

1 **SENATE FLOOR VERSION**

2 April 9, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 1102

6 By: Osburn of the House

7 and

8 Daniels of the Senate

9 [crime victims - expanding list of rights for crime
10 victims to include notification requirements and
11 participation in certain proceedings - effective date
12]

13 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

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

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

19 1. "Crime victim" or "victim" means any person against whom a
20 crime or delinquent act was committed or a person directly and
21 proximately harmed by the commission of a crime or delinquent act,
22 except homicide, in which case the victim may be a surviving family
23 member including a stepbrother, stepsister or stepparent, or the
24 estate when there are no surviving family members other than the

1 defendant, and who, as a direct result of the crime, suffers injury,
2 loss of earnings, out-of-pocket expenses, or loss or damage to
3 property, and who is entitled to restitution from an offender
4 pursuant to an order of restitution imposed by a sentencing court
5 under the laws of this state. The term "victim" does not include
6 the accused or a person whom the court finds would not act in the
7 best interests of a person who is deceased or incompetent, a minor
8 or an incapacitated victim;

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

16 3. "Loss of earnings" means the deprivation of earned income or
17 of the ability to earn previous levels of income as a direct result
18 of a crime and the loss of the cash equivalent of Social Security,
19 railroad retirement, pension plan, retirement plan, disability,
20 veteran's retirement, court-ordered child support or court-ordered
21 spousal support, where the payment is the primary source of the
22 victim's income, and where the victim is deprived of the money as a
23 direct result of the crime;

24

1 4. "Members of the immediate family" means the spouse, a child
2 by birth or adoption, a stepchild, a parent by birth or adoption, a
3 stepparent, a grandparent, a grandchild, a sibling, or a stepsibling
4 of each victim;

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

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

17 7. "Restitution" means the return of property to the crime
18 victim or payments in cash or the equivalent thereof, and payment in
19 cash or the equivalent thereof as reparation for injury, loss of
20 earnings, and out-of-pocket loss ordered by the court in the
21 disposition of a criminal proceeding;

22 8. "Victim impact statements" means information about the
23 financial, emotional, psychological, and physical effects of a
24 violent crime on each victim and members of their immediate family,

1 or person designated by the victim or by family members of the
2 victim and includes information about the victim, circumstances
3 surrounding the crime, the manner in which the crime was
4 perpetrated, and the opinion of the victim of a recommended
5 sentence; and

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

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

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

20 1. To Upon request, to be notified and to be present at all
21 proceedings involving the criminal or delinquent conduct, to be
22 heard in any proceeding involving release, plea, sentencing,
23 disposition, parole and any proceeding during which a right of the
24 victim is implicated and to be notified that a court proceeding to

1 which a victim or witness has been subpoenaed will or will not go on
2 as scheduled, in order to save the person an unnecessary trip to
3 court;

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

11 3. To be informed of financial assistance and other social
12 services available as a result of being a witness or a victim,
13 including information on how to apply for the assistance and
14 services;

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

18 5. To be informed of the procedure to be followed in order to
19 apply for and receive any restitution to which the victim is
20 entitled;

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

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

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

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

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

16 11. To have victim impact statements filed with the judgment
17 and sentence;

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

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

22 14. To be informed that when any family member is required to
23 be a witness by a subpoena from the defense, there must be a showing
24 that the witness can provide relevant testimony as to the guilt or

1 innocence of the defendant before the witness may be excluded from
2 the proceeding by invoking the rule to remove potential witnesses
3 and to refuse an interview or other request made by the accused or
4 any person acting on behalf of the accused, other than a refusal to
5 appear if subpoenaed by defense counsel;

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

10 16. To receive written notification of how to access victim
11 rights information from the interviewing officer or investigating
12 detective; ~~and~~

13 17. To a speedy disposition of the charges free from
14 unwarranted delay caused by or at the behest of the defendant or
15 minor. In determining a date for any criminal trial or other
16 important criminal or juvenile justice hearing, the court shall
17 consider the interests of the victim of a crime to a speedy
18 resolution of the charges under the same standards that govern the
19 right to a speedy trial for a defendant or a minor. In ruling on
20 any motion presented on behalf of a defendant or minor to continue a
21 previously established trial or other important criminal or juvenile
22 justice hearing, the court shall inquire into the circumstances
23 requiring the delay and consider the interests of the victim of a
24 crime to a speedy resolution of the case. If a continuance is

1 granted, the court shall enter into the record the specific reason
2 for the continuance and the procedures that have been taken to avoid
3 further delays; and

4 18. To any other rights enumerated in Section 34 of Article II
5 of the Oklahoma Constitution.

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

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

18 D. In any felony case involving a violent crime or a sex
19 offense, the office of the district ~~attorney's office~~ attorney shall
20 inform the victim, as soon as practicable, or an adult member of the
21 immediate family of the victim if the victim is deceased,
22 incapacitated, or incompetent, of the progress of pretrial
23 proceedings which could substantially delay the prosecution of the
24 case.

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
20 April 9, 2019 - DO PASS AS AMENDED
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