

An Act

ENROLLED HOUSE
BILL NO. 1102

By: Osburn of the House

and

Daniels of the Senate

An Act relating to crime victims; amending 21 O.S. 2011, Sections 142A-1, as amended by Section 1, Chapter 258, O.S.L. 2014 and 142A-2, as amended by Section 1, Chapter 380, O.S.L. 2017 (21 O.S. Supp. 2018, Sections 142A-1 and 142A-2), which relate to the Oklahoma Victim's Rights Act; clarifying scope of certain definition; expanding list of rights for crime victims to include notification requirements and participation in certain proceedings; directing law enforcement officers to provide written copy of constitutional and statutory rights; directing the Attorney General to prepare and post a sample notification card listing victims' rights on the website of the Attorney General; authorizing law enforcement agencies to download the sample notification card or prepare another form for use; allowing crime victims to refuse certain interviews; providing an exception; directing district attorneys to inform crime victims of certain information relating to juvenile offenders; allowing crime victims to assert and have enforced rights enumerated in the Oklahoma Victim's Rights Act; and providing an effective date.

SUBJECT: Crime victims

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

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

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

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

5. "Out-of-pocket loss" means the unreimbursed and nonreimbursable expenses or indebtedness incurred for medical care, nonmedical care, or other services necessary for the treatment of the actual bodily or mental harm, including pregnancy and funeral expenses, directly resulting from the crime and aggravation of

existing physical injuries, if additional losses can be attributed directly to the crime; the unreimbursed and nonreimbursable expenses for damage to real and personal property as a direct result of the crime, and unreimbursed and nonreimbursable economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime;

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

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

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

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

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

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

1. Upon request, to be notified and to be present at all proceedings involving the criminal or delinquent conduct, to be heard in any proceeding involving release, plea, sentencing, disposition, parole and any proceeding during which a right of the

victim is implicated and to be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court;

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

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

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

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

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

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

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

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

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

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

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

13. To be informed in writing of all constitutional and statutory rights. Upon initial contact with a victim, a municipal, county or state law enforcement officer shall provide the victim with a written copy of the constitutional and statutory rights of the victim unless, in the judgment of the law enforcement officer making the initial contact, the circumstances of the criminal offense or delinquent act and condition of the victim indicates that the victim, family of the victim or dependents of the victim will not be able to understand the significance of the constitutional and statutory rights. If a written copy of the constitutional and statutory rights is not provided upon initial contact with the victim, a written copy of the rights shall be provided on the next contact with the victim by a law enforcement officer with the same law enforcement agency no later than twenty-four (24) hours after the initial contact. The Attorney General shall prepare and place on the official website of the Attorney General a sample notification card listing all constitutional and statutory provisions relative to the rights of victims. The card shall be suitable for law enforcement agencies to download for the purpose of providing the cards to victims in printed form. Law enforcement agencies may use the form prepared by the Attorney General or may prepare and use any other written notification form they see fit as long as all rights under the Oklahoma Victim's Rights Act are included;

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

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

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

17. To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays; and

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

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

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

D. In any felony case involving a violent crime or a sex offense, the office of the district attorney's office ~~attorney~~ shall inform the victim, as soon as practicable, or an adult member of the

immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of the progress of pretrial proceedings which could substantially delay the prosecution of the case.

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

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

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

Passed the House of Representatives the 16th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 20th day of May, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____