

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 665  
Committee Substitute Favorable 6/25/97  
Committee Substitute #2 Favorable 7/10/97

Short Title: Crime Victims' Rights Act.

(Public)

Sponsors:

Referred to:

March 27, 1997

1 A BILL TO BE ENTITLED  
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, AND TO  
7 CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN  
8 CRIMINAL CASES.

9 The General Assembly of North Carolina enacts:

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

12 **"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.**

13 **"ARTICLE 101.**

14 **"CRIME VICTIMS' RIGHTS ACT.**

15 **"§ 15A-2010. Definitions.**

16 (a) The following definitions apply in this Article:

17 (1) Accused. – A person who has been arrested and charged with  
18 committing a crime covered by this Article.

- 1           (2) Law enforcement agency. – Law enforcement agency includes the  
2 following:
- 3           a. Arresting law enforcement agency. – The law enforcement  
4 agency that makes the arrest of an accused.
- 5           b. Custodial agency. – The agency that has legal custody of an  
6 accused or defendant arising from a charge or conviction of a  
7 crime covered by this Article including, but not limited to, local  
8 jails or detention facilities, regional jails or detention facilities, or  
9 the Department of Correction.
- 10          c. Investigating law enforcement agency. – The law enforcement  
11 agency with primary responsibility for investigating the crime  
12 committed against the victim.
- 13          (3) Next of kin. – The victim's spouse, children, parents, siblings, or  
14 grandparents. The term does not include the accused unless the charges  
15 are dismissed or the person is found not guilty.
- 16          (4) Victim. – A person against whom there is probable cause to believe one  
17 of the following crimes was committed:
- 18           a. A Class A, B1, B2, C, D, or E felony.
- 19           b. A Class F felony if it is a violation of one of the following: G.S.  
20 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-  
21 32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3;  
22 14-190.17; 14-190.19; 14-202.1; or 14-288.9.
- 23           c. A Class G felony if it is a violation of one of the following: G.S.  
24 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5; or 20-141.4.
- 25           d. A Class H felony if it is a violation of one of the following: G.S.  
26 14-32.3(a); 14-32.3(c); or 14-33.2.
- 27           e. A Class I felony if it is a violation of one of the following: G.S.  
28 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
- 29           f. An attempt of any of the felonies listed in this subdivision if the  
30 attempted felony is punishable as a felony.

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

36 **"§ 15A-2010.1. Assistance to victims of domestic violence.**

37          Effective July 1, 1999, victims of domestic violence shall be entitled to all of the  
38 rights of victims under this Article. For purposes of this Article, a victim of domestic  
39 violence is any person against whom there is probable cause to believe that a felony or  
40 misdemeanor which fits the definition of domestic violence contained in G.S. 50B-1 has  
41 been committed, including G.S. 14-33, 14-134.3, 14-277.1, and 14-318.2, as well as the  
42 attempt of any such felony or misdemeanor. These crimes are in addition to the felonies  
43 set forth in G.S. 15A-2010(a)(4).

1 **"§ 15A-2011. Responsibilities of law enforcement agency.**

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

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

6 (2) The availability of crime victims' compensation funds under Chapter  
7 15B of the General Statutes and the address and telephone number of  
8 the agency responsible for dispensing the funds.

9 (3) The address and telephone number of the district attorney's office that  
10 will be responsible for prosecuting the victim's case.

11 (4) The name and telephone number of an investigating law enforcement  
12 agency employee whom the victim may contact if the victim has not  
13 been notified of an arrest in the victim's case within six months after the  
14 crime was reported to the law enforcement agency.

15 (5) Information about an accused's opportunity for pretrial release.

16 (6) The name and telephone number of an investigating law enforcement  
17 agency employee whom the victim may contact to find out whether the  
18 accused has been released from custody.

19 (b) Within 24 hours after receiving notification from the arresting law enforcement  
20 agency that the accused has been arrested, the investigating law enforcement agency shall  
21 forward to the district attorney's office that will be responsible for prosecuting the case  
22 the victim's name, address, date of birth, social security number, race, sex, and telephone  
23 number, unless the victim refuses to disclose any or all of the information, in which case,  
24 the investigating law enforcement agency shall so inform the district attorney's office.

25 (c) Upon receiving the information in subsection (a) of this section, the victim  
26 shall, on a form provided by the investigating law enforcement agency, indicate whether  
27 the victim wishes to receive any further notices from the investigating law enforcement  
28 agency. If the victim elects to receive further notices, the victim shall be responsible for  
29 notifying the investigating law enforcement agency of any changes in the victim's name,  
30 address, and telephone number.

31 (d) Within 24 hours after the arrest of a person believed to have committed a crime  
32 covered by this Article, the arresting law enforcement agency shall inform the  
33 investigating law enforcement agency of the arrest. Within 24 hours of being notified of  
34 the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

35 **"§ 15A-2012. Responsibilities of the district attorney's office.**

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

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

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

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

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

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

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

11          (b)    Upon receiving the information in subsection (a) of this section, the victim  
12          shall, on a form provided by the district attorney's office, indicate whether the victim  
13          wishes to receive notices of some, all, or none of the trial and posttrial proceedings  
14          involving the accused. If the victim elects to receive notices, the victim shall be  
15          responsible for notifying the district attorney's office or any other department or agency  
16          that has a responsibility under this Article of any changes in the victim's address and  
17          telephone number. The victim may alter the request for notification at any time by  
18          notifying the district attorney's office and completing the form provided by the district  
19          attorney's office.

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

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

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

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

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

41          "§ 15A-2013. Evidence of victim impact.

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

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

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

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

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

15 **§ 15A-2014. Restitution.**

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

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

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

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

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

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

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

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

35       (c) In determining the amount of restitution to 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. The amount of restitution must  
41 be limited to that supported by the record, and the court may order partial restitution  
42 when it appears that the damage or loss caused by the offense is greater than that which  
43 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.

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

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

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

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

18 **"§ 15A-2015. Enforcement of order for restitution.**

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

21       (b) The order for restitution under this Article shall be docketed and indexed in the  
22 county of the original conviction in the same manner as a civil judgment. The order for  
23 restitution may be collected in the same manner as a civil judgment unless the order to  
24 pay restitution is a condition of probation. If the order to pay restitution is a condition of  
25 probation, the judgment may only be collected in accordance with subsection (c) of this  
26 section.

27       (c) If the defendant is ordered to pay restitution as a condition of probation, the  
28 docketed judgment may not be collected until the date of notification to the clerk of  
29 superior court in the county of the original conviction that the judge presiding at the  
30 probation termination or revocation hearing has made a finding that restitution in a sum  
31 certain remains due and payable, that the defendant's probation has been terminated or  
32 revoked, and that the remaining balance of restitution owing may be collected by  
33 execution on the judgment. The clerk shall then enter upon the judgment docket the  
34 amount that remains due and payable on the judgment, together with amounts equal to  
35 the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall  
36 notify the victim by first-class mail at the victim's last known address that the judgment  
37 may be executed upon, together with the amount of the judgment. Until the clerk  
38 receives notification of termination or revocation of probation and the amount that  
39 remains due and payable on the order of restitution, the clerk shall not be required to  
40 update the judgment docket to reflect partial payments on the order of restitution as a  
41 condition of probation.

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

4 **"§ 15A-2016. Posttrial responsibilities.**

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

7           (1) The final disposition of the case.

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

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

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

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

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

22           (3) The final disposition of an appeal.

23       (c) If the defendant has been released on bail pending the outcome of the appeal,  
24 the agency that has custody of the defendant shall notify the investigating law  
25 enforcement agency, and the investigating law enforcement agency shall notify the victim  
26 that the defendant has been released.

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

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

34 **"§ 15A-2017. Responsibilities of agency with custody of defendant.**

35       The Department of Correction shall notify the victim of:

36           (1) The projected date by which the defendant can be released from  
37 custody. The calculation of the release date shall be as exact as  
38 possible, including earned time and disciplinary credits if the sentence  
39 of imprisonment exceeds 90 days.

40           (2) An inmate's assignment to a minimum custody unit and the address of  
41 the unit. This notification shall include notice that the inmate's  
42 minimum custody status may lead to the inmate's participation in one or

1 more community-based programs such as work release or supervised  
2 leaves in the community.

3 (3) The victim's right to submit any concerns to the agency with custody  
4 and the procedure for submitting such concerns.

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

6 (5) The defendant's capture.

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

9 (7) The defendant's death.

10 **"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.**

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

12 (1) The defendant's regular conditions of probation or post-release  
13 supervision, special or added conditions, supervision requirements, and  
14 any subsequent changes.

15 (2) The date of a hearing to determine whether the defendant's supervision  
16 should be revoked, continued with or without modifications, or  
17 terminated.

18 (3) The final disposition of any hearing referred to in subdivision (2) of  
19 this section.

20 (4) Any restitution modification.

21 (5) The defendant's movement into or out of any intermediate sanction as  
22 defined in G.S. 15A-1340.11(6).

23 (6) The defendant absconding supervision.

24 (7) The capture of a defendant described in subdivision (6) of this section.

25 (8) The date when the defendant is terminated or discharged.

26 (9) The defendant's death.

27 **"§ 15A-2019. Notice of commuted sentence or pardon.**

28 The Governor's Clemency Office shall notify a victim when it is considering  
29 commuting the defendant's sentence or pardoning the defendant. The Governor's  
30 Clemency Office shall also give notice that the victim has the right to present a written  
31 statement to be considered by the Office before the defendant's sentence is commuted or  
32 the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its  
33 decision. Notice shall be given in a manner that is reasonably calculated to allow for a  
34 timely response to the commutation or pardon decision.

35 **"§ 15A-2020. No money damages.**

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

38 **"§ 15A-2021. No ground for relief.**

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

42 **"§ 15A-2022. Incompetent victim's rights exercised.**





- 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 2.4. The Governor's Crime Commission of the Department of Crime  
37 Control and Public Safety will coordinate a study of the incidence of domestic violence  
38 and identify the felonies and misdemeanors that may be categorized as domestic  
39 violence. The study will include participation by the North Carolina Conference of  
40 District Attorneys and the seven prosecutorial districts that are currently receiving funds  
41 from the Violence Against Women Act, administered through the Governor's Crime  
42 Commission. The study will also include participation of other prosecutorial districts  
43 which volunteer their participation in providing necessary information. The Commission

1 will recommend a statutory definition of domestic violence crimes that will be  
2 sufficiently clear so that it can be used by law enforcement officers and prosecutors to  
3 determine eligibility of victims of these crimes for victims' assistance services. The  
4 Commission shall also recommend whether any crimes that are currently misdemeanors  
5 should be reclassified as felonies when committed as crimes of domestic violence. The  
6 Commission will report the findings of its study and its recommendations to the 1998  
7 Session of the 1997 General Assembly on or before its convening date.

8 Section 2.5. The Post-Release Supervision and Parole Commission shall  
9 compile a report of the notification services it has provided under G.S. 15A-825(11), and  
10 pursuant to a letter from Governor Hunt to the Chair of the North Carolina Parole  
11 Commission dated October 13, 1993. The report shall include information on  
12 notification services provided through December 31, 1997. The report shall be delivered  
13 to the 1998 Session of the 1997 General Assembly on or before its convening date.

14 Section 2.6. G.S. 7A-304(a) is amended by adding the following new  
15 subdivision to read:

16 "(7) For the support of services to victims of crime, the sum of five dollars  
17 (\$5.00) to be remitted to the State Treasurer to be credited to the Crime  
18 Victims' Rights Fund established under Article 102 of Chapter 15A of  
19 the General Statutes."

20 Section 3. G.S. 15A-2010.1, as enacted by Section 1 of this act, becomes  
21 effective July 1, 1999. Section 2.3 of this act becomes effective when it becomes law and  
22 expires on July 1, 1999. Sections 2.4 and 2.5 and this section of this act are effective  
23 when they become law. Section 2.6 of this act and Article 102 of Chapter 15A of the  
24 General Statutes, as enacted by Section 1 of this act, become effective August 1, 1997.  
25 The remainder of this act becomes effective January 1, 1998, and applies to fees assessed  
26 or paid on or after that date.