

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 763

Short Title: Crime Victims Rights Act.

(Public)

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Sponsors: Senators Cooper; Albertson, Dalton, Gulley, Hoyle, Lee, Martin of Guilford, Miller, Odom, Perdue, Phillips, Plyler, Rand, Warren, Weinstein, and Winner.

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Referred to: Judiciary.

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April 8, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE THE CRIME VICTIMS RIGHTS ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 15A of the General Statutes is amended by adding a new  
5 Subchapter to read:

6 **"SUBCHAPTER XVI. CRIME VICTIMS RIGHTS.**

7 **"ARTICLE 101.**

8 **"CRIME VICTIMS RIGHTS ACT.**

9 **"§ 15A-2010. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Accused. – A person who has been arrested and charged with  
12 committing a crime covered by this Article.
- 13 (2) Law enforcement agency. – The police or sheriff department  
14 responsible for investigating a crime covered by this Article.
- 15 (3) Next of kin. – The victim's spouse, children, parents, or siblings. The  
16 term does not include such a person, however, if the person caused the  
17 victim's injuries or death.
- 18 (4) Victim. – A person against whom there is probable cause to believe one  
19 of the following crimes was committed:

- 1           a.     A Class A, B, C, D, or E felony.  
2           b.     A Class F felony if it is a violation of one of the following: G.S.  
3                 14-16.6(b), 14-16.6(c), 14-18, 14-32.1(e), 14-32.2(b)(3), 14-  
4                 32.3(b), 14-34.2, 14-34.5, 14-41, 14-43.2, 14-43.3, 14-190.17,  
5                 14-190.19, 14-202.1, or 14-288.9.  
6           c.     A Class G felony if it is a violation of one of the following: G.S.  
7                 14-32.3(b), 14-51, 14-58, 14-87.1, 20-138.5(b), or 20-141.4.  
8           d.     A Class H felony if it is a violation of one of the following: G.S.  
9                 14-32.3(a), 14-32.3(c), or 14-33.2.  
10          e.     A Class I felony if it is a violation of one of the following: G.S.  
11                 14-277.3, 14-32.3(b), 14-34.6(b), or 14-190.17A.

12                 A person is also a victim if the perpetrator of one of the  
13                 crimes listed above is a juvenile and the case was referred to  
14                 superior court for adjudication or the perpetrator was found not  
15                 guilty by reason of insanity.

16 **"§ 15A-2011. Responsibilities of law enforcement agency.**

17         (a)     Within 24 hours after identifying a victim covered by this Article, the law  
18         enforcement agency shall provide the victim with the following information:

- 19                 (1)     The availability of medical services, if needed.  
20                 (2)     The availability of crime victims compensation funds under Chapter  
21                 15B of the General Statutes and the address and phone number of the  
22                 agency responsible for dispensing the funds.  
23                 (3)     The address and phone number of the district attorney's office that will  
24                 be responsible for prosecuting the victim's case.  
25                 (4)     The name and phone number of a law enforcement agency employee  
26                 whom the victim may contact if the victim has not been notified of an  
27                 arrest in the victim's case within six months after the crime was reported  
28                 to the law enforcement agency.

29         (b)     Within 24 hours after the arrest of a person believed to have committed a crime  
30         covered by this Article, the law enforcement agency shall:

- 31                 (1)     Inform the victim of the accused's opportunity for pretrial release.  
32                 (2)     Provide the victim with the name and phone number of a law  
33                 enforcement agency employee whom the victim may contact to find out  
34                 whether the accused has been released from custody.

35         (c)     Within 24 hours after an accused has been detained and no later than five days  
36         after the accused has been arrested if the accused is not detained, the law enforcement  
37         agency shall forward to the district attorney's office that will be responsible for  
38         prosecuting the case the victim's name, address, date of birth, social security number,  
39         race, sex, and phone number.

40 **"§ 15A-2012. Responsibilities of the district attorney's office.**

41         (a)     Within 21 days after the arrest of the accused, but not less than 24 hours before  
42         the accused's first scheduled probable cause hearing, the district attorney's office shall

1 provide to the victim a pamphlet or other written material that explains in a clear and  
2 concise manner the following:

- 3 (1) The victim's rights under this Article, including the right to confer with  
4 the attorney prosecuting the case about the disposition of the case.
- 5 (2) The responsibilities of the law enforcement agency and the district  
6 attorney's office under this Article.
- 7 (3) The victim's eligibility for compensation under the Crime Victims  
8 Compensation Act and the date by which the victim must file a claim  
9 for compensation.
- 10 (4) The steps generally taken by the district attorney's office when  
11 prosecuting a felony case.
- 12 (5) Suggestions on what the victim should do if threatened or intimidated  
13 by the accused or someone acting on the accused's behalf.
- 14 (6) The name and phone number of a victim and witness assistant in the  
15 district attorney's office whom the victim may contact for further  
16 information.

17 (b) Upon receiving the information in subsection (a) of this section, the victim  
18 shall, on a form provided by the district attorney's office, indicate whether the victim  
19 wishes to receive any further notices of trial proceedings involving the accused. If the  
20 victim elects to receive further notices, the victim shall be responsible for notifying the  
21 district attorney's office or any other department or agency that has a responsibility under  
22 this Article of any changes in the victim's address and phone number.

23 (c) A victim has the right to be present at every court proceeding at which the  
24 accused has the right to be present. The district attorney's office shall notify a victim of  
25 the date, time, and place of these proceedings. All notices required to be given by the  
26 district attorney's office shall be given in a manner that is reasonably calculated to be  
27 received by the victim prior to the date of the court proceeding.

28 (d) Whenever practical, the district attorney's office shall provide a secure waiting  
29 area during court proceedings that does not place the victim in close proximity to the  
30 defendant or the defendant's family.

31 (e) When the victim is to be called as a witness in a court proceeding, the court  
32 shall make every effort to permit the fullest attendance possible by the victim in the  
33 proceedings.

34 (f) Prior to the disposition of the case, the district attorney's office shall offer the  
35 victim of crime the opportunity to consult with the prosecuting attorney to obtain the  
36 views of the victim about the disposition of a crime, including the victim's views about  
37 dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

38 **"§ 15A-2013. Victim impact statement.**

39 (a) The district attorney's office shall notify the victim that the victim has the right  
40 to make an oral or written victim impact statement, which shall be considered by the  
41 court or jury, as the case may be, in sentencing the defendant. The notice shall explain  
42 that the victim may include in the statement the following:

1           (1) A description of the nature and extent of any physical, psychological, or  
2 emotional injury suffered by the victim as a result of the offense  
3 committed by the defendant.

4           (2) An explanation of any economic or property loss suffered by the victim  
5 as a result of the offense committed by the defendant.

6           (3) An opinion of whether there is a need for restitution and whether the  
7 victim has applied for or received compensation under the Crime  
8 Victims Compensation Act.

9           (4) The victim's recommendation of an appropriate sentence for the  
10 defendant.

11       (b) No victim shall be required to make a victim's impact statement. The court  
12 shall not draw any inference or conclusion from a victim's decision not to make a victim's  
13 impact statement.

14 **"§ 15A-2014. Restitution.**

15       (a) A court shall, in addition to or instead of any penalty authorized by law,  
16 require that the defendant make restitution to a victim or the victim's estate for any  
17 injuries or damages arising out of the offense committed by the defendant.

18       (b) The amount the defendant is ordered to pay in restitution may include, if they  
19 are a result of the offense committed by the defendant:

20           (1) The cost of any medical or other professional services and devices or  
21 equipment required by the victim.

22           (2) The cost of physical therapy, occupational therapy, and rehabilitation  
23 required by the victim.

24           (3) Any income loss, after taxes, suffered by the victim.

25           (4) The cost of any psychological or medical treatment for the victim's next  
26 of kin.

27           (5) The cost of the victim's funeral and any related services.

28       The court may require that the victim or the victim's estate provide evidence that  
29 documents the costs claimed by the victim or the victim's estate under this section. Any  
30 such documentation shall be shared with the defendant before the sentencing hearing.

31       (c) In deciding whether to require that restitution be made, the court shall take into  
32 consideration the resources of the defendant, including all real and personal property  
33 owned by the defendant and the income derived from the property, the defendant's ability  
34 to earn, the defendant's obligation to support dependents, and any other matters that  
35 pertain to the defendant's ability to make restitution, but the court is not required to make  
36 findings of fact or conclusions of law on these matters when the sentence is imposed.  
37 The amount of restitution must be limited to that supported by the record, and the court  
38 may order partial restitution when it appears that the damage or loss caused by the  
39 offense is greater than that which the defendant is able to pay.

40       (d) An order providing for restitution does not abridge the right of a victim or the  
41 victim's estate to bring a civil action against the defendant for damages arising out of the  
42 offense committed by the defendant, but any amount paid by the defendant under the  
43 terms of an order under this section shall be credited against any judgment rendered

1 against the defendant in a civil action. Any amount paid by the defendant shall also be  
2 subtracted from any compensation paid by the Crime Victims Compensation Fund if the  
3 compensation is paid after restitution has been made.

4 (e) The court may order the defendant to make restitution to a person other than  
5 the victim, or to any organization, corporation, or association, including the Crime  
6 Victims Compensation Fund that provided assistance to the victim following the  
7 commission of the offense by the defendant. Restitution shall be made to the victim or  
8 the victim's estate before it is made to any other person, organization, corporation, or  
9 association.

10 (f) The court may require the defendant to make full restitution no later than a  
11 certain date or, if the circumstances warrant, may allow the defendant to make restitution  
12 in installments over a specified time period.

13 (g) If the defendant is placed on probation or post-release supervision, or is  
14 paroled, any restitution ordered under this Article shall be a condition of probation,  
15 supervision, or parole.

16 (h) If the court does not order restitution, or orders partial restitution, the court  
17 shall state on the record the reasons for such a finding.

18 **"§ 15A-2015. Docketing of order of restitution.**

19 An order of restitution shall be docketed with the clerk of superior court and may be  
20 collected in the same manner as a civil judgment.

21 **"§ 15A-2016. Posttrial responsibilities.**

22 (a) Within 30 days after the final proceeding in a case, the district attorney's office  
23 shall notify the victim, in writing, of:

24 (1) The final disposition of the case.

25 (2) The crimes of which the defendant was convicted.

26 (3) The defendant's right to appeal, if any.

27 (b) Upon a defendant's giving notice of appeal to the Court of Appeals or the  
28 Supreme Court, the district attorney's office shall forward to the Attorney General's office  
29 the victim's name, address, and phone number. Upon receipt of this information, the  
30 Attorney General's office shall provide the victim with the following:

31 (1) A clear and concise explanation of how the appellate process works,  
32 including information about possible actions that may be taken by the  
33 appellate court.

34 (2) Notice of the date, time, and place of any appellate proceedings  
35 involving the defendant. Notice shall be given in a manner that is  
36 reasonably calculated to be received by the victim prior to the date of  
37 the proceedings.

38 (3) The final disposition of an appeal.

39 (c) If the defendant has been released on bail pending the outcome of the appeal,  
40 the agency that has custody of the defendant shall notify the victim that the defendant has  
41 been released.

42 (d) If the defendant's conviction is overturned and the district attorney's office  
43 decides to retry the case or the case is remanded to superior court for a new trial, the

1 victim shall be entitled to the same rights under this Article as if the first trial did not take  
2 place.

3 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

4 The law enforcement agency that has custody of the defendant or the Department of  
5 Correction, if it has custody of the defendant, shall notify the victim of:

- 6 (1) The earliest date by which the defendant can be released from custody.  
7 The calculation of the release date shall be as exact as possible,  
8 including earned time and disciplinary credits if the sentence of  
9 imprisonment exceeds 90 days. The law enforcement agency or  
10 Department of Correction shall be required to provide notice of the  
11 defendant's earliest release date only once during the defendant's  
12 incarceration.
- 13 (2) The defendant's transfer to a minimum security facility and the address  
14 of the facility.
- 15 (3) The defendant's release or pending release into a community residential  
16 program or under extended furlough, or the transfer of the defendant to  
17 community status.
- 18 (4) Any reduction of the defendant's minimum sentence.
- 19 (5) The defendant's escape from custody.
- 20 (6) The date of any hearings held by the Parole Commission to consider  
21 whether the defendant should be released from custody. Notice should  
22 be given not later than 90 days before a hearing is held.
- 23 (7) The victim's right to submit a written or oral statement to the Parole  
24 Commission before the defendant is released.
- 25 (8) The Parole Commission's decision about whether to release or continue  
26 the incarceration of a defendant.
- 27 (9) The date the defendant is scheduled to be released from the facility.  
28 Whenever practical, notice shall be given 60 days before release.
- 29 (10) The defendant's death.

30 **"§ 15A-2018. Responsibilities of Department of Adult Probation and Parole.**

31 The Department of Adult Probation and Parole shall notify the victim of:

- 32 (1) The date of a hearing to determine whether the defendant's probation  
33 should be revoked or extended.
- 34 (2) The final disposition of any hearing held in subdivision (1) of this  
35 section.
- 36 (3) The defendant's leaving the jurisdiction of the court that sentenced the  
37 defendant without the permission of the court or the defendant's  
38 probation officer.
- 39 (4) The capture of a defendant described in subdivision (3) of this section.
- 40 (5) The date when the defendant is discharged from probation.

41 **"§ 15A-2019. Notice of commuted sentence or pardon.**

42 The Governor shall notify a victim that the Governor is considering commuting the  
43 defendant's sentence or pardoning the defendant. The Governor shall also give notice

1 that the victim has the right to present a written statement to be considered by the  
2 Governor before the defendant's sentence is commuted or the defendant is pardoned.

3 **"§ 15A-2020. No money damages.**

4 This Article does not create a claim for damages against the State, a county, or a  
5 municipality, or any of its agencies, instrumentalities, or employees.

6 **"§ 15A-2021. No ground for relief.**

7 The failure or inability of any person to provide a right or service under this Article  
8 may not be used by a defendant in a criminal case, by an inmate, or by any other accused  
9 as a ground for relief in any criminal or civil proceeding.

10 **"§ 15A-2022. Appointment of guardian.**

11 When a victim is rendered mentally or physically incompetent, the court shall appoint  
12 a guardian to exercise the victim's rights under this Article. The court shall not appoint as  
13 guardian a person who was responsible for causing the victim's injuries.

14 **"ARTICLE 102.**

15 **"CRIME VICTIMS RIGHTS FUND.**

16 **"§ 15A-2025. Crime Victims Rights Fund established.**

17 There is hereby established within the State treasury a special revenue fund to be  
18 known as the Crime Victims Rights Fund (hereinafter Fund). The Fund shall be  
19 administered by the Department of Crime Control and Public Safety and shall be used to  
20 supplement the budgets of law enforcement agencies and district attorney's offices that  
21 provide services to crime victims as required by the General Statutes. Revenue in the  
22 Fund at the end of each fiscal year shall not revert and interest and other investment  
23 income earned by the Fund must be credited to the Fund.

24 **"§ 15A-2026. Assessments.**

25 (a) In every criminal case where the defendant is convicted of or enters a plea of  
26 guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of  
27 impaired driving under Chapter 20 of the General Statutes, the court shall order the  
28 defendant to pay a sum of thirty dollars (\$30.00) to be used to supplement the budgets of  
29 law enforcement agencies and district attorney's offices who provide services to crime  
30 victims as required by the General Statutes.

31 (b) If the court authorizes the payment of fines, costs, restitution, probation  
32 oversight fees, or any other obligations of the defendant to be paid in installments, the  
33 assessment imposed under this section shall be collected from the first monies paid by the  
34 defendant. The clerk of superior court shall transmit daily all monies collected to the  
35 Department of Crime Control and Public Safety for deposit in the Fund.

36 **"§ 15A-2027. Application for supplemental funds.**

37 (a) A law enforcement agency or district attorney's office that has a responsibility  
38 to provide services to crime victims as required by the General Statutes may apply  
39 annually to the Department of Crime Control and Public Safety for supplemental funds.  
40 Supplemental funds may not be used to supplant local, State, or federal funds that are  
41 available to agencies and district attorney's offices to provide services to crime victims.

42 (b) The Department of Crime Control and Public Safety shall establish procedures  
43 for screening, recording, and processing applications for supplemental funds. The

1 Department shall prepare and transmit annually to the General Assembly a report of the  
2 Department's activities."

3 Section 2. G.S. 7A-304 is amended by adding a new subdivision to read:

4 "(7) For the Crime Victims Rights Fund, the sum of thirty dollars (\$30.00) to  
5 be remitted to the Department of Crime Control and Public Safety to be  
6 administered under the provisions of Article 102 of Chapter 15A of the  
7 General Statutes."

8 Section 3. G.S. 15A-824 through G.S. 15A-827 are repealed.

9 Section 4. Article 102 as enacted in Section 1 of this act becomes effective  
10 January 1, 1998. The remainder of this act is effective when it becomes law.