

Article 46.

Crime Victims' Rights Act.

§ 15A-830. Definitions.

- (a) The following definitions apply in this Article:
- (1) Accused. – A person who has been arrested and charged with committing a crime covered by this Article.
 - (2) Arresting law enforcement agency. – The law enforcement agency that makes the arrest of an accused.
 - (2a) Court proceeding. – A critical stage of the post-arrest process heard by a judge in open court involving a plea that disposes of the case or the conviction, sentencing, or release of the accused, including the hearings described in G.S. 15A-837. The term does not include the preliminary proceedings described in Article 29 of Chapter 15A of the General Statutes. If it is known by law enforcement and the district attorney's office that (i) the defendant and the victim have a personal relationship as defined in G.S. 50B-1(b) and (ii) the hearing may result in the defendant's release, efforts will be made to contact the victim.
 - (3) Custodial agency. – The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, facilities designated under G.S. 122C-252 for the custody and treatment of involuntary clients, or the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.
 - (3a) Family member. – A spouse, child, parent, guardian, legal custodian, sibling, or grandparent of the victim. The term does not include the accused.
 - (3b) Felony property crime. – An act which constitutes a felony violation of one of the following:
 - a. Subchapter IV of Chapter 14 of the General Statutes.
 - b. Subchapter V of Chapter 14 of the General Statutes.
 - (4) Investigating law enforcement agency. – The law enforcement agency with primary responsibility for investigating the crime committed against the victim.
 - (5) Law enforcement agency. – An arresting law enforcement agency, a custodial agency, or an investigating law enforcement agency.
 - (6) Repealed by Session Laws 2019-216, s. 2, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.
 - (6a) Offense against the person. – An offense against or involving the person of the victim which constitutes a violation of one of the following:
 - a. Subchapter III of Chapter 14 of the General Statutes.
 - b. Subchapter VII of Chapter 14 of the General Statutes.
 - c. Article 39 of Chapter 14 of the General Statutes.
 - d. Chapter 20 of the General Statutes, if an element of the offense involves impairment of the defendant, or injury or death to the victim.
 - e. A valid protective order under G.S. 50B-4.1, including, but not limited to, G.S. 14-134.3 and G.S. 14-269.8.
 - f. Article 35 of Chapter 14 of the General Statutes, if the elements of the offense involve communicating a threat or stalking.

- g. An offense that triggers the enumerated victims' rights, as required by the North Carolina Constitution.
- (7) Victim. – A person against whom there is probable cause to believe an offense against the person or a felony property crime has been committed.
 - (b) If the victim is a minor or is legally incapacitated, a parent, guardian, or legal custodian may assert the victim's rights under this Article. The accused may not assert the victim's rights. If the victim is deceased, then a family member, in the order set forth in the definition contained in this section, may assert the victim's rights under this Article, with the following limitations:
 - (1) The guardian or legal custodian of a deceased minor has priority over a family member.
 - (2) The right contained in G.S. 15A-834 may only be exercised by the personal representative of the victim's estate.
 - (c) An individual entitled to exercise the victim's rights as the appropriate family member in accordance with this section may designate any family member to act on behalf of the victim.
 - (d) An individual who, in the determination of the district attorney, would not act in the best interests of the victim shall not be entitled to assert or exercise the victim's rights. An individual may petition the court to review this determination by the district attorney. (1998-212, s. 19.4(c); 2001-433, s. 1; 2001-487, s. 120; 2001-518, s. 2A; 2006-247, s. 20(e); 2007-116, s. 2; 2007-547, s. 2; 2009-58, s. 3; 2011-145, s. 19.1(h); 2014-115, s. 2.1(a); 2017-186, s. 2(ccc); 2019-216, s. 2.)

§ 15A-830.5. Victim's rights.

- (a) A victim of crime shall be treated with dignity and respect by the criminal justice system.
- (b) A victim has the following rights:
 - (1) The right, upon request, to reasonable, accurate, and timely notice of court proceedings of the accused.
 - (2) The right, upon request, to be present at court proceedings of the accused.
 - (3) The right to be reasonably heard at court proceedings involving a plea that disposes of the case or the conviction, sentencing, or release of the accused.
 - (4) The right to receive restitution in a reasonably timely manner, when ordered by the court.
 - (5) The right to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.
 - (6) The right, upon request, to receive information about the conviction or final disposition and sentence of the accused.
 - (7) The right, upon request, to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
 - (8) The right to present the victim's views and concerns in writing to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
 - (9) The right to reasonably confer with the district attorney's office.
- (c) This Article does not create a claim for damages against the State, any county or municipality, or any State or county agencies, instrumentalities, officers, or employees. (2019-216, s. 3.)

§ 15A-831. Responsibilities of law enforcement agency.

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with at least the following information in writing, on a form created by the Conference of District Attorneys:

- (1) The availability of medical services, if needed.
- (2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.
- (3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.
- (4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.
- (5) Information about an accused's opportunity for pretrial release.
- (6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.
- (7) The informational sheet described in G.S. 50B-3(c1), if there was a personal relationship, as defined in G.S. 50B-1(b), with the accused.
- (8) A list of each right enumerated under G.S. 15A-830.5(b).
- (9) Information about any other rights afforded to victims by law.

(b) Within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. Following receipt of this information, the investigating law enforcement agency shall notify the victim of the arrest within an additional 72 hours.

(c) Within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall also forward to the district attorney's office that will be responsible for prosecuting the case the defendant's name and the victim's name, address, and telephone number or other contact information, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form created by the Conference of District Attorneys and provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency on the status of the accused during the pretrial process. If the victim elects to receive further notices during the pretrial process, the victim shall return the form to the investigating law enforcement agency within 10 business days of receipt of the form. The victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

(e) Upon receiving a form from the victim pursuant to subsection (d) of this section, the investigating law enforcement agency shall promptly share the form with the district attorney's office to facilitate compliance with the victim's preferences on notification. (1998-212, s. 19.4(c); 2001-433, s. 2; 2001-487, s. 120; 2008-4, s. 1; 2019-216, s. 4.)

§ 15A-831.1. Polygraph examinations of victims of sexual assaults.

(a) A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

(b) An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

- (1) That taking the polygraph examination is voluntary.
- (2) That the results of the examination are not admissible in court.
- (3) That the person's decision to submit to or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

(c) An agency which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person. (2007-294, s. 1.)

§ 15A-832. Responsibilities of the district attorney's office.

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

- (1) The victim's rights under this Article, including the right to reasonably confer with the district attorney's office about the disposition of the case and the right to provide a victim impact statement.
- (2) The responsibilities of the district attorney's office under this Article.
- (3) The victim's eligibility for compensation under the Crime Victims Compensation Act and the deadlines by which the victim must file a claim for compensation.
- (4) The steps generally taken by the district attorney's office when prosecuting a crime.
- (5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- (6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number or other contact information. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all court proceedings of the type that the victim has elected to receive notice, except as provided in G.S. 15A-835(b)(2) and G.S. 15A-837(a)(2). All notices required to be given by the district attorney's office shall be reasonable, accurate, and timely. The notices shall be given in a manner

that is reasonably calculated to be received by the victim prior to the date of the court proceeding. The district attorney's office may provide the required notification electronically or by telephone, unless the victim requests otherwise. The notifications required by this section shall be documented by the district attorney's office.

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

(e) Repealed by Session Laws 2019-216, s. 5, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.

(f) The district attorney's office shall offer the victim the opportunity to reasonably confer with an attorney from the district attorney's office to obtain the views of the victim about, at a minimum, dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-831(c) about any victim's electing to receive further notices under this Article. The clerk of superior court shall include the form with the final judgment and commitment, or judgment suspending sentence, transmitted to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file.

(h) When a person is a victim of a human trafficking offense and is entitled to benefits and services pursuant to G.S. 14-43.11(d), the district attorney's office shall so notify the Office of the Attorney General and Legal Aid of North Carolina, Inc., in addition to providing services under this Article.

(i) The district attorney's office shall make every effort to ensure that a victim's personal information is not disclosed unless otherwise required by law. The district attorney's office shall inform the victim that personal information such as the victim's telephone number, home address, and bank account number are not relevant in every case and that the victim may request the district attorney to object to that line of questioning when appropriate.

(j) The responsibilities of the district attorney's office extend to a victim of an act of delinquency if the juvenile's case is transferred to criminal court. (1998-212, s. 19.4(c); 2001-433, s. 3; 2001-487, s. 120; 2007-547, s. 3; 2011-145, s. 19.1(h); 2017-186, s. 2(ddd); 2019-216, s. 5; 2019-243, s. 21.5(a).)

§ 15A-832.1. Responsibilities of judicial officials.

(a) In issuing a pleading as provided in G.S. 15A-921, for any misdemeanor offense against the person based on testimony or evidence from a complaining witness rather than from a law enforcement officer, a judicial official shall record the defendant's name and the victim's name, address, and telephone number electronically or on a form separate from the pleading and developed by the Administrative Office of the Courts for the purpose of recording that information, unless the victim refuses to disclose any or all of the information, in which case the judicial official shall so indicate.

(b) A judicial official issuing a pleading for any misdemeanor offense against the person based on testimony or evidence from a complaining witness rather than from a law enforcement officer shall deliver the court's copy of the warrant and the victim-identifying information to the office of the clerk of superior court by the close of the next business day. Within 72 hours, the

office of the clerk of superior court shall forward to the district attorney's office the victim-identifying information set forth in subsection (a) of this section.

(c) The judge, in any court proceeding subject to this Article, shall inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement.

(d) A judge notified by the clerk of court that a victim has filed a motion alleging a violation of the rights provided in this Article shall review the motion. The judge involved in the criminal proceeding that gave rise to the rights in question may, on the judge's own motion, recuse himself or herself if justice requires it and report the recusal to the Administrative Office of the Courts. The judge, or a judge appointed by the Administrative Office of the Courts in the event of recusal, shall dispose of the motion or set the motion for hearing as required by G.S. 15A-834.5.

(e) The court shall make every effort to provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family. (2001-433, s. 4; 2001-487, s. 120; 2019-216, s. 6.)

§ 15A-833. Evidence of victim impact.

(a) A victim has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following:

- (1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.
- (2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.
- (3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. At the victim's request and with the consent of the defendant, a representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court. (1998-212, s. 19.4(c); 2001-433, s. 5; 2001-487, s. 120.)

§ 15A-834. Restitution.

A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes. (1998-212, s. 19.4(c).)

§ 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.)

§ 15A-835. Posttrial responsibilities.

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

- (1) The final disposition of the case.
- (2) The crimes of which the defendant was convicted.
- (3) The defendant's right to appeal, if any.
- (4) The telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's office the defendant's name and the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's office shall provide the victim with the following:

- (1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.
- (2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.
- (3) The final disposition of an appeal.

(b1) Although the victim does not have a right to be heard, the victim is permitted to be present at any appellate proceeding that is an open hearing.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) Repealed by Session Laws 2001-302, s. 1. (1998-212, s. 19.4(c); 2001-302, s. 1; 2001-433, s. 6; 2001-487, s. 120; 2019-216, s. 7.5.)

§ 15A-836. Responsibilities of agency with custody of defendant.

(a) When a form is included with the final judgment and commitment pursuant to G.S. 15A-832(g), or when the victim has otherwise filed a written request for notification with the custodial agency, the custodial agency shall notify the victim of:

- (1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.
- (2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.
- (3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.
- (4) The defendant's escape from custody, within 72 hours, except that if a victim has notified the agency in writing that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest.
- (5) The defendant's capture, within 24 hours.
- (6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.
- (7) The defendant's death.
- (8) The procedure for alleging a failure of the custodial agency to notify the victim as required by this section.

(b) Notifications required in this section shall be provided within 60 days of the date the custodial agency takes custody of the defendant or within 60 days of the event requiring notification, or as otherwise specified in subsection (a) of this section. (1998-212, s. 19.4(c); 2001-433, s. 7; 2001-487, s. 120; 2019-216, s. 8.)

§ 15A-837. Responsibilities of Section of Community Corrections of the Division of Adult Correction and Juvenile Justice.

(a) The Section of Community Corrections of the Division of Adult Correction and Juvenile Justice shall notify the victim of:

- (1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.
- (2) The date and location of any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.
- (3) The final disposition of any hearing referred to in subdivision (2) of this subsection.
- (4) Any restitution modification.
- (5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).
- (6) The defendant's absconding supervision, within 72 hours.
- (7) The capture of a defendant described in subdivision (6) of this subsection, within 72 hours.
- (8) The date when the defendant is terminated or discharged.

(9) The defendant's death.

(b) Notifications required in this section shall be provided within 30 days of the event requiring notification, or as otherwise specified in subsection (a) of this section. (1998-212, s. 19.4(c); 2001-433, s. 8; 2001-487, ss. 47(a), 120; 2011-145, s. 19.1(k); 2017-186, s. 2(eee).)

§ 15A-838. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision. (1998-212, s. 19.4(c).)

§ 15A-839. No money damages.

This Article, including the provision of a service pursuant to this Article through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees. (1998-212, s. 19.4(c); 1999-169, s. 1.)

§ 15A-840: Repealed by Session Laws 2019-216, s. 9, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.

§ 15A-841: Repealed by Session Laws 2019-216, s. 9, effective August 31, 2019, and applicable to offenses and acts of delinquency committed on or after that date.

§§ 15A-842 through 15A-849. Reserved for future codification purposes.