

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## SENATE ENROLLED ACT No. 44

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

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

SECTION 1. IC 35-40 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

### **ARTICLE 40. VICTIM RIGHTS**

#### **Chapter 1. Legislative Intent**

**Sec. 1. The legislature recognizes that many innocent persons suffer economic loss and personal injury or death as a result of criminal or delinquent acts. It is the intent of the general assembly to do the following:**

**(1) Enact laws that define, implement, preserve, and protect the rights guaranteed to victims by Article 1, Section 13 of the Constitution of the State of Indiana.**

**(2) Ensure that Article 1, Section 13 of the Constitution of the State of Indiana is fully and fairly implemented.**

#### **Chapter 2. Applicability; Standing to Invoke Rights**

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

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

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(2) Give rise to a claim for damages against the state of Indiana, a political subdivision, or any public official.

(3) Provide grounds for a person accused of or convicted of a crime or an act of delinquency to obtain any form of relief.

#### **Chapter 3. Statutory Construction**

**Sec. 1.** This article shall be construed to preserve and protect the rights to which a victim is entitled without interfering with the rights of the accused to receive a fair trial or the duty of the prosecuting attorney to represent the people of Indiana.

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

**Sec. 3.** In cases involving a delinquent act, a reference in this article to:

(1) a criminal court shall be treated as a reference to the juvenile court; and

(2) a criminal proceeding or an action related to a criminal proceeding shall be treated as a reference to the equivalent proceeding or action under IC 31.

#### **Chapter 4. Definitions**

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

**Sec. 2.** "Accused" means that an indictment or information charging a person with a crime or a petition alleging that a child is a delinquent child has been filed.

**Sec. 3.** "Crime" includes a delinquent act.

**Sec. 4.** "Delinquent act" has the meaning set forth in IC 31-37-1-2.

**Sec. 5.** "Postarrest release" means the discharge on recognizance, bond, or other condition imposed under IC 31 or IC 35-33 of an accused person from confinement.

**Sec. 6.** "Postconviction release" means parole, work release, home detention, or any other permanent, conditional, or temporary discharge from confinement of a person who is confined in:

(1) the custody of:

(A) the department of correction; or

(B) a sheriff;

(2) a county jail;



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- (3) a secure mental health facility; or
- (4) a secure juvenile facility or shelter care facility.

**Sec. 7. "Public court proceeding"** means a hearing, an argument, or another matter scheduled by and held before a trial court. The term does not include:

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

**Sec. 8. "Victim"** means a person that has suffered harm as a result of a crime that was perpetrated directly against the person. The term does not include a person that has been charged with a crime arising out of the same occurrence.

#### **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)** 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 perpetrated directly against the victim is released from custody or has escaped.

(b) Whenever a person accused or convicted of committing a crime is released or escapes from the custody of a mental health treatment agency or a hospital that is not operated by a county sheriff or the department of correction, the court committing the accused or convicted person to the mental health treatment agency or hospital shall carry out this section to inform the victim of the release or escape. The mental health treatment agency or hospital shall provide the court with sufficient information about the release or escape to allow the court to carry out this section.

**Sec. 3. (a)** This section applies if either of the following has occurred:

- (1) The alleged felony or delinquent act that would have been a felony if committed by an adult was directly perpetrated against the victim.
- (2) The alleged felony, misdemeanor, or delinquent act that would have been a felony or misdemeanor if committed by an adult was:

- (A) a violation of IC 35-42-2 (offenses against the person), IC 35-45-2-1 (intimidation), IC 35-45-2-2 (harassment),

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IC 35-46-1-15.1 (invasion of privacy), or IC 35-47-4-3 (pointing a firearm); and

(B) directly perpetrated against the victim by a person who:

- (i) is or was a spouse of the victim;
- (ii) is or was living as if a spouse of the victim; or
- (iii) has a child in common with the victim.

(3) The alleged misdemeanor or delinquent act that would have been a misdemeanor if committed by an adult, other than a misdemeanor described in subdivision (2), was directly perpetrated against the victim, and the victim has complied with the notice requirements under IC 35-40-10.

(b) 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 be heard at any proceeding involving sentence or a postconviction release decision.

Sec. 6. (a) A victim has the right to make a written or oral statement for use in preparation of the presentence report.

(b) Notwithstanding IC 35-38-1-13, the victim has the right to read presentence reports relating to the crime committed against the victim, except those parts of the reports containing the following:

- (1) The source of confidential information.
- (2) Information about another victim.
- (3) Other information determined confidential or privileged by the judge in a proceeding.

The information given to the victim must afford the victim a fair opportunity to respond to the material included in the presentence report.

Sec. 7. A victim has the right to pursue an order of restitution and other civil remedies against the person convicted of a crime

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against the victim.

**Sec. 8.** 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. 9.** A victim has the right to be informed of the victim's constitutional and statutory rights.

**Chapter 6. Prosecuting Attorney Duties and Victim Assistance 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 provide that:

- (1) victims are treated with dignity, respect, and sensitivity at all stages of the criminal justice process; and
- (2) the rights of victims are protected.

**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

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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 following:

- (A) Victim compensation funds.
  - (B) Victim assistance resources.
  - (C) Legal resources.
  - (D) Mental health services.
  - (E) Social services.
  - (F) Health resources.
  - (G) Rehabilitative services.
  - (H) Financial assistance services.
  - (I) Crisis intervention services.
  - (J) Transportation and child care services to promote the participation of a victim or a member of the victim's immediate family in the criminal proceedings.
- (6) Inform the victim that the court may order a defendant convicted of the offense involving the victim to pay restitution to the victim under IC 35-50-5-3.
- (7) Upon request of the victim, inform the victim of the terms and conditions of release of the person accused of committing a crime against the victim.
- (8) Upon request of the victim, give the victim notice of the criminal offense for which:
- (A) the defendant accused of committing the offense against the victim was convicted or acquitted; or
  - (B) the charges were dismissed against the defendant accused of committing the offense against the victim.
- (9) In a county having a victim-offender reconciliation program (VORP), provide an opportunity for a victim, if the accused person or the offender agrees, to:
- (A) meet with the accused person or the offender in a safe, controlled environment;
  - (B) give to the accused person or the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim and the victim's family; and
  - (C) negotiate a restitution agreement to be submitted to the sentencing court for damages incurred by the victim as a result of the offense.
- (10) Assist a victim in preparing verified documentation

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necessary to obtain a restitution order under IC 35-50-5-3.

(11) Advise a victim of other rights granted to a victim under the law.

**Sec. 5. (a) If a victim participates in a victim-offender reconciliation program (VORP) operated by a victim assistance program under section 4(9) of this chapter, the victim shall execute a waiver releasing:**

(1) the prosecuting attorney responsible for the victim assistance program; and

(2) the victim assistance program;

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

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

**Sec. 6. If:**

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

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

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

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

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

**Sec. 7. If the defendant is convicted, and upon the victim's request, the victim shall be notified, if applicable, of the following:**

(1) The function of the presentence report.

(2) The name and telephone number of the probation department that is preparing the presentence report.

(3) The right to make a victim impact statement under IC 35-38-1-8.5.

(4) The defendant's right to review the presentence report.

(5) The victim's right to review the presentence report, except those parts excised by the court or made confidential by IC 35-40-5-7.

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(6) The victim's right to be present and heard at any sentencing procedure under IC 35-40-5-6.

(7) The time, place, and date of the sentencing proceeding.

**Sec. 8.** The prosecuting attorney or a victim assistance program shall advise a victim on how the request form completed under section 6 of this chapter may be filed with the appropriate agencies and departments.

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

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

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

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

**Sec. 1.** The law enforcement agency having custody of a person accused of committing a crime against a victim shall notify the victim if the accused person escapes from the custody of the law enforcement agency.

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

**Sec. 3.** A notice under this chapter must be given by a law enforcement agency that has custody of the person at the time of the escape or release to a victim:

- (1) before the person is released by the law enforcement agency, if possible; or
- (2) as soon as practicable after the person escapes or has been released by the law enforcement agency.

#### **Chapter 8. Notice of Probation Modification, Revocation, or**

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### **Termination**

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

**Sec. 2.** Upon request of a victim, a criminal court shall notify the victim of a modification of the terms of probation of a person convicted of a crime against the victim only if:

- (1) the modification will substantially affect the person's contact with or safety of the victim; or
- (2) the modification affects the person's restitution or confinement status.

### **Chapter 9. Notice of Release, Discharge, or Escape From a Mental Health Treatment Agency**

**Sec. 1.** If the court described in IC 35-40-5-2 has received a request for notice from a victim and has communicated the request to a mental health treatment agency, the mental health treatment agency shall mail a notification to the court described in IC 35-40-5-2 not later than ten (10) days before the release or discharge of a person:

- (1) accused or convicted of committing a criminal offense against the victim; and
- (2) placed by court order with the mental health treatment agency.

**Sec. 2.** A mental health treatment agency shall immediately notify the court described in IC 35-40-5-2 after the escape or subsequent readmission of a person:

- (1) accused or convicted of committing a criminal offense against the victim; and
- (2) placed by court order with the mental health treatment agency.

**Sec. 3.** The court described in IC 35-40-5-2 shall give the notice required under IC 35-40-5-2 on behalf of the mental health treatment agency.

### **Chapter 10. Request for Notice**

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



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

Sec. 2. A notice provided to a victim under this article must be on a form designated by the prosecuting attorney. The prosecuting attorneys council of Indiana established under IC 33-14-8-1 shall develop and disseminate model notice forms for use by prosecuting attorneys.

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

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

Sec. 2. Except as provided in section 3 of this chapter, a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement, or submission of a statement through audiotape or videotape.

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

**Chapter 12. Procedures Related to Notices and Consultations**

Sec. 1. (a) This section applies if:

- (1) the victim is an individual;
- (2) the victim is incompetent, deceased, less than eighteen (18) years of age, or otherwise incapable of receiving or understanding a notice or consultation required under this article; and
- (3) a person has not been designated under IC 35-40-13 to exercise the rights of the victim under this article.

(b) A notice or consultation required under this article may be performed by notifying or consulting with at least one (1) of the next of kin or the parent, guardian, or custodian of the victim.

Sec. 2. (a) This section applies if the victim is an entity other than an individual.

(b) A notice or consultation required under this article may be performed by notifying or consulting with a responsible officer or agent of the entity.

Sec. 3. (a) This section applies if the victim is a partnership.

(b) A notice or consultation required under this article may be performed by notifying or consulting with at least one (1) partner.

Sec. 4. (a) This section applies if the victim is an entity other than an individual.



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(b) A request for notice under IC 35-40-10 must identify the name and the mailing address of the person who is to receive notices and consultations on behalf of the entity.

Sec. 5. (a) This section applies if there are multiple victims that are entitled to notices or consultations under this article.

(b) The prosecuting attorney for the county in which the crime occurred may adopt procedures that afford to a group of victims the rights afforded by this article.

**Chapter 13. Inability to Exercise Rights, Designation of Others; Representative of a Minor**

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

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

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

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

Sec. 4. If section 3 of this chapter does not apply, the court shall consider appointing a relative of the incompetent, deceased, or otherwise incapable victim as the lawful representative.

Sec. 5. The court shall consider the following guidelines in appointing a person to represent an incompetent or deceased victim:

- (1) Any conflict occasioned by the allegation of criminal conduct that substantially or adversely affected the person.
- (2) The person's willingness and ability to do all of the following:
  - (A) Work with and accompany the victim through all proceedings, including criminal, civil, and dependency proceedings.
  - (B) Communicate with the victim.
  - (C) Express the concerns of the victim to those authorized to come in contact with the victim as a result of the proceedings.
- (3) The person's training, if any, to serve as a representative of the incompetent victim.

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

SECTION 2. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1,1999]: IC 33-14-10; IC 35-33-12.

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