [this section].

(2) Multiple crime victims. In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter [this section] that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus. The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter [this section]. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error. In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief. In no case shall a failure to afford a right under this chapter [this section] provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if--

- (A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;
- (B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and
- (C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

- (6) No cause of action. Nothing in this chapter [this section] shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter [this section] shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions. For the purposes of this chapter [this section], the term crime victim means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter [this section], but in no event shall the defendant be named as such guardian or representative.

(f) Procedures to promote compliance.

(1) Regulations. Not later than 1 year after the date of enactment of this chapter [enacted Oct. 30, 2004], the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents. The regulations promulgated under paragraph (1) shall--

- (A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;
- (B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;
- (C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and
- (D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.