

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.NCVL.ORG

MONTANA VICTIMS' RIGHTS LAWS¹

Constitution

Article II, § 28 – Criminal Justice Policy – Rights of the Convicted

- (1) Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.
- (2) [relates to rights of the defendants]

Statutes

Title 46, Criminal Procedure; Chapter 24, Treatment of Victims and Witnesses

Part I, General Provisions

§ 46-24-101 – Purpose

The legislature declares that the purposes of this chapter are to:

- (1) protect the role of crime victims and witnesses in the criminal justice process;
- (2) assure that victims and witnesses of crime receive fair and proper treatment from law enforcement agencies and prosecutors; and
- (3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

§ 46-24-102 – Training in victim assistance

The Montana law enforcement academy shall offer education and training in victim assistance to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum, so that victims may be properly assisted.

¹ Not intended to be exhaustive.

§ 46-24-103 – Duty of attorney general

The attorney general shall ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general shall prepare a written notice of the rights and services available to victims of crime under this chapter. The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney general shall ensure that victims and witnesses are provided important services and assistance as required under this chapter.

§ 46-24-104 – Consultation with victim of certain offenses

As soon as possible prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim or, in the case of a minor child victim or a homicide victim, with the family of the victim in order to obtain the views of the victim or the victim's family regarding the disposition of the case, including:

- (1) dismissal of the case;
- (2) release of the accused pending judicial proceedings;
- (3) plea negotiations; and
- (4) pretrial diversion of the case from the judicial process.

§ 46-24-105 – No cause of action for damages

Nothing in this chapter may be construed to create a cause of action for damages against the state or one of its political subdivisions.

§ 46-24-106 – Crime victims -- family members -- right to attend proceedings – exceptions

- (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.
- (2) A judge may exclude a victim of a criminal offense from:
 - (a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

- (b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.
- (3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.
- (4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.
- (5) As used in this section, "victim" means:
 - (a) a person who suffers loss of property or bodily injury as a result of:
 - (i) the commission of an offense;
 - (ii) the good faith effort to prevent the commission of an offense; or
 - (iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or
 - (b) a member of the immediate family of a homicide victim.

Part II, Services to Victim, Witness
§ 46-24-201 – Services to victims of crime

- (1) Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:
 - (a) the availability of crime victim compensation;
 - (b) access by the victim and the defendant to information about the case;
 - (c) the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim; and
 - (d) stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.
- (2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

- (3) As soon as possible, law enforcement personnel shall give to the victim the following information:
 - (a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and
 - (b) the prosecuting attorney's name, office address, and telephone number.

§ 46-24-202 – Notification of available protective services

Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation, including the process for obtaining a protective order from the court.

§ 46-24-203 – Prompt notification to victims and witnesses of certain offenses

- (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:
 - (a) the arrest of an accused;
 - (b) the release of the accused pending judicial proceedings;
 - (c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;
 - (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere and the setting of a trial date;
 - (e) if the accused is convicted or pleads guilty or nolo contendere, the function of a presentence report; the name, office address, and telephone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;
 - (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and
 - (g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration.

- (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of a victim or witness who is a minor, or a relative of a homicide victim.

§ 46-24-204 – Scheduling changes

- (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that he is scheduled to attend.
- (2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made.

§ 46-24-205 – Notification to employer or creditor – limitations on employer

- (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from the place of employment.
- (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. The agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for the serious financial strain.
- (3) An employer may not discharge or discipline a victim or a member of the victim's family for participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice proceeding.
- (4) As used in this section, "member of the victim's family" means the victim's spouse, child by birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction.

§ 46-24-206 – Property return – right to be heard on disposition of evidence

- (1) A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining the property.
- (2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition of the evidence.

46-24-211 – Information concerning appeal or postconviction remedies

If the defendant appeals or pursues a postconviction remedy or the district court grants a hearing under Title 41, chapter 5, part 25, the attorney general or the county attorney if the case has not been referred to the attorney general shall promptly inform the victim of the notice of appeal, hearing under Title 41, chapter 5, part 25, or postconviction petition, of the date, time, and place of any hearing, and of the decision.

§ 46-24-212 – Information concerning confinement

Upon request of a victim of a felony offense, the department of corrections or the board of pardons and parole, as applicable, shall:

- (1) promptly inform the victim of the following information concerning a prisoner committing the offense:
 - (a) the custody level;
 - (b) the projected discharge or parole eligibility date;
 - (c) the actual date of the prisoner's discharge from confinement or parole, if reasonably ascertainable;
 - (d) the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons and parole or the hearing panel conducting a parole hearing under 46-23-202; and
 - (e) the community in which the prisoner will reside after parole;
- (2) provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, halfway house, or other community-based program or correctional facility; and
- (3) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:
 - (a) an escape from a correctional or mental health facility or community program;
 - (b) a recapture;
 - (c) a decision of the board of pardons and parole;
 - (d) a decision of the governor to commute the sentence or to grant executive clemency;

- (e) a release from confinement and any conditions attached to the release; and
- (f) the prisoner's death.

§ 46-24-213 – General requirements for information

- (1) Unless specifically stated otherwise, the requirements of 44-2-601, 46-24- 104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 to provide information to the victim may be satisfied by either written or oral communication with the victim or the victim's designee.
- (2) The person responsible for providing information required by 44-2-601, 46- 24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 shall promptly inform the victim of significant changes in the information.
- (3) The obligation to furnish information to a victim under 44-2-601, 46-24- 104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 is conditioned upon the victim informing the appropriate agency in writing of the name, address, and telephone number of the person to whom the information should be provided and of any change of name, address, or telephone number.