

DELAWARE VICTIMS' RIGHTS LAWS¹

Constitution

Delaware does not have a victims' rights amendment to its constitution.

Statutes

Title 11 – Chapter 94 – Victims' Bill of Rights

§ 9401 – Definitions

As used in this chapter, unless the context otherwise requires:

- (1) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates one or more of the following sections of Title 11:

OFFENSES AGAINST THE PERSON

- 601. Offensive touching; unclassified misdemeanor.
- 602. Menacing; unclassified misdemeanor.
- 603. Reckless endangering in the second degree; class A misdemeanor.
- 604. Reckless endangering in the first degree; class E felony.
- 611. Assault in the third degree; class A misdemeanor.
- 612. Assault in the second degree; class D felony.
- 613. Assault in the first degree; class C felony.
- 621. Terroristic threatening.
- 628. Vehicular assault in the second degree; class B misdemeanor.
- 629. Vehicular assault in the first degree; class A misdemeanor.
- 630. Vehicular homicide in the second degree; class F felony; minimum sentence; juvenile offenders.
- 631. Criminally negligent homicide; class E felony.
- 631A. Vehicular homicide in the first degree; class E felony; minimum sentence; juvenile offenders.
- 632. Manslaughter; class C felony.
- 635. Murder in the second degree; class B felony.
- 636. Murder in the first degree; class A felony.
- 645. Promoting suicide; class F felony.

¹ Not meant to be exhaustive.

764. Indecent exposure in the second degree; unclassified misdemeanor.
765. Indecent exposure in the first degree; class A misdemeanor.
766. Incest; class A misdemeanor.
767. Unlawful sexual contact in the third degree; class A misdemeanor.
768. Unlawful sexual contact in the second degree; class G felony.
769. Unlawful sexual contact in the first degree; class F felony.
Former 770. Unlawful sexual penetration in the third degree; class E felony.
Former 771. Unlawful sexual penetration in the second degree; class D felony.
Former 772. Unlawful sexual penetration in the first degree; separate charges; class C felony.
Former 773. Unlawful sexual intercourse in the third degree; class C felony.
Former 774. Unlawful sexual intercourse in the second degree; class B felony.
Former 775. Unlawful sexual intercourse in the first degree; class A felony.
770. Rape in the fourth degree; class C felony.
771. Rape in the third degree; class B felony.
772. Rape in the second degree; class B felony.
773. Rape in the first degree; class A felony.
781. Unlawful imprisonment in the second degree; class A misdemeanor.
782. Unlawful imprisonment in the first degree; class G felony.
783. Kidnapping in the second degree; class C felony.
783A. Kidnapping in the first degree; class B felony.
785. Interference with custody; class G felony; class A misdemeanor.

OFFENSES INVOLVING PROPERTY

801. Arson in the third degree; affirmative defense; class G felony.
802. Arson in the second degree; affirmative defense; class D felony.
803. Arson in the first degree; class C felony.
811. Criminal mischief; felony.
823. Criminal trespass in the first degree; class A misdemeanor.
824. Burglary in the third degree; class F felony.
825. Burglary in the second degree; class D felony.
826. Burglary in the first degree; class C felony.
831. Robbery in the second degree; class E felony.
832. Robbery in the first degree.
835. Carjacking in the second degree; class E felony, class D felony.
836. Carjacking in the first degree, class C felony; class B felony.
840. Shoplifting; class G felony; class A misdemeanor.
841. Theft; class G felony; class A misdemeanor.
846. Extortion; class E felony.
848. Misapplication of property; class G felony; class A misdemeanor.
851. Receiving stolen property; class G felony; class A misdemeanor.
854. Identity theft; class E felony; class D felony.
861. Forgery; class F felony; class G felony; class A misdemeanor; restitution required.
900. Issuing a bad check; class A misdemeanor; class G felony.
903. Unlawful use of credit card; class G felony; class A misdemeanor.

OFFENSES RELATING TO CHILDREN AND INCOMPETENTS

- 1101. Abandonment of child; class A misdemeanor.
- 1102. Endangering the welfare of a child; class A misdemeanor.
- 1105. Endangering the welfare of an incompetent person; class A misdemeanor.
- 1108. Sexual exploitation of a child; class B felony.
- 1112A. Sexual Solicitation of a Child; class C felony.

OFFENSES RELATING TO JUDICIAL AND SIMILAR PROCEEDING

- 1261. Bribing a witness; class E felony.
- 1263. Tampering with a witness; class E felony.
- 1263A. Interfering with child witness.
- 1264. Bribing a juror; class E felony.
- 1312. Aggravated harassment; class B misdemeanor.
- 1312A. Stalking; class F felony.

OFFENSES AGAINST PUBLIC HEALTH

- 1339. Adulteration; class G felony; class E felony; class A felony.

RELEASE OF PERSONS ACCUSED OF CRIMES

- 2113. Penalties for noncompliance with conditions of recognizance; bond or conditions.

WITNESS AND EVIDENCE

- 3532. Act of intimidation; class E felony.
- 3533. Aggravated act of intimidation; class D felony.

- (2) "Member of the victim's family" means the spouse, a child by birth or adoption, a stepchild, a parent, a stepparent, a sibling or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode or plan.
- (3) "Person" means an individual, corporation, statutory trust, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.
- (4) "Representative of the victim" means a member of the victim's family or an individual designated by the victim or by a court in which the crime is being or could be prosecuted.
- (5) "Victim" means the person, organization, partnership, business, corporation, agency or governmental entity identified as the victim of a crime in a police report, a criminal complaint or warrant, an indictment or information or other charging instrument. "Victim" includes a parent, guardian or custodian of a victim who is unable to meaningfully

understand or participate in the legal process due to physical, psychological or mental impairment. "Victim" includes the following relations of a deceased victim if the relation is not the defendant, codefendant or conspirator:

- a. The spouse;
- b. An adult child or stepchild;
- c. A parent; or
- d. A sibling.
- e. "Victim" includes qualifying neighborhood or homeowners associations as defined by § 9419 of this title.

(6) "Prosecutor" means a representative of the office of the Attorney General.

(7) "Court" means the Superior Court, Family Court, Court of Common Pleas and the Justice of the Peace Court.

(8) "Witness" means any person other than a law-enforcement officer or probation officer who has knowledge of the existence or nonexistence of any fact related to any crime, or any person who has reported any crime to any law-enforcement officer or probation officer, or any person other than a law-enforcement officer or probation officer who has been designated for service with a subpoena issued by any court or by the Attorney General, or any person other than a law-enforcement officer or probation officer who would be believed by any reasonable person to be an individual described by this subsection.

§ 9402 – Compliance with chapter

(a) This chapter shall apply to the victims of the crimes defined in § 9401(1) of this title, and to witnesses to such crimes, as specified in § 9403 of this title, and to qualifying neighborhood or homeowners associations where illegal drug activity occurs as defined in § 9419 of this title. Consistent with the duty to represent the interests of the public as a whole, the Attorney General shall enforce compliance with this chapter on behalf of victims, witnesses and members of their families.

(b) Failure to comply with this chapter does not create a claim for damages against a government employee, official or entity.

(c) Failure to provide a right, privilege or notice to a victim under this chapter shall not be grounds for the defendant to seek to have a conviction or sentence set aside.

§ 9403 – Nondisclosure of information about victim

(a) Unless a victim or witness waives confidentiality in writing, neither a law-enforcement agency, the prosecutor, nor the corrections department may disclose, except among themselves or as authorized by law, the residential address, telephone number or place of

employment of the victim or a member of the victim's family, or the identity, residential address, telephone number or place of employment of a witness or a member of the witness's family, except to the extent that disclosure is of the site of the crime, is required by law or the Rules of Criminal Procedure, is necessary for law-enforcement purposes, or is permitted by the court for good cause.

- (b) A court may not compel a victim or witness or a member of the victim's or witness's family testifying in a criminal justice proceeding to disclose a residential address or place of employment on the record unless the court finds that disclosure of the information is necessary.
- (c) The victim's address, place of employment and telephone number and any witness's identity, address, place of employment and telephone number, maintained by a court, prosecutor or law-enforcement agency pursuant to this chapter is exempt from disclosure under the Freedom of Information Act.

§ 9404 – Victim’s interest in speedy prosecution; child victim or witness

- (a) The court shall consider the interest of the victim in a speedy prosecution.
- (b) Proceedings shall be expedited in cases involving a child victim or witness particularly in child abuse and sexual abuse cases.

§ 9405 – Prosecutor to confer with victim

Consistent with the duty to represent the interests of the public as a whole, the prosecutor shall confer with a victim before amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion. Failure of the Attorney General to confer with the victim does not affect the validity of an agreement between the State and the defendant or of an amendment, dismissal, plea, pretrial diversion or other disposition of the case.

§ 9406 – Safety of victim

- (a) The court shall provide a waiting area for victims separate from the defendant, defendant's relatives and defense witnesses if such an area is available and the use of the area is practicable. If a separate waiting area is not available or practical, the court shall provide other available safeguards to minimize the victim's contact with the defendant, defendant's relatives and defense witnesses during court proceedings.
- (b) At the initial contact, the victim shall be provided written information by the investigating law-enforcement agency to whom the victim can contact to ascertain if the defendant is released from custody, and the procedures that the victim may follow if threatened, intimidated or if conditions of bail or custody are not complied with.

§ 9407 – Presence at court proceedings; notice

- (a) A victim or an individual designated by the victim may be present whenever a defendant has a right to be present during a court proceeding concerning the crime charged other than a grand jury proceeding, unless good cause can be shown by the defendant to exclude the victim. If the victim is present, the court, at the victim's request, shall permit the presence of an individual to provide support to the victim, unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.
- (b) The victim shall promptly be informed of the date, time and place of each court proceeding relative to the disposition of the case at which the victim has a right to be present, unless a victim requests that notice of proceedings not be provided under this chapter.

§ 9408 – Prompt return of property

The agency holding the property shall promptly return the property to the victim when it is no longer needed for evidentiary purposes unless it is contraband or subject to forfeiture.

§ 9409 – Limitations on employer

An employer may not discharge or discipline a victim or a representative of the victim for:

- (1) Participation at the prosecutor's request in preparation for a criminal justice proceeding;
- (2) Attendance at a criminal justice proceeding if the attendance is reasonably necessary to protect the interests of the victim; or
- (3) Attendance at a criminal justice proceeding in response to a subpoena.

§ 9410 – Information from law-enforcement agency

At the initial contact between the victim of a reported crime and the law-enforcement agency having responsibility for investigating that crime, that agency shall promptly give in writing to the victim:

- (1) An explanation of the victim's rights under this chapter;
- (2) Information concerning the availability of social service and other assistance to victims;
- (3) A copy of the initial incident report;

- (4) Notice of the availability of a victim service unit within the Department or, in the absence of a unit within that law-enforcement agency, the availability of the Statewide Victim Center;
- (5) Notice of the Violent Crimes Compensation Program;
- (6) Notice of availability of information concerning pretrial release; and
- (7) Source of information at the investigating law-enforcement agency where the victim may check the status of any arrest.

§ 9411 – Information concerning pretrial and trial matters

- (a) After a prosecution is commenced by the Attorney General in the Superior Court, the Attorney General shall promptly inform a victim of:
 - (1) A statement of the procedural steps in the processing of a criminal case;
 - (2) Rights under this chapter;
 - (3) Procedures if the victim is threatened or harassed;
 - (4) Victim compensation information when appropriate;
 - (5) The right of the victim to confer with the prosecutor prior to trial;
 - (6) The right of the victim to consult with the prosecutor about the disposition of the case, including the victim's views on dismissal, plea negotiations or diversion programs;
 - (7) The right of the victim to be present at trial and sentencing;
 - (8) Notice of the scheduling of court proceedings and changes including trial date, case review and sentencing hearings;
 - (9) Notice of the crime(s) of which the defendant is convicted;
 - (10) Notice of the specifics of any sentencing order;
 - (11) Notice of sentence reduction or modification order; and
 - (12) Notice of a reversal upon appeal of a conviction.
- (b) In all other courts, the Attorney General shall give the victim:
 - (1) Notice of the scheduling of the court proceedings and changes, including trial date, case review and sentencing hearings;
 - (2) Notice of the crime(s) of which the defendant is convicted;
 - (3) Notice of the specifics of any sentencing order; and
 - (4) Notice of sentence reduction or modification order.

In the Municipal Court the notice required by this section shall be provided by the Court.

§ 9412 – Information concerning appeal or post-conviction remedies

If the defendant appeals or pursues a post-conviction remedy from any court, the Attorney General shall promptly inform any victim of the date, time and place of any hearing and of the decision.

§ 9413 – Information concerning confinement

- (a) The Department of Correction and the Department of Services for Children, Youth and Their Families shall notify in writing those victims of the following regarding defendants in their custody:
 - (1) Projected release date;
 - (2) Release or release to a community-based program; and
 - (3) Parole Board hearing date.
- (b) In the event of an escape of the defendant, the Department of Correction and the Department of Services for Children, Youth and Their Families, shall notify immediately, by telephone or in person, any victim of the escape of the defendant.
- (c) Notwithstanding any provision to the contrary, upon the request of the victim, the Department of Correction and the Department of Services for Children, Youth and Their Families shall provide the victim with information concerning the terms of probation, parole or other condition of release and the defendant's compliance or noncompliance with the sentence, probation, parole or other conditions imposed on the defendant. The Department of Correction shall have the authority to promulgate rules and regulations to implement this subsection.

§ 9414 – General requirements for information

- (a) Unless the form of notice is expressly set forth by this chapter, information required to be furnished under this chapter may be furnished orally or in written form.
- (b) A person responsible for furnishing information may rely upon the most recent name, address and telephone number furnished by the victim.

§ 9415 – Presentence report

In preparing a presentence report, the Investigative Services Officer shall make a reasonable effort to confer with the victim. If the victim is not available or declines to confer, the Investigative Services Officer shall record that information in the report. The victim shall have the right to present a victim-impact statement pursuant to § 4331 of this title.

§ 9416 – Consideration of victim-impact statement at Board of Parole hearing or Board of Pardons hearing

- (a) The Board of Parole shall inform the victim in writing of:
 - (1) The right of the victim to address the Parole Board in writing or in person; and
 - (2) The decision of the Parole Board.

- (b) The Board of Pardons shall inform the victim in writing of:
 - (1) The right of the victim to address the Board of Pardons in writing or in person;
 - (2) Any commutation of sentence that is recommended by the Board; and
 - (3) Any pardon or commutation that is granted.

§ 9417 – Requirement of state agencies to file annual reports

All agencies given duties by this chapter shall submit an annual report with related statistics outlining compliance with this chapter. The annual report shall be submitted at the end of each calendar year to the Governor and to the Criminal Justice Council. Unless prevented by the failure of a victim to cooperate by furnishing a current address and telephone number, an agency shall make all reasonable efforts to provide notification and participation rights to victims. If the requirements stated in this chapter cannot be achieved by an agency for any reason, the agency shall so state in the annual report and shall explain in detail the nature of the obstacles to comply with this chapter or other causes for the inability to achieve the objectives. The Governor shall advise state agencies of any statutory changes that require an amendment to this chapter.

§ 9418 – Victims’ Rights Fund

All fines collected under Chapter 48 of Title 21 shall be deposited into a Victims' Rights Fund established within the State Treasurer's Office. Proceeds of this Fund are to be used for the establishment of necessary infrastructure and systems development in support of victim notification initiatives.

§ 9419 – Rights of qualifying neighborhood or homeowners' associations

- (a) Residents of neighborhoods where illegal drug activity occurs shall collectively be entitled to all of the rights, privileges and notice requirements otherwise provided to victims under this chapter, provided that:
 - (1) There exists within the residents' neighborhood a neighborhood or homeowners' association, which shall serve as the residents' designated agent for all purposes under this chapter;

- (2) The neighborhood or homeowners' association has been legally incorporated in accordance with Delaware's General Corporation Law;
 - (3) The neighborhood or homeowners' association has been recognized by its local government jurisdiction, through actual practice or by specific designation, as duly representative of the residents of its surrounding neighborhood; and
 - (4) The neighborhood or homeowners' association has given prior written notice to all state and local police authorities whose jurisdiction encompasses all or any portion of the geographical area represented by the association, specifying its election to prevail itself of the rights, privileges and notice requirements provided under this chapter and the name, address and telephone number of the representative of the neighborhood or homeowners' association to whom all notices or other communications required under this chapter shall be given. Any police authority so notified shall thereafter identify the neighborhood or homeowners' association as a victim for purposes of this chapter in any police report, criminal complaint, warrant, indictment, information or other charging document in which any person is subsequently charged with violating any provision of subchapter IV of Title 16 or any successor law within the geographical area represented by the association.
- (b) For purposes of this section, "illegal drug activity" means the unlawful selling, serving, storing, giving away or manufacturing of (which includes production, preparation, compounding, conversion, processing, packaging or repackaging) of any drug, which includes all narcotic or psychoactive drugs, cannabis, cocaine and all controlled substances as defined in the Delaware Uniform Controlled Substances Act.