

NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, *and* ADVANCING VICTIMS' RIGHTS

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MISSISSIPPI VICTIMS' RIGHTS LAWS¹

Constitution

Article 3, § 26A – Victims' Rights; construction of provisions; legislative authority

- (1) Victims of crime, as defined by law, shall have the right to be treated with fairness, dignity and respect throughout the criminal justice process; and to be informed, to be present and to be heard, when authorized by law, during public hearings.
- (2) Nothing in this section shall provide grounds for the accused or convicted offender to obtain any form of relief nor shall this section impair the constitutional rights of the accused. Nothing in this section or any enabling statute shall be construed as creating a cause of action for damages against the state or any of its agencies, officials, employees or political subdivisions.
- (3) The Legislature shall have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section.

Statutes

Title 99, Criminal Procedure; Chapter 43, Crime Victims' Bill of Rights

§ 99-43-1 – Short title; purpose

This chapter may be cited as the "Mississippi Crime Victims' Bill of Rights." The purpose of this chapter is to ensure the fair and compassionate treatment of victims of crime, to increase the effectiveness of the criminal justice system by affording rights and considerations to the victims of crime, and to preserve and protect victims' rights to justice and fairness in the criminal justice system.

§ 99-43-3 – Definitions

As used in this chapter, the following words shall have the meanings ascribed to them unless the context clearly requires otherwise:

¹ Not intended to be exhaustive.

- (a) "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial or who is a target of an investigation for committing a criminal offense.
- (b) "Appellate proceeding" means an oral argument held in open court before the Mississippi Court of Appeals, the Mississippi Supreme Court, a federal court of appeals or the United States Supreme Court.
- (c) "Arrest" means the actual custodial restraint of a person or his submission to custody.
- (d) "Community status" means extension of the limits of the places of confinement of a prisoner through work release, intensive supervision, house arrest and initial consideration of pre-discretionary leave, passes and furloughs.
- (e) "Court" means all state courts including juvenile courts.
- (f) "Victim assistance coordinator" means 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.
- (g) "Criminal offense" means conduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, a sexual offense, any offense involving spousal abuse or domestic violence has been committed.
- (h) "Criminal proceeding" means 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.
- (i) "Custodial agency" means a municipal or county jail, the Department of Corrections, juvenile detention facility, Department of Youth Services or a secure mental health facility having custody of a person who is arrested or is in custody for a criminal offense.
- (j) "Defendant" means a person or entity that is formally charged by complaint, indictment or information of committing a criminal offense.
- (k) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.
- (l) "Immediate family" means the spouse, parent, child, sibling, grandparent or guardian of the victim, unless that person is in custody for an offense or is the accused.
- (m) "Lawful representative" means a person who is a member of the immediate family or who is designated as provided in Section 99-43-5; no person in custody for an offense or who is the accused may serve as lawful representative.

- (n) "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.
- (o) "Post-conviction release" means parole or discharge from confinement by an agency having custody of the prisoner.
- (p) "Post-conviction relief proceeding" means 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.
- (q) "Prisoner" means 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 Department of Corrections, Department of Youth Services, juvenile detention facility, a municipal jail or a secure mental health facility.
- (r) "Prosecuting attorney" means the district attorney, county prosecuting attorney, municipal prosecuting attorney, youth court prosecuting attorney, special prosecuting attorney or Attorney General.
- (s) "Right" means any right granted to the victim by the laws of this state.
- (t) "Victim" means a person against whom the criminal offense has been committed, or if the person is deceased or incapacitated, the lawful representative.

§ 99-43-5 – Designation of representative

- (1) If a victim is physically or emotionally unable to exercise any right established by this chapter, but is able to designate in writing 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 personally exercise his or her rights.
- (2) 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.
- (3) If the victim is a minor, the parent, guardian or other immediate family of the victim, or a designated representative as determined by the court, may exercise all of the rights of the victim on behalf of the victim.

§ 99-43-7 – Notification of victim by law enforcement officials

Unless the victim is unavailable or incapacitated as a result of the crime, within seventy-two (72) hours after the law enforcement agency becomes responsible for investigating the crime, the law

enforcement agency shall provide to the victim in a manner and form prescribed by the Attorney General the following information:

- (a) The availability of emergency and crisis services.
- (b) The availability of victims' compensation benefits and the name, address and telephone number of the victim compensation hearing officer.
- (c) The name of the law enforcement officer and telephone number of the law enforcement agency with the following statement attached: "If within sixty (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."
- (d) The procedural steps involved in a criminal prosecution.
- (e) The rights authorized by the Mississippi Constitution on rights of victims, including a form to invoke these rights.
- (f) The existence of and eligibility requirements for restitution and compensation pursuant to Section 99-37-1 et seq. and Section 99-41-1 et seq., Mississippi Code of 1972.
- (g) A recommended procedure if the victim is subjected to threats or intimidation.
- (h) The name and telephone number of the office of the prosecuting attorney to contact for further information.

§ 99-43-9 – Notification of victim by prosecutor

- (1) Upon written request of the victim, the prosecuting attorney shall notify the victim of all charges filed against the defendant and any criminal proceedings, other than initial appearances, as soon as practicable, including any changes that may occur.
- (2) In order to be entitled to receive notice under this section, the victim shall provide to and maintain with the office of the prosecuting attorney a request for notice which shall include the telephone number and address of the victim. The request for notice shall be considered withdrawn and void in the event the victim fails to update this information as necessary. Except as otherwise provided, all notices provided to a victim pursuant to this chapter shall be on forms as specified by the Attorney General.

§ 99-43-11 – Conference of prosecutor and victim before disposition

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.

§ 99-43-13 – Conference of prosecutor and victim before 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.

§ 99-43-15 – Victim's right to transcripts

The victim has the right to receive a transcript of any criminal proceedings at his own cost.

§ 99-43-17 – Victim not to direct prosecution

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

§ 99-43-19 – Unreasonable delays; continuances

The victim shall have the right to a final disposition of the criminal proceeding free from unreasonable delay. To effectuate this right, the court, in determining whether to grant any continuance, should make every reasonable effort to consider whether granting such continuance shall be prejudicial to the victim.

§ 99-43-21 – Victim's right to be present at proceedings

The victim has the right to be present throughout all criminal proceedings as defined in Section 99-43-1.

§ 99-43-23 – Separate waiting areas

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.

§ 99-43-25 – Identification and address of victim; confidentiality

(1) 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 in 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.

- (2) The address, phone number, place of employment, and other related information about the victim contained in the prosecuting attorney's file shall not be public record.

§ 99-43-27 – Plea bargaining; victim's rights

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:

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

§ 99-43-29 – Notice to victim of disposition and sentencing

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:

- (a) The criminal offense for which the defendant was convicted, acquitted, or the effect of a dismissal of the charges filed against the defendant.
- (b) If the defendant is convicted, on request, the victim shall be notified, if applicable, of the following:
 - (i) The existence and function of the pre-sentence report.
 - (ii) The name, address, and telephone number of the office which is preparing the pre-sentence report.
 - (iii) The right to make a victim impact statement.
 - (iv) The right of the defendant to view the pre-sentence report.
 - (v) The right to be present and be heard at any sentencing proceeding.
 - (vi) The time, place and date of the sentencing proceeding.
 - (vii) If the court orders restitution, the right to pursue collection of the restitution as provided by Section 99-37-1 et seq., Mississippi Code of 1972.

§ 99-43-31 – Victim impact statements to probation officers

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.

§ 99-43-33 – Victim impact statements at court proceedings

The victim has the right to present an impact statement or information that concerns the criminal offense or the sentence during any entry of a plea of guilty, sentencing or restitution proceeding.

§ 99-43-35 –Release, escape and sentencing information

The victim has the right to the following information:

- (a) 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.
- (b) The names, addresses and telephone numbers of the appropriate agencies and departments to whom request for notice should be provided.
- (c) 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, within five (5) business days after the status is known.
- (d) 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.
- (e) 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.

§ 99-43-37 – Right of victim to be present and heard at court proceedings

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 forward 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, or both.

§ 99-43-39 – Victim's property

- (1) Prior to the admission into evidence by the court, on request of the victim, after consultation and written approval by the prosecuting attorney, 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.
- (2) If the property of the victim has been admitted as evidence during a trial or hearing, the court may, upon request of the prosecuting attorney, 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.

§ 99-43-41 –Notice requirements of custodial agencies

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

- (a) Within fifteen (15) days prior to the end of the sentence of the prisoner, notice of release upon expiration of sentence or notice of medical release.
- (b) Within fifteen (15) days after the prisoner has died, notice of the death.

§ 99-43-43 –Victim statements for prison records; notice of parole or pardon proceedings

- (1) Upon written request, the victim shall have the right to be notified that he or she may submit a written statement, or audio or video recording, which shall be entered into the prisoner's Department of Corrections records. The statement or recording shall be considered during any review for community status of the prisoner or prior to release of the prisoner.
- (2) The victim shall have the right to be notified and allowed to submit a written or recorded statement when parole or pardon is considered.

§ 99-43-45 –Victim's employment protected

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

§ 99-43-47 – Prosecutor may assert victim's rights

The prosecuting attorney may assert any right to which the victim is entitled.

§ 99-43-49 – Failure to provide victim's rights or notice

The 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 the conviction or sentence set aside, and any reasonable attempt to provide notice shall satisfy the requirements of this chapter.