

# NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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

### Constitution

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

### Statutes

#### Title 17, Criminal Procedure; Chapter 17, Crime Victims' Bill of Rights

##### § 17-17-1 – Legislative findings

The General Assembly hereby finds and declares it to be the policy of this state that victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights.

##### § 17-17-2 – Short title

This chapter shall be known and may be cited as the "Crime Victims' Bill of Rights."

##### § 17-17-3 – Definitions

As used in this chapter, the term:

- (1) "Accused" means a person suspected of and subject to arrest for, arrested for, or convicted of a crime against a victim.
- (2) "Arresting law enforcement agency" means any law enforcement agency, other than the investigating law enforcement agency, which arrests the accused.
- (3) "Compensation" means awards granted by the Georgia Crime Victims Compensation Board pursuant to Chapter 15 of this title.
- (4) "Crime" means an act committed in this state which constitutes any violation of Chapter 5 of Title 16, relating to crimes against persons; Chapter 6 of Title 16, relating to sexual offenses; Article 1 or Article 3 of Chapter 7 of Title 16, relating to burglary and arson; Article 1 or Article 2 of Chapter 8 of Title 16, relating to offenses involving theft and armed robbery; Code Section 16-12-100, relating to sexual exploitation of children; Code

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

Section 40-6-393, relating to homicide by vehicle; Code Section 40-6-393.1, relating to feticide by vehicle; or Code Section 40-6-394, relating to serious injury by vehicle.

- (5) "Custodial authority" means a warden, sheriff, jailer, deputy sheriff, police officer, correctional officer, officer or employee of the Department of Corrections or the Department of Juvenile Justice, or any other law enforcement officer having actual custody of the accused.
- (6) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the crime.
- (7) "Notice," "notification," or "notify" means a written notice when time permits or, failing such, a documented effort to reach the victim by telephonic or other means.
- (8) "Person" means an individual.
- (9) "Prompt notice," "prompt notification," or "promptly notify" means notification given to the victim as soon as practically possible so as to provide the victim with a meaningful opportunity to exercise his or her rights pursuant to this chapter.
- (10) "Prosecuting attorney" means the district attorney, the solicitor-general of a state court or the solicitor of any other court, the Attorney General, a county attorney opposing an accused in a habeas corpus proceeding, or the designee of any of these.
- (11) "Victim" means:
  - (A) A person against whom a crime has been perpetrated; or
  - (B) In the event of the death of the crime victim, the following relations if the relation is not either in custody for an offense or the defendant:
    - (i) The spouse;
    - (ii) An adult child if division (i) does not apply;
    - (iii) A parent if divisions (i) and (ii) do not apply;
    - (iv) A sibling if divisions (i) through (iii) do not apply; or
    - (v) A grandparent if divisions (i) through (iv) do not apply; or
  - (C) A parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if such parent, guardian, or custodian is in custody for an offense or is the defendant.

#### **§ 17-17-4 – Designation of persons to act in place of victim during duration of physical disability**

If a victim is physically unable to exercise privileges and rights under this chapter, the victim may designate by written instrument his or her spouse, adult child, parent, sibling, or grandparent to act in place of the victim during the duration of the physical disability. During the physical

disability, notices to be provided under this chapter to the victim shall continue to be afforded only to the victim.

**§ 17-17-5 – Victims entitled to notification of accused's arrest, release from custody, and any proceeding at which release of accused considered**

- (a) All victims, wherever practicable, shall be entitled to notification as defined by paragraph (7) of Code Section 17-17-3 of the accused's arrest, of the accused's release from custody, and of any judicial proceeding at which the release of the accused will be considered. No such notification shall be required unless the victim provides a landline telephone number other than a pocket pager or electronic communication device number to which such notice can be directed.
- (b) The investigating law enforcement agency, prosecuting attorney, or custodial authority who is required to provide notification pursuant to this chapter shall advise the victim of his or her right to notification and of the requirement of the victim's providing a landline telephone number other than a pocket pager or electronic communication device number to which the notification shall be directed. Such victim shall transmit the telephone number described in this subsection to the appropriate investigating law enforcement agency, prosecuting attorney, or custodial authority as provided for in this chapter.

**§ 17-17-6 – Information to be made available to victim upon initial contact by law enforcement and court personnel**

- (a) Upon initial contact with a victim, all law enforcement and court personnel shall make available to the victim the following information written in plain language:
  - (1) The possibility of pretrial release of the accused, the victim's rights and role in the stages of the criminal justice process, and the means by which additional information about these stages can be obtained;
  - (2) The availability of victim compensation; and
  - (3) The availability of community based victim service programs.
- (b) The Criminal Justice Coordinating Council is designated as the coordinating entity between various law enforcement agencies, the courts, and social service delivery agencies. The Criminal Justice Coordinating Council shall develop and disseminate written information upon which law enforcement personnel may rely in disseminating the information required by this chapter.

**§ 17-17-7 – Notification of victim by investigating law enforcement agency, prosecuting attorney, and custodial authority**

- (a) Whenever possible, the investigating law enforcement agency shall give to a victim prompt notification as defined in paragraph (9) of Code Section 17- 17-3 of the arrest of an accused.
- (b) The arresting law enforcement agency shall promptly notify the investigating law enforcement agency of the accused's arrest.
- (c) Whenever possible, the prosecuting attorney shall notify the victim prior to any proceeding in which the release of the accused will be considered.
- (d) Whenever possible, the prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the release of the accused pending judicial proceedings.
- (e) Whenever possible, the custodial authority shall give prompt notification to a victim of the release of the accused.
  - (1) Prompt notification of release from a county or municipal jail is effected by placing a telephone call to the telephone number provided by the victim and giving notice to the victim or any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine.
  - (2) Notification of release from the custody of the state or any county correctional facility shall be in the manner provided by law.
- (f) If the court has granted a pretrial release or supersedeas bond, the victim shall have the right to file a written complaint with the prosecuting attorney asserting acts or threats of physical violence or intimidation by the accused or at the accused's direction against the victim or the victim's immediate family. Based on the victim's written complaint or other evidence, the prosecuting attorney may move the court that the bond or personal recognizance of an accused be revoked.

**§ 17-17-8 – Information to be made available to victim upon initial contact by prosecuting attorney.**

- (a) Upon initial contact with a victim, a prosecuting attorney shall give prompt notification to the victim of the following:
  - (1) The procedural steps in processing a criminal case;
  - (2) The rights and procedures of victims under this chapter;
  - (3) Suggested procedures if the victim is subjected to threats or intimidation; and
  - (4) The names and telephone numbers of contact persons at both the office of the custodial authority and in the prosecuting attorney's office.
- (b) If requested in writing by the victim and to the extent possible, the prosecuting attorney shall give prompt advance notification of any scheduled court proceedings and notice of any changes to that schedule. Court proceedings shall include, but not be limited to, pretrial commitment hearings, arraignment, motion hearings, trial, sentencing, appellate review, and

post-conviction relief. The prosecuting attorney shall notify all victims of the requirement to make such request in writing.

**§ 17-17-9 – Separation of victims from accuseds and related parties during court proceedings**

The victim shall have the right to wait in an area separate from the accused, from the family and friends of the accused, and from witnesses for the accused during any judicial proceeding involving the accused, provided that such separate area is available and its use in such a manner practical. If such a separate area is not available or practical, the court, upon request of the victim made through the prosecuting attorney, shall attempt to minimize the victim's contact with the accused, the accused's relatives and friends, and witnesses for the accused during any such judicial proceeding.

**§ 17-17-10 – Information concerning victim's address, telephone number, or place of employment not to be transmitted to defendant**

As a condition of permitting a response to an inquiry as to the victim's current address, telephone number, or place of employment, the court may require counsel or any other officer of the court, including but not limited to counsel for the defendant, not to transmit or permit transmission to the defendant of the victim's current address, telephone number, or place of employment by the counsel or officer of the court or any employee, agent, or other representative of the counsel or officer of the court.

**§ 17-17-11 – Victim's right to express opinion as to disposition of accused's case**

The prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the disposition of an accused's case, including the views of the victim regarding:

- (1) Plea or sentence negotiations; and
- (2) Participation in pretrial or post-conviction diversion programs.

This provision shall not limit any other right created pursuant to state law.

**§ 17-17-12 – Notification of victim of appellate proceedings by prosecuting attorney**

- (a) Upon the written request of the victim, the prosecuting attorney shall notify the victim of the following:
  - (1) That the accused has filed a motion for new trial, an appeal of his or her conviction, or an extraordinary motion for new trial;

- (2) Whether the accused has been released on bail or other recognizance pending the disposition of the motion or appeal;
  - (3) The time and place of any appellate court proceedings relating to the motion or appeal and any changes in the time or place of those proceedings; and
  - (4) The result of the motion or appeal.
- (b) Upon the written request of the victim as defined in paragraph (11) of Code Section 17-17-3, in cases in which the accused is convicted of a capital offense and receives the death penalty, it shall be the duty of the Attorney General to:
- (1) Notify the victim of the filing and disposition of all collateral attacks on such conviction which are being defended by the Attorney General including, but not limited to, petitions for a writ of habeas corpus, and the time and place of any such proceedings and any changes in the time or place of those proceedings; and
  - (2) Provide the victim with a report on the status of all pending appeals, collateral attacks, and other litigation concerning such conviction which is being defended by the Attorney General at least every six months until the accused dies or the sentence or conviction is overturned or commuted or otherwise reduced to a sentence other than the death penalty.
- (c) In the event the accused is granted a new trial or the conviction is reversed or remanded and the case is returned to the trial court for further proceedings, the victim shall be entitled to request the rights and privileges provided by this chapter.

**§ 17-17-13 – Notification of victim prior to consideration of pardon, parole, or other clemency by State Board of Pardons and Paroles**

The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim whenever it considers making a final decision to grant parole or any other manner of executive clemency action to release a defendant for a period exceeding 60 days; and the board shall provide the victim with an opportunity to file a written objection to such action. No notification need be given unless the victim has expressed objection to release or has expressed a desire for such notification and has provided the State Board of Pardons and Paroles with a current address and telephone number.

**§ 17-17-14 – Responsibility of victim to keep certain persons informed of victim's current address and phone number**

- (a) It is the right and responsibility of the victim who desires notification under this chapter or under any other notification statute to keep the following informed of the victim's current address and phone number:
- (1) The investigating law enforcement agency;

- (2) The prosecuting attorney, until final disposition or completion of the appellate and post-conviction process, whichever occurs later; and
- (3) As directed by the prosecuting attorney, the sheriff if the accused is in the sheriff's custody for pretrial, trial, or post-conviction proceedings; the Department of Corrections if the accused is in the custody of the state; or any county correctional facility if the defendant is sentenced to serve time in a facility which is not a state facility; and
- (4) The State Board of Pardons and Paroles.

(b) Current addresses and telephone numbers of victims and their names provided for the purposes of notification pursuant to this chapter or any other notification statute shall be confidential and used solely for the purposes of this chapter and shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records.

**§ 17-17-15 – Failure to provide information or notifications**

- (a) Failure to provide or to timely provide any of the information or notifications required by this chapter shall not subject the person responsible for such notification or that person's employer to any liability for damages.
- (b) Failure to provide a victim with any of the rights required by law shall not give an accused a basis for error in either an appellate action or a post-conviction writ of habeas corpus.
- (c) This chapter does not confer upon a victim any standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.
- (d) The enumeration of these rights shall not be construed to deny or diminish other notification rights granted by state law.
- (e) The victim may waive any of the information or notification or other rights provided for by this chapter.

**§ 17-17-16 – Temporary restraining orders and protective orders prohibiting harassment of victims or witnesses**

- (a) As used in this Code section, the term:
  - (1) "Course of conduct" spans a series of acts over a period of time, however short, indicating a continuity of purpose.
  - (2) "Harassment" means a course of conduct directed at a specific person that causes substantial emotional distress in such person.

- (b) (1) A superior court, upon application of a prosecuting attorney, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a criminal case if the court finds from specific facts shown by affidavit or by verified complaint that there are reasonable grounds to believe that harassment of an identified victim or witness in a criminal case exists or that such order is necessary to prevent and restrain an offense under Code Section 16-10-32 or 16-10-93.
- (2) (A) A temporary restraining order may be issued under this Code section without written or oral notice to the adverse party or such party's attorney in a civil action under this Code section if the court finds, upon written certification of facts by the prosecuting attorney, that such notice should not be required and that there is a reasonable probability that the state will prevail on the merits.
- (B) A temporary restraining order issued without notice under this Code section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.
- (C) A temporary restraining order issued under this Code section shall expire at such time, not to exceed ten days from issuance, as the court directs. The court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to ten days or for such longer period agreed to by the adverse party.
- (D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and at the hearing, if the prosecuting attorney does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.
- (E) If on two days' notice to the prosecuting attorney or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
- (F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail and not by reference to the complaint or other document the act or acts being restrained.
- (c) (1) A superior court, upon motion of the prosecuting attorney, shall issue a protective order prohibiting harassment of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a criminal case exists or that such order is necessary to prevent and restrain an offense under Code Section 16-10-32 or 16-10-93.
- (2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.
- (3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail and not by reference to the complaint or other document the act or acts being restrained.

(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The prosecuting attorney may, at any time within 90 days before the expiration of such order, apply for a new protective order under this Code section.

(d) Article 5 of Chapter 11 of Title 9, relating to depositions and discovery, shall not apply to actions brought pursuant to this Code section.