

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 665

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors: Representatives Eddins; Aldridge, Arnold, Baddour, Baker, Barbee, Berry, Braswell, Brawley, Buchanan, Cansler, Capps, Clary, Creech, Culp, Davis, Decker, Dockham, Earle, Ellis, Esposito, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Hiatt, Hightower, Hill, Holmes, Howard, R. Hunter, Ives, Jeffus, Justus, Kiser, McMahan, Miner, Moore, Morgan, Morris, Mosley, Neely, Nichols, Oldham, Rayfield, Redwine, Reynolds, Russell, Saunders, Sexton, Shubert, Sutton, Warwick, Watson, Weatherly, C. Wilson, G. Wilson, Wood, and Yongue.

Referred to: Judiciary I.

March 27, 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.

1 (3) Next of kin. – The victim's spouse, children, parents, or siblings. The
2 term does not include such a person, however, if the person caused the
3 victim's injuries or death.

4 (4) Victim. – A person against whom there is probable cause to believe one
5 of the following crimes was committed:

6 a. A Class A, B, C, D, or E felony.

7 b. A Class F felony if it is a violation of one of the following: G.S.
8 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-
9 32.3(b); 14-34.2; 14-34.5; 14-41; 14-43.2; 14-43.3; 14-190.17;
10 14-190.19; 14-202.1; or 14-288.9.

11 c. A Class G felony if it is a violation of one of the following: G.S.
12 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5(b); or 20-141.4.

13 d. A Class H felony if it is a violation of one of the following: G.S.
14 14-32.3(a); 14-32.3(c); or 14-33.2.

15 e. A Class I felony if it is a violation of one of the following: G.S.
16 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

17 A person is also a victim if the perpetrator of one of the
18 crimes listed above is a juvenile, and the case was referred to
19 superior court for adjudication or the perpetrator was found not
20 guilty by reason of insanity.

21 **§ 15A-2011. Responsibilities of law enforcement agency.**

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

24 (1) The availability of medical services, if needed.

25 (2) The availability of crime victims' compensation funds under Chapter
26 15B of the General Statutes and the address and phone number of the
27 agency responsible for dispensing the funds.

28 (3) The address and phone number of the district attorney's office that will
29 be responsible for prosecuting the victim's case.

30 (4) The name and phone number of a law enforcement agency employee
31 whom the victim may contact if the victim has not been notified of an
32 arrest in the victim's case within six months after the crime was reported
33 to the law enforcement agency.

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

36 (1) Inform the victim of the accused's opportunity for pretrial release.

37 (2) Provide the victim with the name and phone number of a law
38 enforcement agency employee whom the victim may contact to find out
39 whether the accused has been released from custody.

40 (c) Within 24 hours after an accused has been detained and no later than five days
41 after the accused has been arrested if the accused is not detained, the law enforcement
42 agency shall forward to the district attorney's office that will be responsible for

1 prosecuting the case the victim's name, address, date of birth, social security number,
2 race, sex, and phone number.

3 **"§ 15A-2012. Responsibilities of the district attorney's office.**

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

8 (1) The victim's rights under this Article, including the right to confer with
9 the attorney prosecuting the case about the disposition of the case.

10 (2) The responsibilities of the law enforcement agency and the district
11 attorney's office under this Article.

12 (3) The victim's eligibility for compensation under the Crime Victims'
13 Compensation Act and the date by which the victim must file a claim
14 for compensation.

15 (4) The steps generally taken by the district attorney's office when
16 prosecuting a felony case.

17 (5) Suggestions on what the victim should do if threatened or intimidated
18 by the accused or someone acting on the accused's behalf.

19 (6) The name and phone number of a victim and witness assistant in the
20 district attorney's office whom the victim may contact for further
21 information.

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

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

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

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

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

43 **"§ 15A-2013. Victim impact statement.**

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

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

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

10 (3) An opinion of whether there is a need for restitution and whether the
11 victim has applied for or received compensation under the Crime
12 Victims' Compensation Act.

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

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

18 **§ 15A-2014. Restitution.**

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

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

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

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

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

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

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

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

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

1 (d) An order providing for restitution does not abridge the right of a victim or the
2 victim's estate to bring a civil action against the defendant for damages arising out of the
3 offense committed by the defendant, but any amount paid by the defendant under the
4 terms of an order under this section shall be credited against any judgment rendered
5 against the defendant in a civil action. Any amount paid by the defendant shall also be
6 subtracted from any compensation paid by the Crime Victims' Compensation Fund if the
7 compensation is paid after restitution has been made.

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

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

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

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

22 **"§ 15A-2015. Docketing of order of restitution.**

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

25 **"§ 15A-2016. Posttrial responsibilities.**

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

28 (1) The final disposition of the case.

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

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

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

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

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

42 (3) The final disposition of an appeal.

1 (c) If the defendant has been released on bail pending the outcome of the appeal,
2 the agency that has custody of the defendant shall notify the victim that the defendant has
3 been released.

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

8 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

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

11 (1) The earliest date by which the defendant can be released from custody.
12 The calculation of the release date shall be as exact as possible,
13 including earned time and disciplinary credits if the sentence of
14 imprisonment exceeds 90 days. The law enforcement agency or
15 Department of Correction shall be required to provide notice of the
16 defendant's earliest release date only once during the defendant's
17 incarceration.

18 (2) The defendant's transfer to a minimum security facility and the address
19 of the facility.

20 (3) The defendant's release or pending release into a community residential
21 program or under extended furlough, or the transfer of the defendant to
22 community status.

23 (4) Any reduction of the defendant's minimum sentence.

24 (5) The defendant's escape from custody.

25 (6) The date of any hearings held by the Parole Commission to consider
26 whether the defendant should be released from custody. Notice should
27 be given not later than 90 days before a hearing is held.

28 (7) The victim's right to submit a written or oral statement to the Parole
29 Commission before the defendant is released.

30 (8) The Parole Commission's decision about whether to release or continue
31 the incarceration of a defendant.

32 (9) The date the defendant is scheduled to be released from the facility.
33 Whenever practical, notice shall be given 60 days before release.

34 (10) The defendant's death.

35 **"§ 15A-2018. Responsibilities of Department of Adult Probation and Parole.**

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

37 (1) The date of a hearing to determine whether the defendant's probation
38 should be revoked or extended.

39 (2) The final disposition of any hearing held in subdivision (1) of this
40 section.

41 (3) The defendant's leaving the jurisdiction of the court that sentenced the
42 defendant without the permission of the court or the defendant's
43 probation officer.

1 (4) The capture of a defendant described in subdivision (3) of this section.

2 (5) The date when the defendant is discharged from probation.

3 **"§ 15A-2019. Notice of commuted sentence or pardon.**

4 The Governor shall notify a victim that the Governor is considering commuting the
5 defendant's sentence or pardoning the defendant. The Governor shall also give notice
6 that the victim has the right to present a written statement to be considered by the
7 Governor before the defendant's sentence is commuted or the defendant is pardoned.

8 **"§ 15A-2020. No money damages.**

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

11 **"§ 15A-2021. No ground for relief.**

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

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

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

19 **"ARTICLE 102.**

20 **"CRIME VICTIMS' RIGHTS FUND.**

21 **"§ 15A-2025. Crime Victims' Rights Fund established.**

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

29 **"§ 15A-2026. Assessments.**

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

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

41 **"§ 15A-2027. Application for supplemental funds.**

42 (a) A law enforcement agency or district attorney's office that has a responsibility
43 to provide services to crime victims as required by the General Statutes may apply

1 annually to the Department of Crime Control and Public Safety for supplemental funds.
2 Supplemental funds may not be used to supplant local, State, or federal funds that are
3 available to agencies and district attorneys' offices to provide services to crime victims.

4 (b) The Department of Crime Control and Public Safety shall establish procedures
5 for screening, recording, and processing applications for supplemental funds. The
6 Department shall prepare and transmit annually to the General Assembly a report of the
7 Department's activities."

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

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

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

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