

2019 Legislation Affecting Criminal Law and Procedure

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Below are summaries of 2019 legislation affecting criminal law and procedure, enacted before the North Carolina General Assembly adjourned on November 15, 2019 (to reconvene on January 14, 2020). To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, www.ncleg.gov. Be careful to note the effective date of each piece of legislation.

- 1. [S.L. 2019-13 \(H 130\): Game nights east of I-26.](#)** Effective June 1, 2019 and applicable to areas of the state located east of I-26 as that interstate highway was located on November 28, 2011, the act adds a new Part 4, Game Nights, to G.S. Chapter 14, Article 37, Lotteries, Gaming, Bingo and Raffles. The new part, G.S. 14-309.25 through 14-309.37, makes it lawful for a tax-exempt organization, defined in G.S. 14-309.25, to conduct a game night at a qualified facility, defined in G.S. 18B-1000(5a) as a facility that has a permit to serve beer, wine, and mixed beverages. The part details the permits required, limits on events, permissible prizes, types of games (slot machines and like devices remain prohibited under new G.S. 14-309.37), and use of proceeds. If an exempt organization conducts a game night in violation of the new part, the person who applied for the permit is guilty of a Class 2 misdemeanor under new G.S. 14-309.26(b). A game night conducted other than in accordance with the provisions of the new part constitutes gambling within the meaning of G.S. 14-292 and G.S. Chapter 19, Article 1, Abatement of Nuisances. The act also allows employers with 25 or more employees to hold game nights for employees, guests, or a trade association with 25 or more members in accordance with the requirements of new G.S. 14-309.34. The new part exempts from the prohibitions on gaming tables and gaming equipment the possession or transportation of such equipment for game nights in compliance with new G.S. 14-309.35 and 14-309.36. G.S. 14-309.35(b) makes it a Class 1 misdemeanor to use a gaming table or gaming equipment not registered with the Alcohol Law Enforcement Branch of the Department of Public Safety. G.S. 14-309.36 prohibits issuance of a permit to a person who has a prior gambling conviction within the previous five years, any pending gambling charges, any active order prohibiting involvement in gambling, and any felony conviction regardless of the nature or date of the offense. The same disqualifiers apply to employment of a person by a game night vendor. The Department of Public Safety must report to the 2020 General Assembly about game night activities and make any recommendations to modify the law.
- 2. [S.L. 2019-33 \(H 301\): Juvenile Code revisions.](#)** Effective October 1, 2019, revised G.S. 7B-101(18a) expands the definition of "responsible individual," a designation that affects a person's ability to adopt, foster, or care for children and obtain employment in the childcare field. The revised definition designates as a responsible individual a person who is

40. [S.L. 2019-216 \(S 682\)](#), as amended by [S.L. 2019-243 \(H 470\)](#): **Victims’ rights. The act adds and amends several victims’ rights provisions to implement the 2018 constitutional amendment on victims’ rights. The provisions in adult criminal cases and juvenile delinquency cases are summarized separately below.**

Effective for offenses committed on or after August 31, 2019, the act makes the following changes for adult criminal cases:

- G.S. Ch. 15A, Art. 45, Fair Treatment for Certain Victims and Witnesses, has described a more limited set of responsibilities of law-enforcement agencies, prosecutors, and others with respect to victims in cases not subject to G.S. Ch. 15A, Art. 46, the Crime Victims’ Rights Act. The act revises the definition of family member in G.S. 15A-824 to include a spouse, child, parent, legal custodian, sibling, or grandparent of the victim (was, spouse, child, parent or legal guardian, or closest living relative). The act also revises the definition of crime in G.S. 15A-824 to include acts by a juvenile covered in new G.S. Ch. 7B, Art. 20A, Rights of Victims of Delinquent Acts, summarized in detail after this summary of adult criminal cases.
- G.S. 8-53.12 provides a privilege for information acquired by agents of rape crisis centers and domestic violence programs in providing services to a victim of a sexual assault or domestic violence. The revised statute directs agents, centers, and programs to make every effort to inform the victim of any request for such information and provide the victim with a copy of the request if the request was in writing. The revised statute also provides that in any court proceeding to compel disclosure of the information, the judge must inquire whether the victim is present and wishes to be heard and, if so, must grant the victim an opportunity to be reasonably heard, including in the victim’s discretion through an oral statement, written statement, or audio-video statement.
- The act’s remaining provisions about adult criminal cases make the following changes to G.S. Ch. 15A, Art. 46, the Crime Victims’ Rights Act.
- The act makes several changes to the definitions section, G.S. 15A-830, and thus the coverage of the article.
 - New subdivision (a)(2a) of G.S. 15A-830 defines “court proceeding” as “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.” The subdivision states that the term does not include preliminary proceedings described in Ch. 15A, Art. 29, First Appearance Before District Court Judge.
 - New subdivision (a)(3a) defines a “family member,” which is a person who may assert the victim’s rights if the victim is a minor or incapacitated, as a spouse, child, parent, guardian, legal custodian, sibling, or grandparent of the victim. The subdivision states that the term does not include the accused. New G.S. 15A-

830(d) provides that the district attorney may determine that an individual would not act in the victim's best interest and may not exercise the victim's rights and gives the individual the right to petition the court for review of that determination.

- New subdivisions (a)(3b) and (a)(6a) define “felony property crime” and “offense against the person,” which constitute the offenses that give rise to the victims’ rights in the article. Revised subdivision (a)(7) defines “victim” as a person against whom there is probable cause to believe that such an offense has been committed. For a discussion of covered crimes, see Jamie Markham, [Crimes Covered under the New Victims’ Rights Law](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (Sep. 27, 2019).
- New G.S. 15A-830.5 states the general rights of a victim covered by the article, including the right to timely notices of court proceedings (as defined in the article), the right to receive notice of release of the accused, and the right to confer with the district attorney’s office.
- G.S. 15A-831 details the responsibilities of law enforcement agencies. It is revised to require the arresting agency to inform the investigating agency within 72 hours after arrest of a person believed to have committed a crime covered by the article. Following receipt of this information, the investigating agency has 72 hours to notify the victim of the arrest. The investigating agency continues to have the obligation of providing the victim with a form, now created by the Conference of District Attorneys, that asks whether the victim wants to receive further notice from the investigating agency during the pretrial process. The revised statute requires the victim to return the form to the investigating agency within 10 business days. The investigating agency must share the form with the district attorney.
- G.S. 15A-832 details the responsibilities of district attorneys. The statute is revised to delete the provision requiring the court to make every effort to permit the fullest attendance by the victim when the victim is to be called as a witness. It adds a requirement that the district attorney make every effort to ensure that a victim’s personal information is not disclosed unless required by law.
- G.S. 15A-832.1 details the responsibilities of judicial officials.
 - Under the revised statute, a judicial official who issues a pleading for a misdemeanor offense, when based on testimony from a complaining witness and not a law enforcement officer, must: record identifying information about the victim unless the victim declines to provide the information and deliver the information to the clerk of superior court. Previously, the statute applied to arrest warrants and for specific misdemeanor offenses only.
 - The judge in any court proceeding subject to the article must inquire whether the victim is present and wishes to be heard. If so, the judge must grant the victim the opportunity to be heard and, in the victim’s discretion, allow the

victim to be heard through an oral statement, written statement, or audio-video statement. The court must make every effort to secure a waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

- New G.S. 15A-834.5 details procedures for victims to enforce their rights under the article.
 - For purposes of utilizing the procedures in the new statute, the term “victim” includes others acting on the victim’s behalf, including the victim’s attorney, the prosecutor at the victim’s request, and in certain circumstances a parent, guardian, legal custodian, or family member as defined in G.S. 15A-830.
 - A victim may allege a violation of rights provided in the article by filing a motion with the clerk of superior court in the pending criminal proceeding. If the motion alleges a violation by the district attorney or a law enforcement agency, the victim must first file a written complaint with and afford that office or agency an opportunity to resolve the issue. A motion alleging a violation by the district attorney or law enforcement agency must include a copy of the written complaint.
 - A victim has the right to consult with an attorney about an alleged violation but does not have the right to counsel provided by the State.
 - The clerk of superior court must provide victims with the form motion created by the Administrative Office of the Courts, [AOC-CR-182](#) (Aug., 31, 2019), to enable them to allege violations of their rights. There is no filing fee for the motion.
 - The statute states that a copy of a filed motion must be provided to the prosecutor, the elected District attorney, and the judge in the criminal proceeding. If the allegation is that a law enforcement agency failed to comply with a victim’s rights, a copy of the motion must be provided to the head of the law enforcement agency. The AOC form provides that the clerk of superior court is to provide these copies to the indicated people. The statute and the AOC form do not require that a copy of the motion be provided to the defendant or the defendant’s attorney.
 - The judge must review the motion and, following review, dispose of the motion or set it for hearing. The statute states that “review” may include conferring with the victim, the prosecutor, the elected District Attorney, and, if the subject of the motion, the head of the concerned law enforcement agency. The statute and AOC form do not require that the defendant or the defendant’s attorney be given notice of the review and any hearing.
 - The judge involved in the criminal proceeding may, on the judge’s own motion, recuse himself or herself if justice requires it. A judge appointed by the AOC in the event of recusal must dispose of the motion or set it for hearing. (This recusal provision is part of revised G.S. 15A-832.1, Responsibilities of judicial officials.)

- If a judge fails to review the motion and dispose of it or set it for hearing in a timely manner, the victim may petition the North Carolina Court of Appeals for a writ of mandamus.
- The statute states that failure to provide a right or service under the article does not provide grounds for relief to a defendant, an inmate, any other accused person or, except as provided by Art. 1, Sec. 37 (Rights of victims of crime) of the North Carolina Constitution, a victim or family member of a victim.
- G.S. 15A-835 details posttrial responsibilities. The revised statute states that a victim does not have a right to be heard on appeal but is permitted to be present at any open appellate hearing.
- G.S. 15A-836 details responsibilities of an agency with custody of a defendant after a final judgment and commitment. The revised statute states that in addition to other information, it must notify the victim of the procedure for alleging a failure of the custodian to notify the victim of the required information.
- G.S. 15A-840, which has limited the relief for violations, and G.S. 15A-841, which has indicated when a family member may assert the rights of a victim, are repealed. Similar provisions are incorporated into the new and revised statutes described above.
- For a further discussion of the provisions in adult criminal cases, see the following blog posts on North Carolina Criminal Law:
 - Shea Denning, [Victims' Rights Bill Sent to Governor](#) (Sep. 4, 2019)
 - Shea Denning, [When Victims' and Defendants' Rights Collide in Court, Who Wins?](#) (Sep. 11, 2019)
 - Jamie Markham, [Crimes Covered under the New Victims' Rights Law](#) (Sep. 27, 2019)
 - Jeff Welty, [Comparing the Role Victims Play in Criminal Court: Mexico vs. North Carolina](#) (Sep. 30, 2019)

The following summary, prepared by School of Government faculty member Jacqueline Greene, summarizes the victims' rights provisions in the act for juvenile delinquency proceedings, which are effective for delinquent acts committed on or after August 31, 2019:

- Adds a new Article 20A, "Rights of Victims of Delinquent Acts," to Chapter 7B of the General Statutes.
- Provides definitions for the meaning of "court proceeding," "family member," "felony property offense," "offense against the person," and "victim" for the purposes of the new Article. G.S. 7B-2051(a).
- Allows for a parent, guardian, or legal custodian, if not the accused person in the matter, to assert the rights of any victim who is a minor or who is legally incapacitated. G.S. 7B-2051(b).
- Allows a family member to assert the victim's rights if the victim is deceased. The guardian or legal custodian of a deceased minor has priority over a family member, and

the right to restitution under G.S. 15A-834 can only be exercised by the personal representative of the victim's estate. G.S. 7B-2051(b).

- Allows an individual entitled to exercise the victim's rights as the appropriate family member to designate any family member to act on the victim's behalf. G.S. 7B-2051(c).
- Provides that if an individual is determined by the district attorney's office to be someone who would not act in the best interests of the victim, that person is not entitled to assert the victim's rights. Any such determination can be reviewed by the court following a petition for review. G.S. 7B-2051(d).
- Establishes victim rights, including the right to: reasonable, accurate, and timely notice of court proceedings (on request); be present at court proceedings of the juvenile (on request); be reasonably heard at court proceedings involving the adjudication, disposition, or release of the juvenile; receive any ordered restitution in a reasonably timely manner; be given information about the offense, how the juvenile justice system works, the rights of victims, and the availability of victim services; receive information about the adjudication or disposition of the case (on request); receive notification of the escape or release of the juvenile (on request); and reasonably confer with the district attorney's office. G.S. 7B-2052.
- Establishes the following responsibilities of the office of the district attorney:
 - Provide the victim certain information within 72 hours of petition filing;
 - Provide the victim a form on which he or she can request to receive notice of court proceedings and information regarding case adjudication and disposition;
 - Make every effort to ensure that a victim's personal information is not disclosed unless otherwise required by law;
 - Offer the victim the opportunity to reasonably confer with an attorney in the district attorney's office to obtain the victim's views about, at least, dismissal, plea or negotiations, disposition, and any dispositional alternatives;
 - Provide and document reasonable, accurate, and timely notice to the victim of the date and time of scheduled court proceedings, as requested;
 - Whenever practical, provide a secure waiting area during court proceedings that does not place the victim in close proximity to the juvenile or the juvenile's family;
 - Prior to the dispositional hearing, notify the victim of the right to request to be notified in advance of the juvenile's scheduled release date if the juvenile is committed to a Youth Development Center (YDC) and of any escape of the juvenile if the juvenile is being held in secure custody or is committed to a YDC. Submit a form to the court at disposition regarding the victim's request for these further notices;
 - Following disposition, provide the victim with information on the adjudication and disposition of the juvenile as requested by the victim. This information is limited to: whether the juvenile was adjudicated, adjudicated offense

classification, available dispositions, any no contact orders as they relate to the victim, and any orders for restitution. G.S. 7B-2053.

- Adds the following responsibilities for judicial officials:
 - In any court proceeding subject to this article and in which the victim may be present, inquire as to whether the victim is present and wishes to be heard. If the victim wishes to be heard, grant an opportunity to be heard through an oral statement, submission of a written statement, or submission of an audio or video statement;
 - Provide the victim an opportunity to be heard regarding the victim's right to be present in the event that an entire hearing has been closed to the victim;
 - Review any motion alleging a violation of the victim's rights established by this Article;
 - Make every effort to provide a secure waiting area during court proceedings that does not place the victim in close proximity to the juvenile or the juvenile's family. G.S. 7B-2054.
- Creates the following responsibilities within the Division of Adult Correction and Juvenile Justice:
 - If a victim has requested to be notified of a juvenile's release from a YDC, notify the victim at least 45 days before releasing the juvenile to post-release supervision, including only the juvenile's initials, offense, date of commitment, projected release date, and any no-contact release conditions related to the victim;
 - Provide the victim an opportunity to be reasonably heard regarding release of the juvenile when determining whether the juvenile is ready for release and consider the victim's views. If the juvenile is determined to be ready for release, consider the victim's views during the post-release supervision planning conference process;
 - If a victim has requested to be notified of the juvenile's escape, notify the victim within 24 hours of any escape from a YDC or from secure custody. If public disclosure of the escape is required, make a reasonable effort to notify the victim before releasing information to the public. Notify the victim within 24 hours of the juvenile's return to custody, even if the juvenile is returned before notification of the escape is required;
 - Notify the victim of the procedure for alleging a failure of the Division to notify the victim of any requested notification of release or escape. G.S. 7B-2055.
- Prohibits examination by and release of confidential juvenile records to victims. Limits disclosure of information contained in a juvenile record to a victim to the information expressly allowed in this Article. G.S. 7B-2057.
- Establishes a judicial process for enforcement of victim rights. Any allegation involving failure of the district attorney to comply with the provisions of this article must begin by

filing a written complaint with the district attorney. The Administrative Office of the Courts must create a form to serve as a motion to enable a victim to allege a violation of the rights provided under this article. The motion must be filed with the clerk of the superior court in the same proceeding giving rise to the rights in question. Victims have a right to consult with counsel, although victims do not have a right to counsel provided by the State. The judge may dispose of the motion through conference or following a hearing. If the judge does not review and dispose of the motion, the victim may petition the Court of Appeals for a writ of mandamus;

- Provides that failure or inability to provide a right or service under this article may not be used as a ground for relief in a juvenile or other civil proceeding except as provided in Section 37 of Article I of the North Carolina Constitution (Rights of Victims of Crimes). G.S. 7B-2058.
- Makes conforming changes regarding existing release and escape notification provisions and confidentiality of juvenile records. G.S. 7B-2514(d), 7B-3000(b), 7B-3100(b), 7B-3102(e).
- Repeals G.S. 7B-2513(j), which previously provided a process for victim notification of release of certain juveniles from YDC commitments.
- Requires the Conference of District Attorneys and the Administrative Office of the Courts to develop and disseminate required forms by August 31, 2019.
- Requires the Administrative Office of the Courts, in consultation with the Conference of District Attorneys, to develop procedures to automate required court date notifications.
- Requirements for development of automated court date notifications are effective September 4, 2019.

41. [S.L. 2019-217](#) (S 574): Study sports betting and establishment of gaming commission.

Effective September 4, 2019, the act directs the North Carolina State Lottery Commission to study several matters related to gaming, including authorizing sports betting, on-site betting at horse steeplechases, and the creation of a commission to oversee gambling. The Commission must report its findings and any proposed legislation to the General Assembly by April 15, 2020.

42. [S.L. 2019-221](#) (H 29): Testing of sexual assault kits. The act, entitled “The Standing Up for Rape Victims (SURVIVOR) Act of 2019,” adds new G.S. 15A-266.5A establishing requirements for testing of sexual assault examination kits, effective September 18, 2019. (For CODIS hits, the act applies to hits received on or after that date.) The act appropriates \$3,000,000 each year of the 2019–21 biennium for the testing of sexual assault examination kits as required by the act. The State Crime Lab must report to the General Assembly by March 1, 2020, on the use of the funds.