

## **SOUTH DAKOTA VICTIMS' RIGHTS LAWS<sup>1</sup>**

### **Constitution**

*South Dakota does not have a victims' rights amendment to its constitution.*

### **Statutes**

#### **Title 23A, Criminal Procedure; Chapters 23A – 28C, Crime Victims' Act**

#### **§ 23A-28C-1 – Rights of crime victim-Crime of violence-Driving under the influence vehicle accidents**

Consistent with § 23A-28C-4, victims of the crime, including victims of driving under the influence vehicle accidents, have the following rights:

- (1) To be notified of scheduled bail hearings and release from custody, to be notified by the prosecutor's office when the case is received and to whom the case is assigned, and to be notified in advance of the date of preliminary hearing and trial;
- (2) To be informed of what the charges mean and the elements necessary for conviction;
- (3) To testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released;
- (4) To be protected from intimidation by the defendant, including enforcement of orders of protection;
- (5) To offer written input into whether plea bargaining or sentencing bargaining agreements should be entered into;
- (6) To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case or by contrary policy of the presiding circuit judge;
- (7) To be prepared as a witness, including information about basic rules of evidence, cross-examination, objections, and hearsay;
- (8) To provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and his or her family as well as

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

recommendations for restitution and sentencing and § 23A-28-8 notwithstanding, the right to appear at any hearing during which a change in the plan of restitution is to be considered;

- (9) To receive restitution, whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it;
- (10) To provide written input at parole hearings or with respect to commutations of sentences by the Governor, should those options be considered;
- (11) In a case in which the death penalty may be authorized, to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family;
- (12) To be notified of the defendant's release from custody, which notice includes:
  - (a) Notice of the defendant's escape from custody and return to custody following escape;
  - (b) Notice of any other release from custody, including placement in an intensive supervision program or other alternative disposition, and any associated conditions of release;
  - (c) Notice of parole; and
  - (d) Notice of pending release of an inmate due to expiration of sentence;
- (13) To be notified of the victim's right to request testing for infection by blood-borne pathogens pursuant to § 23A-35B-2; and
- (14) To be provided a copy of any report of law enforcement that is related to the crime, at the discretion of the state's attorney, or upon motion and order of the court. However, no victim may be given the criminal history of any defendant or any witness.

**§ 23A-28C-2 – Notice of rights-Victim's response-Duty of Department of Corrections-Confidentiality**

At the commencement of a criminal proceeding subject to the terms of this chapter, the prosecutor, by first class mail, shall advise the victim of the rights set forth in this chapter. In order to take advantage of such rights, the victim shall advise the prosecutor of the desire to participate. A victim may choose to participate only in certain enumerated phases of the proceedings. A victim wishing to participate shall advise the prosecutor or the Department of Corrections of the place where notifications required under this chapter are to be made, and of any changes in the place of notification. A prosecutor receiving notification of a victim's wish to participate shall keep record of that notification and most recent place of notification through the time of the defendant's final discharge from the criminal justice system. If the defendant is sentenced to the state prison system, the prosecutor shall forward the information to the Department of Corrections and the Department of Corrections shall keep record of the request for notification and the most recent place of notification until the defendant's final discharge from prison and parole. The request for notification and the place of notification is confidential and may not be disclosed to the defendant.

### **§ 23A-28C-3 – Violation of chapter-Complaint-No relief from conviction**

No cause of action exists against any person for a failure to comply with the terms of this chapter. If a victim as defined in § 23A-28C-4 alleges in writing that a violation of this chapter has occurred and files the same with the court having jurisdiction over the criminal matter, the court, in its discretion, may determine whether additional hearings or orders are necessary to ensure compliance with the chapter. A violation of any right set forth in § 23A-28C-1 does not constitute grounds for an appeal from conviction by a defendant or for any other relief from such conviction.

### **§ 23A-28C-4 – Victim defined**

For the purposes of this chapter, the term, victim, means any person being the direct subject of an alleged act, which would constitute a crime of violence as defined by subdivision 22-1-2(9), simple assault between family or household members as defined in subdivision 25-10-1(2), stalking as defined in chapter 22-19A, a violation of chapter 22-22, or a driving under the influence vehicle accident, under the laws of South Dakota or the laws of the United States. If the victim does not survive such act or is unable to comment, the term, victim, means the members of the immediate family of the primary victim.

### **§ 23A-28C-5 – Notice of escape, release, parole, return to custody, or revocation of parole of person convicted of crime**

Any institution under the control of the Department of Corrections or the Department of Human Services, or any jail or other facility where a person is incarcerated due to the commission of a crime, shall provide notice, as soon as possible, if any of the following occur:

- (1) Upon the person's escape from custody and return to custody following escape;
- (2) Of any release from custody, including placement in an intensive supervision program or other alternative disposition, such notice to include associated conditions of release;
- (3) Upon the granting of parole or revocation of parole;
- (4) Prior to the defendant's release from custody due to expiration of sentence; and
- (5) Of any removal from an intensive supervision program or other alternative disposition.

### **§ 23A-28C-6 – Notice to be provided by the Department of Corrections or Department of Human Services**

Notice as required in § 23A-28C-5 shall be provided directly to the victim by the Department of Corrections if the defendant is incarcerated in an institution under the control of the Department of Corrections. If the defendant is incarcerated in an institution under the control of the Department of Human Services, or in any jail or in other facility due to the commission of a crime, notice as required in § 23A-28C-5 shall be provided to the state's attorney in the county where the person was convicted of that crime.

### **§ 23A-28C-7 – Victim or witness assistant-appointment and compensation**

The board of county commissioners may appoint, with the concurrence of the state's attorney or county sheriff, a victim or witness assistant to assist victims of crime if authorized by the board of county commissioners by resolution entered upon its minutes. The board of county commissioners shall set the compensation for the victim or witness assistant.

[effective July 1, 2006]

### **§ 23A-28C-8 – Victim or witness assistant-duties**

The victim or witness assistant shall:

- (1) Advise the victim about the legal proceedings in which the victim will be involved;
- (2) Advise the victim concerning any required appearance at any proceeding and if the proceeding is continued or postponed;
- (3) Assist the state's attorney, court services officer, and the victim to determine the amount of monetary damages suffered by the victim and advise the victim about restitution;
- (4) Advise, if the victim is less than sixteen years of age and the victim of certain crimes, the victim and one of the victim's immediate family that the preliminary hearing or deposition testimony of the victim may be videotaped pursuant to § 23A-12-9;
- (5) Advise the victim or one of the victim's immediate family if the defendant is released from custody and the defendant's bail conditions.

The victim or witness assistant may accompany the victim in any criminal proceeding.

[effective July 1, 2006]

### **§ 23A-28C-9 – Notification of immediate family**

No person, other than in the performance of official duties, may disclose the identity and biographical information concerning a victim of a crime of violence or of a violation of § 22-22-7 until reasonable efforts have been made to notify one of the immediate family.

[effective July 1, 2006]