

# NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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## ALABAMA VICTIMS' RIGHTS LAWS<sup>1</sup>

### Constitution

#### Amendment No. 557

(a) Crime victims, as defined by law or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when authorized, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the person accused of committing the crime.

(b) Nothing in this amendment or in any enabling statute adopted pursuant to this amendment shall be construed as creating a cause of action against the state or any of its agencies, officials, employees, or political subdivisions. The legislature may from time to time enact enabling legislation to carry out and implement this amendment.

### Statutes

#### § 15-23-60 – Definitions.

As used in this article, the following words shall have the following meanings:

(1) ACCUSED. A person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.

(2) APPELLATE PROCEEDING. An oral argument held in open court before the Alabama Court of Criminal Appeals, the Supreme Court of Alabama, a federal court of appeals, or the United States Supreme Court.

(3) ARREST. The actual custodial restraint of a person or his or her submission to custody.

(4) COMMUNITY STATUS. Extension of the limits of the places of confinement of a prisoner through work release, supervised intensive restitution (SIR), and initial consideration of pre-discretionary leave, passes, and furloughs.

(5) COURT. All state courts including juvenile courts.

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<sup>1</sup> Not intended to be exhaustive.

(6) **CRIME VICTIM ADVOCATE.** A person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment, or other supportive assistance to crime victims.

(7) **CRIMINAL OFFENSE.** Conduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence has been committed.

(8) **CRIMINAL PROCEEDING.** A hearing, argument, or other matter scheduled by and held before a trial court but does not include a lineup, grand jury proceeding, or other matter not held in the presence of the court.

(9) **CUSTODIAL AGENCY.** A municipal or county jail, the State Department of Corrections, juvenile detention facility, Department of Youth Services, the Board of Pardons and Paroles, or a secure mental health facility having custody of a person who is arrested or is in custody for a criminal offense.

(10) **DEFENDANT.** A person or entity that is formally charged by complaint, indictment, information, or petition, of committing a criminal offense.

(11) **FINAL DISPOSITION.** The ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal, or imposition of a sentence.

(12) **IMMEDIATE FAMILY.** The spouse, parent, child, sibling, or grandparent of the victim, unless that person is in custody for an offense or is the accused.

(13) **LAWFUL REPRESENTATIVE.** A person who is designated by the victim, who is a member of the immediate family, or appointed by the court and who will act in the best interests of the victim.

(14) **POST-ARREST RELEASE.** The discharge of the accused from confinement on recognizance, bond, or other condition.

(15) **POST-CONVICTION RELEASE.** Parole, or discharge from confinement by an agency having custody of the prisoner.

(16) **POST-CONVICTION RELIEF PROCEEDING.** A hearing, argument, or other matter that is held in any court and that involves a request for relief from a conviction, sentence, or adjudication.

(17) **PRISONER.** A person who has been convicted or adjudicated of a criminal offense against a victim and who has been sentenced to the custody of the sheriff, the Alabama Department of Corrections, Department of Youth Services, juvenile detention facility, a municipal jail, or a secure mental health facility.

(18) **RIGHT.** Any right granted to the victim by the laws of this state.

(19) VICTIM. A person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the spouse, sibling, parent, child, or guardian of the person, except if the person is in custody for an offense or is the accused.

**§ 15-23-61 – Designated Representative.**

(a) If a victim is physically or emotionally unable to exercise any right established by this article, but is able to designate a lawful representative, the designated representative or person may exercise the same rights that the victim is entitled to exercise. The victim may revoke his or her designated representation at any time and thereafter exercise his or her rights.

(b) If a victim is incompetent, deceased, or otherwise incapable of designating another person to act in his or her behalf, the court may appoint a lawful representative who is not a witness in the case. If at any time the victim is no longer incompetent, incapacitated, or otherwise incapable of acting, the victim may personally exercise his or her rights.

(c) If the victim is a minor, the parent or other immediate family of the victim, or other designated representative as determined by the court, may exercise all of the rights of the victim on behalf of the victim.

**§ 15-23-62 – Law enforcement agency required to provide victim with information concerning services, compensation benefits, etc.**

Within 72 hours, unless the victim is unavailable or incapacitated as a result of the crime, after the initial contact between a victim of a reported crime and the law enforcement agency either responding to the report of the crime of the victim or another person, or having responsibility for investigating the crime, the law enforcement agency shall provide to the victim in a manner and form designed and produced for the appropriate governmental agency or office, the following information:

(1) The availability of emergency and crisis services.

(2) The availability of victims' compensation benefits and the name, address, and telephone number of the Alabama Crime Victims Compensation Commission.

(3) The name of the law enforcement officer and telephone number of the law enforcement agency with the following statement attached: 'If within 60 days you are not notified of an arrest in your case, you may call the telephone number of the law enforcement agency for the status of the case.'

(4) The procedural steps involved in a criminal prosecution.

(5) The rights authorized by the Alabama Constitution on rights of victims, including a form to invoke these rights.

(6) The existence and eligibility requirements of restitution and compensation pursuant to Section 15-18-65 et seq. and Section 15-23-1 et seq.

(7) A recommended procedure if the victim is subjected to threats or intimidation.

(8) The name and telephone number of the office of the prosecuting attorney to contact for further information.

**§ 15-23-53 – Prosecuting attorney required to notify victim of charges and proceedings; request for notice**

(a) Upon written request of the victim, the prosecuting attorney shall notify the victim of all charges filed against the defendant, criminal proceedings, except initial appearances, as soon as practicable, including any changes that may occur.

(b) The victim shall provide to and maintain with the office of the prosecuting attorney a request for notice on a form provided by the agency. The form shall include the telephone number and address of the victim. If the victim fails to keep this information current, his or her request for notice shall be considered withdrawn and void. Except as otherwise provided, all notices provided to a victim pursuant to this article shall be on forms developed and produced for the appropriate government agency or office.

**§ 15-23-64 – Prosecuting attorney required to confer with victim prior to final disposition of offense.**

The prosecuting attorney shall confer with the victim prior to the final disposition of a criminal offense, including the views of the victim about a nol pros, reduction of charge, sentence recommendation, and pre-trial diversion programs.

**§ 15-23-65 – Prosecuting attorney required to confer with victim before commencement of trial.**

The prosecuting attorney shall confer with the victim before the commencement of a trial. Any information received by the victim relating to the substance of the case shall be confidential, unless otherwise authorized by law or required by the courts to be disclosed.

**§ 15-23-66 – No right to direct prosecution.**

The rights of the victim do not include the authority to direct the prosecution of the case.

**§ 15-23-67 – Right to be present throughout proceedings.**

The victim has the right to be present throughout all criminal proceedings pursuant to Section 15-14-50 et seq.

**§ 15-23-68 – Waiting area for victim; court to minimize contact of victim with defendant.**

The court shall provide a waiting area for the victim separate from the defendant, relatives of the defendant, and defense witnesses, if an area is available and the use of the area is practical. If a separate waiting area is not available, or its use impractical, the court shall minimize contact of the victim with the defendant, relatives of the defendant, and defense witnesses during court proceedings.

**§ 15-23-69 – Testimony concerning information about victim; information about victim in court file.**

(a) Based upon the reasonable apprehension of the victim of acts or threats of physical violence or intimidation by the defendant, the family of the defendant, or by anyone at the direction of the defendant, against the victim or the immediate family of the victim, the prosecutor may petition the court to direct that the victim or any other witness not be compelled to testify during pre-trial proceedings or to any trial, facts that could divulge the identity, residence, or place of employment of the victim, or other related information without consent of the victim unless necessary to the prosecution of the criminal proceeding. If the court schedules a hearing on the merits of the petition, it shall be held in camera.

(b) The address, phone number, place of employment, and other related information about the victim contained in the court file shall not be public record.

**§ 15-23-70 – Right to refuse defendant's request for interview.**

The victim has the right to refuse a request by the defendant, the attorney of the defendant, or by any other person acting on behalf of the defendant, for an interview or other communication with the victim.

**§ 15-23-71 – Plea agreement.**

The victim has the right to be present at any proceeding at which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court. The court shall not accept a plea agreement unless:

(1) The prosecuting attorney advises the court that, before requesting the negotiated plea, reasonable efforts were made to confer with the victim.

(2) Reasonable efforts are made to give the victim notice of the plea proceeding, including the offense to which the defendant will plead guilty, the date that the plea will be presented to the court, the terms of any sentence agreed to as part of the negotiated plea, and that the victim has the right to be present.

(3) The prosecuting attorney advises the court that, to the best of his or her knowledge, the notice requirements of this article have been met.

#### **§ 15-23-72 – Right to pre-sentence information.**

The prosecuting attorney shall provide to the victim the date of a conviction, acquittal, or dismissal of the charges filed against the defendant and prior to sentencing, when applicable, notice of the following:

- (1) The criminal offense for which the defendant was convicted, acquitted, or the effect of a dismissal of the charges filed against the defendant.
- (2) If the defendant is convicted, on request, the victim shall be notified, if applicable, of the following:
  - a. The existence and function of the pre-sentence report.
  - b. The name, address, and telephone number of the office of the Board of Pardons and Paroles which is preparing the pre-sentence report.
  - c. The right to make a victim impact statement.
  - d. The right of the defendant to view the pre-sentence report.
  - e. The right to be present and be heard at any sentencing proceeding.
  - f. The time, place, and date of the sentencing proceeding.
  - g. If the court orders restitution, the right to pursue collection of the restitution as provided by Section 15-18-65 et seq.

#### **§ 15-23-73 – Impact statement; right to review pre-sentence investigative report.**

(a) The victim may submit a written impact statement or make an oral impact statement to the probation officer for use in preparing a pre-sentence report. The probation officer shall consider the economic, physical, and psychological impact that the criminal offense has had on the victim and the immediate family of the victim.

(b) The victim shall have the right to review a copy of the pre-sentence investigative report, subject to the applicable federal or state confidentiality laws, at the same time the document is available to the defendant or his or her counsel.

**§ 15-23-74 – Right to present evidence, statement, etc., during sentencing or restitution proceedings.**

The victim has the right to present evidence, an impact statement, or information that concerns the criminal offense or the sentence during any pre-sentencing, sentencing, or restitution proceeding.

**§ 15-23-75 – Right to information concerning defendant's sentence, request for notice, post-conviction review, etc.**

The victim has the right to the following information:

- (1) As soon as practicable, after the date of sentencing, the office of the prosecuting attorney shall notify the victim of the sentence imposed on the defendant.
- (2) The names, addresses, and telephone numbers of the appropriate agencies and departments to whom request for notice should be provided.
- (3) The status of any post-conviction court review or appellate proceeding or any decisions arising from those proceedings shall be furnished to the victim by the Office of the Attorney General or the office of the district attorney, whichever is appropriate, immediately after the status is known.
- (4) If the terms and conditions of a post-arrest release include a requirement that the accused post a bond, the sheriff or municipal jailer shall, upon request, notify the victim of the release on bond of the defendant.
- (5) The agency having physical custody of a prisoner shall, if provided a request for notice, and as soon as practicable, give notice to the victim of the escape and, subsequently, the return of the prisoner into custody.

**§ 15-23-76 – Right to be present and heard at court proceeding.**

It is the discretion of the victim to exercise the right to be present and heard, where authorized by law, at a court proceeding. The absence of the victim at the proceeding of the court does not preclude the court from going forth with the proceeding. The right of the victim to be heard may be exercised, where authorized by law, at the discretion of the victim, through an oral statement or submission of a written statement.

**§ 15-23-77 – Right to have property returned.**

- (a) Prior to the admission of evidence to the court, on request of the victim, after consultation and written approval by the district attorney or Attorney General, the law enforcement agency

responsible for investigating the criminal offense shall return to the victim any property belonging to the victim that was taken during the course of the investigation, or shall inform the victim of the reasons why the property will not be returned. The law enforcement agency shall make reasonable efforts to return the property to the victim as soon as possible.

(b) If the property of the victim has been admitted as evidence during a trial or hearing, the court may, upon request of the district attorney or the Attorney General, order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the attorney for the defendant or investigator may inspect and independently photograph the evidence before it is released.

#### **15-23-78 – Right to information from agency having physical custody of prisoner.**

Any custodial agency having physical custody of the prisoner, if provided a request for notice, shall mail to the victim the following information:

(1) Notice of an end of sentence release within 15 days prior to the end of the sentence of the prisoner.

(2) Notice of the death within 15 days after the prisoner has died.

#### **§ 15-23-79 – Submission of victim's statement into prisoner's records.**

(a) The victim shall have the right to be notified, upon written request, that he or she may submit a written statement, or recorded oral transcription, which shall be entered into the prisoner's Department of Corrections records. The statement shall be considered during any review for community status of the prisoner or prior to release of the prisoner.

(b) The victim shall have the right to be notified by the Board of Pardons and Paroles and allowed to be present and heard at a hearing when parole or pardon is considered pursuant to Section 15-22-36 et seq.

#### **§ 15-23-80 – Facility with custody of defendant to send victim release opinion.**

Upon written request of the victim, the Alabama Department of Mental Health and Mental Retardation, or other facility with custody of the criminal defendant, shall send the victim a copy to the address stated in the request, of its release opinion which was provided to the appropriate court pursuant to Section 15-16-63 et seq.

**§ 15-23-81 – Victim to respond to subpoena or to participate in proceeding preparation without loss of employment or fear of loss.**

The victim shall respond to a subpoena to testify in a criminal proceeding or participate in the reasonable preparation of criminal proceeding without the loss of employment or the intimidation, threats, or fear of the loss of employment.

**§ 15-23-82 – Clerk of court to accept and disburse restitution.**

The clerk of the court is authorized and shall accept partial payments from defendants when directed to do so by the court, pursuant to the conditions in Section 12-19-26. The clerk of the court shall disburse restitution to victims or the authorized recipient, including partial periodic payments as ordered under any judgment, decree, or order of the circuit or district court, pursuant to Section 15-18-65 et seq. The disbursements shall be made to the victims or the authorized recipient no later than the time provided in Rule 4, Alabama Rules of Judicial Administration. The clerk of the court shall, at the end of each month, provide to the district attorney and probation office a list of the names of defendants who are delinquent in their restitution payments under a court-approved installment plan or any other deferred-payment time period specified by the court in its sentencing order.

**§ 15-23-83 – Assertion of rights by Attorney General or district attorney.**

The Attorney General or district attorney may assert any right to which the victim is entitled.

**§ 15-23-84 – Failure to provide right or notice not grounds for setting aside sentence.**

The failure to provide a right, privilege, or notice to a victim under this article shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

**Rule of Criminal Procedure:**

**Rule 25.8. Release from commitment.**

(a) DUTY OF COMMISSIONER. When a defendant has been committed to the custody of the commissioner or a facility as provided by Rule 25.6(b), the commissioner or the facility, as the case may be, may not release such defendant from custody or permit such defendant to be at large without supervision and attendance unless authorized to do so by court order.

(b) APPLICATION FOR RELEASE. Upon receipt by the court of a motion from the defendant, a motion on behalf of the defendant, or a motion from the commissioner, alleging that the defendant is no longer mentally ill or no longer poses a real and present threat of substantial harm to himself or others by being at large, or no longer poses a real and present threat of

substantial harm to himself or to others by being at large if certain conditions are imposed upon the defendant's release, and accompanied by the certification of a mental health expert stating that, in the expert's opinion, those allegations are correct, the court shall give notice to the district attorney (who shall then notify the victim pursuant to Ala. Code 1975, § 15-14-50 et seq.), the commissioner, and the regional or community mental health facility which is or may be involved if the defendant is released, and the defendant, the defendant's guardian, or the defendant's attorney, and unless an order of release is stipulated by the parties with consent of the court, shall hold a hearing to determine whether said defendant is still mentally ill or still poses a real and present threat of substantial harm to himself or to others. The court may not be required to give notice or to hold a hearing on such motion for any defendant more frequently than every six (6) months. The court shall conduct the hearing without empaneling a jury.

(c) DUTY OF DEPARTMENT TO GIVE NOTICE. Whenever the department or facility with custody of a defendant is of the opinion that the defendant is no longer mentally ill, or that the defendant no longer poses a real and present threat of substantial harm to himself or to others by being at large, or no longer poses a real and present threat of substantial harm to himself or to others by being at large if certain conditions are imposed upon the defendant's release, the department or facility, as the case may be, shall give notice of that opinion to the court in writing. The department or the facility, as the case may be, shall contemporaneously send copies of that notice to the district attorney (who shall notify the victim pursuant to § 15-14-50 et seq.), the regional or community mental health facility which is or may be involved if the defendant is released, and the defendant, the defendant's guardian, or the defendant's attorney. The notice may include a conditional release plan if the department or facility deems such a plan appropriate.

(d) DATE OF HEARING; NOTICE. The court shall set a hearing to be held within thirty (30) days of its receipt of the motion or notice described in Rule 25.8(b) and (c), respectively, unless an order of release either with or without conditions is stipulated by the department and all the parties to whom notice is required to be given in Rule 25.8(b) and (c). The court shall give notice of the date of that hearing to the department and to all the parties to whom notice is required to be given in Rule 25.8(b) and (c).

(e) RELEASE OF DEFENDANT UPON FAILURE TO HOLD HEARING. If a hearing is not held within sixty (60) days of receipt by the court of the notice described in Rule 25.8(c) (not simply upon application for release as provided in Rule 25.8(b)), the defendant shall be released forthwith unless, for good cause shown, the hearing is continued for a reasonable time.

(f) DETERMINATION AS TO CONDITION OF DEFENDANT. If, after conducting the hearing, the court determines that the defendant is no longer mentally ill or no longer poses a real and present threat of substantial harm to himself or to others by being at large, the court shall order the defendant's release. If the court determines that the defendant is still mentally ill but no longer poses a real and present threat of substantial harm to himself or to others by being at large if the defendant's release is accompanied by certain conditions, the court shall order his release subject to those conditions necessary to prevent the defendant from posing a real and present threat of substantial harm to himself or to others.

(g) COURT-IMPOSED CONDITIONS FOR RELEASE. The conditions that the court may

impose upon release, if necessary and appropriate, include the following:

(1) That the defendant take medication as prescribed by doctors in the department or in a regional or community mental health facility, or by some other doctor whose care the defendant is in;

(2) That the defendant submit to treatment and accept care from a duly authorized outpatient facility such as a regional or community mental health facility;

(3) That the defendant submit to mental or medical evaluation or testing as prescribed by the department, by a regional or community mental health facility, or by other appropriate person or facility;

(4) That the defendant submit to periodic or random drug testing designed to ensure that the defendant is taking any prescribed drugs and avoiding any proscribed drugs, including alcohol;

(5) That the defendant avoid specified activities, persons, or places that may be detrimental to the defendant's condition; and

(6) Any other appropriate condition that is necessary to prevent the defendant from posing a real and present threat of substantial harm to himself or to others while the defendant is at large. If conditional release is ordered, the court shall state in its order the specific conditions to be followed by the defendant. The order shall also direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of release and progress in treatment, with copies to the district attorney, to the defendant or defendant's guardian or counsel, and to the individual or institution from which the defendant is released. Such reports shall not be deemed to be a violation of any doctor-patient, psychiatrist-patient, or psychologist-patient privilege.

(h) MODIFICATION OF RELEASE CONDITIONS. If at any time it appears that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court may, after a hearing, modify the release conditions or order the defendant returned to the department for further treatment. All such hearings shall be preceded by notice to the department and to the parties required to be notified in Rule 25.8(b) and (c). All such modifications shall be guided by the standard of whether such modifications are necessary to ensure that the defendant does not pose a real and present threat of substantial harm to himself or to others.

(i) REMOVAL OF CONDITIONS OF RELEASE. If at any time after a defendant has been conditionally released, it appears that removal of some or all of the conditions will not cause the defendant to pose a real and present threat of substantial harm to himself or to others by being at large, the court, after a hearing, shall remove the unnecessary conditions, or it shall order the defendant released unconditionally and terminate its jurisdiction over the case, as the case may be. All such hearings shall be preceded by notice to the department and to the parties required to be notified in Rule 25.8(b) and (c).