



This Bill Analysis reflects the contents of the bill as it was presented in committee.

SENATE BILL 682: Implement Crime Victim Rights Amendment.

2019-2020 General Assembly

Committee:	House Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	July 24, 2019
Introduced by:	Sens. Daniel, J. Davis, Britt	Prepared by:	Jennifer H. Bedford
Analysis of:	PCS to Third Edition S682-CSTT-40		Staff Attorney

OVERVIEW: The PCS for Senate Bill 682 would implement the constitutional amendment to provide better protections and safeguards to victims of crime and acts of delinquency.

BACKGROUND: On November 6, 2018, North Carolina voters approved a constitutional amendment to expand the protections and safeguards for victims of crime. **Section 37 of the North Carolina Constitution** now guarantees certain basic rights to all victims of crime or acts of delinquency, and enumerates specific rights to victims of certain crimes or acts of delinquency. The major changes by the amendment include: expanding the pool of victims that are guaranteed rights, and creating a process for a victim to allege a violation of a guaranteed right.

CURRENT LAW AND BILL ANALYSIS: Fair Treatment for Certain Victims and Witnesses.

Section 1 of the PCS would make conforming changes to the existing law that guarantees certain basic rights to the victims of crime **that would not be protected by the enumerated rights**, and family members of homicide victims.

Section 1.5 is added by the PCS to direct an agency or center that works with victims of domestic violence and sexual assault to notify victims if confidential records are requested, and require a judge to provide a victim an opportunity to speak at a hearing before disclosing those records.

Crime Victims' Rights Act.

The majority of statutory protections for victims are found in the Crime Victims' Rights Act. Currently, only the following criminal offenses trigger those rights:

- A Class A, B1, B2, C, D, or E felony.
- Certain Class G, H, and I felonies.
- A small number of violent misdemeanors.
- A violations of a valid Domestic Violence Protection Order.

Section 2 of the PCS would expand the offenses that trigger victims' rights to include all of the following:

A violation of Subchapter III of Chapter 14 of the General Statutes. (*Offenses against the Person*)

A violation of Subchapter VII of Chapter 14 of the General Statutes. (*Offenses against Public Morality and Decency*)

A violation of Article 39 of Chapter 14 of the General Statutes. (*Protections of Minors*)

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A violation of Chapter 20 of the General Statutes, involving impairment or death. (*DWIs and Death by Vehicle*)

A violation of a valid protective order under G. S. 50B-4.1 (*Domestic Violence*) with a couple examples. A violation of Article 35 of Chapter 14 of the General Statutes involving communicating a threat, or stalking.

Property crime. – An act which constitutes one of the following felonies:

A violation of Subchapter IV of Chapter 14 of the General Statutes. (*Offenses against the Habitation and Other Buildings*)

A violation of Subchapter V of Chapter 14 of the General Statutes. (*Offenses against Property*)

Section 2 of the PCS adds any other offense as required by the North Carolina Constitution to the definition of offense against the person.

Section 2 of the PCS would also:

- Provide that court proceedings other than preliminary hearings, trigger victims' rights.
- Specify who can assert rights on behalf of a victim.

Section 2 of the PCS adds that an effort will be made to contact victims even in preliminary hearings if there is a known domestic relationship.

Section 2 of the PCS also adds that the district attorney, not the court, would make the determination that a person is not acting in the best interest of the victim and should not be able to assert the rights. The court may review this determination.

Section 3 of the PCS would echo the constitutional provision and enumerate the rights provided to victims.

Section 3 of the PCS would echo the constitutional provision and bar a defendant or victim from challenging any decision made in a criminal proceeding.

Section 4 of the PCS would require that law enforcement provide information to the victim on a form created by the Conference of District Attorneys including the following:

- A list of enumerated rights to the victim.
- Other rights afforded to victims by law.

Section 4 of the PCS would also clarify time allowed for information to be gathered and transmitted by law enforcement agencies.

Section 5 of the PCS would require that notices be accurate and timely and would allow the district attorney's office to provide notification electronically or by telephone with the victim, unless requested to do otherwise.

Section 5 of the PCS adds that the DA's office must document the required notifications.

Section 5 of the PCS also adds that the DA's office makes every effort to protect a victim's personal information unless required by law to disclose it.

Section 6 of the PCS would:

- Require a judicial official to ask if a victim is present and wishes to be heard in a proceeding.
- Require a judicial official to allow the victim to be reasonably heard.
- Give the victim the discretion to be heard orally, or by submission of a written or recorded statement.
- Require a judge to review the motion.
- Require that the judge dispose of the complaint or set a hearing in a timely manner.

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- Require that the court make every effort to provide a secure waiting area during court proceedings.

Section 6 of the PCS adds that a judge, on the judge's motion, may recuse himself or herself.

Section 6 of the PCS also adds that the judge's review may include talking with the victim, the prosecutor, and the elected District Attorney.

Section 7 of the PCS would:

- Create an enforcement mechanism for a victim to assert the rights guaranteed.
- Require that a written complaint be asserted in writing to the DA's office prior to filing a motion with the court.
- Allow the district attorney an opportunity to resolve the complaint in a timely manner.

Section 7 of the PCS adds most of the following details to the process for a victim to allege a violation:

- AOC creates a form.
- The clerk of court provides the form.
- The victim checks off which rights were allegedly violated, offers detail, and attaches the written complaint that had to have been previously given to the DA if the allegation regards the DA.
- There is no fee to file the motion.
- The judge reviews the motion which may include talking to the victim, the prosecutor, and the elected DA, in order to gauge compliance.
- The judge either disposes of the motion or sets it for hearing. *(This was also in the Senate version.)*

Section 7.5 of the PCS adds that a victim may be present for open appellate hearings although a victim cannot be heard. (Current law requires the Attorney General's Office to notify victims of appellate court hearings.)

Section 8 of the PCS would require the custodial agency to inform the victim of the procedure to allege a violation of the rights regarding a custodial agency.

Section 9 of the PCS would make conforming changes by repealing statutes whose provisions are either contained in or are inconsistent with, the newly created sections.

Rights of Victims of Delinquent Acts.

Section 10 of the PCS would:

- Create a new Article within the Juvenile Code to establish the newly guaranteed rights for victims of delinquent acts.
- Model the Crime Victims' Rights Act.
- Specify the acts of delinquency that trigger victims' rights.
- Provide for the additional privacy and confidentiality needed when dealing with juveniles including providing a victim information regarding a juvenile's adjudication without revealing a juvenile's confidential delinquency history.

Section 11 of the PCS would make conforming changes to existing notification requirements prior to the juvenile's release from custody.

Section 12 of the PCS would safeguard the confidential nature of a juvenile's court record.

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Sections 13 and 14 of the PCS would make a conforming changes by referencing the newly created Rights of Victims of Delinquent Acts.

Section 15 of the PCS would make a conforming change by repealing a subdivision regarding victim notification which is restated in the newly created Article.

Section 16 of the PCS would direct the Conference of District Attorneys and the Administrative Office of the Courts to develop and disseminate the required forms.

Section 16.5 of the PCS would direct the Administrative Office of the Courts, in consultation with the Conference of District Attorneys, to develop procedures to automate the required notifications.

EFFECTIVE DATE: Sections 16, 16.5, and 17 are effective when this act becomes law. The remainder of this act would become effective August 31, 2019, and apply to offenses and acts of delinquency, committed on or after that date.