

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

NORTH CAROLINA VICTIMS' RIGHTS LAWS¹

Constitution

Article I, § 37 – Rights of Victims of Crime

1. Basic Rights. Victims of crime, as prescribed by law, shall be entitled to the following basic rights:
 - a. The right as prescribe by law to be informed of and to be present at court proceedings of the accused.
 - b. The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.
 - c. The right as prescribed by law to receive restitution.
 - d. The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.
 - e. The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.
 - f. The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
 - g. The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
 - h. The right as prescribed by law to confer with the prosecution.
2. No money damages; other enforcement. Nothing in this section shall be construed as creating a claim of money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.
3. No ground for relief in criminal case. The failure of inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an

¹ Not intended to be exhaustive.

inmate, or any other accused as a ground for relief in any trial, appeal, post-conviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.

Statutes

Chapter 15A, Criminal Procedure Act; Subchapter VIII-A, Rights of Crime Victims and Witnesses

Article 45 – Fair Treatment for Certain Victims and Witnesses

§ 15A-824 – Definitions

As used in this Article, unless the context clearly requires otherwise:

- (1) "Crime" means a felony or serious misdemeanor as determined in the sole discretion of the district attorney, except those included in Article 46 of this Chapter, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony or serious misdemeanor.
- (2) "Family member" means a spouse, child, parent or legal guardian, or the closest living relative.
- (3) "Victim" means a person against whom there is probable cause to believe a crime has been committed.
- (4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced.

§ 15A-825 – Treatment due victims and witnesses

To the extent reasonably possible and subject to available resources, the employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

- (1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.
- (2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law-enforcement prosecution efforts, and receives such protection.

- (2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to raise an objection should he/she deem it appropriate to this line of questioning in the case at hand.
- (3) Has any stolen or other personal property expeditiously returned by law-enforcement agencies when it is no longer needed as evidence, and its return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law-enforcement officials.
- (4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system and minimize the employee's loss of pay and other benefits resulting from such cooperation whenever possible.
- (5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.
- (6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.
- (6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.
- (7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if he has requested to be present or be informed.
- (8) Is notified, whenever possible, that a court proceeding to which he has been subpoenaed will not occur as scheduled.
- (9) Has a victim impact statement prepared for consideration by the court.
- (9a) Prior to trial, is provided information about plea bargaining procedures and is told that the district attorney may recommend a plea bargain to the court.
- (10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.
- (11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements.

§ 15A-826 – Assistants for administrative and victim and witness services

In addition to providing administrative and legal support to the district attorney's office, assistants for administrative and victim and witness services are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article.

§ 15A-827 – Scope

This Article does not create any civil or criminal liability on the part of the State of North Carolina or any criminal justice agency, employee, or volunteer.

Article 46 – Crime Victims' Rights Act

§ 15A-830 – Definitions

(a) The following definitions apply in this Article:

- (1) Accused. --A person who has been arrested and charged with committing a crime covered by this Article.
- (2) Arresting law enforcement agency. --The law enforcement agency that makes the arrest of an accused.
- (3) Custodial agency. --The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, or the Department of Correction.
- (4) Investigating law enforcement agency. --The law enforcement agency with primary responsibility for investigating the crime committed against the victim.
- (5) Law enforcement agency. --An arresting law enforcement agency, a custodial agency, or an investigating law enforcement agency.

- (6) Next of kin. --The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.
- (7) Victim. --A person against whom there is probable cause to believe one of the following crimes was committed:
 - a. A Class A, B1, B2, C, D, or E felony.
 - b. A Class F felony if it is a violation of one of the following: G.S. 14- 16.6(b); 14- 16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14- 32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14- 190.19; 14-202.1; 14-277.3; 14-288.9; or 20- 138.5.
 - c. A Class G felony if it is a violation of one of the following: G.S. 14- 32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
 - d. A Class H felony if it is a violation of one of the following: G.S. 14- 32.3(a); 14- 32.3(c); 14-33.2, or 14-277.3.
 - e. A Class I felony if it is a violation of one of the following: G.S. 14- 32.3(b); 14- 34.6(b); or 14-190.17A.
 - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
 - g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14- 33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14- 277.3.
- (b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article. However, the right contained in G.S. 15A-834 may only be exercised by the personal representative of the victim's estate. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

§ 15A-831 – Responsibilities of law enforcement agency

- (a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:
 - (1) The availability of medical services, if needed.
 - (2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.
 - (3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.
 - (4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

- (5) Information about an accused's opportunity for pretrial release.
- (6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

- (b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.
- (c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the defendant's name and the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.
- (d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency on the status of the accused during the pretrial process. If the victim elects to receive further notices during the pretrial process, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

§ 15A-832 – Responsibilities of the district attorney's office

- (a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:
 - (1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.
 - (2) The responsibilities of the district attorney's office under this Article.
 - (3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.
 - (4) The steps generally taken by the district attorney's office when prosecuting a felony case.
 - (5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- (6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

- (b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.
- (c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.
- (d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.
- (e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant's right to a fair trial.
- (f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.
- (g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The clerk of superior court shall include the form with the final judgment and commitment, or judgment suspending sentence, transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file.

§ 15A-832.1 – Responsibilities of judicial officials issuing arrest warrants

- (a) In issuing a warrant for the arrest of an offender for any of the misdemeanor offenses set forth in G.S. 15A-830(a)(7)g., based on testimony or evidence from a complaining witness rather than from a law enforcement officer, a judicial official shall record the defendant's name and the victim's name, address, and telephone number electronically or on a form separate from the warrant and developed by the Administrative Office of the Courts for the purpose of recording that information, unless the victim refuses to disclose any or all of the information, in which case the judicial official shall so indicate.

- (b) A judicial official issuing a warrant for the arrest of an offender for any of the misdemeanor offenses set forth in G.S. 15A-830(a)(7) g. shall deliver the court's copy of the warrant and the victim-identifying information to the office of the clerk of superior court by the close of the next business day. As soon as practicable, but within 72 hours, the office of the clerk of superior court shall forward to the district attorney's office the victim-identifying information set forth in subsection (a) of this section.

§ 15A-833 – Evidence of victim impact

- (a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:
- (1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.
 - (2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.
 - (3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.
- (b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. At the victim's request and with the consent of the defendant, a representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court.

§ 15A-834 – Restitution

A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes.

§ 15A-835 – Posttrial responsibilities

- (a) Within 30 days after the final trial court proceeding in the case, the district attorney's office shall notify the victim, in writing, of:
- (1) The final disposition of the case.
 - (2) The crimes of which the defendant was convicted.
 - (3) The defendant's right to appeal, if any.
 - (4) The telephone number of offices to contact in the event of nonpayment of restitution by the defendant.
- (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the defendant's name

and the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

- (1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.
 - (2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.
 - (3) The final disposition of an appeal.
- (c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.
- (d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

§ 15A-836 – Responsibilities of agency with custody of defendant

- (a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:
- (1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.
 - (2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.
 - (3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.
 - (4) The defendant's escape from custody, within 72 hours, except that if a victim has notified the agency in writing that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.
 - (5) The defendant's capture, within 24 hours.
 - (6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.
 - (7) The defendant's death.

- (b) Notifications required in this section shall be provided within 60 days of the date the custodial agency takes custody of the defendant or within 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section.

§ 15A-837 – Responsibilities of Division of Community Corrections

- (a) The Division of Community Corrections shall notify the victim of:
- (1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.
 - (2) The date and location of any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.
 - (3) The final disposition of any hearing referred to in subdivision (2) of this subsection.
 - (4) Any restitution modification.
 - (5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).
 - (6) The defendant's absconding supervision, within 72 hours.
 - (7) The capture of a defendant described in subdivision (6) of this subsection, within 72 hours.
 - (8) The date when the defendant is terminated or discharged.
 - (9) The defendant's death.
- (b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section.

§ 15A-838 – Notice of commuted sentence or pardon

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

§ 15A-839 – No money damages

This Article, including the provision of a service pursuant to this Article through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

§ 15A-840 – No ground for relief

The failure or inability of any person to provide a right or service under this Article, including a service provided through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, may not be used by a defendant in a criminal case, by an inmate, by any other accused, or by any victim, as a ground for relief in any criminal or civil proceeding, except in suits for a writ of mandamus by the victim.

§ 15A-841 – Incompetent victim's rights exercised

When a victim is mentally or physically incompetent or when the victim is a minor, the victim's rights under this Article, other than the rights provided by G.S. 15A-834, may be exercised by the victim's next of kin or legal guardian.