



# NORTH MIAMI POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURES



### VICTIM/WITNESS ASSISTANCE 300.24

EFFECTIVE DATE: 09-21-23

APPROVED: \_\_\_\_\_

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Chief of Police

SUPERSEDES: 10-29-20

CFA: 15.09D

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#### I. PURPOSE

To establish guidelines and procedures for all employees to assist victims and witnesses of crime.

#### II. POLICY

To inform all victims and witnesses of their rights as enumerated in Florida Statutes and the Florida Constitution. Victims and witnesses will be made aware of their rights by way of a Victims' Rights Brochure.

#### III. SCOPE

This policy applies to all members of the Department.

#### IV. DEFINITIONS

**Victim:** A person who suffers direct or threatened physical, psychological, or

financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term victim includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. *The term "victim" does not include the accused.*" Article I, Section 16(b)(11), Florida Constitution.

**Witness:** A person, as determined by law enforcement, who has information or evidence relevant to a specific crime.

## V. VICTIMS' AND WITNESSES' RIGHTS

A "Victims' Rights Brochure" will be issued and explained to victims and witnesses of crime. Below is some of the information contained in the brochure as noted in the Constitution and Florida Statutory Laws:

### **A. The following victims' and witnesses' rights are guaranteed by the Florida Constitution: CFA 15.09D**

- The right to due process and to be treated with fairness and respect for your dignity.
- The right to be free from intimidation, harassment, and abuse.
- The right, within the judicial process, to be reasonably protected from the accused and any person acting on behalf of the accused. However, this is not intended to create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida law.
- The right to have your safety and welfare as well as your family's considered when setting bail, including setting pretrial release conditions that could affect you or your family's safety and welfare.
- The right to prevent the disclosure of information or records that could be used to locate or harass you or your family, or which could disclose your confidential or privileged information.
- The right to the prompt return of your property when no longer needed as evidence in the case.

- The right to full and timely restitution in every case and from each convicted offender for all losses you suffered, both directly and indirectly, because of the criminal conduct.
- The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post judgment proceedings. (In appropriate cases, the prosecutor may file a good faith demand for a speedy trial. In non-capital cases, all state-level appeals and post-conviction proceedings must be completed within two years and five years for capital cases, unless the court enters an order with specific findings concerning why the court was unable to do so and the circumstances causing the delay).
- The right to be informed of your state constitutional rights, and to be informed that you can seek the advice of an attorney with respect to your rights.

**B. The following victims' and witnesses' Constitutional rights are afforded upon request: CFA 15.09D**

- The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if you will be a witness at the proceeding, notwithstanding any rule to the contrary. (For this purpose, consider providing the prosecutor an address, an email address, or a telephone number at which you can be reached quickly, and update this information during the pendency of your case.) You shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of yours is implicated.
- The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of yours is implicated.
- The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.
- The right to provide information regarding the impact of the offender's conduct on you and your family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

- The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.
- The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.
- The right to be informed of all post-conviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.
- The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

**C. The following victims' and witnesses' rights are afforded under Florida State Statutes: CFA 15.09D**

- You have the right to employ private counsel.
- In some cases, you (or relatives where the victim is deceased) may be eligible for financial compensation from the State of Florida. Information regarding eligibility may be obtained from the State Attorney's Office, local Witness Coordination Office (where available), law enforcement agency or from the Bureau of Crimes Compensation, Office of the Attorney General - 1-800-226-6667, website: [www.myfloridalegal.com/pages.nsf](http://www.myfloridalegal.com/pages.nsf). The right to receive information on available crisis intervention services and local community services to include counseling, shelter, legal assistance, or other types of help, depending on the particular circumstances. Telephone numbers of these services are provided at the end of this brochure.
- The right to receive information regarding the stages of the criminal justice or juvenile justice processes and the way information about such stages may be obtained. (Sec 960.001(1)(a)4, FSS).

- A victim who is incarcerated has the right to be informed and submit written statements at all crucial stages of the criminal and juvenile proceedings.
- The right to receive information on the steps available to law enforcement and the State Attorney's Office to protect you from intimidation and/or harassment.

It is a third-degree felony to knowingly use intimidation or physical force; threaten another person or attempt to do so; engage in misleading conduct toward another person; or offer pecuniary benefit or gain to another person. If you are being threatened or intimidated, please contact the appropriate agency or any law enforcement officer. (Sec 960.001(1)(C), FSS).

- The right of the victim of domestic violence to be informed of the address confidentiality program administered through the Attorney General's Office. You may contact the Attorney General's Office at 1-800-226-6667. The State Attorney's Office may assist with this paperwork if necessary.
- The right of each victim, or witness, who has been scheduled to attend a criminal or juvenile justice proceeding to be notified as soon as possible by the agency or person scheduling his/her appearance of any change in scheduling which will affect the victim's or witness's appearance.
- The right to receive advance notification of judicial and post judicial proceedings relating to the case, including all proceedings or hearings relating to:
  - The arrest of the accused.
  - The release of the accused pending judicial proceedings, and any modification of release condition to include release to community control or work release.
  - 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 involuntary commitment is imposed, the release of the defendant or juvenile offender from such imprisonment, detention or juvenile offender from such imprisonment; detention or

commitment by expiration of sentence or parole and any meeting held to consider such release. (*sec. 960.001(1)(e), FSS*).

- In addition to the provisions of sec. 921.143, Florida Statutes, the rights of 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 case involving 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 about as a result of such crime, including their views about:
  - The release of the accused pending judicial proceedings.
  - Plea Agreements.
  - Participation in pretrial diversion programs.
  - Sentencing of the accused.
- The right to request that the State Attorney or law enforcement agency help you explain to employers and creditors that you may face additional burdens by taking time off from work to assist law enforcement and you may undergo serious financial strain either because of the crime or by cooperating with authorities. (*Sec. 960.001(1)(i), FSS*). Law Enforcement agencies and the State Attorney shall inform you of your right to request and receive restitution and of your rights of enforcement in the event an offender does not pay. The State Attorney shall seek your assistance in the documentation of your losses for the purpose of requesting and receiving restitution. If an order of restitution is converted to a civil lien or civil judgment against the defendant, the Clerk of Court's office 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. The State Attorney shall inform you if and when restitution is ordered. (*Sec. 960.001(1)(j), FSS*).
- The right to receive information on the steps available to law enforcement and the State Attorney's Office to protect you from intimidation and/or harassment.
- It is a third-degree felony to knowingly use intimidation or physical force; threaten another person or attempt to do so; engage in misleading conduct toward another person; or offer pecuniary benefit or gain to another person. If you are being threatened or intimidated, please contact the appropriate agency or any law enforcement officer. (*sec. 960.001(1)(c), FSS*). The right of the victim of a sexual offense to have the courtroom

cleared, with certain exceptions during his or her testimony, regardless of the victim's age or mental capacity. *(Sec. 960.001(q), FSS)*.

- The right to request, in certain circumstances that the offender be required to attend a different school than the victim or siblings of the victim. If the victim of an offense committed by a juvenile is a minor, the victim or any sibling of the victim attends or is eligible to attend the same school as that of the offender, the Department of Juvenile Justice or the Department of Corrections 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. *(Sec. 960.001(1)(s), FSS)*.
- The right of the victim who is not incarcerated to not be required to attend discovery depositions in any correctional facility. *(Sec. 960.001(6), FSS)*.
- The statutory obligation of the victim, parent/guardian of a minor victim, or next of kin of a homicide victim, that any information gained pursuant to Chapter 960, Florida Statutes, regarding any case handled in juvenile court, must not be revealed to any outside party, except as reasonably necessary in pursuit of legal remedies. *(Sec. 960.001(8), FSS)*.
- The right to know in certain cases and at the earliest possible opportunity, if the person charged with an offense has tested positive for hepatitis and human immunodeficiency virus (HIV) infection. In such cases, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo hepatitis and HIV testing within 48 hours after the charging document is filed or 48 hours from the date of request. *(Sec. 960.003, FSS)*.
- The right of a victim of a sexual offense to request the presence of a victim advocate during the forensic medical examination. An advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.
- If a victim has been diagnosed with autism or an autism spectrum disorder, he or she or the parent or guardian, has the right to request that a public safety official make a good faith effort to ensure that a related professional, such as a mental health counselor, special education instructor or clinical social worker be present for all interviews of the individual. All expenses related to the attendance of the professional at the interviews are the responsibility of the requesting victim, parent or guardian; however, the defendant shall reimburse the victim for all expenses related to the attendance of the professional at the interviews, in

addition to restitution and penalties provided by law. (Sec. 943.0439, FSS).

- The right of a victim, if contacted, to obtain information relating to a criminal proceeding by an attorney, investigator, or any other agent acting on behalf of the criminal defendant, to be informed of (1) the person's name and employer and (2) the fact that such person is acting on behalf of the defendant. (Sec. 960.001(1)(v), FSS).

## **VI. ALL RIGHTS AFFORDED BY THE CONSTITUTION ARE ENFORCEABLE**

*Article 1, section 16(c), Florida Constitution*

The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of these rights and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of your right shall be clearly stated on the record.

## **VII. . PROCEDURES**

- A. Each officer shall be responsible for informing all victims of the availability of victim/witness services through the distribution of the Victims' Rights Brochure.
- B. The officer shall provide victims and witnesses with information on steps available to law enforcement and the State Attorney's Office to protect the victims or witnesses from intimidation. The notification, contained in the Victims' Rights Brochure, will include the advisement that it is a felony to tamper with or threaten a witness, and that the North Miami Police Department should be promptly contacted if a possible violation has occurred.
- C. The property of crime victims shall be promptly returned, unless there is a compelling law enforcement reason for not returning it. The Quartermaster shall promptly comply with court orders allowing



photographs of the victim's property to be used as evidence at the trial and/or requiring the return of the victim's property. Department members should consult with the State Attorney's Office before releasing any property.

- D. When so requested, the NMPD's Victims' Advocate may assist victims and witnesses in locating accessible parking and transportation when needed for court proceedings, and will direct those persons to separate in pretrial waiting areas where available.
- E. When so requested, the North Miami Police Department may assist victims and witnesses of crime in notifying employers and creditors of court appearances and financial hardship.
- F. When necessary, North Miami Police personnel will attempt to locate translators, when necessary, in order to communicate effectively with victims and witnesses.

## **VIII. . VICTIM DISCRIMINATION PROHIBITION**

All victim services shall be provided without discrimination on the basis of real or perceived personal characteristics, to include, but not limited to race, ethnic background, national origin, immigration status, gender, gender identity/expression, sexual orientation, religion, socioeconomic status, age, disability, or political affiliation.

Reports of discrimination will be investigated by the Department in compliance with the Office of Professional Compliance's policy, 300.06.