

§ 15A-834.5. Enforcement of the rights of a victim.

(a) A victim may assert the rights provided in this Article pursuant to Section 37 of Article I of the North Carolina Constitution. In no event shall any underlying proceeding be subject to undue delay for the enforcement provided in this section. The procedure by which a victim may assert the rights provided under this Article shall be by motion to the court of jurisdiction. For the purposes of this section, the term "victim" includes the following individuals acting on behalf of the victim:

- (1) The victim's attorney.
- (2) The prosecutor, at the request of the victim.
- (3) A parent, guardian, or legal custodian, if the victim is a minor or is legally incapacitated, as provided in G.S. 15A-830.
- (4) A family member, if the victim is deceased, as provided in G.S. 15A-830.

(b) A victim may allege a violation of the rights provided in this Article by filing a motion with the office of the clerk of superior court. The motion must be filed within the same criminal proceeding giving rise to the rights in question.

(c) If the motion involves an allegation that the district attorney failed to comply with the rights of a victim provided by this Article, the victim must first file a written complaint with the district attorney's office, to afford the district attorney's office an opportunity to resolve the issue stated in the written complaint in a timely manner.

(d) If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, the victim must first file a written complaint with that agency, to afford the agency an opportunity to resolve the issue stated in the written complaint in a timely manner.

(e) A victim has the right to consult with an attorney regarding an alleged violation of the rights provided in this Article, but the victim does not have the right to counsel provided by the State.

(f) The Administrative Office of the Courts shall create a form to serve as the motion and enable a victim to allege a violation of the rights provided in this Article. The form will indicate what specific right has allegedly been violated. The form will also provide the victim the opportunity to describe the substance of the alleged violation in detail. If the motion involves an allegation that the district attorney failed to comply with the rights of a victim provided in this Article, the victim must attach a copy of the written complaint that was previously filed with the district attorney as required by subsection (c) of this section. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided in this Article, the victim must attach a copy of the written complaint that was previously filed with that law enforcement agency as required by subsection (d) of this section.

(g) The clerk of superior court of each county shall provide the form created by the Administrative Office of the Courts to enable a victim to allege a violation of the rights provided in this Article. No fees shall be assessed for the filing of this motion. A copy of the motion required in subsection (b) of this section shall be given to the prosecutor if other than the elected District Attorney, the elected District Attorney, and the judge involved in the criminal proceeding that gave rise to the rights in question. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, a copy of the motion required in subsection (b) of this section shall also be provided to the head of the law enforcement agency referenced in the motion.

(h) The judge shall review the motion and dispose of it or set it for hearing in a timely manner. Review may include conferring with the victim, the prosecutor if other than the District Attorney, and the District Attorney in order to inquire as to compliance with this Article. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, the judge may confer with the head of that law enforcement

agency as part of the review. At the conclusion of the review, the judge shall dispose of the motion or set the motion for hearing.

(i) If the judge fails to review the motion and dispose of it or set it for hearing in a timely manner, a victim may petition the North Carolina Court of Appeals for a writ of mandamus. The petition shall be filed without unreasonable delay. The court for good cause shown may shorten the time for filing a response.

(j) 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 or any family member of a victim, as a ground for relief in any criminal or civil proceeding, except as provided in Section 37 of Article I of the North Carolina Constitution. (2019-216, s. 7.)