

NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

10015 SW TERWILLIGER BOULEVARD, PORTLAND, OR 97219 | P: (503) 768-6819 | F: (503) 768-6255 | WWW.NCVLL.ORG

LOUISIANA VICTIMS' RIGHTS LAWS¹

Constitution

Article I, § 25 – Declaration of Rights

Any person who is a victim of crime shall be treated with fairness, dignity, and respect, and shall be informed of the rights accorded under this Section. As defined by law, a victim of crime shall have the right to reasonable notice and to be present and heard during all critical stages of preconviction and postconviction proceedings; the right to be informed upon the release from custody or the escape of the accused or the offender; the right to confer with the prosecution prior to final disposition of the case; the right to refuse to be interviewed by the accused or a representative of the accused; the right to review and comment upon the presentence report prior to imposition of sentence; the right to seek restitution; and the right to a reasonably prompt conclusion of the case. The legislature shall enact laws to implement this Section. The evidentiary and procedural laws of this state shall be interpreted in a manner consistent with this Section.

Nothing in this Section shall be construed to inure to the benefit of an accused or to confer upon any person the right to appeal or seek supervisory review of any judicial decision made in a criminal proceeding. Nothing in this Section shall be the basis for an award of costs or attorney fees, for the appointment of counsel for a victim, or for any cause of action for compensation or damages against the state of Louisiana, a political subdivision, a public agency, or a court, or any officer, employee, or agent thereof. Remedies to enforce the rights enumerated in this Section shall be provided by law.

Statutes

Louisiana Revised Statutes, Title 46, Chapter 21-B – Rights of Crime Victims and Witnesses

§ 1841 Legislative intent

In recognition of the civic and moral duty of victims and witnesses of crime to cooperate fully and voluntarily with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this Chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this

¹ Not intended to be exhaustive.

Chapter to victims and witnesses of crime are honored and protected by the law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the criminal defendants.

§ 1842 – Definitions

In this Chapter:

- (1) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.
- (1.1) "Crime victim who is a minor" means a person under the age of eighteen against whom any of the following offenses have been committed:
 - (a) Any homicide, or any felony offense defined or enumerated in R.S. 14:2(13).
 - (b) Any sexual offense.
 - (c) The offenses of vehicular negligent injuring and first degree vehicular negligent injuring.
- (2) "Critical stage" means any judicial proceeding at which there is a disposition of the charged offense or a lesser offense, or a sentence imposed pursuant thereto.
- (3) "Designated family member" means a family member or legal guardian of the victim who is a minor, a homicide victim, or victim who is unable to exercise his rights hereunder due to a serious disability. The designated family member shall be selected by a majority of the victim's family members, and shall be afforded all of the rights accruing to victims under this Chapter. A substitution of the designated family member may be made upon agreement by the majority of the victim's family members. In specific cases, the court or the district attorney may allow more than one designated family member.
- (4) "Inmate" means a person convicted of a felony.
- (5) "Judicial agency" means the district court and officers thereof, including the judge, the prosecutor, and the clerk of court, the Crime Victims Reparations Board, the Department of Public Safety and Corrections, and the division of probation and parole.
- (6) "Judicial proceeding" means any contradictory proceeding held in open court.
- (7) "Law enforcement agency" means the sheriff, constable, or police force as defined by law, and the Department of Public Safety and Corrections.
- (8) "Registration" means the completion of a form which is filed with the law enforcement agency investigating the offense of which the person is a victim, as specified in R.S. 46:1844(T), which shall include an address and telephone number at which the victim or designated family member may be notified. Such forms shall be promulgated by the Louisiana Commission on Law Enforcement in accordance with R.S. 46:1844(R).
- (9) "Victim" means a person against whom any of the following offenses have been committed:

- (a) Any homicide, or any felony offense defined or enumerated in R.S. 14:2(13).
- (b) Any sexual offense.
- (c) The offenses of vehicular negligent injuring and first degree vehicular negligent injuring.
- (d) Any offense against the person as defined in the Criminal Code committed against a family or household member as defined in R.S. 46:2132(4) or dating partner as defined in R.S. 46:2151(B).

(10) "Victim notice and registration form" means a form promulgated by the Louisiana Commission on Law Enforcement in accordance with R.S. 46:1844(R) and distributed by a judicial or law enforcement agency on which a victim or witness or a family member of a victim or witness may indicate a request that he be afforded the rights prescribed in this Chapter or other criminal statutes relative to a crime of which he or a family member was a victim or witness.

(11) "Victim's family" includes a spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when the person is in custody for an offense or is the defendant.

(12) "Witness" means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

§ 1843 – Eligibility of victim

A victim has the rights and is eligible for the services under this Chapter only if the victim reported the crime to law enforcement authorities within seventy-two hours of its occurrence or discovery, unless extenuating circumstances exist for later reporting.

§ 1844 – Basic rights for victims and witnesses

A. Services and information concerning services available to victims and witnesses of a crime.

(1) The appropriate law enforcement agency shall ensure that crime victims and witnesses receive emergency, social, and medical services as soon as possible. The appropriate law enforcement agency shall also distribute to the victim or to the family of a homicide victim a victim notice and registration form promulgated by the Louisiana Commission on Law Enforcement and Administration of Criminal Justice, in conformity with Subsection R of this Section.

(2) The Department of Public Safety and Corrections shall maintain the Crime Victims Services Bureau presently in operation. The bureau shall publicize and provide a way for crime victims and their family members to be kept informed about the following:

- (a) Successful court appeals.

- (b) Parole board or pardon board hearings or other release hearings.
- (c) Information regarding dates of possible release from physical custody, escape, apprehension, or otherwise.
- (d) Inquiries concerning the department's policies and programs for inmates.

(3) All law enforcement agencies having custody of those accused or convicted of the offenses enumerated in R.S. 46:1842(9) shall, pursuant to Article I, Section 25 of the Constitution of Louisiana, notify crime victims or designated family members who have properly registered concerning an accused's or a defendant's arrest, release on recognizance, posting of bond, release pending charges being filed, release due to rejection of charges by the district attorney, escape, or re-apprehension.

B. Advance notification to victim, or designated family member concerning judicial proceedings; right to be present.

If requested by registering with the appropriate law enforcement or judicial agency as outlined in Subsection T of this Section, the clerk of court shall provide reasonable notice to a victim, or a designated family member of judicial proceedings relating to their case. The notice required pursuant to this Subsection may be made by any method reasonably calculated to notify the victim or designated family member of the judicial proceeding in a timely manner.

C. Interviewing the victim and witness of a crime.

- (1) The district attorney, prior to trial, shall make reasonable efforts to interview the victim or designated family member to determine the facts of the case and whether the victim or the family is requesting restitution.
- (2) All law enforcement or judicial agencies shall provide a private setting for all interviewing of victims of crime. "Private setting" shall mean an enclosed room from which the occupants are not visible or otherwise identifiable and whose conversations cannot be heard from outside such room. Only those persons directly and immediately related to the interviewing of the victim, specifically the victim, a social worker, psychologist, or other professional, the victim advocate designated by the sheriff's office, or a representative from a not-for-profit victim service organization, including but not limited to rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups providing emotional support to the victim, shall be present, unless the victim requests the exclusion of such person from the interview, and, when appropriate, the parent or parents of the victim.
- (3) The victim and the victim's family may refuse any requests for interviews with the attorney for the defendant or any employee or agent working for the attorney for the defendant. Before any victim may be subpoenaed to testify on behalf of a defendant at any pretrial hearing, the defendant shall show good cause at a contradictory hearing with the district attorney why the subpoena should be issued.

D. Consultation with the victim or the designated family member.

- (1) The victim or the designated family member shall have the right to retain counsel to confer with law enforcement and judicial agencies regarding the disposition of the victim's case. The prosecutor may confer with the counsel retained by the victim or designated family member in the prosecution of the case. "Case" herein shall mean a criminal matter in which formal charges have been filed by the district attorney's office.
- (2) Upon written notification to the district attorney's office received from the victim, or the designated family member, the district attorney's office shall, within a reasonable period of time following such notification, contact the victim and schedule a conference with the victim or a designated family member in order to obtain their view, either orally or in writing, regarding:
 - (a) The disposition of the criminal case by dismissal, plea, or trial.
 - (b) The use of available sentencing alternatives such as incarceration, probation, community service, and the payment of restitution to the victim.

E. Notification to employers. The victim or witness who so requests shall be assisted by judicial and law enforcement agencies in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from work.

F. Notification of scheduling changes. Each victim or witness who has been scheduled to attend a criminal justice proceeding shall be notified as soon as possible by the agency scheduling his or her appearance of any change in scheduling which shall affect his or her appearance.

G. The victim and witness in the court setting. The court shall provide, whenever possible, a secure waiting area during court proceedings which does not require victims, witnesses, or homicide victims' families to be in close proximity to the defendants or their families or friends, and shall provide a secure waiting area in cases involving violent crimes.

H. Presentence or postsentence reports. If properly registered with the clerk of court, the victim or designated family member shall have the right to review and comment on the presentence or postsentence reports relating to the crime against the victim. The trial court shall regulate when and how the presentence report is provided to the victim or designated family member. The Department of Public Safety and Corrections shall regulate how the postsentence report is provided to the victim or designated family member.

I. Rules governing evidence and criminal procedure. The victim shall be protected at all times by all rules and laws governing the criminal procedure and the admissibility of evidence applicable to criminal proceedings.

J. Speedy disposition. The victim shall have the right to a speedy disposition and prompt and final conclusion of the case after conviction and sentencing. When ruling on a defense motion for continuance, the court shall consider the impact on the victim.

K. Right of victim or designated family member to be present and heard at all critical stages of the proceedings.

- (1) (a) At all critical stages of the prosecution, if the victim or designated family member has registered with the appropriate law enforcement or judicial agency and is present, the court shall determine if the victim or designated family member wishes to make a victim impact statement. If the victim is not present, the court shall ascertain whether the victim or designated family member has requested notification and, if so, whether proper notice has been issued to the victim or designated family member, in accordance with Subsection B of this Section, by the clerk of court or by the district attorney's office. If notice has been requested and proper notice has not been issued, the court shall continue the proceedings until proper notice is issued.
 - (b) The victim and victim's family members shall have the right to make a written and oral victim impact statement as follows:
 - (i) Any written statement shall be made available to the state and the defendant and shall be made part of the record. The statement may be submitted by the district attorney upon request of the victim or designated family member. Upon request of the victim or designated family member, any such written statement may be sealed by the court after review by the parties.
 - (ii) The hearing at which an oral statement is provided to the court shall be subject to the limitations of relevance. In any case where the number of victim's family members exceeds three, the court may limit the in-court statements it receives from them to a fewer number of statements. The court may otherwise reasonably restrict the oral statement in order to maintain courtroom decorum. The defendant must be present for the victim impact statement. Upon motion of the state, the court may hear any such statement in camera.
- (2) The statement of the victim or the victim's family may:
 - (a) Identify the victim of the offense.
 - (b) Itemize any economic loss that has been or may be reasonably suffered by the victim as a result of the offense.
 - (c) Identify any physical injury suffered by the victim as a result of the offense, along with its seriousness and permanence.
 - (d) Describe any change in the victim's personal welfare or familial relationships as a result of the offense.
 - (e) Identify any request for medical or counseling services needed by the victim or the victim's family as a result of the offense.
 - (f) Contain any other information related to the impact of the offense upon the victim or the victim's family that the trial court requires.
 - (g) Contain any other information that the victim or victim's family wishes to share with the court regarding the overall effect of the crime upon the victim and the victim's family.
 - (3) (a) Prior to the sentencing hearing, the court shall provide the counsel for the defendant, the victim, and the attorney for the state with notice of the maximum and minimum sentence allowed by law. The court shall allow the victim, or designated family member, and the prosecutor the opportunity to review any presentence investigation reports that have been

prepared relating to the victim's case. The review of the presentence report shall be conducted under the supervision of the court.

- (b) At the sentencing hearing, the court shall afford the counsel for the defendant, the attorney for the state, and the victim or designated family member an opportunity to comment upon matters relating to the appropriate sentence. Before imposing sentence, the court shall verify that the victim or designated family member was notified of the sentencing hearing and address the victim or designated family member personally, if the victim or designated family member is present at the sentencing hearing, to determine if the victim or designated family member wishes to present a written and oral impact statement pursuant to this Chapter.

L. Return of property to victim or family of victim. All judicial and law enforcement agencies shall expeditiously return any stolen or other personal property to victims or victims' families when no longer needed as evidence.

M. Victims' right to seek restitution.

- (1) If the defendant is found guilty, the court or parole board shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or parole board may require the defendant to perform community service work in an amount and according to a schedule determined by the court.
- (2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the parole board. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.
- (3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

N. Duties of the Department of Public Safety and Corrections.

- (1) In cases where the sentence is the death penalty, the victim's family shall have the right to be notified by the Department of Public Safety and Corrections of the time, date, and place of the execution, and a minimum of two representatives of the victim's family shall have the right to be present.
- (2) Upon filing of a victim notice and registration form by a victim or a family member, or a witness, it shall be the duty of the Department of Public Safety and Corrections, corrections services, at the time of the appeal, discharge, or parole of an inmate including a juvenile inmate, to notify the victim, family member, or witness, by certified mail of such appeal or release. Such form shall be included in the prisoner's commitment documents to be delivered to the warden of any state correctional facility where such prisoner has been committed or transferred.

(3) In the event of an escape or absconding by an inmate including a juvenile inmate, from any facility under the jurisdiction of the Department of Public Safety and Corrections, corrections services, it shall be the duty of the department to immediately notify the victim, family member of the victim, or witness, at the most current address or phone number on file with the department, of the escape by the most reasonable and expedient means possible. If the inmate is recaptured, the department shall send notice within forty-eight hours of regaining custody of the inmate. In no case shall the state be held liable for damages for any failure to provide notice pursuant to this Section.

O. Notification of pardon or parole. The Board of Pardons or the Board of Parole, respectively, shall notify the victim or the victim's family and the appropriate district attorney that a hearing has been set for the person convicted of the crime against the victim. The victim or victim's family shall have the right to make written and oral statements as to the impact of the crime at any hearing before either board and to rebut any statements or evidence introduced by the inmate or defendant. The victim or the victim's family, a victim advocacy group, and the district attorney or his representative, may also appear before either board in person or by means of telephone communication from the office of the local district attorney.

P. Notification concerning missing children. All law enforcement agencies shall expeditiously investigate all reports of missing children and shall inform the family members of such children of the status of the investigation.

Q. Victim assistance education and training. Victim assistance education and training shall be offered to persons taking courses at law enforcement training facilities.

R. Preparation of victim notice and registration forms. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall cause to be promulgated uniform victim notice and registration forms which outline and explain the rights and services established by this Chapter. This information shall be updated as necessary. The costs of developing the victim notice and registration form shall be funded by the Louisiana Commission on Law Enforcement.

S. Failure to comply. No sentence, plea, conviction, or other final disposition shall be invalidated because of failure to comply with the provisions of this Section.

T. Registration with the appropriate law enforcement or judicial agency.

(1) In order for a victim or designated family member to be eligible to receive notices hereunder and exercise the rights provided in this Chapter, the victim or designated family member must complete a form promulgated by the Louisiana Commission on Law Enforcement. The form shall be completed by the victim or designated family member and shall be filed with the law enforcement agency investigating the offense of which the person is a victim, as defined in this Chapter. The completed victim notice and registration form shall be included in the documents sent by the law enforcement agency to the district attorney for prosecution. The district attorney shall include the completed victim notice and registration form with any subsequent bill of information or indictment that is filed with the clerk of court. Upon

conviction, the victim notice and registration form shall be included in the documents sent by the clerk of court to the Department of Public Safety and Corrections, the law enforcement agency having custody of the defendant, or the division of probation and parole.

- (2) All victim notice and registration forms, and the information contained therein, shall be kept confidential by all law enforcement and judicial agencies having possession. The information shall be used only for the purposes required by this Chapter, and shall be released only upon court order after contradictory hearing.
- (3) The victim and designated family member shall have the right to register with the appropriate agency at any time and exercise prospectively the rights guaranteed by this Chapter.

U. No cause of action. Nothing in this Section shall be construed as creating a cause of action by or on behalf of any person for an award of costs or attorney fees, for the appointment of counsel for a victim, or for any cause of action for compensation or damages against the state of Louisiana, a political subdivision, a public agency, or a court, or any officer, employee, or agent thereof. Nothing in this Chapter precludes filing for a writ of mandamus as provided in the Code of Civil Procedure to compel the performance of a ministerial duty required by law.

V. Crime victim's assistance hotline. In furtherance of the purposes of this Section, a statewide crime victim's assistance hotline may be established. The Crime Victims Reparations Board along with the Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall jointly operate the hotline and periodically review the criteria and implementation procedures of said hotline.

W. Confidentiality of crime victims who are minors and victims of sex offenses.

- (1) (a) In order to protect the identity and provide for the safety and welfare of crime victims who are minors under the age of eighteen years and of victims of sex offenses, all public officials and officers and public agencies, including but not limited to all law enforcement agencies, sheriffs, district attorneys, judicial officers, clerks of court, the Crime Victims Reparations Board, and the Department of Social Services or any division thereof, shall not publicly disclose the name, address, or identity of crime victims who at the time of the commission of the offense are minors under eighteen years of age or of victims of sex offenses. The confidentiality of the identity of the victim of a sex offense may be waived by the victim. The public disclosure of the name of the juvenile crime victim by any public official or officer or public agency is not prohibited by this Subsection when the crime resulted in the death of the victim.
 - (b) Notwithstanding the provisions of Subparagraph (a) of this Paragraph, all information regarding juvenile crime victims that is required by a child abduction alert system which assists law enforcement in the successful resolution of child abduction cases, such as the AMBER Alert network, shall be made available to such alert system as quickly as possible.
- (2) For purposes of this Section, "sex offense" shall include the perpetration or attempted perpetration of aggravated rape (R.S. 14:42), forcible rape (R.S. 14:42.1), simple rape (R.S.

14:43), sexual battery (R.S. 14:43.1), second degree sexual battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), intentional exposure to the AIDS virus (R.S. 14:43.5), stalking (R.S. 14:40.2), incest (R.S. 14:78), aggravated incest (R.S. 14:78.1), felony carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with juveniles (R.S. 14:81), pornography involving juveniles (R.S. 14:81.1), molestation of a juvenile (R.S. 14:81.2), crime against nature (R.S. 14:89), aggravated crime against nature (R.S. 14:89.1), sexual battery of the infirm (R.S. 14:93.5), and video voyeurism (R.S. 14:283).

- (3) Notwithstanding any other provision of law to the contrary, all public officials, officers, and public agencies, including but not limited to all law enforcement agencies, sheriffs, district attorneys, judicial officers, clerks of court, the Crime Victims Reparations Board, and the Department of Social Services or any division thereof, charged with the responsibility of knowing the name, address, and identity of crime victims who are minors or of crime victims of a sex offense as a necessary part of their duties shall have full and complete access to this information regarding a crime victim who is a minor or a victim of a sex offense, and they may lawfully utilize initials, abbreviations, or other forms of indefinite descriptions on all public documents used in the performance of their duties to whatever extent they deem necessary, to prevent the public disclosure of the name, address, or identity of such a crime victim.
- (4) The provisions of this Subsection shall not apply to the requirement of promptly informing a defendant or his attorney of the name of the victim of a sexual crime during pretrial discovery.

§ 1845 – Protection of privacy of a victim when evidence pertains to child pornography, video voyeurism, or obscenity

- A. Notwithstanding any other law to the contrary, after the institution of prosecution under any statute listed in R.S. 46:1844(W)(2), or any other criminal law, the district attorney may file a motion for a contradictory hearing, with the defendant, to determine whether the court should issue an order to protect the privacy of the victim by limiting access to child pornography evidence, video voyeurism evidence, or involuntary obscenity evidence obtained in the investigation of the offense. The victim may request the district attorney to file the motion. The court may order the hearing on its own motion.
- B. For purposes of this Section:
 - (1) "Child pornography evidence" means evidence tending to prove pornography involving a juvenile as defined in R.S. 14:81.1.
 - (2) "Involuntary obscenity evidence" means any evidence tending to prove the conduct proscribed in R.S. 14:106(A)(2)(b) that is unlawfully possessed.
 - (3) "Stored data" means data, which although not a tangible visual depiction, may be used to render a tangible visual depiction through the use of an appropriate device or process. Stored data shall include but is not limited to digital or analog data stored on any of the following mediums: film, videotape, tape, hard disk, floppy disk, magnetic tape, electro-optical disk, CD, DVD, semi-conductor memory, memory stick, Read-

Only Memory, flash memory and any other form of physical, electric, magnetic, electromagnetic, optical or electro-optical media.

- (4) "Video voyeurism evidence" means any evidence tending to prove video voyeurism as defined in R.S. 14:283.
- (5) A "victim" is any person who appears in any evidence defined in Paragraph (1), (2), (3), or (4) of this Subsection.

C. At the hearing, the court shall inspect only tangible visual depictions, and any stored data which may be used to create a tangible visual depiction obtained during the investigation of the offense. The court may view the evidence in camera.

D. If the court finds probable cause that the evidence tends to prove child pornography, video voyeurism, or involuntary obscenity and that it is in the interest of justice to take action to protect the privacy of a victim, it shall issue an order to limit access to the evidence and copies thereof. The order shall remain in effect until modified or rescinded by a court of competent jurisdiction.

E. The court, upon motion of the district attorney, after a contradictory hearing with the defendant, may order the destruction of the evidence tending to prove child pornography, video voyeurism, or involuntary obscenity.

F. When making a ruling pursuant to the provisions of this Chapter, the court shall:

(1) Consider the legislative intent expressed in R.S. 46:1841.

(2) Balance the following interests:

- (a) The right of government to exercise the police power to promote, protect, and preserve the general welfare, safety, health, peace, and good order of the public by proscribing criminal behavior and providing punishment therefor.
- (b) The right of a person charged with a crime to have a fair, impartial, and public trial.
- (c) The right of the public to know.
- (d) The right of an individual to own private property and not be deprived thereof without due process.
- (e) The right of a person to privacy.
- (f) The freedom of speech rights of the media and the public.