

January 28, 1998

HOUSE BILL No. 1398

DIGEST OF HB 1398 (Updated January 27, 1998 2:07 pm - DI 69)

Citations Affected: IC 33-14; IC 35-40.

Synopsis: Victim rights. Provides statutory implementation of the victim rights amendment to the Indiana Constitution (Article 1, Section 13 of the Constitution of the State of Indiana). Outlines the rights of victims, including the right to be notified of and to be present at hearings concerning the accused and to make statements at sentencing hearings. Repeals and replaces the existing statute concerning victim assistance programs. (The introduced version of this bill was prepared by the commission on courts.)

Effective: July 1, 1998.

Villalpando, Richardson, Steele

January 13, 1998, read first time and referred to Committee on Judiciary.
January 27, 1998, amended, reported — Do Pass.

HB 1398—LS 6399/DI 41



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January 28, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1398

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-40 IS ADDED TO THE INDIANA CODE AS
2 A **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
3 **1998]:**
- 4 **ARTICLE 40. VICTIM RIGHTS**
5 **Chapter 1. Legislative Intent**
6 **Sec. 1. The legislature recognizes that many innocent persons**
7 **suffer economic loss and personal injury or death as a result of**
8 **criminal acts. It is the intent of the general assembly of Indiana to**
9 **do the following:**
- 10 (1) **Enact laws that define, implement, preserve, and protect**
11 **the rights guaranteed to crime victims by Article 1, Section 13**
12 **of the Constitution of the State of Indiana.**
- 13 (2) **Ensure that Article 1, Section 13 of the Constitution of the**
14 **State of Indiana is fully and fairly implemented and that all**
15 **crime victims are provided with basic rights of respect,**
16 **protection, participation, and healing of their ordeals.**
- 17 **Chapter 2. Applicability; Standing to Invoke Rights**

HB 1398—LS 6399/DI 41



1 **Sec. 1. A victim has standing to assert the rights established by**
 2 **this article. However, this article does not do any of the following:**

3 **(1) Provide grounds for a victim to challenge a charging**
 4 **decision or a conviction, obtain a stay of trial, or compel a**
 5 **new trial.**

6 **(2) Provide grounds for a person accused of or convicted of a**
 7 **crime to obtain any form of relief.**

8 **Chapter 3. Statutory Construction**

9 **Sec. 1. This article shall be liberally construed to preserve and**
 10 **protect the rights to which a victim of crime is entitled.**

11 **Sec. 2. This article may not be construed to imply that a victim**
 12 **who is confined by the department of correction or by any local**
 13 **law enforcement agency has a right to be released to attend a**
 14 **hearing or that the department of correction or the local law**
 15 **enforcement agency has a duty to transport the confined victim to**
 16 **a hearing.**

17 **Chapter 4. Definitions**

18 **Sec. 1. The definitions in this chapter apply throughout this**
 19 **article.**

20 **Sec. 2. "Postarrest release" means the discharge on**
 21 **recognizance, bond, or other condition imposed under IC 35-33 of**
 22 **a person who is accused of committing an offense from**
 23 **confinement.**

24 **Sec. 3. "Postconviction release" means parole, work release,**
 25 **community corrections, or any other permanent, conditional, or**
 26 **temporary discharge from confinement of a person who is confined**
 27 **in:**

- 28 **(1) the custody of:**
 29 **(A) the department of correction; or**
 30 **(B) a sheriff;**
 31 **(2) a county jail; or**
 32 **(3) a secure mental health facility.**

33 **Sec. 4. "Public court proceeding" means a hearing, argument,**
 34 **or other matter scheduled by and held before a trial court. The**
 35 **term does not include:**

- 36 **(1) a deposition;**
 37 **(2) a lineup;**
 38 **(3) a grand jury proceeding; or**
 39 **(4) any other procedure not held in the presence of a court**
 40 **having jurisdiction.**

41 **Sec. 5. "Victim" means a person, corporation, partnership, or**
 42 **association who has suffered harm as a result of a criminal offense**



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or a delinquent act.

Chapter 5. Victim Rights

Sec. 1. A victim has the right to be treated with fairness, dignity, and respect throughout the criminal justice process.

Sec. 2. A victim has the right to be informed, upon request, when a person who is:

- (1) accused of committing; or**
- (2) convicted of committing;**

a crime against the victim is released from custody or has escaped.

Sec. 3. A victim has the right to confer with a representative of the prosecuting attorney's office:

- (1) after a crime allegedly committed against the victim has been charged;**
- (2) before the trial of a crime allegedly committed against the victim; and**
- (3) before any disposition of a criminal case involving the victim.**

This right does not include the authority to direct the prosecution of a criminal case involving the victim.

Sec. 4. A victim has the right to have the victim's safety considered in determining release from custody of a person accused of committing a crime against the victim.

Sec. 5. A victim has the right to timely disposition of the criminal case following the arrest of a person accused of committing a crime against the victim.

Sec. 6. A victim has the right to be heard at any proceeding involving sentence, or a postconviction release decision.

Sec. 7. A victim has the right to make a written or oral statement for use in preparation of the presentence report and the right to read presentence reports relating to the crime committed against the victim, except those portions of the reports containing confidential information.

Sec. 8. A victim has the right to pursue an order of restitution or other civil remedies against the person convicted of a crime against the victim.

Sec. 9. A victim has the right to information, upon request, about the disposition of the criminal case involving the victim or the conviction, sentence, and release of a person accused of committing a crime against the victim.

Sec. 10. A victim has the right to be informed of the victim's constitutional and statutory rights.

Chapter 6. Prosecuting Attorney Duties and Victim Assistance

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Programs

Sec. 1. This chapter applies when:

- (1) law enforcement officials have received a report of an alleged offense not later than five (5) days after the alleged offense occurred or was discovered, unless the prosecuting attorney having jurisdiction finds that the report was not made within the five (5) day period due to circumstances beyond the control of a victim of the alleged offense; and**
- (2) a victim fully cooperates with and responds to reasonable requests from law enforcement officials and the prosecuting attorney.**

Sec. 2. A prosecuting attorney shall ensure the following:

- (1) That the full impact of an offense is brought to the attention of the court.**
- (2) That victims are treated with dignity, respect, and sensitivity at all stages of the criminal justice process.**
- (3) That the rights of victims are vigorously protected by law enforcement agencies and the office of the prosecuting attorney.**

Sec. 3. A prosecuting attorney may contract with a person to operate a victim assistance program to provide the services required under this chapter.

Sec. 4. A prosecuting attorney or a victim assistance program shall do the following:

- (1) Inform a victim that the victim may be present at all public stages of the criminal justice process to the extent that:

 - (A) the victim's presence and statements do not interfere with a defendant's constitutional rights; and**
 - (B) there has not been a court order restricting, limiting, or prohibiting attendance at the criminal proceedings.****
- (2) Timely notify a victim of all criminal justice hearings and proceedings that are scheduled for a criminal matter in which the victim was involved.**
- (3) Promptly notify a victim when a criminal court proceeding has been rescheduled or canceled.**
- (4) Obtain an interpreter or translator, if necessary, to advise a victim of the rights granted to a victim under the law.**
- (5) Coordinate efforts of local law enforcement agencies that are designed to promptly inform a victim after an offense occurs of the availability of, and the application process for, community services for victims and the families of victims, including information concerning services such as the**

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- 1 following:
- 2 (A) Victim compensation funds.
- 3 (B) Victim assistance resources.
- 4 (C) Legal resources.
- 5 (D) Mental health services.
- 6 (E) Social services.
- 7 (F) Health resources.
- 8 (G) Rehabilitative services.
- 9 (H) Financial assistance services.
- 10 (I) Crisis intervention services.
- 11 (J) Transportation and child care services to promote the
- 12 participation of a victim or a member of the victim's
- 13 immediate family in the criminal proceedings.
- 14 (6) Inform the victim that the court may order a defendant
- 15 convicted of the offense involving the victim to pay restitution
- 16 to the victim under IC 35-50-5-3.
- 17 (7) Upon request of the victim, inform the victim of the terms
- 18 and conditions of release of the person accused of committing
- 19 a crime against the victim.
- 20 (8) Upon request of the victim, give the victim notice of the
- 21 criminal offense for which:
- 22 (A) the defendant accused of committing the offense
- 23 against the victim was convicted or acquitted; or
- 24 (B) the charges were dismissed against the defendant
- 25 accused of committing the offense against the victim.
- 26 (9) In a county having a victim-offender reconciliation
- 27 program (VORP), provide an opportunity for a victim, if the
- 28 accused person or the offender agrees, to:
- 29 (A) meet with the accused person or the offender in a safe,
- 30 controlled environment;
- 31 (B) give to the accused person or the offender, either orally
- 32 or in writing, a summary of the financial, emotional, and
- 33 physical effects of the offense on the victim and the victim's
- 34 family; and
- 35 (C) negotiate a restitution agreement to be submitted to the
- 36 sentencing court for damages incurred by the victim as a
- 37 result of the offense.
- 38 (10) Assist a victim in preparing verified documentation
- 39 necessary to obtain a restitution order under IC 35-50-5-3.
- 40 (11) Advise a victim of other rights granted to a victim under
- 41 the law.
- 42 Sec. 5. (a) If a victim participates in a victim-offender

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1 reconciliation program (VORP) operated by a victim assistance
 2 program under section 4(a)(9) of this chapter, the victim shall
 3 execute a waiver releasing:

- 4 (1) the prosecuting attorney responsible for the victim
 5 assistance program; and
 6 (2) the victim assistance program;

7 from civil and criminal liability for actions taken by the victim, an
 8 accused person, or an offender as a result of participation by the
 9 victim, the accused person, or the offender in a victim-offender
 10 reconciliation program (VORP).

11 (b) A victim is not required to participate in a victim-offender
 12 reconciliation program (VORP) under section (4)(a)(9) of this
 13 chapter.

14 **Sec. 6. If:**

15 (1) a victim submits to the prosecuting attorney an affidavit
 16 asserting:

17 (A) that an act or threat of physical violence or
 18 intimidation has been made against the victim or the
 19 immediate family of the victim; and

20 (B) that the act or threat described in clause (A) has been
 21 made by the defendant or at the direction of the defendant;
 22 and

23 (2) the prosecuting attorney has reason to believe the
 24 allegations in the affidavit are true and warrant the filing of
 25 a motion for bond revocation;

26 the prosecuting attorney shall file a motion under IC 35-33-8-5
 27 requesting the court to revoke the defendant's bond or order for
 28 personal recognizance.

29 **Sec. 7. If the defendant is convicted, the victim shall be notified,
 30 if applicable, of the following:**

- 31 (1) The function of the presentence report.
 32 (2) The name and telephone number of the probation
 33 department that is preparing the presentence report.
 34 (3) The right to make a victim impact statement under
 35 IC 35-38-1-8.5.
 36 (4) The defendant's right to review the presentence report.
 37 (5) The victim's right to review the presentence report, except
 38 those parts excised by the court or made confidential by law.
 39 (6) The victim's right to be present and heard at any
 40 sentencing procedure under IC 35-40-5-6.
 41 (7) The time, place, and date of the sentencing proceeding.

42 **Sec. 8. The prosecuting attorney or a victim assistance program**



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1 shall advise a victim on how the request form completed under
 2 section 6 of this chapter may be filed with the appropriate agencies
 3 and departments.

4 **Sec. 9. (a)** Notice provided under this chapter does not relieve a
 5 probation department of responsibility under IC 35-38-1-8.5 to
 6 initiate the contact between a victim and the probation department
 7 concerning the consequences suffered by the victim as a result of
 8 the crime.

9 **(b)** At the time of contact with a victim, a probation department
 10 shall advise the victim of the date, time, and place of sentencing
 11 and of the victim's right to be present and to be heard at the
 12 proceeding.

13 **Sec. 10.** If a person convicted of a crime against the victim seeks
 14 appellate review or attacks the person's conviction or sentence, the
 15 prosecuting attorney or the office of the attorney general,
 16 whichever is appropriate, shall inform the victim, upon request, of
 17 the status of the case and of the decision of the court.

18 **Chapter 7. Notice of Release on Bond or Escape**

19 **Sec. 1.** The law enforcement agency having custody of a person
 20 accused of committing a crime against a victim shall personally
 21 communicate notice to the victim in the most expeditious manner
 22 possible if the accused person escapes from the custody of the law
 23 enforcement agency.

24 **Sec. 2.** Upon request of a victim, the office of the prosecuting
 25 attorney having jurisdiction or a law enforcement agency having
 26 custody of a person accused of a crime against the victim shall
 27 notify the victim of the scheduling of a bond hearing, the escape or
 28 death of a person accused of committing a crime against the victim,
 29 release of a person convicted of a crime against the victim to a
 30 work release program, or any other type of postarrest release of a
 31 person convicted of a crime against the victim.

32 **Chapter 8. Notice of Probation Modification, Revocation or**
 33 **Termination**

34 **Sec. 1.** Upon request of a victim, a criminal court shall notify the
 35 victim of any probation revocation disposition proceeding or
 36 proceeding in which the court is asked to terminate the probation
 37 of a person who is convicted of a crime against the victim.

38 **Sec. 2.** Upon request of a victim, the probation department shall
 39 notify the victim of a modification of the terms of probation of a
 40 person convicted of a crime against the victim only if:

- 41 (1) the modification will substantially affect the person's
 42 contact with or safety of the victim; or

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1 (2) the modification affects the person's restitution or
2 confinement status.

3 Chapter 9. Notice of Release, Discharge, or Escape from a
4 Mental Health Treatment Agency or Community Corrections
5 Program

6 Sec. 1. If a victim has made a request for notice, a mental health
7 treatment agency or community corrections program shall mail a
8 notification to the victim not later than ten (10) days before the
9 release or discharge of a person:

10 (1) accused or convicted of committing a criminal offense
11 against the victim; and

12 (2) notice of the release or discharge of the person who is
13 placed by court order with the mental health treatment
14 agency or community corrections program.

15 Sec. 2. A mental health treatment agency or community
16 corrections program shall personally communicate notice to a
17 victim in the most expeditious manner possible immediately after
18 the escape or subsequent readmission of a person:

19 (1) accused or convicted of committing a criminal offense
20 against the victim; and

21 (2) placed by court order with the mental health treatment
22 agency or community corrections program.

23 Chapter 10. Request for Notice

24 Sec. 1. (a) A victim shall provide to and maintain with the
25 agency that is responsible for providing notice to the victim a
26 request for notice on a form that is provided by that agency. The
27 form shall include a telephone number and address for the victim.
28 If the victim fails to keep the victim's telephone number and
29 address current, the agency may withdraw the victim's request for
30 notice.

31 (b) A victim may restore a request for notice of subsequent
32 proceedings by filing, on a request form provided by an agency, the
33 victim's current telephone number and address.

34 Sec. 2. A notice provided to a victim under this article must be
35 on a form developed by the attorney general of Indiana.

36 Chapter 11. Victim's Discretion; Form of Statement

37 Sec. 1. It is at the victim's discretion to exercise the victim's
38 rights under this article to be present and to be heard at court
39 proceedings, and the absence of the victim at a court proceeding
40 does not preclude the court from holding the proceeding.

41 Sec. 2. Except as provided in section 3 of this chapter, a victim's
42 right to be heard may be exercised, at the victim's discretion,



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1 through an oral statement, submission of a written statement, or
2 submission of a statement through audiotape or videotape.

3 **Sec. 3. If a victim is in custody for committing or allegedly**
4 **committing an offense, the victim may be heard by submitting a**
5 **written statement to the court.**

6 **Chapter 12. Inability to Exercise Rights, Designation of Others;**
7 **Representative of a Minor**

8 **Sec. 1. (a) If a victim is physically or emotionally unable to**
9 **exercise any right but is able to designate a lawful representative**
10 **who is not a bona fide witness, the designated person may exercise**
11 **the same rights that the victim is entitled to exercise.**

12 **(b) A victim may revoke the designation of a representative at**
13 **any time and exercise the victim's rights.**

14 **Sec. 2. If a victim is incompetent, deceased, or otherwise**
15 **incapable of designating another person to act in the victim's place,**
16 **the court may appoint, upon request of the prosecuting attorney,**
17 **a lawful representative who is not a witness.**

18 **Sec. 3. If the victim is a minor, the victim's parents or legal**
19 **guardian may exercise all of the victim's rights on behalf of the**
20 **victim.**

21 **Sec. 4. The court shall consider the following guidelines in**
22 **appointing a person to represent an incompetent or deceased**
23 **victim:**

24 **(1) Whether there is a relative of the victim who is not**
25 **substantially or adversely affected by the conflict occasioned**
26 **by the allegation of criminal conduct against a member of the**
27 **immediate family of the incompetent victim.**

28 **(2) The person's willingness and ability to do all of the**
29 **following:**

30 **(A) Work with and accompany the victim through all**
31 **proceedings, including criminal, civil, and dependency**
32 **proceedings.**

33 **(B) Communicate with the victim.**

34 **(C) Express the concerns of the victim to those authorized**
35 **to come in contact with the victim as a result of the**
36 **proceedings.**

37 **(3) The person's training, if any, to serve as an incompetent**
38 **victim's representative.**

39 **(4) The likelihood of the person being called as a witness in the**
40 **criminal case involving the incompetent victim.**

41 **SECTION 2. IC 33-14-10 IS REPEALED [EFFECTIVE JULY 1,**
42 **1998].**



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1398, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 6 through 7.

Page 2, line 8, delete "(3)" and insert "(2)".

Page 2, line 27, delete "home detention," and insert "**community corrections,**".

Page 6, line 31, delete "and upon the victim's".

Page 6, line 32, delete "request,".

Page 7, line 22, delete "notify the" and insert "**personally communicate notice to the victim in the most expeditious manner possible**".

Page 7, line 23, delete "victim".

Page 7, line 39, delete "a criminal court" and insert "**the probation department**".

Page 8, line 5, after "Agency" insert "**or Community Corrections Program**".

Page 8, line 7, after "agency" insert "**or community corrections program**".

Page 8, line 13, delete "." and insert "**or community corrections program.**".

Page 8, line 14, after "agency" insert "**or community corrections program**".

Page 8, line 14, delete "mail a" and insert "**personally communicate notice to a victim in the most expeditious manner possible**".

Page 8, line 15, delete "notification to a victim".

Page 8, line 20, delete "." and insert "**or community corrections program.**".

and when so amended that said bill do pass.

(Reference is to House Bill 1398 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 9, nays 3.



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