

Victims' Rights

Jamie Markham

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 UNC SCHOOL OF GOVERNMENT

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North Carolina Victims' Rights Act



Marsy's Law

- Marsalee Ann Nicholas

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Recent History

- 1996: Article I, section 37 added to N.C. Constitution
- 2018: Constitutional amendment expanding victims' rights (Marsy's Law)
- 2019: Implementing legislation (S.L. 2019-216)

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Article I, Section 37

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Article I, Section 37

Basic rights. Victims of crime or acts of delinquency shall be treated with dignity and respect by the criminal justice system.

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Article I, Section 37

Enumerated rights. When the crime or act of delinquency is one against or involving the person of the victim or is equivalent to a felony property crime, the victim is entitled to the following rights:

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Article I, Section 37

- (a) The right upon request to reasonable, accurate, and timely **notice** of court proceedings of the accused.
- (a1) The right upon request **to be present** at court proceedings of the accused.
- (b) The right **to be reasonably heard** at any court proceeding involving the **plea, conviction, adjudication, sentencing, or release** of the accused.
- (c) The right to receive **restitution** in a reasonably timely manner, when ordered by the court.
- (d) The right to be **given information** about the crime or act of delinquency, how the criminal justice system works, the rights of victims, and the availability of services for victims.

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Article I, Section 37

- (e) The right upon request to receive **information** about the conviction, adjudication, or final disposition and sentence of the accused.
- (f) The right upon request to receive **notification** of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
- (g) The right **to present the victim's views** and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
- (h) The right to reasonably **confer with the prosecution**.

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Article I, Section 37: Limits

- **No money damages or cause of action.** Against the State, a county, a municipality, or any of the agencies, instrumentalities, or officers and employees thereof.
- **No ground for relief in criminal case.** May not be used by the defendant as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.
- **No grounds for victim** to appeal, challenge, participate as a party, or obtain confidential juvenile records.

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Implementing Statutes

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Which Offenses?

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Covered Offenses: Prior Law

- Prior law (pre-2019) included serious felonies (A – E), assaults, and DV misdemeanors

Felonies

- Any Class A through E felony.
- Abduction of children (G.S. 14-43).
- Assault inflicting serious bodily injury (G.S. 14-32.4).
- Assault on a handicapped person (G.S. 14-32.36).
- Assault on an executive, legislative, or court official with a deadly weapon or inflicting serious injury (G.S. 14-36.6b)–(f).
- Assault on emergency personnel with a dangerous weapon or substance (G.S. 14-38.9).
- Assault with a firearm or deadly weapon on a government officer/employee or campus/company police officer (G.S. 14-34.2).
- Assault with a firearm, deadly weapon, or inflicting serious bodily injury on a firefighter, emergency medical technician, or emergency room nurse or physician (G.S. 14-34.6b)–(f).
- Common law robbery (G.S. 14-47.1).
- Domestic abuse or neglect of a disabled or elder adult causing injury or serious injury (G.S. 14-32.36)–(h).
- Felonious restraint (G.S. 14-43.3).
- Habitual impaired driving (G.S. 20-138.5).
- Habitual misdemeanor assault (G.S. 14-33.2).
- Human trafficking of adults (G.S. 14-42.11).
- Involuntary manslaughter (G.S. 14-40).
- Participating in the prostitution of a minor (former G.S. 14-190.19).
- Patient abuse/neglect causing serious bodily injury (G.S. 14-32.20)(C).
- Second-degree arson (G.S. 14-58).
- Second-degree burglary (G.S. 14-41).
- Seizure, second or subsequent offense or when a court order is in effect (G.S. 14-277.3A or former G.S. 14-277.3).
- Taking indecent liberties with children (G.S. 14-202.1).
- Third-degree sexual exploitation of a minor (G.S. 14-190.17A).
- Any attempt of the felonies listed above if the attempt is punishable as a felony.

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Covered Offenses: Revised Law

G.S. 15A-830(a)(7) Victim. – A person against whom there is probable cause to believe an offense against the person or a felony property crime has been committed.

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Covered Offenses

G.S. 15A-830(a)(6a) Offense against the person. – An offense against or involving the person of the victim which constitutes a violation of one of the following:

- Subchapter III of Chapter 14 of the General Statutes.
- Subchapter VII of Chapter 14 of the General Statutes.
- Article 39 of Chapter 14 of the General Statutes.
- Chapter 20 of the General Statutes, if an element of the offense involves impairment of the defendant, or injury or death to the victim.
- A valid protective order under G.S. 50B-4.1, including, but not limited to, G.S. 14-134.3 and G.S. 14-269.8.
- Article 35 of Chapter 14 of the General Statutes, if the elements of the offense involve communicating a threat or stalking.
- An offense that triggers the enumerated victims' rights, as required by the North Carolina Constitution.

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Covered Offenses

G.S. 15A-830(a)(3b) Felony property crime. – An act which constitutes a felony violation of one of the following:

- Subchapter IV of Chapter 14 of the General Statutes.
- Subchapter V of Chapter 14 of the General Statutes.

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Covered Offenses

North Carolina Criminal Law

Crimes Covered under the New Victim's Rights Law

Effective 12/1/15

Which crimes are covered under the new victim's rights amendment and its implementing statute?

Offenses against the Person Catch-All	
BURNING CROSS TO INTIMIDATE	14-12.12(B)
EXHIBIT TO INTIMIDATE	14-12.13
MASK/HOOD TO INTIMIDATE	14-12.14
ASSAULT ON EXEC/LEG/COURT OFFICER	14-16.6(A)
ASSAULT ON EXEC/LEG/COURT OFFICER DEADLY WPN	14-16.6(B)
ASSAULT ON EXEC/LEG/COURT OFFICER SER BOD INJ	14-16.6(C)
THREAT TO INFLICT SER BOD INJ OR KILL EXEC/LEG/COURT OFF	14-16.7(A)

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Which Proceedings?

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Covered Proceedings

- G.S. 15A-830(a)(2a). Court proceeding** – A critical stage of the post-arrest process heard by a judge in open court involving a plea that disposes of the case or the conviction, sentencing, or release of the accused, including the hearings described in G.S. 15A-837. The term does not include the preliminary proceedings described in Article 29 of Chapter 15A of the General Statutes.
- Does not apply to initial appearance or first appearance

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Responsibilities

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CVRA Responsibilities

- **Law Enforcement Agencies**
 - Identify covered victims, inform of rights within 72 hours
 - Forward information to district attorney's office
- **District Attorney's Office**
 - Provide victim information pamphlet within 21 days
 - Give victim opportunity to opt into notices on "some, all, or none" of trial and posttrial proceedings
 - Give victim opportunity to share views on negotiations, sentencing, and pretrial diversion

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Judicial Responsibilities

- **G.S. 15A-832.1(c).** The judge, in any court proceeding subject to this Article, shall inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement.

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Judicial Responsibilities

G.S. 15A-833. Evidence of victim impact. (a) A victim has the right to offer evidence at sentencing, which shall be considered by the court

- A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.
- An explanation of any economic or property loss
- A request for restitution
- No victim shall be required to offer evidence.
- At the victim's request and with the consent of the defendant, a representative of the district attorney's office or a law enforcement officer may proffer evidence of the impact of the crime to the court.

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CVRA Restitution

G.S. 15A-1340.34(b). If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.

G.S. 15A-1340.38(a). [W]hen an order for restitution under G.S. 15A-1340.34(b) requires the defendant to pay restitution in an amount in excess of two hundred fifty dollars (\$250.00) to a victim, the order may be enforced in the same manner as a civil judgment, subject to the provisions of this section.

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STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
STATE VERSUS Name And Address Of Defendant		RESTITUTION WORKSHEET, NOTICE AND ORDER (INITIAL SENTENCING) G.S. 15A-1340.34 through 1340.38 15A-1341.01
I. TOTAL RESTITUTION TO BE PAID BY DEFENDANT NOTE: Enter total restitution from Part II - (c). The clerk should enter the total as "Restitution" on the Judgment.		Requested:
II. VICTIMS' RIGHTS ACT (VRA) VICTIMS		
Referred "G.S. 15A-1340.34(b) as a result of an offense"		
Contact Person	Telephone No.	Requested:
Name And Address	Account No.	Amount, if Different:
Contact Person	Place Sex DOB	Receiving Info
[] The defendant is held jointly and severally liable to this victim with the following person(s), as provided in any order(s) for restitution against them		Abuse No.
NOTE: For each victim jointly and severally liable to this victim with the following person(s), as provided in any order(s) for restitution against them		Requested:
Name And Address		Account No.
Contact Person	Place Sex DOB	Amount, if Different:
[] The defendant is held jointly and severally liable to this victim with the following person(s), as provided in any order(s) for restitution against them		Receiving Info
Abuse No.		Requested:
III. OTHER VICTIMS (NON-VRA)		Amount, if Different:
NOTE: For each victim jointly and severally liable to this victim with the following person(s), as provided in any order(s) for restitution against them		Receiving Info
Abuse No.		Requested:
VICTIM INFORMATION		RESTITUTION AMOUNT
Name And Address	Telephone No.	Requested:

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CVRA Restitution

- **State v. Crew, 281 N.C. App. 437 (2022)**
 - Trial court ordered restitution to animal services for defendant convicted of dogfighting and cruelty to animals; immediately converted to civil judgment at sentencing

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CVRA Restitution

“The restitution statutes distinguish between two categories of offenses: (1) those for which the victim is entitled to restitution under the Crime Victims’ Rights Act (VRA), and (2) those not covered by the VRA. . . . The State contends that the trial court does not need any separate statutory authority because courts have the “inherent authority” to convert any restitution award to a civil judgment. But we agree with Crew that, if this were so, it would render the language in N.C. Gen. Stat. § 15A-1340.38 superfluous, counter to long-standing principles of statutory construction. . . . Because there is no statutory provision authorizing the immediate entry of civil judgments for the restitution in this case, we vacate those civil judgments.”

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Judicial Responsibilities

- **Victim rights vs. Defendant rights**
 - Judge has obligation inquire if victim is present and wishes to be heard; no duty to investigate
 - **What if defendant asks for a bond modification and the victim has not yet been notified or is unavailable?**
 - See, e.g., State v. Riggs, 942 P.2d 1159 (Ariz. 1997) (“[I]f, in a given case, the victim’s state constitutional rights conflict with a defendant’s federal constitutional rights . . . the victim’s rights must yield.”).

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Judicial Responsibilities

- **Victim impact and judicial discretion**
- Consider State v. Arnold, 169 N.C. App. 438 (2005)

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Judicial Responsibilities

The Court: "I'm going to send you to prison for the entire term unless [the victim] says give him another chance because it's his money. . . If [the victim] want[s] me to give [defendant] another chance, I will do so. . . If not, I'll send him to prison today. . . I want you [the victim] to make that decision."

The victim: My decision is, Your Honor, that he's in too much trouble. . . I think he needs to go somewhere and grow up.

The Court: Okay. . . You want me to send him on?

The victim: Yes, sir.

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Judicial Responsibilities

Court of Appeals: "We agree with defendant that, under the unusual circumstances in this case, the trial court abdicated its duty to exercise its discretion and, instead, allowed the victim to determine whether defendant's probation should be revoked."

State v. Arnold, 169 N.C. App. 438 (2005)

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Violations and Enforcement

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Violations and Enforcement

- Victim must first file written complaint with law enforcement or DA, giving opportunity to resolve
- Victim may allege violation by filing a motion in the cause with the clerk

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STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice
STATE VERSUS		<input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name Of Defendant	MOTION AND ORDER TO ENFORCE RIGHTS OF CRIME VICTIM	
G.S. 15A-832.1(d), -834.5		
<small>INSTRUCTIONS TO VICTIM OR PERSON ASSERTING RIGHTS ON BEHALF OF VICTIM: Carefully review the NOTE at the top of Side Two of this form, then complete Side One of this form and file it with the Clerk of Superior Court in the county in which the criminal proceeding is pending. The clerk will not assess you any fees for filing this motion. If you are alleging that the Office of the District Attorney or a law enforcement agency failed to comply with the rights of a victim, then before filing this motion, you first must file a written complaint with the Office of the District Attorney or the agency, as applicable, and allow the Office of the District Attorney or agency an opportunity to act in a timely manner to resolve the issue. If you believe the Office of the District Attorney or the agency has not resolved the issue in a timely manner and therefore are filing this motion alleging a Crime Victim's Rights Act violation by the Office of the District Attorney or agency, you must attach a copy of the written complaint that you previously filed with the District Attorney or agency.</small>		
MOTION AND DESCRIPTION OF RIGHT(S) VIOLATED		
<small>The undersigned hereby moves the Court to enforce the rights of the victim named below in this matter. Described immediately below is(are) the specific right(s) that I believe has(have) been violated, and the substance of the violation(s); (describe in detail the right(s) violated and the nature of the violation(s))</small>		
AOC-CR-182		

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Violations and Enforcement

- Judge shall review motion
 - Dispose, or
 - Set for hearing in “timely manner”
 - Confer with victim, prosecutor, and/or head of law enforcement agency
 - Failure to review and dispose may result in writ of mandamus from Court of Appeals

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ORDER OF JUDGE DISPOSING OF MOTION WITHOUT HEARING OR SETTING HEARING FOR MOTION			
<small>The undersigned, having reviewed this motion as required by G.S. 15A-834.5(g), hereby ORDERS that (select one):</small>			
<input type="checkbox"/> 1. this motion be set for hearing, and that the clerk complete and provide the NOTICE OF HEARING below to the person filing the motion, to the prosecutor in this case (if the prosecutor is not the person filing the motion), and (if this motion alleges that a law enforcement agency failed to comply with the rights of the victim) the head of the law enforcement agency referenced in the motion.			
<input type="checkbox"/> 2. this motion be disposed without hearing as follows: _____			
Date _____	Name Of Presiding Judge (type or print) _____		Signature Of Presiding Judge _____
NOTICE OF HEARING (IF NECESSARY)			
Date Of Hearing _____	Time Of Hearing _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Hearing _____	
Date _____	Name (type or print) _____	Signature _____	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
ORDER OF JUDGE FOLLOWING HEARING ON MOTION (IF NECESSARY)			
<small>This matter is before the Court on the motion of the person named on the reverse. A hearing was held before the Court on the date below. On the basis of the information presented and the entire record in this case, the Court enters the following ORDER:</small>			

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Violations and Enforcement

- **G.S. 15A-834.5(j).** Any failure to comply with CVRA may not be used by a defendant, inmate, or victim as a ground for relief in any criminal or civil proceeding.

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