

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

5

HOUSE BILL 665

Committee Substitute Favorable 6/25/97
Committee Substitute #2 Favorable 7/10/97
Committee Substitute #3 Favorable 6/18/98
Committee Substitute #4 Favorable 6/30/98

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

1
2 AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS
3 OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS
4 FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL
5 JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY
6 EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, TO
7 CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN
8 CRIMINAL CASES, TO PROHIBIT THE USE OF STATE FUNDS FOR JURY
9 CONSULTANTS, TO REQUEST THE NORTH CAROLINA SUPREME COURT
10 TO CONSIDER AND ADOPT RULES TO EXPEDITE APPEALS FROM
11 CAPITAL CASES THAT INCLUDE A SENTENCE OF DEATH, AND TO
12 ELIMINATE THE REVIEW OF SENTENCES OF LIFE IMPRISONMENT
13 WITHOUT PAROLE.

14 The General Assembly of North Carolina enacts:

15 Section 1. Chapter 15A of the General Statutes is amended by adding a new
16 Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS."ARTICLE 101."Crime Victims' Rights Act."§ 15A-2010. 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) Law enforcement agency. – Law enforcement agency includes the following:

a. Arresting law enforcement agency. – The law enforcement agency that makes the arrest of an accused.

b. 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, or the Department of Correction.

c. Investigating law enforcement agency. – The law enforcement agency with primary responsibility for investigating the crime committed against the victim.

(3) Next of kin. – The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

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

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-288.9; or 20-138.5.

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

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

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

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

(b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"§ 15A-2010.1. Assistance to victims of domestic violence.

1 Effective July 1, 1999, victims of domestic violence shall be entitled to all of the
2 rights of victims under this Article. For purposes of determining eligibility for assistance
3 under this Article, a victim of domestic violence is any person against whom there is
4 probable cause to believe that any of the following misdemeanor offenses has been
5 committed: G.S. 14-33(c)(1), 14-33(c)(2), 14-33(a), 14-34, 14-134.3, or 14-277.3, when
6 the offense is committed between persons who are current or former spouses, or who
7 voluntarily live together in an intimate relationship or who have voluntarily lived together
8 in an intimate relationship, or who have or are expecting a child in common. These
9 crimes are in addition to the felonies set forth in G.S. 15A-2010(a)(4).

10 **"§ 15A-2011. Responsibilities of law enforcement agency.**

11 (a) As soon as practicable but within 72 hours after identifying a victim covered
12 by this Article, the investigating law enforcement agency shall provide the victim with
13 the following information:

- 14 (1) The availability of medical services, if needed.
- 15 (2) The availability of crime victims' compensation funds under Chapter
16 15B of the General Statutes and the address and telephone number of
17 the agency responsible for dispensing the funds.
- 18 (3) The address and telephone number of the district attorney's office that
19 will be responsible for prosecuting the victim's case.
- 20 (4) The name and telephone number of an investigating law enforcement
21 agency employee whom the victim may contact if the victim has not
22 been notified of an arrest in the victim's case within six months after the
23 crime was reported to the law enforcement agency.
- 24 (5) Information about an accused's opportunity for pretrial release.
- 25 (6) The name and telephone number of an investigating law enforcement
26 agency employee whom the victim may contact to find out whether the
27 accused has been released from custody.

28 The investigating law enforcement agency shall also be available to provide victims
29 with more direct assistance in understanding the criminal justice process and the scope of
30 victims' services available to assist them. The investigating law enforcement agency
31 shall assist a victim in obtaining any of those services upon the request of the victim.

32 (b) As soon as practicable but within 72 hours after receiving notification from the
33 arresting law enforcement agency that the accused has been arrested, the investigating
34 law enforcement agency shall forward to the district attorney's office that will be
35 responsible for prosecuting the case the victim's name, address, date of birth, social
36 security number, race, sex, and telephone number, unless the victim refuses to disclose
37 any or all of the information, in which case, the investigating law enforcement agency
38 shall so inform the district attorney's office.

39 (c) Upon receiving the information in subsection (a) of this section, the victim
40 shall, on a form provided by the investigating law enforcement agency, indicate whether
41 the victim wishes to receive any further notices from the investigating law enforcement
42 agency. If the victim elects to receive further notices, the victim shall be responsible for

1 notifying the investigating law enforcement agency of any changes in the victim's name,
2 address, and telephone number.

3 (d) As soon as practicable but within 72 hours after the arrest of a person believed
4 to have committed a crime covered by this Article, the arresting law enforcement agency
5 shall inform the investigating law enforcement agency of the arrest. As soon as
6 practicable but within 72 hours of being notified of the arrest, the investigating law
7 enforcement agency shall notify the victim of the arrest.

8 **"§ 15A-2012. Responsibilities of the district attorney's office.**

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

13 (1) The victim's rights under this Article, including the right to confer with
14 the attorney prosecuting the case about the disposition of the case and
15 the right to provide a victim impact statement.

16 (2) The responsibilities of the district attorney's office under this Article.

17 (3) The victim's eligibility for compensation under the Crime Victims'
18 Compensation Act and the deadlines by which the victim must file a
19 claim for compensation.

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

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

24 (6) The name and telephone number of a victim and witness assistant in the
25 district attorney's office whom the victim may contact for further
26 information.

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

36 (c) The district attorney's office shall notify a victim of the date, time, and place of
37 all trial court proceedings of the type which the victim has elected to receive notice. All
38 notices required to be given by the district attorney's office shall be given in a manner
39 that is reasonably calculated to be received by the victim prior to the date of the court
40 proceeding.

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

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

4 (f) Prior to the disposition of the case, the district attorney's office shall offer the
5 victim the opportunity to consult with the prosecuting attorney to obtain the views of the
6 victim about the disposition of the case, including the victim's views about dismissal, plea
7 or negotiations, sentencing, and any pretrial diversion programs.

8 (g) At the sentencing hearing, the prosecuting attorney shall submit to the court a
9 copy of a form containing the identifying information set forth in G.S. 15A-2011(b)
10 about any victim electing to receive further notices under this Article. The form shall be
11 included with the final judgment and commitment transmitted to the Department of
12 Correction or other agency receiving custody of the defendant and shall be maintained by
13 the custodial agency as a confidential file.

14 **"§ 15A-2013. Evidence of victim impact.**

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

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

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

23 (3) A request for restitution and an indication of whether the victim has
24 applied for or received compensation under the Crime Victims'
25 Compensation Act.

26 (b) No victim shall be required to offer evidence of the impact of the crime. No
27 inference or conclusion shall be drawn from a victim's decision not to offer evidence of
28 the impact of the crime.

29 **"§ 15A-2014. Restitution.**

30 (a) Upon conviction of the defendant or upon a plea of guilty, the court shall, in
31 addition to any penalty authorized by law, require that the defendant make restitution to a
32 victim or the victim's estate for any injuries or damages arising out of the offense
33 committed by the defendant. In determining the amount of restitution, the court shall
34 consider the following:

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

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

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

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

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

1 (6) Any other injuries or damages arising out of the offense committed by
2 the defendant.

3 (b) The court may require that the victim or the victim's estate provide evidence
4 that documents the costs claimed by the victim or the victim's estate under this section.
5 Any such documentation shall be shared with the defendant before the sentencing
6 hearing.

7 (c) In determining the amount of restitution to be made, the court shall take into
8 consideration the resources of the defendant including all real and personal property
9 owned by the defendant and the income derived from the property, the defendant's ability
10 to earn, the defendant's obligation to support dependents, and any other matters that
11 pertain to the defendant's ability to make restitution, but the court is not required to make
12 findings of fact or conclusions of law on these matters. The amount of restitution must
13 be limited to that supported by the record, and the court may order partial restitution
14 when it appears that the damage or loss caused by the offense is greater than that which
15 the defendant is able to pay.

16 (d) An order providing for restitution does not abridge the right of a victim or the
17 victim's estate to bring a civil action against the defendant for damages arising out of the
18 offense committed by the defendant.

19 (e) The court may order the defendant to make restitution to a person other than
20 the victim, or to any organization, corporation, or association, including the Crime
21 Victims' Compensation Fund that provided assistance to the victim following the
22 commission of the offense by the defendant. Restitution shall be made to the victim or
23 the victim's estate before it is made to any other person, organization, corporation, or
24 association.

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

28 (g) If the defendant is placed on probation or post-release supervision, any
29 restitution ordered under this Article shall be a condition of probation or post-release
30 supervision.

31 (h) If the court orders partial restitution, the court shall state on the record the
32 reasons for such an order.

33 **"§ 15A-2015. Enforcement of order for restitution.**

34 (a) An order for restitution under this Article may be enforced in the same manner
35 as a civil judgment, subject to the provisions of this section.

36 (b) The order for restitution under this Article shall be docketed and indexed in the
37 county of the original conviction in the same manner as a civil judgment. The order for
38 restitution may be collected in the same manner as a civil judgment unless the order to
39 pay restitution is a condition of probation. If the order to pay restitution is a condition of
40 probation, the judgment may only be collected in accordance with subsection (c) of this
41 section.

42 (c) If the defendant is ordered to pay restitution as a condition of probation, the
43 docketed judgment may not be collected until the date of notification to the clerk of

1 superior court in the county of the original conviction that the judge presiding at the
2 probation termination or revocation hearing has made a finding that restitution in a sum
3 certain remains due and payable, that the defendant's probation has been terminated or
4 revoked, and that the remaining balance of restitution owing may be collected by
5 execution on the judgment. The clerk shall then enter upon the judgment docket the
6 amount that remains due and payable on the judgment, together with amounts equal to
7 the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall
8 notify the victim by first-class mail at the victim's last known address that the judgment
9 may be executed upon, together with the amount of the judgment. Until the clerk
10 receives notification of termination or revocation of probation and the amount that
11 remains due and payable on the order of restitution, the clerk shall not be required to
12 update the judgment docket to reflect partial payments on the order of restitution as a
13 condition of probation.

14 (d) An appeal of the conviction upon which the order of restitution is based shall
15 stay execution on the judgment until the appeal is completed. If the conviction is
16 overturned, the judgment shall be removed from the judgment docket.

17 **"§ 15A-2016. Posttrial responsibilities.**

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

20 (1) The final disposition of the case.

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

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

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

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

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

35 (3) The final disposition of an appeal.

36 (c) If the defendant has been released on bail pending the outcome of the appeal,
37 the agency that has custody of the defendant shall notify the investigating law
38 enforcement agency, and the investigating law enforcement agency shall notify the victim
39 that the defendant has been released.

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

1 (e) The Conference of District Attorneys shall maintain a repository relating to
2 victims' identities, addresses, and other appropriate information for use by agencies
3 charged with responsibilities under this Article.

4 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

5 The Department of Correction shall notify the victim of:

- 6 (1) The projected date by which the defendant can be released from
7 custody. The calculation of the release date shall be as exact as
8 possible, including earned time and disciplinary credits if the sentence
9 of imprisonment exceeds 90 days.
- 10 (2) An inmate's assignment to a minimum custody unit and the address of
11 the unit. This notification shall include notice that the inmate's
12 minimum custody status may lead to the inmate's participation in one or
13 more community-based programs such as work release or supervised
14 leaves in the community.
- 15 (3) The victim's right to submit any concerns to the agency with custody
16 and the procedure for submitting such concerns.
- 17 (4) The defendant's escape from custody.
- 18 (5) The defendant's capture.
- 19 (6) The date the defendant is scheduled to be released from the facility.
20 Whenever practical, notice shall be given 60 days before release.
- 21 (7) The defendant's death.

22 **"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.**

23 The Division of Adult Probation and Parole shall notify the victim of:

- 24 (1) The defendant's regular conditions of probation or post-release
25 supervision, special or added conditions, supervision requirements, and
26 any subsequent changes.
- 27 (2) The date of a hearing to determine whether the defendant's supervision
28 should be revoked, continued with or without modifications, or
29 terminated.
- 30 (3) The final disposition of any hearing referred to in subdivision (2) of
31 this section.
- 32 (4) Any restitution modification.
- 33 (5) The defendant's movement into or out of any intermediate sanction as
34 defined in G.S. 15A-1340.11(6).
- 35 (6) The defendant absconding supervision.
- 36 (7) The capture of a defendant described in subdivision (6) of this section.
- 37 (8) The date when the defendant is terminated or discharged.
- 38 (9) The defendant's death.

39 **"§ 15A-2019. Notice of commuted sentence or pardon.**

40 The Governor's Clemency Office shall notify a victim when it is considering
41 commuting the defendant's sentence or pardoning the defendant. The Governor's
42 Clemency Office shall also give notice that the victim has the right to present a written
43 statement to be considered by the Office before the defendant's sentence is commuted or

1 the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its
2 decision. Notice shall be given in a manner that is reasonably calculated to allow for a
3 timely response to the commutation or pardon decision.

4 **"§ 15A-2020. No money damages.**

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

7 **"§ 15A-2021. No ground for relief.**

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

11 **"§ 15A-2022. Incompetent victim's rights exercised.**

12 When a victim is rendered mentally or physically incompetent or when the victim is a
13 minor, the victim's rights under this Article, other than the rights provided by G.S. 15A-
14 2014 and G.S. 15A-2015, may be exercised by the victim's next of kin."

15 Section 1.1. If the General Assembly appropriates funds for State grants to
16 local and State law enforcement to implement the provisions of this act, the Department
17 of Crime Control and Public Safety shall establish criteria for the allocation of these State
18 grants. These criteria shall include a requirement that the requesting law enforcement
19 agency document services and man-hours that directly relate to the provisions of this act.
20 The criteria shall also require documentation that the requesting law enforcement agency
21 is not receiving funding from any other source for that specific service. The Department
22 of Crime Control and Public Safety shall report quarterly to the Chairs of the House and
23 Senate Appropriations Committees and the Chairs of the House and Senate
24 Appropriations Subcommittees on Justice and Public Safety on the development of the
25 grant program and allocation of funding.

26 Section 2. The provisions of Article 45 of Subchapter VIII of Chapter 15A of
27 the General Statutes are supplemental to the provisions of Article 101 of Subchapter XVI
28 of Chapter 15A of the General Statutes as enacted in Section 1 of this act. If there is any
29 conflict between the provisions of Article 45 and Article 101, the provisions of Article
30 101 shall control.

31 Section 2.1. G.S. 1C-1601(e) reads as rewritten:

32 "(e) Exceptions. – The exemptions provided in this Article are inapplicable to
33 claims

- 34 (1) Of the United States or its agencies as provided by federal law;
- 35 (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary
36 bonds;
- 37 (3) Of lien by a laborer for work done and performed for the person
38 claiming the exemption, but only as to the specific property affected;
- 39 (4) Of lien by a mechanic for work done on the premises, but only as to the
40 specific property affected;
- 41 (5) For payment of obligations contracted for the purchase of the specific
42 real property affected;
- 43 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;

- 1 (7) For contractual security interests in the specific property affected;
2 provided, that the exemptions shall apply to the debtor's household
3 goods notwithstanding any contract for a nonpossessory, nonpurchase
4 money security interest in any such goods;
- 5 (8) For statutory liens, on the specific property affected, other than judicial
6 liens;
- 7 (9) For child support, alimony or distributive award order pursuant to
8 Chapter 50 of the General Statutes-Statutes;
- 9 (10) For criminal restitution orders docketed as civil judgments pursuant to
10 G.S. 15A-2015."

11 Section 2.2. G.S. 7A-304(d) reads as rewritten:

12 "(d) In any criminal case in which the liability for costs, fines, restitution, or any
13 other lawful charge has been finally determined, the clerk of superior court shall, unless
14 otherwise ordered by the presiding judge, disburse such funds when paid in accordance
15 with the following priorities:

- 16 (1) Sums in restitution prorated among the persons entitled thereto;
17 ~~(2)~~ Costs due the county;
18 ~~(3)~~ Costs due the city;
19 ~~(4)~~ Fines to the county school fund;
20 ~~(4)~~ Sums in restitution prorated among the persons entitled thereto;
21 (5) Costs due the State;
22 (6) Attorney's fees.

23 Sums in restitution received by the clerk of superior court shall be disbursed when:

- 24 (1) Complete restitution has been received; or
25 (2) When, in the opinion of the clerk, additional payments in restitution will
26 not be collected; or
27 (3) Upon the request of the person or persons entitled thereto; and
28 (4) In any event, at least once each calendar year."

29 Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General
30 Statutes is amended by adding a new section to read:

31 "**§ 15A-828. Assistance to victims of domestic violence.**

32 In the allocation of resources to persons the district attorney determines are victims of
33 serious misdemeanors, the district attorney shall, to the extent possible, provide the
34 services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could
35 involve the infliction of serious bodily injury."

36 Section 3. The Department of Crime Control and Public Safety shall establish
37 a pilot program to integrate the Justice Wide Area Network (JWAN) with the proposed
38 Victim Information and Notification Everyday (VINE) automated victim notification
39 system. The pilot program shall include the development of a software application that
40 can be implemented statewide to integrate the VINE system with other criminal justice
41 networks. The Department shall report to the Chairs of the Joint Legislative Correction
42 and Crime Control Oversight Committee and the Chairs of the Senate and House

1 Appropriations Subcommittees on Justice and Public Safety by April 1, 1999, on the
2 progress of the pilot program.

3 Section 4. Funds appropriated to the Judicial Department may not be used to
4 contract for the services of jury consultants in criminal cases where the defendant has
5 been assigned counsel by the court.

6 Section 5. The General Assembly requests the North Carolina Supreme Court
7 to consider and adopt rules to expedite appeals from all cases in which the defendant is
8 convicted of murder in the first degree and the judgment of the superior court includes a
9 sentence of death.

10 Section 6. Article 85B of Chapter 15A is repealed.

11 Section 7. The provisions of this act are severable. If any provision of this act
12 is held invalid by a court of competent jurisdiction, the invalidity does not affect other
13 provisions of the act that can be given effect without the invalid provision.

14 Section 8. Sections 1.1, 2.3, 5, and this section of this act are effective when
15 they become law. Section 4 of this act becomes effective July 1, 1998. Section 6 of this
16 act becomes effective December 1, 1998, and applies to offenses committed on or after
17 that date. The remainder of this act becomes effective October 1, 1998.