

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1102

By: Osburn

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to crime victims; amending 21 O.S.
10 2011, Sections 142A-1, as amended by Section 1,
11 Chapter 258, O.S.L. 2014 and 142A-2, as amended by
12 Section 1, Chapter 380, O.S.L. 2017 (21 O.S. Supp.
13 2018, Sections 142A-1 and 142A-2), which relate to
14 the Oklahoma Victim's Rights Act; clarifying scope of
15 certain definition; expanding list of rights for
16 crime victims to include notification requirements
17 and participation in certain proceedings; allowing
18 crime victims to refuse interviews; providing an
19 exception; directing district attorneys to inform
20 crime victims of certain information relating to
21 juvenile offenders; allowing crime victims to assert
22 and have enforced rights enumerated in the Oklahoma
23 Victim's Rights Act; and providing an effective date.

24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2011, Section 142A-1, as
amended by Section 1, Chapter 258, O.S.L. 2014 (21 O.S. Supp. 2018,
Section 142A-1), is amended to read as follows:

Section 142A-1. For purposes of the Oklahoma Victim's Rights
Act:

1 1. "Crime victim" or "victim" means any person against whom a
2 crime or delinquent act was committed or a person directly and
3 proximately harmed by the commission of a crime or delinquent act,
4 except homicide, in which case the victim may be a surviving family
5 member including a stepbrother, stepsister or stepparent, or the
6 estate when there are no surviving family members other than the
7 defendant, and who, as a direct result of the crime, suffers injury,
8 loss of earnings, out-of-pocket expenses, or loss or damage to
9 property, and who is entitled to restitution from an offender
10 pursuant to an order of restitution imposed by a sentencing court
11 under the laws of this state. The term "victim" does not include
12 the accused or a person whom the court finds would not act in the
13 best interests of a person who is deceased or incompetent, a minor
14 or an incapacitated victim;

15 2. "Injury" means any physical, mental, or emotional harm
16 caused by the conduct of an offender and includes the expenses
17 incurred for medical, psychiatric, psychological, or generally
18 accepted remedial treatment of the actual bodily or mental harm,
19 including pregnancy and death, directly resulting from a crime and
20 aggravation of existing physical injuries, if additional losses can
21 be attributed to the direct result of the crime;

22 3. "Loss of earnings" means the deprivation of earned income or
23 of the ability to earn previous levels of income as a direct result
24 of a crime and the loss of the cash equivalent of social security,

1 railroad retirement, pension plan, retirement plan, disability,
2 veteran's retirement, court-ordered child support or court-ordered
3 spousal support, where the payment is the primary source of the
4 victim's income, and where the victim is deprived of the money as a
5 direct result of the crime;

6 4. "Members of the immediate family" means the spouse, a child
7 by birth or adoption, a stepchild, a parent by birth or adoption, a
8 stepparent, a grandparent, a grandchild, a sibling, or a stepsibling
9 of each victim;

10 5. "Out-of-pocket loss" means the unreimbursed and
11 nonreimbursable expenses or indebtedness incurred for medical care,
12 nonmedical care, or other services necessary for the treatment of
13 the actual bodily or mental harm, including pregnancy and funeral
14 expenses, directly resulting from the crime and aggravation of
15 existing physical injuries, if additional losses can be attributed
16 directly to the crime; the unreimbursed and nonreimbursable expenses
17 for damage to real and personal property as a direct result of the
18 crime, and unreimbursed and nonreimbursable economic losses incurred
19 as a consequence of participation in prosecution and proceedings
20 related to the crime;

21 6. "Property" means any real or personal property;

22 7. "Restitution" means the return of property to the crime
23 victim or payments in cash or the equivalent thereof, and payment in
24 cash or the equivalent thereof as reparation for injury, loss of

1 earnings, and out-of-pocket loss ordered by the court in the
2 disposition of a criminal proceeding;

3 8. "Victim impact statements" means information about the
4 financial, emotional, psychological, and physical effects of a
5 violent crime on each victim and members of their immediate family,
6 or person designated by the victim or by family members of the
7 victim and includes information about the victim, circumstances
8 surrounding the crime, the manner in which the crime was
9 perpetrated, and the opinion of the victim of a recommended
10 sentence; and

11 9. "Violent crime" means any crime listed in paragraph 2 of
12 Section 571 of Title 57 of the Oklahoma Statutes or any attempt,
13 conspiracy or solicitation to commit any such crime or the crime of
14 negligent homicide pursuant to Section 11-903 of Title 47 of the
15 Oklahoma Statutes or the crime of causing great bodily injury while
16 driving under the influence of intoxicating substance pursuant to
17 Section 11-904 of Title 47 of the Oklahoma Statutes.

18 SECTION 2. AMENDATORY 21 O.S. 2011, Section 142A-2, as
19 amended by Section 1, Chapter 380, O.S.L. 2017 (21 O.S. Supp. 2018,
20 Section 142A-2), is amended to read as follows:

21 Section 142A-2. A. The office of the district attorney's
22 office attorney shall inform the victims and witnesses of crimes of
23 their rights under the Oklahoma Victim's Rights Act, which shall
24 include the following rights:

1 1. ~~To~~ Upon request, to be notified and to be present at all
2 proceedings involving the criminal or delinquent conduct, to be
3 heard in any proceeding involving release, plea, sentencing,
4 disposition, parole and any proceeding during which a right of the
5 victim is implicated and to be notified that a court proceeding to
6 which a victim or witness has been subpoenaed will or will not go on
7 as scheduled, in order to save the person an unnecessary trip to
8 court;

9 2. To be treated with fairness and respect for the safety,
10 dignity and privacy of the victim, to receive protection from harm
11 and threats of harm arising out of the cooperation of the person
12 with law enforcement and prosecution efforts, ~~and~~ to be provided
13 with information as to the level of protection available and how to
14 access protection and, upon request, to be notified of any release
15 or escape of an accused;

16 3. To be informed of financial assistance and other social
17 services available as a result of being a witness or a victim,
18 including information on how to apply for the assistance and
19 services;

20 4. To be informed of the procedure to be followed in order to
21 apply for and receive any witness fee to which the victim or witness
22 is entitled;

1 5. To be informed of the procedure to be followed in order to
2 apply for and receive any restitution to which the victim is
3 entitled;

4 6. To be provided, whenever possible, a secure waiting area
5 during court proceedings that does not require close proximity to
6 defendants and families and friends of defendants;

7 7. To have any stolen or other personal property expeditiously
8 returned by law enforcement agencies when no longer needed as
9 evidence. If feasible, all such property, except weapons, currency,
10 contraband, property subject to evidentiary analysis and property
11 the ownership of which is disputed, shall be returned to the person;

12 8. To be provided with appropriate employer intercession
13 services to ensure that employers of victims and witnesses will
14 cooperate with the criminal justice process in order to minimize the
15 loss of pay and other benefits of the employee resulting from court
16 appearances;

17 9. To have the family members of all homicide victims afforded
18 all of the services under this section, whether or not the person is
19 to be a witness in any criminal proceeding;

20 10. To be informed of any plea bargain negotiations and, upon
21 request, to confer with the attorney for the state;

22 11. To have victim impact statements filed with the judgment
23 and sentence;

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1 12. To be informed if a sentence is overturned, remanded for a
2 new trial or otherwise modified by the Oklahoma Court of Criminal
3 Appeals;

4 13. To be informed in writing of all statutory rights;

5 14. To be informed that when any family member is required to
6 be a witness by a subpoena from the defense, there must be a showing
7 that the witness can provide relevant testimony as to the guilt or
8 innocence of the defendant before the witness may be excluded from
9 the proceeding by invoking the rule to remove potential witnesses
10 and to refuse an interview or other request made by the accused or
11 any person acting on behalf of the accused, other than a refusal to
12 appear if subpoenaed by defense counsel;

13 15. To be informed that the Oklahoma Constitution allows, upon
14 the recommendation of the Pardon and Parole Board and the approval
15 of the Governor, the commutation of any sentence, including a
16 sentence of life without parole;

17 16. To receive written notification of how to access victim
18 rights information from the interviewing officer or investigating
19 detective; ~~and~~

20 17. To a speedy disposition of the charges free from
21 unwarranted delay caused by or at the behest of the defendant or
22 minor. In determining a date for any criminal trial or other
23 important criminal or juvenile justice hearing, the court shall
24 consider the interests of the victim of a crime to a speedy

1 resolution of the charges under the same standards that govern the
2 right to a speedy trial for a defendant or a minor. In ruling on
3 any motion presented on behalf of a defendant or minor to continue a
4 previously established trial or other important criminal or juvenile
5 justice hearing, the court shall inquire into the circumstances
6 requiring the delay and consider the interests of the victim of a
7 crime to a speedy resolution of the case. If a continuance is
8 granted, the court shall enter into the record the specific reason
9 for the continuance and the procedures that have been taken to avoid
10 further delays; and

11 18. To any other rights enumerated in Section 34 of Article 2
12 of the Oklahoma Constitution.

13 B. The office of the district ~~attorney's office~~ may attorney
14 shall inform the crime victim of an offense committed by a juvenile
15 of the name and address of the juvenile found to have committed the
16 crime, and shall notify the crime victim ~~of any offense listed in~~
17 ~~Section 2-5-101 of Title 10A of the Oklahoma Statutes~~ of all court
18 hearings involving that particular juvenile act. If the victim is
19 not available, the office of the district ~~attorney's office~~ attorney
20 shall notify an adult relative of the victim of said hearings.

21 C. The office of the district ~~attorney's office~~ attorney shall
22 inform victims of violent crimes and members of the immediate family
23 of such victims of their rights under Sections 142A-8 and 142A-9 of
24 this title and Section 332.2 of Title 57 of the Oklahoma Statutes.

1 D. In any felony case involving a violent crime or a sex
2 offense, the office of the district attorney's office attorney shall
3 inform the victim, as soon as practicable, or an adult member of the
4 immediate family of the victim if the victim is deceased,
5 incapacitated, or incompetent, of the progress of pretrial
6 proceedings which could substantially delay the prosecution of the
7 case.

8 E. The office of the district attorney's office attorney shall
9 inform the crime victim that he or she has the right to utilize the
10 automated notification system provided by the designated Oklahoma
11 victim notification service provider for purposes of receiving
12 information regarding the location of the defendant following an
13 arrest, during a prosecution of the criminal case, during a sentence
14 to probation or confinement, and when there is any release or escape
15 of the defendant from confinement.

16 F. The victim, the attorney for the victim or other lawful
17 representative, or the attorney for the state upon request of the
18 victim may assert, in any trial or appellate court or before any
19 other authority with jurisdiction over the case, and have enforced
20 all of the rights enumerated in this section and any other right
21 afforded to the victim by law. The court or other authority shall
22 act promptly on such a request. The rights afforded victims under
23 the Oklahoma Victim's Rights Act shall be protected in a manner no
24 less vigorous than the rights afforded the accused.

SECTION 3. This act shall become effective November 1, 2019.

COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/28/2019 - DO PASS,
As Amended.