

IDAHO VICTIMS' RIGHTS LAWS¹

Constitution

Article 1, § 22 – Rights of Crime Victims

A crime victim, as defined by statute, has the following rights:

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.
- (8) To refuse an interview, ex parte contact, or other request by the defendant, or any other person acting on behalf of the defendant, unless such request is authorized by law.
- (9) To read presentence reports relating to the crime.
- (10) To the same rights in juvenile proceedings, where the offenses is a felony if committed by an adult, as guaranteed in this section, provided that access to the social history report shall be determined by statute.

Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the

¹ Not intended to be exhaustive.

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provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute.

This section shall be self-enacting. The legislature shall have the power to enact laws to define, implement, preserve, and expand the rights guaranteed to victims in the provisions of this section.

Statutes

Title 19, Criminal Procedure; Chapter 53, Compensation of Victims of Crime

§ 19-5302 – Victims of Crime – Restitution Priority

If a district court or a magistrate's division orders the defendant to pay restitution, the court shall order the defendant to pay such restitution to the victim or victims injured by the defendant's action. There shall be a full restitution to such victim or victims before the court may order any payment be made by the defendant to any governmental entity; provided, however, the court may order the defendant to make the payments required in sections 20-255 and/or 20-614(7), Idaho Code, before any payment of restitution is made to the victim or victims.

§ 19-5303 – Cost of medical exams to be paid by law enforcement agency

When the victim of any crime is directed or authorized by a law enforcement agency to obtain a medical examination for the purpose of procuring evidence for use by a law enforcement agency in the investigation or prosecution of the crime, the expense incurred shall be paid by the law enforcement agency. Provided however, the cost of forensic and/or medical examinations of alleged victims of sexual assault shall be paid for from the crime victims compensation account, as established by section 72-1009, Idaho Cod. The provisions of this section shall not be construed to require a law enforcement agency to bear the expense of any medical treatment of the victim.

§ 19-5304 – Restitution for crime victims – Orders to be separate – When restitution is not appropriate – Other remedies – Evidentiary hearings – Definitions

(1) As used in this chapter:

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- (a) "Economic loss" includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.
 - (b) "Found guilty of any crime" shall mean a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.
 - (c) "Value" shall be as defined in section 18-2402(11) Idaho Code.
 - (d) "Property" shall be as defined in section 18-2402(8), Idaho Code.
 - (e) "Victim" shall mean:
 - (i) The directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases;
 - (ii) Any health care provider who has provided medical treatment to a directly injured victim if such treatment is for an injury resulting from the defendant's criminal conduct, and who has not been otherwise compensated for such treatment by the directly injured victim or the immediate family of the directly injured victim;
 - (iii) The account established pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, from which payment was made for medical treatment, services or monetary benefits for injury resulting from the defendant's criminal conduct;
 - (iv) A person or entity who suffers economic loss because such person or entity has made payments to or on behalf of a directly injured victim pursuant to a contract including, but not limited to, an insurance contract.
- (2) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction;

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however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim's loss shall not absolve the defendant of the obligation to pay restitution.

- (3) If the court determines that restitution is inappropriate or undesirable or if only partial or nominal restitution is ordered, it shall enter an order articulating the reasons therefor on the record.
- (4) If a separate written order of restitution is issued, an order of restitution shall be for an amount certain and shall be due and owing at the time of sentencing or at the date the amount of restitution is determined, whichever is later. An order of restitution may provide for interest from the date of the economic loss or injury.
- (5) The court may order the defendant to pay restitution to the victim in any case, regardless of whether the defendant is incarcerated or placed on probation. The court may order the defendant to pay all or a part of the restitution ordered to the court to be distributed by the court to the victims in a manner the court deems just.
- (6) Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.
- (7) The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.
- (8) In determining restitution, where it appears that more than one (1) person is responsible for a crime that results in economic loss to a victim, and one (1) or more of the suspects or defendants are not found, apprehended, charged, convicted or ordered to pay restitution, the court may require the remaining defendant or defendants, who are convicted of or plead guilty to the crime, to be jointly and severally responsible for the entire economic loss to the victim.

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- (9) The court may, with the consent of the parties, order restitution to victims, and/or any other person or entity, for economic loss or injury for crimes which are not adjudicated or are not before the court.
- (10) A defendant, against whom a restitution order has been entered, may, within forty-two (42) days of the entry of the order of restitution, request relief from the restitution order in accordance with the Idaho rules of civil procedure relating to relief from final orders.
- (11) An order of restitution shall not preclude the victim from seeking any other legal remedy.
- (12) Every presentence report shall include a full statement of economic loss suffered by the victim or victims of the defendant's crime or crimes.
- (13) If there is more than one (1) victim, the restitution order shall provide that the directly injured victim(s) be fully compensated for so much of the loss caused by the defendant's criminal conduct which has not been paid by a third party, including persons referred to in subsection (1)(e)(ii), (iii) and (iv) of this section.

§ 19-5305 – Collection of judgments

After forty-two (42) days from the entry of the order of restitution or at the conclusion of a hearing to reconsider an order of restitution, whichever occurs later, an order of restitution may be recorded as a judgment and the victim may execute as provided by law for civil judgments.

§ 19-5306 – Rights of victims during investigation, prosecution, and disposition of crime

- (1) Each victim of a criminal or juvenile offense shall be:
 - (a) Treated with fairness, respect, dignity and privacy throughout the criminal justice process;
 - (b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings;
 - (c) Entitled to a timely disposition of the case;

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- (d) Given prior notification of trial court, appellate, probation and parole proceedings and, upon request, to information about the sentence, incarceration, placing on probation or release of the defendant;
 - (e) Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result;
 - (f) Afforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children;
 - (g) Allowed to refuse an interview, ex parte contact or other request by the defendant or any other person acting on behalf of the defendant, unless such request is authorized by law;
 - (h) Consulted by the presentence investigator during the preparation of the presentence report and have included in that report a statement of the impact which the defendant's criminal conduct had upon the victim and shall be allowed to read, prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report, and shall not disclose its contents to any person except statements made by the victim to the prosecuting attorney or the court;
 - (i) Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence;
 - (j) Notified whenever the defendant or suspect is released or escapes from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. When the release is granted subsequent to a final conviction, notice shall be given to the victim by the law enforcement authority from whose custody the defendant was released unless release is granted by the commission of pardons and parole, in which case the commission shall notify the victim. When a release on probation is being considered following a period of retained jurisdiction, notice of the hearing shall be given to the victim by the prosecuting attorney.
- (2) Upon the filing of a criminal complaint or juvenile petition, the prosecuting attorney shall inform the victim of the various opportunities provided by this section. The victim may exercise any of the rights provided by this section by completing a written request on a form provided by the prosecuting attorney to the clerk of the district court. The clerk thereafter shall notify the appropriate authorities of the victim's

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requests. Notice thereafter shall be given to the victim at the address provided unless the victim subsequently provides a different address. The victim's address shall be kept confidential by the court except for carrying out the provisions of this chapter.

- (3) The provisions of this section shall apply equally to the immediate families of homicide victims or immediate families of victims of such youthful age or incapacity as precludes them from exercising these rights personally. The court may designate a representative from the immediate family to exercise these rights on behalf of a deceased, incapacitated, or minor victim.
- (4) Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney's fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute; nor be construed to require the court appointment of legal counsel or the payment of transportation costs.
- (5) As used in this section:
 - (a) "Victim" is an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense;
 - (b) "Criminal offense" is any charged felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense;
 - (c) "Juvenile offense" is charged conduct that is a violation of law that brings a juvenile within the purview of chapter 5, title 20, Idaho Code, and which conduct committed by a juvenile would be a felony if committed by an adult.