

# NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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## OKLAHOMA VICTIMS' RIGHTS LAWS<sup>1</sup>

### Constitution

#### Article II, § 34 – Rights of Victims

- A. To preserve and protect the rights of victims to justice and due process and ensure that victims are treated with fairness, respect and dignity and are free from intimidation, harassment or abuse, throughout the criminal justice process, any victim or family member of a victim of a crime has the right to know the status of the investigation and prosecution of the criminal case, including all proceedings wherein a disposition of a case is likely to occur, and where plea negotiations may occur. The victim or family member of a victim of a crime has the right to know the location of the defendant following an arrest, during a prosecution of the criminal case, during a sentence to probation or confinement, and when there is any release or escape of the defendant from confinement. The victim or family member of a victim of a crime has a right to be present at any proceeding where the defendant has a right to be present, to be heard at any sentencing or parole hearing, to be awarded restitution by the convicted person for damages or losses as determined and ordered by the court, and to be informed by the state of the constitutional rights of the victim.
- B. An exercise of any right by a victim or family member of a victim or the failure to provide a victim or family member of a victim any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- C. The Legislature, or the people by initiative or referendum, has the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings and if enacted by the Legislature, youthful offender proceedings.
- D. The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage other rights granted by the Legislature or retained by victims.

### Statutes

#### Title 19, Counties and County Officers; Chapter 7A, District Attorney § 215.33 – Victims and witnesses rights

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<sup>1</sup> Not intended to be exhaustive.

- A. The district attorney's office shall inform the victims and witnesses of crimes of the following rights:
1. To be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court;
  2. To receive protection from harm and threats of harm arising out of the person's cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available and how to access protection;
  3. To be informed of financial assistance and other social services available as a result of being a witness or a victim, including information on how to apply for the assistance and services;
  4. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which the victim or witness is entitled;
  5. To be informed of the procedure to be followed in order to apply for and receive any restitution to which the victim is entitled;
  6. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;
  7. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person;
  8. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;
  9. To have the family members of all homicide victims afforded all of the services under this section, whether or not the person is to be a witness in any criminal proceedings;
  10. To be informed of any plea bargain negotiations;
  11. To have victim impact statements filed with the judgment and sentence;
  12. To be informed if a sentence is overturned, remanded for a new trial or otherwise modified by the Oklahoma Court of Criminal Appeals;
  13. To be informed in writing of all statutory rights;

14. To be informed that when any family member is required to be a witness by a subpoena from the defense, there must be a showing that the witness can provide relevant testimony as to the guilt or innocence of the defendant before the witness may be excluded from the proceeding by invoking the rule to remove potential witnesses; and
  15. To be informed that the Oklahoma Constitution allows upon the recommendation of the Pardon and Parole Board and the approval of the Governor the commutation of any sentence, including a sentence of life without parole.
- B. Victim-witness coordinators may inform the crime victim of an offense committed by a juvenile of the name and address of the juvenile found to have committed the crime, and shall notify the crime victim of any offense listed in Section 7306-1.1 of Title 10 of the Oklahoma Statutes of all court hearings involving that particular juvenile act. If the victim is not available, the victim-witness coordinator shall notify an adult relative of the victim of said hearings.
- C. Victim-witness coordinators shall inform victims of violent crimes, as defined in Section 984 of Title 22 of the Oklahoma Statutes, and members of the immediate family of such victims of their rights under Sections 984.1 and 984.2 of Title 22 of the Oklahoma Statutes and Section 332.2 of Title 57 of the Oklahoma Statutes.
- D. In any felony case involving a violent crime or a sex offense, the victim-witness coordinator shall inform the victim, as soon as practicable, or an adult member of the immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of the progress of pretrial proceedings which could substantially delay the prosecution of the case.
- E. All victim-witness coordinators appointed to perform the services specified in subsection A of this section shall complete a minimum of twelve (12) hours in-service training annually. Said training shall be conducted pursuant to the direction of the District Attorneys Council and the Crime Victims Compensation Board.

**Title 21, Crimes and Punishments; Part I, In General; Chapter 2, General Provisions;  
Victims' Rights Act**

**§ 142A – Short title**

Section 142A et seq. of this title shall be known and may be cited as the "Victim's Rights Act".

**§ 142A-1 – Definitions**

For purposes of the Victim's Rights Act: (fn 1)

1. "Crime victim" or "victim" means any person against whom a crime was committed, except homicide, in which case the victim may be a surviving family member including a stepbrother, stepsister or stepparent, or the estate when there are no surviving family

members other than the defendant, and who, as a direct result of the crime, suffers injury, loss of earnings, out-of-pocket expenses, or loss or damage to property, and who is entitled to restitution from an offender pursuant to an order of restitution imposed by a sentencing court under the laws of this state;

2. "Injury" means any physical, mental, or emotional harm caused by the conduct of an offender and includes the expenses incurred for medical, psychiatric, psychological, or generally accepted remedial treatment of the actual bodily or mental harm, including pregnancy and death, directly resulting from a crime and aggravation of existing physical injuries, if additional losses can be attributed to the direct result of the crime;
3. "Loss of earnings" means the deprivation of earned income or of the ability to earn previous levels of income as a direct result of a crime and the loss of the cash equivalent of social security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support, where the payment is the primary source of the victim's income, and where the victim is deprived of the money as a direct result of the crime;
4. "Out-of-pocket loss" means the unreimbursed and nonreimbursable expenses or indebtedness incurred for medical care, nonmedical care, or other services necessary for the treatment of the actual bodily or mental harm, including pregnancy and funeral expenses, directly resulting from the crime and aggravation of existing physical injuries, if additional losses can be attributed directly to the crime; the unreimbursed and nonreimbursable expenses for damage to real and personal property as a direct result of the crime, and unreimbursed and nonreimbursable economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime;
5. "Property" means any real or personal property; and
6. "Restitution" means the return of property to the crime victim or payments in cash or the equivalent thereof, and payment in cash or the equivalent thereof as reparation for injury, loss of earnings, and out-of-pocket loss ordered by the court in the disposition of a criminal proceeding.

(fn 1: Title 21, § 142A et seq.).

**§ 142B – Civil action by victim of felony crime against offender – Attorney’s fees and costs – Reduction of hardship exemption from garnishment**

In any civil action against an offender for property damages resulting from a felony crime committed by the offender, the court may award a victim who prevails in the civil action reasonable attorney's fees and other costs of litigation; provided, there has been a felony conviction of the defendant for the crime which caused the damage. The court granting judgment in a civil action pursuant to the provisions of this section may reduce or limit the hardship

exemption from garnishment provided in Section 1.1 of Title 31 of the Oklahoma Statutes, when limitation or reduction would be in the interests of justice.

## **Title 22, Criminal Procedure; Chapter 2, Prevention of Public Offenses; Victim of Rape, Forcible Sodomy, or Domestic Abuse**

### **§ 40.1 – Victim of rape of forcible sodomy – Notice of Rights**

Upon the preliminary investigation of any rape or forcible sodomy, it shall be the duty of the officer who interviews the victim of the rape or forcible sodomy to inform the victim, or a responsible adult if the victim is a minor child or an incompetent person, of the twenty-four-hour statewide telephone communication service established by the Department of Mental Health and Substance Abuse Services for victims of sexual assault pursuant to Section 3-314 of Title 43A of the Oklahoma Statutes and to give notice to the victim or such responsible adult of certain rights of the victim. The notice shall consist of handing such victim or responsible adult a written statement in substantially the following form:

"As a victim of the crime of rape or forcible sodomy, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;
2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;
3. The right to be informed of financial assistance and other social services available to victims, including information on how to apply for the assistance and services;
4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant; and
5. The right to be informed by the district attorney of other victim's rights available pursuant to Section 215.33 of Title 19 of the Oklahoma Statutes."

The written notice shall also include the telephone number of the twenty-four-hour statewide telephone communication service established by the Department of Mental Health and Substance Abuse Services in Section 3-314 of Title 43A of the Oklahoma Statutes.

### **§ 40.2 – Victim protection order – Victims not to be discouraged from pressing charges – Rape or forcible sodomy**

A victim protection order for any victim of rape or forcible sodomy shall be substantially similar to a protective order in domestic abuse cases pursuant to Section 60 et seq. of this title. No peace

officer shall discourage a victim of rape or forcible sodomy from pressing charges against any assailant of the victim.

**§ 40.3 – Emergency temporary order of protection – Rape or forcible sodomy**

- A. When the court is not open for business, the victim of rape or forcible sodomy may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:
1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.2 of this title for a petition for protective order in domestic abuse cases;
  2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;
  3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection;
  4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest, or upon identification of the assailant notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person; and
  5. File a copy of the petition and the statement of the officer with the district court of the county immediately upon the opening of the court on the next day the court is open for business.
- B. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.2 of this title.