



# SENATE BILL 682: Implement Crime Victim Rights Amendment.

2019-2020 General Assembly

<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	August 20, 2019
<b>Introduced by:</b>	Sens. Daniel, J. Davis, Britt	<b>Prepared by:</b>	Jennifer H. Bedford
<b>Analysis of:</b>	PCS to Fourth Edition S682-CSTT-44		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.

**CURRENT LAW AND BILL ANALYSIS:** The rights of victims can be found in the "Fair Treatment for Certain Victims and Witnesses", the more recent "Crime Victims' Rights Act", and the Juvenile Code. The Victims' Rights implementation legislation would make changes to all three.

### **Fair Treatment for Certain Victims and Witnesses.**

**Section 1** 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** would also 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** 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**)

Karen Cochrane-Brown  
Director



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

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**)

Any other offense required by the North Carolina Constitution.

**Section 2** would also:

- Expand the proceedings that have victims' rights attached.
- Specify who can assert rights on behalf of a victim.

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

**Section 3** states that this Article does not create a claim for damages.

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

**Section 5** 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.
- Require documentation of the notifications made by the office of the district attorney.
- Allow an attorney from the district attorney's office other than the prosecuting attorney to confer with the victim regarding plea negotiations and dismissal.

**Section 6** would:

- Require a judicial official to ask if a victim is present and wishes to be heard.
- 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 inquire as to compliance with the requirements of the Article, if a complaint is filed.
- Require that the judge dispose of the complaint or set a hearing in a timely manner.
- Require that the court make every effort to provide a secure waiting area during court proceedings.

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**Section 7** would:

- Create an enforcement mechanism for a victim to assert the guaranteed rights.
- Prohibit a proceeding to be unduly delayed for enforcement of the rights.
- Require that a victim's complaint be asserted in writing.
- Allow the district attorney an opportunity to resolve the complaint in a timely manner.
- Allow law enforcement an opportunity to resolve the complaint in a timely manner.
- Maintain a limited right to file a writ of mandamus for discretionary review by an appellate court if a judge fails to review a motion alleging a violation of victims' rights and dispose of it or set it for a hearing.
- Bar a victim or defendant from using a violation of a right as a ground for relief in a civil or criminal proceeding except as provided in this section.

**Section 7.5** would allow a victim to be present for appellate hearings although a victim cannot be heard.

**Section 8** would clarify the responsibilities of the agency having custody of the defendant.

**Section 9** would make conforming changes by repealing statutes whose provisions are contained in the newly created sections.

## **Rights of Victims of Delinquent Acts.**

**Section 10** 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 acts of delinquency.
- 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** would make conforming changes to existing notification requirements prior to the juvenile's release from custody.

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

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

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

**Section 16** would direct the Conference of District Attorneys and the Administrative Office of the Courts to develop and disseminate the required forms by August 31, 2019.

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

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**EFFECTIVE DATE:** Section 16 is 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.