

Arkansas Victim Rights Law: Act 1262 of 1997

For An Act To Be Entitled

"AN ACT TO ENHANCE THE RIGHTS OF VICTIMS OF CRIME."

Subtitle

"AN ACT TO ENHANCE THE RIGHTS OF VICTIMS OF CRIME."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DEFINITIONS. In this act:

(1) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration.

(2) "Member of the victim's family" means the spouse, a child by birth or adoption, a stepchild, a parent, a stepparent, a sibling, or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan.

(3) "Offense against a victim who is a minor" means:

(A) Kidnapping pursuant to A.C.A. §5-11-102 (a)(4) when the victim is a minor and the offender is not the parent of the victim;

(B) False imprisonment in the first degree pursuant to A.C.A. §5-11-103 when the victim is a minor and the offender is not the parent of the victim.

(C) Permanent detention or restraint pursuant to A.C.A. §5-11-106 when the victim is a minor and the offender is not the parent of the victim;

(D) Any sex offense when the victim is a minor;

(E) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subsection (3);

(F) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subsection (3); or

(G) A violation of any former law of this state which is substantially equivalent to any of the offenses enumerated to this subsection (3);

(4) "Person" means an individual, corporation, estate, trust, partnership, association, joint venture, governmental entity, agency, or instrumentality, or any other legal entity.

(5) "Representative of the victim" means a member of the victim's family or an individual designated by the victim or by a court in which the crime is being or could be prosecuted.

(6) "Sex offense" means:

- (A) Rape - A.C.A. §5-14-103;
- (B) Carnal abuse in the first degree - A.C.A. §5-14-104;
- (C) Carnal abuse in the second degree - A.C.A. §5-14-105;
- (D) Carnal abuse in the third degree - A.C.A. §5-14-106;
- (E) Sexual misconduct - A.C.A. §5-14-107;
- (F) Sexual abuse in the first degree - A.C.A. §5-14-109;
- (G) Sexual abuse in the second degree - A.C.A. §5-14-109;
- (H) Sexual solicitation of a child - A.C.A. §5-14-110;
- (I) Violation of minor in the first degree - A.C.A. §5-14-120;
- (J) Violation of a minor in the second degree - A.C.A. §5-14-121; (K) Incest - A.C.A. §5-26-202;
- (L) Engaging children in sexually explicit conduct for use in visual or print medium - A.C.A. §5-27-303;
- (M) Transportation of minors for prohibited sexual conduct - A.C.A. §5-27-305;
- (N) Employing or consenting use of child in sexual performance - A.C.A. §5-27-402;
- (O) Producing, directing or promoting sexual performance - A.C.A. §5-27-4-3;
- (P) Promoting prostitution in the first degree- A.C.A. §5-70-104; (Q) Stalking - A.C.A. §5-71-29;
- (R) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subsection (6);
- (S) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for military offense, which is substantially equivalent to any of the offenses enumerated in this subsection (6);
- (T) A violation of any former law of this state which is substantially equivalent to any of the offenses enumerated in this subsection (6);

(7) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(8) "Victim" means a victim of a sex offense or an offense against a victim who is a minor, and a victim of any violent crime, but does not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan and does not include a governmental entity.

(9) "Violent Crime" means any felony which resulted in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree, and stalking as defined in Arkansas Code Annotated § 5-7-229.

SECTION 2. COMPLIANCE WITH ACT.

Failure to comply with this act does not create a claim for damages against a government employee, official, or *entity*.

SECTION 3. NONDISCLOSURE OF INFORMATION ABOUT VICTIM.

(a) A court may not compel a victim or a member of the victim's family testifying in a criminal justice proceeding to disclose a residential address or place of employment on the record in open court unless the court finds that disclosure of the information is necessary.

(b) A law enforcement agency shall not disclose to the public information directly or indirectly identifying the victim of a sex crime except to the extent that disclosure is of the site of the crime, is required by law, is necessary for law enforcement purposes, or is permitted by the court for good cause.

SECTION 4. PRESENCE AT COURT PROCEEDINGS.

The victim or a representative of the victim may be present whenever the defendant has a right to be present during a court proceeding concerning the crime charged other than a grand jury proceeding, unless the court determines that exclusion of the victim or the victim's representative is necessary to protect the defendant's right to a fair trial or the confidentiality or fairness of a juvenile proceeding. If the victim is present, the court, at the victim's request, shall permit the presence of an individual to provide support to the victim, unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

SECTION 5. PROMPT RETURN OF PROPERTY.

Any person holding property of a victim shall take reasonable care of the property. The responsible official shall promptly return the property to the victim when it is no longer needed for evidentiary purposes unless it is contraband or subject to forfeiture.

SECTION 6. LIMITATIONS ON EMPLOYER.

An employer may not discharge or discipline a victim or a representative of the victim for:

- (1) participation at the prosecuting attorney's request in preparation for a criminal justice proceeding; or
- (2) attendance at a criminal justice proceeding if the attendance is reasonably necessary to protect the interests of the victim.

SECTION 7. INFORMATION FROM LAW ENFORCEMENT AGENCIES.

(a) After initial contact between a victim and a law enforcement agency responsible for investigating a crime, the agency shall promptly give in writing to the victim:

- (1) an explanation of the victim's rights under this act; and
- (2) information concerning the availability of:
 - (i) assistance to victims, including medical, housing, counseling, financial, social, legal, and emergency services;
 - (ii) compensation for victims under the Arkansas Crime Victims Reparations Act and the name, street address, and telephone number of the agency to contact;
 - (iii) protection of the victim, including protective court orders; and (iv) access by the victim and the defendant to public records related to the case.

(b) As soon as practicable, the law enforcement agency shall give to the victim, as relevant, the following:

- (1) information as to the suspect's identity unless inconsistent with law enforcement purposes;
- (2) information as to whether the suspect has been taken into custody, has escaped, or has been released, and any conditions imposed on the release when such information has been made known to the law enforcement agency;
- (3) the file number of the case and the name, *office* address, and *office* telephone number of a law enforcement officer assigned to investigate the case; and
- (4) the prosecuting attorney's name, office address, and office telephone number.

SECTION 8. INFORMATION CONCERNING APPEAL OR POST-CONVICTION REMEDIES.

If the defendant appeals or pursues a post-conviction remedy, the Attorney General shall, as to cases handled by the Attorney General, promptly inform the victim of that fact, of the date, time, and place of any hearing, and of the decision.

SECTION 9. INFORMATION CONCERNING CONFINEMENT.

(a) Upon request of the victim, the Department of Correction, State Hospital and any other facility to which the defendant is committed by the court shall:

- (1) promptly inform the victim of the estimated date of the defendant's release from confinement, if reasonably ascertainable;
- (2) inform the victim at least thirty (30) days before release of the defendant on furlough or to a work-release, half-way house, or other community program; and

(3) promptly inform the victim of the occurrence of any of the following events concerning the defendant:

- (i) an escape from a correctional or mental-health facility or community program;
- (ii) a recapture;
- (iii) a decision of the Governor to commute the sentence or to pardon;
- (iv) a release from confinement and any conditions attached to the release;
- and
- (v) the defendant's death.

(b) At least thirty (30) days before a Post Prison Transfer Board hearing concerning the defendant, if requested by the victim, the board shall inform the victim of the hearing and of the victim's right to submit to the Post Prison Transfer Board a victim-impact statement and shall promptly inform the victim of any decision of the board. It is the responsibility of the victim or his next of kin to notify the board of any change in address or telephone number. It is the responsibility of the victim or his next of kin to notify the board after the date of commitment of any change in regard to the desire to be notified of any future parole hearings.

SECTION 10. GENERAL REQUIREMENTS FOR INFORMATION.

(a) Unless otherwise provided by this act, information required to be furnished to the victim or other person authorized to receive notice may be furnished either orally or in writing. It is the responsibility of the victim or other person authorized to receive notice to furnish to the proper authorities, and keep current, the victim's mailing address and phone number.

(b) The person responsible for furnishing information shall promptly inform the victim of significant changes in the information to be furnished.

(c) The person responsible for furnishing information may rely upon the most recent name, address, and telephone number furnished by the victim. The address and telephone number of the victim or the immediate family member shall be exempt from the Arkansas Freedom of Information Act, §§ 25-19-101, et seq. It is the responsibility of the victim or his next of kin to notify the person responsible for providing notice under this act regarding any change in the victim's name, address, or telephone number.

SECTION 11. PRESENTENCE REPORT.

In preparing a presentence report, the person preparing the report shall make a reasonable effort to confer with the victim. If the victim is not available or declines to confer, the person preparing the report shall record that information in the report.

SECTION 12. VICTIM-IMPACT STATEMENT.

(a) Before imposing sentence, the court shall permit the victim to present a victim-impact statement concerning the effects of the crime on the victim, the

circumstances surrounding the crime, the manner in which the crime was perpetrated. The victim may present the statement in writing before the sentencing proceeding, or orally under oath at the sentencing proceeding.

(b) The court shall give copies of all written victim-impact statements to the prosecuting attorney and the defendant.

(c) The sentencing court shall consider the victim-impact statement along with other factors, but if the victim-impact statement includes new, material factual information upon which the court intends to rely, the court shall adjourn the sentencing proceeding or take other appropriate action to allow the defendant adequate opportunity to respond.

SECTION 13. CONSIDERATION OF VICTIM-IMPACT STATEMENT AT PAROLE HEARING.

(a) Before determining whether to release the defendant on parole, the Post Prison Transfer Board shall permit a victim to present a written victim-impact statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the defendant should be released on parole. At the victim's option, the victim may present the statement orally at the parole hearing. The Post Prison Transfer Board shall give the defendant a copy of all written victim-impact statements.

(b) The Post Prison Transfer Board, in deciding whether to release a prisoner on parole, shall consider among other factors:

- (1) victim-impact statements presented under subsection(a); and (2)
- victim-impact statements presented to the sentencing court under section 12.

SECTION 14. DERIVATIVE RIGHTS OF MEMBER OF VICTIM'S FAMILY.

If a victim is a minor or is incapacitated, incompetent, or deceased, a member of the victim's family may exercise the rights of the victim under this act. If more than one member of the victim's family attempts to exercise those rights, the court may designate which of them may exercise those rights.

SECTION 15.

None of the provisions of this act shall be deemed to relieve any person of the duty of providing information or notices required by any other law.

SECTION 16.

A.C.A. §16-21-106 is amended to read as follows: Assistance to victims and witnesses of crimes- Victim of crimes case coordinator.

(a) (1) The prosecuting attorneys shall, upon request, provide to a victim and the immediate family members of all homicide victims, whether or not they are witnesses in

criminal proceedings, notice of critical events in the criminal justice process, which shall include but not be limited to:

- (A) notice of motions or hearings to establish or reduce bail or authorize other pre-trial release from custody;
- (B) notice of proceedings in which any plea agreement may be submitted;
- (C) notice of trial;
- (D) notice of any motion that may substantially delay the prosecution.
- (E) notice that a court proceeding for which the victim had been subpoenaed will not transpire as scheduled;
- (F) notice of the date, time, and place of the defendant's appearance before a judicial officer;
- (G) the function of a presentence report, the name, street address, and telephone number of the agency preparing the report, and the defendant's right of access to the report;
- (H) notice of the victim's right under this act to present a victim-impact statement and the defendant's right to be present at the sentencing proceeding;
- (I) notice of the date, time, and place of any sentencing proceeding;
- (J) notice of the date, time, and place of any hearing for reconsideration of a sentence imposed;
- (K) notice of any sentence imposed and any modification of that sentence; and
- (L) notice of the right to receive information from the Department of Correction, State Hospital and any other facility to which the defendant is committed by the court.

(2) After a prosecution is commenced, the prosecuting attorney shall promptly inform a victim of:

- (A) relevant criminal justice procedures;
- (B) the crime with which the defendant has been charged, including an explanation of the elements of crime if necessary to an understanding of the nature of the crime; and
- (C) the file number of the case and the prosecuting attorney's name, office address, and telephone number.

(3) The notices may be accomplished by providing the victim or immediate family member with a telephone number to a computer notification program. Prosecutors remain responsible for providing the notice in instances where no computer notification program exists.

(4) When an immediate family member has been charged with the homicide, that person shall not be notified in accordance with this section.

(b) Prosecuting attorneys shall confer with the victim before amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion. Failure of the prosecuting attorney to confer with the victim does not affect the validity of an agreement

between the prosecuting attorney and the defendant or of an amendment, dismissal, plea, pretrial diversion, or other disposition.

(c) The prosecuting attorney of the county from which the inmate was committed shall notify the Post Prison Transfer Board at the time of commitment of the desire of the victim, or member of the victim's family, to be notified of any future parole hearings and to forward to the board the last known address and telephone number of the victim or member of the victim's family. It shall be the responsibility of the victim or his next of kin to notify the board after the date of commitment of any change in regard to the desire to be notified of any future parole hearings.

(d) The prosecuting attorneys and deputy prosecuting attorneys shall provide the following services to victims of crimes and witnesses of crimes and the family members of all homicide victims, whether or not they are witnesses in criminal proceedings:

- (1) Assist such persons in obtaining protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;
- (2) Assist such persons in applying for financial assistance and other social services available as a result of being a witness or victim of a crime;
- (3) Assist such persons in applying for any witness fees to which they are entitled;
- (4) Provide, when possible, a secure waiting area during court proceedings that does not require such persons to be in close proximity to the defendants and families and friends of the defendants and otherwise make a reasonable effort to minimize unwanted contact between the victim, members of the victim's family, or prosecution witnesses and the defendant, members of the defendant's family, or defense witnesses before, during, and immediately after a judicial proceeding; and
- (5) Intercede with such persons' employers to assure that the employers cooperate with the criminal justice process in order to minimize loss of pay and other benefits resulting from court appearances.

(e) In order to enable the prosecuting attorney to perform the additional duties provided in this section:

- (1) The prosecutor may request the county judge of the county to designate or provide an appropriate room or area in the county courthouse, reasonably close to the courtroom, to serve as a waiting area during court proceedings to accommodate the families and friends of the defendants, as provided in subsection (d) of this section; and
- (2) The prosecutor may request the quorum court of the county to provide additional employees for his office to be known as victim of crimes case coordinators' at such salary as may be determined by the quorum court, to be in addition to any other position available to the prosecutor's office.

SECTION 17. Arkansas Code Annotated §16-93-702 (b) is amended to read as follows:

"(b) If the person whose parole is being considered by the board was convicted of capital murder or of a Class Y, Class A, or Class B felony, or any violent or sexual offense, the board shall also notify the victim of the crime, or the victim's next of kin, of the parole hearing and shall solicit written or oral recommendations of the victim or his next of kin regarding the granting of the parole, unless the prosecuting attorney has notified the board at the time of commitment of the prisoner that the victim or his next of kin do not want to be notified of future parole hearings."

SECTION 18. *This act becomes effective on January 1, 1998.*

SECTION 19. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 21. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 22. Arkansas Code Annotated §16-93-707 is repealed.

SECTION 23. Arkansas Code Annotated §16-97-102 (4) is repealed.

/s/ Rep. Ferrell, et al
APPROVED: 4-9-97