

# 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

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

### Constitution

#### Article I, § 35 – Rights of victims of crimes

To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights:

1. The right to confer with the prosecution.
2. The right to be free from intimidation, harassment and abuse throughout the criminal justice system.
3. The right to be present at all proceedings where the defendant has the right to be present.
4. The right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly.
5. The right to be informed of all proceedings, and of the release, transfer or escape of the accused or convicted person.
6. The right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence.
7. The right to restitution from the offender.
8. The right to be informed of each of the rights established for victims.

The general assembly has the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section.

### Statutes

#### Title 40, Criminal Procedure; Chapter 38, Victims' Rights

#### Part 1, Victims' Bill of Rights § 40-38-101 – Short title; intent

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

- (a) The general assembly finds and declares that victims and witnesses shall have certain rights in this state and that they shall be made aware of these rights.
- (b) This part shall be known and may be cited as the "Victims' Bill of Rights."

**§ 40-38-102 – Rights of victims and witnesses; waiting areas**

- (a) All victims of crime and prosecution witnesses have the right to:
  - (1) Be treated with dignity and compassion; and
  - (2) Protection and support with prompt action in the case of intimidation or retaliation from the defendant and the defendant's agents or friends.
- (b)
  - (1) Without requiring the expenditure of additional funds or additional construction or renovation, whenever possible, victims of crime and prosecution witnesses should be provided waiting areas that are separate and secure from the defendant or defense witnesses during all stages of the judicial process.
  - (2) In order to accomplish the goals of this section, the court security committee established by § 16-2-505(d)(2) shall have among its duties the responsibility to assess existing facilities to determine where space could be allocated to provide the secure waiting areas described in subdivision (b)(1). A report of this assessment shall be included in the findings provided to the county legislative body and the administrative office of the courts pursuant to § 16-2-505(d)(3)(B). In cases where the committee determines that existing facilities cannot accommodate the goals of this section, the committee shall include in its report recommendations as to how a secure waiting area could be provided for in new construction and renovation projects. In a jurisdiction where existing facilities cannot meet the goals of this section, the local government should consider the recommendation of the committee's report in planning for any new construction or renovation of courtroom facilities.
- (c) All victims of crime shall have the right to collect court-ordered restitution in the same manner as a civil judgment, as authorized pursuant to § 37-1-131(b)(2) or § 40-35-304(h).

**§ 40-38-103 –Victims; additional rights**

- (a) All victims of crime shall, upon their request, have the right to:
  - (1) Be fully informed orally, in writing, or by video tape by the office of the district attorney general, acting through the appropriate victim-witness coordinator, of the following:
    - (A) The various steps and procedures involved in the criminal justice system;
    - (B) The procedure and basis for continuances in the proceedings;
    - (C) The procedure involved in the plea-bargaining process and how to request input into such process;

- (D) The times, dates and locations of all pertinent stages in the proceedings following presentment or indictment by the grand jury;
  - (E) The methods by which the victim may have input into a convicted defendant's sentence, including the presentence report and the sentencing hearing;
  - (F) The stages in the appellate process and how to obtain information concerning appellate action that has an effect on the defendant's conviction or sentence and the date a defendant's sentence becomes final;
  - (G) How to obtain pertinent information relating to the possible release of an appropriate inmate, including notification of any department of correction decision permitting such inmate's release into the community, or any scheduled hearing by the board of probation and parole concerning the inmate's parole or application for executive clemency;
  - (H) The methods by which the victim may obtain restitution directly from the defendant and information about obtaining assistance in obtaining such restitution; and
  - (I) The methods by which the victim may obtain a monetary award or other benefits from the criminal injuries compensation fund and information about obtaining assistance in securing such award or benefits;
- (2) Whenever possible, be advised and informed of plea bargaining discussions and agreements prior to the entry of any plea agreement, where such victim is a victim of violent crime, involving death of a family member or serious bodily injury, speak at parole hearings, submit a victim impact statement to the courts and the board of probation and parole and give impact testimony at court sentencing hearings;
- (3) Be informed that § 41-21-240 requires the department to notify them, upon their request, at least ninety (90) days prior to the date an inmate with a sentence of two (2) years or more is scheduled to be released by reason of expiration of such inmate's sentence, and be informed how such a request of the department is made; and
- (4) Be compensated for expenses actually and reasonably incurred as the result of traveling to and from the trial of the defendant or defendants and traveling to and from appellate, post-conviction or habeas corpus proceedings resulting from the trial of the defendant or defendants alleged to have committed a compensable offense subject to the provisions of title 29, chapter 13, part 1, and the availability of funds in the criminal injuries compensation fund.
- (b) Upon the request of a victim of violent crime involving serious bodily injury or death of a relative, such victim shall be supplied information and a request form by the law enforcement agency responsible for the investigation of the crime and/or the arrest of the defendant, the sheriff or other custodian of the defendant, or the victim-witness coordinator as to how the victim or relative of a victim may request and secure notification of the release from custody of an offender from a jail or detention facility prior to trial. The jailer, sheriff or other custodian of criminal offenders shall maintain a record or file of such request forms and, prior to the release of an offender about whom a notification request has been made, give immediate and prompt notice of such release to the requesting victim, or family member of a victim by the most direct means available, including telephone, messenger or telegram.

**§ 40-38-104 – Grief counseling; educational preferences**

- (a) If a child is the victim of a homicide not committed by the parents, the parents of such child shall be able to apply to the criminal injuries compensation fund for reimbursement to such parents for expenses incurred in obtaining necessary grief counseling.
- (b) All vocational schools and technical institutes operated by the board of regents shall, if there are limitations as to the number of persons who may be admitted to a particular school or institute or in a particular class or program, give preference in making such admissions to victims of violent crime. For purposes of this subsection (b), "victim" means the person who will become the primary wage earner in the victim's family if the victim was the primary wage earner and the crime resulted in such victim's death or permanent disability.

**§ 40-38-105 – Prompt disposition of cases; priorities and preferences**

- (a) All parties affected by a criminal offense, including the victim and/or survivors of the victim and witnesses to the offense, shall be able to expect that the operation of the criminal justice system will not be unnecessarily delayed and that they will be able to return to normal lives as soon as possible. To this end, all persons involved in the criminal justice system shall make every effort to dispose of any charges against a defendant within one hundred eighty (180) days of the date of the defendant's indictment, and in those cases in which the defendant is charged with a crime of violence involving death or serious bodily injury to a victim, all applications for continuance of any court date by any party shall be in writing setting out the reasons for the continuance. If, at any time during the proceeding, the court grants a continuance to the defendant and the defendant is not represented by an attorney, the court shall file an order in the records setting out the reasons why the court granted the continuance. If, for any reason, the case is not tried or otherwise disposed of in one hundred eighty (180) days of the indictment, the court shall set out in a certificate the reasons why the case is still pending before the court.
- (b) All parties affected by a criminal offense shall be able to expect that cases involving crimes against the person are given judicial and prosecutorial priority over cases involving property crimes.

**§ 40-38-106 – Property offenses**

Victims of crimes involving offenses against property shall have the right to:

- (1) Recover property in the custody of the police or the court as soon as is reasonably possible;
- (2) Restitution ordered as a condition of probation or a suspended sentence or parole and the swift revocation of such privileges for failure to make such ordered restitution; and

- (3) Once a claim under the criminal injuries compensation fund has been filed with the state, such claim shall be disposed of expeditiously and any award or other benefit to which a victim may be entitled shall be paid promptly.

**§ 40-38-107 – Information; distribution**

- (a) The state treasurer, in consultation with the executive director of the district attorneys general conference, shall prepare and distribute to each district attorney general a booklet, pamphlet, brochure, handout or other publication which shall set forth all of the provisions of this chapter and a summary of any other provision of law or regulation that pertains to victims or that would be of assistance to victims. It is the duty of the office of district attorney general to deliver free of charge to each victim, assisted by the victim-witness coordinator, a copy of such publication setting out the provisions of this chapter and other pertinent provisions.
- (b) It also is the duty of the appropriate victim-witness coordinator to distribute to such victim a listing of all appropriate referral services that are available in that particular area to victims of crime.

**§ 40-38-108 – Noncompliance; officers and employees**

Failure to comply with any provision of this part shall not create a cause of action or claim for damages against the state, a political subdivision of the state, a government employee or other official or entity, and no such cause of action shall be maintained. No defendant or person charged with a criminal offense may claim any prejudice or assign any error based upon the failure to comply with any provision of this part by the court or any other official of the state.

**§ 40-38-109 – Eligibility for compensation; notice**

The office of the district attorney general shall notify in writing each victim of a violent crime who may be eligible for compensation under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13, of the methods by which the victim may obtain such compensation. The written notice shall be substantially in the form and content as prescribed by the state treasurer. In cases involving the death of such a victim, the notification shall be given to the closest relative to the deceased victim. For purposes of this section, "closest relative" has the same meaning as that given in § 34-1-101(3).

**§ 40-38-110 – Proceedings; notification to victim**

- (a) A victim of crime has the right to be informed of the following proceedings or occurrences by the appropriate agency at the earliest practicable opportunity:
- (1) Cancelled/rescheduled hearings;

- (2) Bail hearing for the defendant;
  - (3) Dismissal of the defendant's case;
  - (4) Pardon of the defendant;
  - (5) Defendant's recapture;
  - (6) Defendant's release from a mental institution under § 33-5-410 or § 33-6-708; and
  - (7) Defendant's transfer to a different correctional complex if such complex has a lower security designation.
- (b) This section shall not be construed as limiting rights already in existence under Tennessee statute and shall be construed as working in conjunction with existing statutes.
  - (c) The victim has a duty to keep current information regarding such victim's location so that the appropriate agency may be able to contact such victim.

**§ 40-38-111 – Proceedings and rights; notification of victim**

- (a) Victims, under the provisions of the Tennessee Constitution, article I, § 35, have the right to be informed of proceedings and the right to be informed of each of the rights conferred upon such victims.
- (b) When a victim appears before a judicial commissioner, magistrate or general sessions court clerk or one of such clerk's duly sworn deputies to obtain an arrest warrant, such commissioner, magistrate, general sessions court clerk or such clerk's duly sworn deputy shall notify the victim of such victim's rights under the Tennessee Constitution, article I, § 35. The victims of crime state coordinating council will provide, upon request, sufficient copies of the form or brochure to be used to provide notice to victims under this subsection (b).
- (c) If a law enforcement officer obtains an arrest warrant on behalf of a victim, the agency employing such officer shall notify the victim of such victim's rights under the Tennessee Constitution, article I, § 35, and of the first court date at which the defendant will be required to appear. The victims of crime state coordinating council will provide, upon request, sufficient copies of the form or brochure to be used to provide notice to victims under this subsection.
- (d) At the defendant's initial court appearance the judge shall inform the victim, if such victim is present, of such victim's rights under the Tennessee Constitution, article I, § 35. The judge shall also inform the victim that the clerk of such court will have a form on which such rights

are listed and a telephone number which the victim can call for further information regarding future proceedings involving the defendant.

- (e) Following the indictment or presentment being returned by a grand jury against the defendant for a violent crime, the district attorney general of the district in which such indictment or presentment was returned shall notify the victim of such offense of that victim's rights under the Tennessee Constitution, article I, § 35, and of the dates of all future trial court proceedings involving such defendant.
- (f) Following the indictment or presentment being returned by a grand jury against the defendant for a non-violent crime, the district attorney general of the district in which such indictment or presentment was returned shall notify the victim of such offense of that victim's rights under the Tennessee Constitution, article I, § 35, and shall give such victim a telephone number to call for further information regarding future trial court proceedings involving the defendant.
- (g) As used in this section, "violent crime" means any of the following offenses:
  - (1) Aggravated arson as defined in § 39-14-302;
  - (2) Aggravated assault as defined in § 39-13-102 which results in serious bodily injury;
  - (3) Aggravated child abuse and neglect as defined in § 39-15-402;
  - (4) Aggravated kidnapping as defined in § 39-13-304;
  - (5) Aggravated rape as defined in § 39-13-502;
  - (6) Aggravated robbery as defined in § 39-13-402;
  - (7) Aggravated sexual battery as defined in § 39-13-504;
  - (8) Aggravated spousal rape, spousal rape and spousal sexual battery as defined in § 39-13-507;
  - (9) Aggravated vehicular homicide as defined in § 39-13-218;
  - (10) Carjacking as defined in § 39-13-404;
  - (11) Criminally negligent homicide as defined in § 39-13-212;
  - (12) Especially aggravated burglary as defined in § 39-14-404;
  - (13) Especially aggravated kidnapping as defined in § 39-13-305;
  - (14) Especially aggravated robbery as defined in § 39-13-403;
  - (15) First degree murder as defined in § 39-13-202;
  - (16) Incest as defined in § 39-15-302;
  - (17) Kidnapping as defined in § 39-13-303;
  - (18) Rape as defined in § 39-13-503;
  - (19) Rape of a child as defined in § 39-13-522;
  - (20) Reckless homicide as defined in § 39-13-215;
  - (21) Second degree murder as defined in § 39-13-210;
  - (22) Sexual battery by an authority figure as defined in § 39-13-527;
  - (23) Sexual battery as defined in § 39-13-505;
  - (24) Stalking as defined in § 39-17-315.
  - (25) Statutory rape as defined in § 39-13-506;
  - (26) Vehicular assault as defined in § 39-13-106;
  - (27) Vehicular homicide as defined in § 39-13-213; or
  - (28) Voluntary manslaughter as defined in § 39-13-211.

- (h) As used in this section, "non-violent crime" means any crime not defined as a "violent crime" in subsection (g).

**§ 40-38-112 – Prosecuting attorney; information to victim; duty of victim**

- (a) After indictment, presentment, or information, the office of the prosecuting attorney through the victim witness coordinator shall provide the victim with the following information:
- (1) The procedural steps involved in a criminal prosecution;
  - (2) Dates, times and places of all proceedings involving the victim's case;
  - (3) The availability of victim's compensation benefits; and
  - (4) Forms to invoke compensation benefits and other rights.
- (b) The victim has a duty to keep current information regarding such victim's location so that the victim witness coordinator may be able to contact such victim if necessary.

**§ 40-38-113 – Notice to victims**

Law enforcement agencies shall provide notice of the following information to any victim of crime:

- (1) The victim's rights under the Tennessee Constitution, article I, § 35, to be free from intimidation, harassment and abuse throughout the criminal justice system;
- (2) The availability, if any, of crisis intervention services and emergency and medical services;
- (3) The name of the law enforcement agency and telephone number;
- (4) In cases of domestic violence, the procedures and resources available for protection of the victim;
- (5) The names and telephone numbers of public and private victim assistance programs, including the state criminal injuries compensation program and programs that provide counseling, treatment and other support services; and
- (6) The procedural steps involved in a criminal prosecution.

**§ 40-38-114 – Victim conference prior to final disposition; failure to confer; victim's rights and duty**

- (a) The prosecuting attorney shall confer with the victim prior to the final disposition of a criminal offense, including the views of the victim regarding a decision not to proceed with a criminal prosecution or a decision to dismiss a charge or to enter into plea or sentencing agreements, or the victim's views regarding a decision to enter a pre-trial or other type diversion program.
- (b) 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.
- (c) The rights of the victim do not include the authority to direct the prosecution of the case.
- (d) Failure of the prosecuting attorney to confer with the victim does not affect the validity of an agreement between the prosecutor and the defendant in the case, a pretrial diversion of the defendant, a dismissal of an indictment or complaint filed against the defendant, a plea entered by the defendant, or any other disposition in the case.
- (e) Under this section, the victim has a duty to keep current information regarding such victim's location so the prosecuting attorney may be able to contact such victim. If the prosecuting attorney is unable to contact the victim, due to such victim's failure to keep current information regarding such victim's location, the prosecuting attorney may only confer with the victim if practical under the circumstances.

#### **§ 40-38-115 – Emotional support for victims**

- (a) Any victim of crime may have a crime victim advocate from a crime assistance program or a victim-witness coordinator as provided for in § 8-7- 206 present at any defense interviews with the victim. This section applies if practical and if the presence of the crime victim advocate or victim-witness coordinator does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate or victim-witness coordinator is to provide emotional support to the victim.
- (b) As used in subsection (a), "crime assistance program" includes, but is not limited to, programs which provide appropriate counseling and support to victims.

#### **§ 40-38-116 – Continuances**

- (a) In any criminal proceeding in which a continuance is requested, the court shall consider the victim's views and the victim's right to a speedy trial. If the continuance is granted over the victim's objection, the court shall state on the record the reason for the continuance and the procedures that have been taken to avoid further delays.

(b) In determining a date for any criminal trial or other important criminal hearing, the court shall consider the interests of the victim's right to a speedy trial.

**§ 40-38-117 – Communication with defendant; victim right to refuse**

Any victim of crime has the right to refuse a request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, for an interview or other communication with such victim.

**Part II, Victim Impact Statement Act**

**§ 40-38-201 – Short title**

This part shall be known and may be cited as the "Victim Impact Statement Act."

**§ 40-38-202 – Sentencing; consideration by judge**

The sentencing judge shall solicit and consider a victim impact statement prior to sentencing a convicted offender who has caused physical, emotional, or financial harm to a victim, as defined in § 40-38-203.

**§ 40-38-203 – Definitions**

As used in this part, unless the context otherwise requires:

(1) "Victim" means an individual who suffers direct or threatened physical, emotional, or financial harm as the result of the commission of a crime, or an immediate family member of a minor victim or a homicide victim;

(2) "Victim impact statement" means a statement providing information about the financial, emotional, and physical effects of the crime on the victim and the victim's family, and specific information about the victim, the circumstances surrounding the crime, and the manner in which it was perpetrated; and

(3) "Victim representative" means a spouse, parent, child, sibling, or other relative of a deceased or incapacitated victim or of a victim who is under eighteen (18) years of age, or a person who has had a close personal relationship with the victim and who is designated by the court to be a victim representative.

**§ 40-38-204 – Notice; policy; form**

(a) If a defendant is convicted of a felony involving one (1) or more identifiable victims who suffered death or physical, emotional, or financial injury, the department of correction shall

ensure notification of the victim or the victim representative and advise the victim or victim representative of the opportunity to present a victim impact statement.

- (b) The department shall establish a policy concerning the victim impact statement. This policy shall include the development of a uniform victim impact statement form. In developing the form, the department shall first consult with the executive director of the district attorneys general conference.

#### **§ 40-38-205 – Presentence report; statements**

Prior to imposition of sentence in a felony case, the department of correction shall prepare a written victim impact statement as part of the pre-sentence report on the defendant. The statement shall include applicable information obtained during consultation with the victim or the victim representative. If the victim or victim representative cannot be located or declines to participate in the preparation of the statement, the department shall include a notation to that effect in the statement. If there are multiple victims and preparation of individual victim impact statements is not feasible, the department may submit one (1) or more representative statements.

#### **§ 40-38-206 – Presentence report; filing; time**

The pre-sentence report shall be filed with the clerk of the court within ten (10) days prior to the sentencing hearing as provided in § 40-35-208.

#### **§ 40-38-207 – Sentencing; mitigation or enhancement**

Any victim impact statement submitted to the court under § 40-38-205 shall be considered as evidence in determining whether the factors in §§ 40-35-113 and 40-35-114 apply.

#### **§ 40-38-208 – Construction of law; rights of victims**

This part shall not be construed to require a victim or victim representative to submit a victim impact statement or to cooperate in the preparation of a victim impact statement.

### **Part III, Constitutional Rights of Victims**

#### **§ 40-38-301 – General Assembly; intent**

- (a) It is the intent of the general assembly by enactment of this part to implement and make fully operational the provisions of the Constitution of Tennessee, art. I, § 35, relative to the rights of victims of crime. The proposed amendment that became article I, § 35 was ratified by the voters of Tennessee at the November 3, 1998 general election, but there was some question as to

whether it required the general assembly to define certain terms before the amendment could be implemented and in full force and effect.

(b) It is the further intent of the general assembly that this part only govern the implementation of article I, § 35. If any other provision of law confers additional, enhanced or more expansive rights upon victims of crime than are set out in this part or article I, § 35, a victim shall also be entitled to such additional, enhanced or expansive statutory rights.

(c) If any other provision of law contains a broader definition of "crime," "victim" or "critical stages of the criminal justice process" for any purpose other than implementation of article I, § 35, the broader definition shall control for such purpose.

### **§ 40-38-302 – Definitions**

As used in this part:

(1) "Crime" means:

- (A) Any offense the punishment for which is a Class A, B, C, D or E felony;
- (B) First degree murder; or
- (C) Assault under § 39-13-101(a)(1);

(2) "Critical stages of the criminal justice process" are:

- (A) Bond hearings or bond reduction hearings if hearing from the victim is deemed relevant by the appropriate district attorney general;
- (B) The defendant's sentencing hearing;
- (C) Any hearing at which the issue of whether the defendant should pay restitution or the amount of restitution that should be paid is discussed; and
- (D) Any parole hearing at which the defendant's release on parole will be discussed or determined;

(3) "Family member" means the victim's spouse, natural parent, child, adopted child, grandparent, grandchild, stepparent, adoptive parent, or brother or sister of the whole or half-blood or by adoption. If a "family member" is a minor, such minor may be represented by a guardian where appropriate; and

(4) (A) "Victim" means:

- (i) A natural person against whom a crime was committed;
- (ii) If the victim is a minor, then the parent or legal guardian of the minor; or
- (iii) If the victim is deceased or is physically or emotionally unable to exercise the victim's rights, then the following persons, or their designees, in the order of preference in which they are listed:
  - (a) A family member; or
  - (b) A person who resided with the victim.

(B) "Victim" does not include any person charged with or alleged to have committed the crime or who is charged with some form of criminal responsibility for commission of the crime.