

# **Crime Victim's Bill of Rights & Procedures**

## **§ 17-17-1. Declaration of policy**

The General Assembly hereby finds and declares it to be the policy of this state that victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights. These rights include:

- (1) The right to reasonable, accurate, and timely notice of any scheduled court proceedings or any changes to such proceedings;
- (2) The right to reasonable, accurate, and timely notice of the arrest, release, or escape of the accused;
- (3) The right not to be excluded from any scheduled court proceedings, except as provided in this chapter or as otherwise required by law;
- (4) The right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused;
- (5) The right to file a written objection in any parole proceedings involving the accused;
- (6) The right to confer with the prosecuting attorney in any criminal prosecution related to the victim;
- (7) The right to restitution as provided by law;
- (8) The right to proceedings free from unreasonable delay; and
- (9) The right to be treated fairly and with dignity by all criminal justice agencies involved in the case.

## **§ 17-17-2. Short title**

This chapter shall be known and may be cited as the "Crime Victims' Bill of Rights."

## **§ 17-17-3. Definitions**

As used in this chapter, the term:

- (1) "Accused" means a person suspected of and subject to arrest for, arrested for, or convicted of a crime against a victim.
- (1.1) "Arrest" means an actual custodial restraint of a person or the person's submission to custody and includes the taking of a child into custody.
- (2) "Arresting law enforcement agency" means any law enforcement agency, other than the investigating law enforcement agency, which arrests the accused.
- (3) "Compensation" means awards granted by the Georgia Crime Victims Compensation Board pursuant to Chapter 15 of this title.
- (4) "Crime" means an act committed in this state which constitutes any violation of Chapter 5 of Title 16; Chapter 6 of Title 16; Article 1, 3, or 4 of Chapter 7 of Title 16; Article 1 or 2 of Chapter 8 of Title 16; Chapter 9 of Title 16; Part 3 of Article 3 of Chapter 12 of Title 16; Code Section 40-6-393 ; Code Section 40-6-393.1 ; or Code Section 40-6-394.
- (4.1) "Criminal justice agency" means an arresting law enforcement agency, custodial authority, investigating law enforcement agency, prosecuting attorney, or the State Board of Pardons and Paroles.
- (5) "Custodial authority" means a warden, sheriff, jailer, deputy sheriff, police officer, correctional officer, officer or employee of the Department of Corrections or the Department of Juvenile Justice, or any other law enforcement officer having actual custody of the accused.
- (6) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the crime.
- (7) "Notice," "notification," or "notify" means a written notice when time permits or, failing such, a documented effort to reach the victim by telephonic or other means.
- (8) "Person" means an individual.
- (9) "Prompt notice," "prompt notification," or "promptly notify" means notification given to the victim as soon as practically possible so as to provide the victim with a meaningful opportunity to exercise his or her rights pursuant to this chapter.

(10) "Prosecuting attorney" means the district attorney, the solicitor-general of a state court or the solicitor of any other court, the Attorney General, a county attorney opposing an accused in a habeas corpus proceeding, or the designee of any of these.

(11) "Victim" means:

(A) A person against whom a crime has been perpetrated or has allegedly been perpetrated; or

(B) In the event of the death of the crime victim, the following relations if the relation is not either in custody for an offense or the defendant:

(i) The spouse;

(ii) An adult child if division (i) does not apply;

(iii) A parent if divisions (i) and (ii) do not apply;

(iv) A sibling if divisions (i) through (iii) do not apply; or

(v) A grandparent if divisions (i) through (iv) do not apply; or

(C) A parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if such parent, guardian, or custodian is in custody for an offense or is the defendant.

#### **§ 17-17-4. Designation of family member to act in place of physically disabled victim**

If a victim is physically unable to exercise privileges and rights under this chapter, the victim may designate by written instrument his or her spouse, adult child, parent, sibling, or grandparent to act in place of the victim during the duration of the physical disability. During the physical disability, notices to be provided under this chapter to the victim shall continue to be afforded only to the victim.

## **§ 17-17-5. Notification to victim of accused's arrest, release, judicial proceedings, escape, and violations of electronic release and monitoring program**

(a) All victims, wherever practicable, shall be entitled to notification of:

(1) The accused's arrest;

(2) The accused's release from custody;

(3) Any judicial proceeding at which the release of the accused will be considered;

(4) An escape by the accused and his or her subsequent rearrest; and

(5) If the accused is released from custody and the terms or conditions of such release require that the accused participate in an electronic release and monitoring program, the accused's violation of the terms or conditions of the electronic release and monitoring program, provided that an arrest warrant has been issued for the accused and the accused is prohibited from contacting the victim.

(b) No such notification shall be required unless the victim provides a current address and telephone number to which such notice can be directed.

(c) The criminal justice agency having knowledge of an event described in subsection (a) of this Code section shall provide notice to the victim of such event. Such agency shall advise the victim of his or her right to notification pursuant to this chapter and of the requirement of the victim's providing a current address and telephone number to which the notification shall be directed. Such victim shall transmit the telephone number described in this subsection to the appropriate criminal justice agency or custodial authority as provided for in this chapter.

## **§ 17-17-6. Notification to victim of accused's pretrial release and of victims' rights and the availability of victims' compensation and services**

(a) Upon initial contact with a victim, all law enforcement and court personnel shall make available to the victim the following information written in plain language:

(1) The possibility of pretrial release of the accused, the victim's rights and role in the stages of the criminal justice process, and the means by which additional information about these stages can be obtained;

(2) The availability of victim compensation and, if the victim has been trafficked for labor or sexual servitude as defined in Code Section 16-5-46, compensation available through the federal government pursuant to 22 U.S.C. Section 7105 ; and

(3) The availability of community based victim service programs.

(b) The Criminal Justice Coordinating Council is designated as the coordinating entity between various law enforcement agencies, the courts, and social service delivery agencies. The Criminal Justice Coordinating Council shall develop and disseminate written information upon which law enforcement personnel may rely in disseminating the information required by this chapter.

**§ 17-17-7. Notification to victim of accused's arrest and proceedings where accused's release is considered; victim's right to express opinion in pending proceedings and to file written complaint in event of release**

(a) Whenever possible, the investigating law enforcement agency shall give to a victim prompt notification as defined in paragraph (9) of Code Section 17-17-3 of the arrest of an accused.

(b) The arresting law enforcement agency shall promptly notify the investigating law enforcement agency of the accused's arrest.

(c) Whenever possible, the prosecuting attorney shall notify the victim prior to any proceeding in which the release of the accused will be considered.

(d) Whenever possible, the prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the release of the accused pending judicial proceedings.

(e) Whenever possible, the custodial authority shall give prompt notification to a victim of the release of the accused.

(1) Prompt notification of release from a county or municipal jail is effected by placing a telephone call to the telephone number provided by the victim and giving notice to the victim or any person answering the telephone who appears to be sui juris or by leaving an appropriate message on a telephone answering machine.

(2) Notification of release from the custody of the state or any county correctional facility shall be in the manner provided by law.

(f) If the court has granted a pretrial release or supersedeas bond, the victim shall have the right to file a written complaint with the prosecuting attorney asserting acts or threats of physical

violence or intimidation by the accused or at the accused's direction against the victim or the victim's immediate family. Based on the victim's written complaint or other evidence, the prosecuting attorney may move the court that the bond or personal recognizance of an accused be revoked.

### **§ 17-17-8. Notification by prosecuting attorney of legal procedures and of victim's rights in relation thereto; victims seeking restitution**

(a) Upon initial contact with a victim, a prosecuting attorney shall give prompt notification to the victim of the following:

- (1) The procedural steps in processing a criminal case including the right to restitution;
- (2) The rights and procedures of victims under this chapter;
- (3) Suggested procedures if the victim is subjected to threats or intimidation;
- (4) The names and telephone numbers of contact persons at both the office of the custodial authority and in the prosecuting attorney's office; and
- (5) The names and telephone numbers of contact persons at the office of the investigating agency where the victim may make application for the return of any of the victim's property that was taken during the course of the investigation, as provided by Code Section 17-5-50.

(b) If requested in writing by the victim and to the extent possible, the prosecuting attorney shall give prompt advance notification of any scheduled court proceedings and notice of any changes to that schedule. Court proceedings shall include, but not be limited to, pretrial commitment hearings, arraignment, motion hearings, trial, sentencing, restitution hearings, appellate review, and post-conviction relief. The prosecuting attorney shall notify all victims of the requirement to make such request in writing.

(c)

(1) In the event the victim seeks restitution, the victim shall provide the prosecuting attorney with his or her legal name, address, phone number, social security number, date of birth, and, if the victim has an email address, his or her email address. The victim shall also provide such information, other than a social security number, to the prosecuting attorney for a secondary contact person in the event the victim cannot be reached after reasonable efforts are made to contact such victim. The prosecuting attorney shall advise the victim of any agency that will receive such information and advise the victim that he or she is responsible for updating such information with the prosecuting attorney while the case involving the victim is pending and that he or she should update the agency with such information after a restitution order has been entered.

(2) The prosecuting attorney shall transmit the information collected in paragraph (1) of this subsection to the Department of Corrections, Department of Juvenile Justice, or the State Board of Pardons and Paroles, as applicable, if an order of restitution is entered.

(3) The information collected pursuant to paragraph (1) of this subsection shall be treated as confidential and shall not be disclosed to any person outside of the disclosure provided by this subsection; such information shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

## **§ 17-17-9. Exclusion of testifying victim from criminal proceedings; separate victims' waiting areas**

(a) A victim has the right to be present at all criminal proceedings in which the accused has the right to be present. A victim or member of the immediate family of a victim shall not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify unless it is established that such victim or family member is a material and necessary witness to such hearing, trial, or proceeding and the court finds that there is a substantial probability that such person's presence would impair the conduct of a fair trial. The provisions of this Code section shall not be construed as impairing the authority of a judge to remove a person from a trial or hearing or any portion thereof for the same causes and in the same manner as the rules of court or law provides for the exclusion or removal of the accused. A motion to exclude a victim or family members from the courtroom for any reason other than misconduct shall be made and determined prior to jeopardy attaching.

(b) A victim of a criminal offense who has been or may be subpoenaed to testify at such hearing or trial shall be exempt from the provisions of Code Section 24-6-616 requiring sequestration; provided, however, that the court shall require that the victim be scheduled to testify as early as practical in the proceedings.

(c) If the victim is excluded from the courtroom, the victim shall have the right to wait in an area separate from the accused, from the family and friends of the accused, and from witnesses for the accused during any judicial proceeding involving the accused, provided that such separate area is available and its use in such a manner practical. If such a separate area is not available or practical, the court, upon request of the victim made through the prosecuting attorney, shall attempt to minimize the victim's contact with the accused, the accused's relatives and friends, and witnesses for the accused during any such judicial proceeding.

## **§ 17-17-10. Requirement by court that defense counsel not disclose victim information to accused**

As a condition of permitting a response to an inquiry as to the victim's current address, telephone number, or place of employment, the court may require counsel or any other officer of the court, including but not limited to counsel for the defendant, not to transmit or permit transmission to the defendant of the victim's current address, telephone number, or place of employment by the counsel or officer of the court or any employee, agent, or other representative of the counsel or officer of the court.

## **§ 17-17-11. Right of victim to express opinion on disposition of accused's case**

The prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the disposition of an accused's case, including the views of the victim regarding:

- (1) Plea or sentence negotiations; and
- (2) Participation in pretrial or post-conviction diversion programs.

This provision shall not limit any other right created pursuant to state law.

**§ 17-17-12. Notification to victim of accused's motion for new trial or appeal, release on bail or recognizance, appellate proceedings, and outcome of appeal; notifications regarding death penalty cases; victim's rights retained at new trial or on appeal**

(a) Upon the written request of the victim, the prosecuting attorney shall notify the victim of the following:

- (1) That the accused has filed a motion for new trial, an appeal of his or her conviction, or an extraordinary motion for new trial;
- (2) Whether the accused has been released on bail or other recognizance pending the disposition of the motion or appeal;
- (3) The time and place of any appellate court proceedings relating to the motion or appeal and any changes in the time or place of those proceedings; and
- (4) The result of the motion or appeal.

(b) The Attorney General shall notify the prosecuting attorney of the filing of collateral attacks on convictions of this state which are being defended by the Attorney General.

(b.1) In cases in which the accused is convicted of a capital offense and receives the death penalty, the Attorney General shall:

- (1) Notify the prosecuting attorney and upon the written request of the victim notify the victim of the filing and disposition of all collateral attacks on such conviction which are being defended by the Attorney General, including, but not limited to, petitions for a writ of habeas corpus, and the time and place of any such proceedings and any changes in the time or place of those proceedings; and

(2) Provide the prosecuting attorney and upon the written request of the victim provide the victim with a report on the status of all pending appeals, collateral attacks, and other litigation concerning such conviction which is being defended by the Attorney General at least every six months until the accused dies or the sentence or conviction is overturned or commuted or otherwise reduced to a sentence other than the death penalty.

(c) In the event the accused is granted a new trial or the conviction is reversed or remanded and the case is returned to the trial court for further proceedings, the victim shall be entitled to request the rights and privileges provided by this chapter.

### **§ 17-17-13. Notification to victim of impending parole or clemency proceedings**

The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim whenever it considers making a final decision to grant parole or any other manner of executive clemency action to release a defendant for a period exceeding 60 days; and the board shall provide the victim with an opportunity to file a written objection to such action. No notification need be given unless the victim has expressed objection to release or has expressed a desire for such notification and has provided the State Board of Pardons and Paroles with a current address and telephone number.

## **§ 17-17-14. Victim required to provide current address and phone number to notifying parties**

(a) It is the right and responsibility of the victim who desires notification under this chapter or under any other notification statute to keep the following informed of the victim's current address and phone number:

(1) The investigating law enforcement agency;

(2) The prosecuting attorney, until final disposition or completion of the appellate and post-conviction process, whichever occurs later; and

(3) As directed by the prosecuting attorney, the sheriff if the accused is in the sheriff's custody for pretrial, trial, or post-conviction proceedings; the Department of Corrections if the accused is in the custody of the state; or any county correctional facility if the defendant is sentenced to serve time in a facility which is not a state facility; and

(4) The State Board of Pardons and Paroles.

(b) Current addresses and telephone numbers of victims and their names provided for the purposes of notification pursuant to this chapter or any other notification statute shall be confidential and used solely for the purposes of this chapter and shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to inspection of public records.

**§ 17-17-15. Failure to provide notice not rendering responsible person liable or comprising basis for error; chapter not conferring standing; existing rights not affected; waiver of rights by victim**

(a) Failure to provide or to timely provide any of the information or notifications required by this chapter shall not subject the person responsible for such notification or that person's employer to any liability for damages.

(b) Failure to provide a victim with any of the rights required by law shall not give an accused a basis for error in either an appellate action or a post-conviction writ of habeas corpus.

(c) This chapter does not confer upon a victim any standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

(d) The enumeration of these rights shall not be construed to deny or diminish other notification rights granted by state law.

(e) The victim may waive any of the information or notification or other rights provided for by this chapter.

## **§ 17-17-16. Temporary restraining and protective orders**

(a) As used in this Code section, the term:

(1) "Course of conduct" spans a series of acts over a period of time, however short, indicating a continuity of purpose.

(2) "Harassment" means a course of conduct directed at a specific person that causes substantial emotional distress in such person.

(b)

(1) A superior court, upon application of a prosecuting attorney, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a criminal case if the court finds from specific facts shown by affidavit or by verified complaint that there are reasonable grounds to believe that harassment of an identified victim or witness in a criminal case exists or that such order is necessary to prevent and restrain an offense under Code Section 16-10-32 or 16-10-93.

(2)

(A) A temporary restraining order may be issued under this Code section without written or oral notice to the adverse party or such party's attorney in a civil action under this Code section if the court finds, upon written certification of facts by the prosecuting attorney, that such notice should not be required and that there is a reasonable probability that the state will prevail on the merits.

(B) A temporary restraining order issued without notice under this Code section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

(C) A temporary restraining order issued under this Code section shall expire at such time, not to exceed ten days from issuance, as the court directs. The court, for good cause shown before expiration of such order, may extend the expiration

date of the order for up to ten days or for such longer period agreed to by the adverse party.

(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and at the hearing, if the prosecuting attorney does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

(E) If on two days' notice to the prosecuting attorney or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail and not by reference to the complaint or other document the act or acts being restrained.

(c)

(1) A superior court, upon motion of the prosecuting attorney, shall issue a protective order prohibiting harassment of a victim or witness in a criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a criminal case exists or that such order is necessary to prevent and restrain an offense under Code Section 16-10-32 or 16-10-93.

(2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

(3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail and not by reference to the complaint or other document the act or acts being restrained.

(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The prosecuting attorney may, at any time within 90 days before the expiration of such order, apply for a new protective order under this Code section.

(d) Article 5 of Chapter 11 of Title 9, relating to depositions and discovery, shall not apply to actions brought pursuant to this Code section.