

Article 20A.

Rights of Victims of Delinquent Acts.

**§ 7B-2051. Definitions.**

(a) The following definitions apply in this Article:

- (1) Court proceeding. – Any open hearing authorized or required by this Subchapter and any closed hearing or portion of a closed hearing in which the victim, in accordance with G.S. 7B-2402, is permitted to be present. The term shall not include the first appearance described in G.S. 7B-1808 if the juvenile is in secure or nonsecure custody. If it is known by the juvenile court counselor and the district attorney's office that (i) the juvenile and the victim have a personal relationship as defined in G.S. 50B-1(b) and (ii) the hearing may result in the juvenile's release from custody, efforts will be made to contact the victim.
- (2) Family member. – A spouse, child, parent, guardian, legal custodian, sibling, or grandparent of the victim. The term does not include the accused.
- (3) Felony property offense. – An offense that, if committed by an adult, would constitute 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) Offense against the person. – An offense against or involving the person of the victim that, if committed by an adult, would constitute 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 act of delinquency 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 act of delinquency involve communicating a threat or stalking.
  - g. An offense that triggers the enumerated victims' rights, as required by the North Carolina Constitution.
- (5) Victim. – A person against whom there is probable cause to believe a juvenile has committed an offense against the person or a felony property offense.

(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 right. 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's office, 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's office. (2019-216, s. 10.)

**§ 7B-2052. Victim's rights.**

(a) A victim of a juvenile offense shall be treated with dignity and respect by the juvenile 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 juvenile.
- (2) The right, upon request, to be present at court proceedings of the juvenile.
- (3) The right to be reasonably heard at court proceedings involving the adjudication, disposition, or release of the juvenile.
- (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 offense, how the juvenile justice system works, the rights of victims, and the availability of services for victims.
- (6) The right, upon request, to receive information about the adjudication of the juvenile or disposition of the case.
- (7) The right, upon request, to receive notification of the escape or release of the juvenile.
- (8) 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. 10.)

**§ 7B-2053. Responsibilities of the district attorney's office.**

(a) Within 72 hours of the filing of a petition, the district attorney's office shall provide the victim with the following information:

- (1) The victim's rights under this Article, including the right to reasonably confer with the district attorney's office.
- (2) The responsibilities of the district attorney's office under this Article.
- (3) The steps generally taken by the district attorney's office in cases involving juvenile offenses.
- (4) Suggestions on what the victim should do if threatened or intimidated by the juvenile or someone acting on the juvenile's behalf.
- (5) 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.
- (6) A list of each right enumerated under G.S. 7B-2052(b).
- (7) Information about any other rights afforded to victims by law.

(b) On a form provided by the district attorney's office for this purpose, the victim shall indicate whether the victim requests to receive notices of some, all, or none of the court proceedings included under this Article. The form shall also indicate whether the victim wishes to receive information about the adjudication and disposition of the case. If the victim elects to receive notices or information by requesting it on the form provided, the victim shall be responsible

for notifying the district attorney's office of any changes in the victim's address and telephone number or other contact information. The victim may alter the request for notification or information 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 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.

(d) The district attorney's office shall offer the victim the opportunity to reasonably confer with an attorney in the district attorney's office to obtain the views of the victim about, at a minimum, dismissal, plea or negotiations, disposition, and any dispositional alternatives.

(e) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, the district attorney's office shall notify the victim of the date, time, and place of court proceedings as requested by the victim under subsection (b) of this section. All notices required to be given by the district attorney's office shall be reasonable, accurate, and timely and 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 shall consider all hearings open, pursuant to G.S. 7B-2402, for the purpose of providing notice to the victim. The district attorney shall inform the victim if the entire hearing has been closed to the victim by the court. 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.

(f) 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 juvenile or the juvenile's family.

(g) Prior to the dispositional hearing, the district attorney's office shall notify the victim that the victim may request in writing to be notified (i) in advance of the juvenile's scheduled release date, if the juvenile is committed to the Division for placement in a youth development center or (ii) in the event that the juvenile escapes, if the juvenile is being held in secure custody or is committed to the Division for placement in a youth development center.

(h) At the dispositional hearing, the prosecutor shall submit to the court a form containing the victim's request for further notices under subsection (g) of this section and any necessary identifying information about the victim, if applicable. The chief court counselor shall include the form with the final disposition and commitment transmitted to the Division, and the form shall be maintained by the Division as a confidential file. The victim shall be responsible for notifying the Division of any changes in the victim's address and telephone number.

(i) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, following the completion of the dispositional hearing, the district attorney's office shall provide the victim with information about the adjudication and disposition of the juvenile as requested by the victim pursuant to G.S. 7B-2053(b). The information provided shall be limited to (i) whether or not the juvenile was adjudicated delinquent, and if so, the offense classification, the dispositions available to the court as provided in G.S. 7B-2508, and (ii) no-contact orders as they relate to the victim, and (iii) any order for restitution. (2019-216, s. 10.)

#### **§ 7B-2054. Responsibilities of judicial officials.**

(a) In any court proceeding subject to this Article in which the victim may be present, the court shall inquire as to whether a victim is present and wishes to be heard and, if so, 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.

(b) In the event that an entire hearing has been closed to the victim by the court, the victim shall have the opportunity to be heard by the court regarding the right to be present, if the court has not previously provided this opportunity to the victim.

(c) 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 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. 7B-2058.

(d) 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 juvenile or the juvenile's family. (2019-216, s. 10.)

#### **§ 7B-2055. Responsibilities of the Division of Juvenile Justice.**

(a) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, if a victim has requested to be notified of the juvenile's release pursuant to G.S. 7B-2053, at least 45 days before releasing to post-release supervision a juvenile who was committed to the Division of Juvenile Justice of the Department of Public Safety for placement in a youth development center, the Division shall notify the victim as requested. The notification shall include only the juvenile's initials, offense, date of commitment, projected release date, and any no-contact release conditions related to the victim.

(b) When determining whether a juvenile is ready for release pursuant to G.S. 7B-2514, the Division shall provide the victim an opportunity to be reasonably heard by the Division and shall consider the victim's views regarding release of the juvenile. If the Division determines that the juvenile is ready for release, the victim's views shall be considered during the post-release supervision planning conference process.

(c) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, if a victim has requested in writing to be notified of the juvenile's escape pursuant to G.S. 7B-2053, within 24 hours of the time the juvenile escapes from a youth development center or from secure custody, the Division shall notify the victim. If, pursuant to G.S. 7B-3102, disclosure of information about the escaped juvenile will be released to the public, the Division may provide to the victim the same information that will be released to the public, but the Division shall make a reasonable effort to notify the victim prior to releasing the information to the public. The Division shall notify the victim within 24 hours of the juvenile's return to custody, even if the juvenile is returned to custody before the notification of escape is required.

(d) When a form is included with the final disposition and commitment pursuant to G.S. 7B-2053(h), or when the victim has otherwise filed a written request for notification with the Division, the Division shall notify the victim of the procedure for alleging a failure of the Division to notify the victim as required by this section. (2019-216, s. 10; 2021-180, s. 19C.9(ee).)

#### **§ 7B-2056. Right to restitution.**

A victim has the right to receive restitution when ordered by the court pursuant to G.S. 7B-2506(4) and G.S. 7B-2506(22). (2019-216, s. 10.)

**§ 7B-2057. Confidentiality of a juvenile record.**

No rights under this Article provide grounds for a victim to examine or obtain confidential juvenile records. In providing notice or information to any victim, no agency, department, or official shall permit a victim to examine or obtain copies of any part of the juvenile record. Except as provided in G.S. 7B-2055(c), any agency, department, or official that provides a victim written notice or information under this Article shall not identify the juvenile by name in the notice or information, but shall identify the juvenile by the juvenile's first and last initials only. This Article shall not be construed to require or permit disclosing to any victim any information contained in juvenile records except as specifically provided. (2019-216, s. 10.)

**§ 7B-2058. Enforcement of rights.**

(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. 7B-2051.
- (4) A family member, if the victim is deceased, as provided in G.S. 7B-2051.

(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 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, to afford the district attorney an opportunity to resolve the issue stated in the written complaint in a timely manner.

(d) 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.

(e) The Administrative Office of the Courts shall create a form to serve as the motion to 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 previously filed with the district attorney as required by subsection (c) of the section.

(f) The clerk of superior court of each county shall provide the form necessary 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.

(g) 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. At the conclusion of the review, the judge shall dispose of the motion or set the motion for hearing.

(h) If the judge fails to review the motion and dispose of it or set it for a 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.

(i) 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 juvenile, by any other accused, or by any victim or family member of a victim, as a ground for relief in any criminal, juvenile, or other civil proceeding, except as provided in Section 37 of Article I of the North Carolina Constitution. (2019-216, s. 10.)