



**North Carolina**  
Victim Assistance Network



# **NORTH CAROLINA CRIME VICTIMS' RIGHTS ACT SUMMARY**

**INTRODUCTION TO THE CRIME VICTIMS'  
RIGHTS ACT (MARSY'S LAW)**

# WHERE ARE WE NOW?

Historically, the North Carolina Victim Assistance Network (NCVAN) has received a high volume of calls from crime victims/survivors/loved ones of homicide victims\* indicating that they were never informed of their rights. If/when they suddenly learned they had rights - either during court proceedings or at the end - it was too late and there was no recourse or "remedy." This reality was the primary reason NCVAN supported Marsy's Law.

While it is true that the former NC Crime Victims' Rights Act gave rights to the victim that are much like those in our current NC Crime Victims' Rights Act (Marsy's Law), many of those rights were qualified by "...as prescribed by law" - so the previous amendment, in effect, deferred to statute. Marsy's Law goes a step further and eliminates the "...as prescribed by law" and elevates victims' rights by offering constitutional protection that is not qualified by statute. Simply put, the effect of the previous crime victims' rights amendment could be somewhat fluid by changing applicable statutes - so how those rights played out on the ground was left to the whim of potentially changing statutes.

Furthermore, the strengthening of victims' rights, through Marsy's Law, now allows victims to petition the court when/if they are not afforded their rights during the court process. This is a remedy available to victims under our current Crime Victims' Rights Act (Marsy's Law) that was not present in the previous Crime Victims' Rights Act.

NCVAN's belief is that the process of affording victims their rights, as a result of the previous amendment, was less than satisfactory and resulted in victims being overlooked. We believe that the current Crime Victims' Rights Amendment (Marsy's Law) will improve the way NC protects and serves victims by requiring process improvement (through policy and procedure) to ensure remedy is available to victims who are not afforded their rights - something the previous amendment failed to do. NCVAN is committed to process improvement efforts (checks and balances) that will prevent victims from being overlooked as they are thrown into a complicated process (court system) which is a process that is most often alien to anything they have ever experienced and at a time when they are most vulnerable.

So, where are we now? While many agencies around the state continue their work to improve processes in order to ensure compliance with the new NC Crime Victims' Rights amendment, the national and state Marsy's Law teams have convened an advisory committee of North Carolina's key stakeholders. The purpose of the committee is to gauge where North Carolina stands regarding transitioning, to identify existing barriers, to determine which systems may collaborate to improve outcomes for key agencies tasked with notifying victims of their rights, and to keep victims of crime at the center of the conversation.

The first step to ensure compliance is to understand the responsibilities and requirements outlined in the new Crime Victims' Rights Act. NCVAN has dedicated resources to this initiative by breaking down the entire amendment in a manner that we believe is easier for lay people/crime victims and survivors to follow and to understand. This information can also be used as a quick reference for criminal justice professionals and allied partners as it is written in plain language and is easy to navigate.

\*Will be referred to as "victims" for the remainder of the summary

# WHAT ARE MY RIGHTS AS A CRIME VICTIM?

## **NCGS – Chapter 15A - Article 46: Crime Victims’ Rights Act**

In 1998 North Carolina Victim Assistance Network (NCVAN) championed the initial Crime Victims’ Rights Act (CVRA) which compelled the criminal legal system to treat victims of crime in a dignified and respectful manner. The CVRA set forth rights to be afforded to crime victims which provided them with services and information as they moved through the criminal legal process. However, the 1998 CVRA failed to prescribe compliance and possible remedies (a means of legal reparation) if those rights were not provided by each of the responding disciplines (law enforcement and the District Attorney’s Office).

In 2019 North Carolina endeavored to correct this shortcoming with an enhanced version of the CVRA referred to as Marsy’s Law. This enhanced amendment for North Carolina has incorporated compliance requirements for each agency, as well as remedies for violations of those rights should any violation occur.

As a person who has been affected by crime, you have the right to know what each agency’s responsibilities are to you throughout the criminal investigation and the judicial proceedings. You also have the right to assert a claim for rights’ violations with the responsible agency. If that claim does not result in a reasonable resolution, you have the right to appeal.

NCVAN has worked diligently to bring the opportunity to North Carolina for victim’s voices to be heard and considered. NCVAN advocated for Marsy’s Law rights to modify and strengthen the existing CVRA. It is NCVAN’s intent to offer the following summary of this enhanced amendment so that you will be informed and better equipped to advocate for yourself.

Please understand that NCVAN’s summary of the CVRA is not legal advice, but a simpler explanation to ensure decisions made during a traumatic time are informed and accomplish the best outcomes for you as a victim.

## **Who is a Victim under NC Crime Victims’ Rights Act?**

“Victim. - A person against whom there is probable cause to believe an offense against the person or a felony property crime has been committed.” The CRVA added certain offenses against a person and/or property, as well as offenses or acts of delinquency to this definition.

Under the CVRA, the category of victim is extended to include family members or the person legally responsible for the crime victim who is deceased as a result of the crime or, if the victim is a minor or is legally incapacitated. That person may be “a parent, guardian, or legal custodian, sibling or grandparent of the victim” or “a personal representative of the victim's estate or family member may act on behalf of the victim.”

The CVRA states that the accused (person charged with the crime and arrested), even if he/she is a family member or legally responsible person of the victim, is not eligible to exercise these rights.

## Critical Phases in the Criminal Legal Process:

When a crime occurs, there will be responding agencies who are responsible for conducting the appropriate and legal response to victims of crime. Law Enforcement will commonly be the entry point for victims of crime as law enforcement will conduct an investigation and possibly charge the accused with a crime. Upon the arrest of the accused, the District Attorney's Office will conduct the next phase within the judicial process and will be responsible for the case as it moves through the court process towards final disposition. At some point other professionals within the criminal justice system such as judicial officials, the Clerk's Office and possibly, the Department of Community Corrections for Adults and Juveniles, may also be responsible for providing you with your entitled rights.

## What are my rights under the NC-CVRA?

A victim of crime shall be treated with dignity and respect by the criminal justice system.

1. The right, \*\*upon request, to reasonable, accurate, and timely notice of court proceedings of the accused.
2. The right, upon request, to be present at court proceedings of the accused.
3. The right to be reasonably heard at court proceedings involving a plea that disposes of the case or the conviction, sentencing, or release of the accused.
4. \*\*\* The right to receive restitution in a reasonably timely manner, when ordered by the court.
5. The right to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.
6. The right, upon request, to receive information about the conviction or final disposition and sentence of the accused.
7. The right, upon request, to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.
8. The right to present the victim's views and concerns in writing to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.
9. The right to reasonably confer with the district attorney's office.

### **\*\*What is the significance of "upon request" in the CVRA? Why do I have to request my rights? Shouldn't my rights be afforded to me automatically?**

Victims must "request" or "opt-in" to receive their rights. This means that when the District Attorney's office informs you of your rights, you must in return communicate to the District Attorney's Office that you want to exercise all of your rights, some of your rights, or none of your rights. Some victims do not want to participate in the criminal legal process and it is important that already overburdened criminal justice officials are not expending energy to locate and inform victims who do not want to participate in court proceedings.



\*\*\*Please note that as a victim of a crime you have the right to receive restitution as ordered by the court pursuant to North Carolina General Statutes Chapter 15 - Article 81C. This means that at the sentencing hearing the court will determine whether to order the defendant to pay restitution to you as the victim of the defendant's crime.

### **How will I receive the notifications mentioned in the CVRA?**

It is important to know that the notification process will likely be different in each prosecutorial district. It is important that you ask questions of how specific notifications will happen when you speak to law enforcement and when you speak to the contact person for the District Attorney's Office. It is in your best interest to remain aware of the notifications to which you are entitled during the investigation, pre-trial, during trial, and post trial. Please remember that in order to remain informed you must ask questions about anything that you do not understand.

# WHAT ARE LAW ENFORCEMENT'S RESPONSIBILITIES TO ME AS A CRIME VICTIM?

## Responsibilities of Law Enforcement

As soon as possible BUT within 72 hours the law enforcement agency shall provide the victim/you with the following information in writing:

- ✦ The availability of medical attention if needed.
- ✦ The availability of crime victims' compensation funds to include the address and telephone number of NC Victims Compensation.
- ✦ The address and phone number of the District Attorney's office that will be responsible for prosecuting the case.
- ✦ The name and telephone number of a person who works for the investigating law enforcement agency whom you may contact if you have not been notified of an arrest in your case within 6 months after the crime was reported to law enforcement.
- ✦ Information about the accused's opportunity for pre-trial release (release from jail before the court trial or plea).
- ✦ The name and telephone number of a person who works for the investigating law enforcement agency whom you may contact to find out if the accused has been released from jail.
- ✦ The information sheet if there was a personal relationship with the accused.
- ✦ A list of your rights as outlined in the Crime Victims' Rights Act.
- ✦ Information about any other rights afforded to victims by law.

## *When someone is arrested for the crime:*

- ✦ Within 72 hours of receiving notification of the accused's arrest, the investigating law enforcement agency will notify the victim/you of the arrest.
- ✦ Within 72 hours of receiving notification of the arrest, the investigating law enforcement agency shall forward to the district attorney's office your name, address, phone number or other contact information unless you refuse to disclose this information and then law enforcement officers should inform the district attorney's office of this non-disclosure.
- ✦ Using a form provided by the investigating law enforcement agency, you should indicate whether or not you wish to receive further notification on the status of the accused's pre-trial process (before it goes to court).
- ✦ If you want to receive further notification, you shall give the form to the law enforcement agency within 10 days of receiving the form. You are responsible for letting law enforcement know if you have changed your name, address or phone number.
- ✦ Upon receiving the form, law enforcement should promptly give the form to the district attorney's office so that the district attorney's office is aware of your preferences.

**Pertaining specifically to victims of sexual assault:** A criminal or juvenile justice agency **shall not require** a person claiming to be a victim of sexual assault, or claiming to be a witness regarding the sexual assault of another person, to submit to a polygraph or similar examination. Such demands by an agency are not necessary for an investigation to be conducted.

If an agency wishes to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault, the agency **shall** inform the person of the following:

- ✦ That taking the polygraph examination is voluntary.
- ✦ That the results of the examination are not admissible in court.
- ✦ That the victim/witness's decision to submit to or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.
- ✦ If an agency declines to investigate an alleged case of sexual assault following a decision by a person (claiming to be a victim) **not** to submit to a polygraph examination, the agency **shall** provide to that person, **in writing**, the reasons why the agency did not pursue the investigation at the request of the person.



# WHAT ARE THE JUDICIAL OFFICIALS' RESPONSIBILITIES TO ME AS A CRIME VICTIM?

Judicial Officials including judges, magistrates and the Clerk of Court's Office also have responsibilities to you.

Should you decide not to have a law enforcement agency involved in the reporting of a misdemeanor crime against you, or a law enforcement agency declines to investigate such a crime, you have the right to speak with a magistrate. The magistrate is an officer of the District Court. In criminal cases, a magistrate may issue criminal summons and warrants among other judicial tasks.

*Upon a pleading (i.e. a warrant) being issued for any misdemeanor offense against the person based on testimony or evidence from a complaining witness rather than from a law enforcement officer, a judicial official **shall**:*

- ✦ Record the defendant's name and the victim's name, address, and telephone number electronically or on a form separate from the pleading unless you have refused to disclose any or all of the information, in which case the judicial official shall so indicate.
- ✦ Deliver the court's copy of the warrant and victim-identifying information to the office of the clerk of superior court by the close of the next business day.
- ✦ Within 72 hours, the office of the clerk of superior court **shall** forward to the district attorney's office the victim-identifying information.

*Please note that in any court proceeding subject to this Article, a judge shall inquire as to whether the victim is present and wishes to be heard.*

- ✦ If you (victim) are present and wish to be heard, the court shall grant you an opportunity to be reasonably heard.
- ✦ The court **shall** make every effort to provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.
- ✦ The right to be reasonably heard **may** be exercised, at your discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement.



# WHAT ARE THE DISTRICT ATTORNEY'S RESPONSIBILITIES TO ME AS A CRIME VICTIM?

## Responsibilities of the District Attorney's Office:

Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable-cause hearing, the district attorney's office **shall** provide you with a pamphlet or other written material that explains:

- ✦ The responsibilities of the district attorney's office.
- ✦ You have the right to reasonably confer with the district attorney's office about the disposition of the case and the right to provide a victim impact statement.
- ✦ You have the right to be informed of eligibility for compensation under the Crime Victim's Compensation Act and the deadlines by which the victim must file a claim for compensation.
- ✦ You have the right to be informed of the steps generally taken by the district attorney's office when prosecuting a crime.
- ✦ You have the right to receive suggestions on what a victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.
- ✦ You have the right to be informed of the name and telephone number of the witness assistant in the district attorney's office whom you may contact for further information regarding your case.

**You**, as the victim, have the responsibility, upon receiving the information and a form provided by the district attorney's office, to indicate whether you wish to receive notices of some, all, or none of the trial and post trial proceedings involving the accused.

If you decide to receive these notices, you are responsible for notifying the district attorney's office, or any other department or agency involved in your case, of any changes in your address and telephone number or other contact information.

You may change the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

If you are the victim of an act of delinquency, the district attorney's office responsibility to you is extended if the juvenile's case is transferred to criminal court.

If you are a victim of a human trafficking offense the district attorney's office shall notify the Office of the Attorney General and Legal Aid of North Carolina, Inc., in addition to providing entitled rights.

## *When someone is arrested for the crime:*

- ✦ The district attorney's office shall notify you of the date, time, and place of all court proceedings of which you have chosen to be notified.
- ✦ All notices required to be given by the district attorney's office shall be reasonable, accurate, and timely. The notices shall be given prior to the date of the court proceeding. The district attorney's office may provide the required notification electronically or by telephone, unless the victim/you requests otherwise. The notifications shall be documented by the district attorney's office.



- ✦ Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place you in close proximity to the defendant or the defendant's family.
- ✦ The district attorney's office shall make every effort to ensure that your personal information is not disclosed unless otherwise required by law. The district attorney's office shall inform you that personal information such as the victim's telephone number, home address, and bank account number are not relevant in every case and that you may request the district attorney to object to that line of questioning when appropriate.
- ✦ The district attorney's office shall offer you the opportunity to reasonably confer with an attorney from the district attorney's office to obtain your views about (at a minimum) dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.
- ✦ At the time the defendant is found guilty (if the defendant is found guilty) and at the time of the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing information about your decisions to receive further notices pertaining to this case.

The clerk of superior court shall include the form, containing information about your decisions to receive further notices, with the final judgment and commitment, or judgment suspending sentence that goes to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or other agency receiving custody of the defendant. This form shall be maintained by the custodial agency as a confidential file.

#### *When someone is arrested for the crime:*

You have the right to (but are not required to) submit a Victim Impact Statement to the court to be considered during sentencing. Your written Victim Impact Statement becomes a permanent part of the District Attorney's file. The Victim Impact Statement may include:

- ✦ A description of any physical, psychological, or emotional injury sustained as a result of the offense committed by the accused
- ✦ An explanation of any economic or property loss
- ✦ A request for restitution and an indication as to whether you have applied for or received crime victim's compensation

At your request and with the consent of the defendant, the district attorney's office or a law enforcement officer may offer evidence of the impact of the crime to the court.



# WHAT IF MY CRIME VICTIMS' RIGHTS ARE VIOLATED?

## Enforcement of Crime Victim's Rights:

If you believe that your rights as a crime victim have been violated and one or more criminal justice agencies have not fulfilled their responsibility to you, you have the right to file a written complaint.

The procedure by which you may assert your rights shall be by motion to the court of jurisdiction (where the court proceedings are held). For this complaint to be heard you (as the victim of the crime) or the following individuals may act on your behalf:

- ✦ The victim's attorney.
- ✦ The prosecutor, at the request of the victim.
- ✦ A parent, guardian, or legal custodian, if the victim is a minor or is legally incapacitated.
- ✦ A family member, if the victim is deceased.

## STEP 1: FILING A COMPLAINT WITH THE VIOLATING AGENCY

When a claim is made that a violation of your rights provided in this Article has occurred by the law enforcement agency conducting the investigation or the District Attorney's Office prosecuting the case, these first steps must occur:

- ✦ If an allegation involves a law enforcement agency who failed to comply with rights to be provided to you, then you must first file a written complaint with that agency. The agency is then given an opportunity to resolve the issue stated in the written complaint in a timely manner.
- ✦ If an allegation involves the district attorney's office who failed to comply with rights to be provided to you, then you must first file a written complaint with the district attorney's office. The district attorney's office is then given an opportunity to resolve the issue stated in the written complaint in a timely manner.

## STEP 2: IF YOU FEEL THAT THE RESPONSE BY THE GIVEN AGENCY IS NOT A REASONABLE RESOLUTION OR YOUR COMPLAINT REGARDING A VIOLATION OF YOUR RIGHTS IS BY A JUDICIAL OFFICIAL:

Please note that you have the right to consult with an attorney regarding an alleged violation of the rights provided in this Article, but you do not have the right to counsel provided by the State.

- ✦ You may file a motion within the same criminal proceeding giving rise to the rights alleged to be violated with the office of the clerk of superior court in the court where the case is pending, alleging violation of your rights.
- ✦ Upon request, the form provided by the clerk of superior court must indicate what specific right has allegedly been violated and must contain a description of the alleged violation in detail. No fees shall be assessed for the filing of this motion.
- ✦ The motion must have attached a copy of the written complaint previously filed with the law enforcement agency or district attorney's office that failed to comply with the rights of a victim provided in this Article. The motion must be filed within the same criminal case that you believe your rights are not being upheld.
- ✦ A copy of the filed motion shall be given to the agency that you allege has violated your rights.

- ✦ If it involves the District Attorney's Office, a copy of the motion shall be given to the prosecutor if other than the elected District Attorney, the elected District Attorney, and the judge involved in the criminal proceeding that gave rise to the rights in question.
- ✦ If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim, a copy of the motion shall also be provided to the head of the law enforcement agency referenced in the motion.
- ✦ A judge is notified by the clerk of court that a victim has filed a motion alleging a violation of the rights provided in this Article.
- ✦ The judge shall review the motion and dispose of it or set it for hearing in a timely manner.
- ✦ Review may include conferring with the victim, the prosecutor if other than the District Attorney, and the District Attorney in order to inquire as to compliance with this Article. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, the judge may confer with the head of that law enforcement agency as part of the review.
- ✦ If the judge is involved in the criminal case pertaining to the rights in question, the judge may, on the judge's own motion, recuse (excuse) himself or herself if justice requires it and report the recusal to the Administrative Office of the Courts. The Administrative Office of the Courts may then appoint another judge who will conduct the judicial tasks required by this Article.
- ✦ At the conclusion of the review, the judge shall dispose of the motion or set the motion for hearing.

### **STEP 3: FAILURE OF THE JUDGE TO REVIEW/DISPOSE IN A TIMELY MANNER:**

- ✦ If the judge fails to review the motion and dispose of it or set it for hearing in a timely manner, you may petition the North Carolina Court of Appeals for a writ of mandamus.
- ✦ A writ of mandamus is a court order issued by a judge at a petitioner's request compelling someone to execute a duty that they are legally obligated to complete. The writ of mandamus can be used to order a task to be completed, or in other cases, it may require an activity to be ceased.
- ✦ The petition shall be filed without unreasonable delay. The court for good cause shown may shorten the time for filing a response.



# WHAT RIGHTS DO I HAVE AFTER COURT IS OVER?

## Post Trial Responsibilities:

After the trial is over, within 30 days after the final court proceeding in the case, the district attorney's office shall notify you, in writing, of:

- ✦ The final disposition of the case.
- ✦ The crimes of which the defendant was convicted.
- ✦ The defendant's right to appeal, if any.
- ✦ The telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

*Should the defendant in the case appeal this conviction to the Court of Appeals or the Supreme Court, and dependent upon the circumstances of this appeal, the Attorney General's office shall provide you with the following:*

- ✦ A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.
- ✦ Notice of the date, time, and place of any appellate proceedings involving the defendant.
- ✦ This notice shall be given in a manner that is reasonably calculated to be received by you prior to the date of the proceedings.
- ✦ The final disposition of an appeal.

*Although you as the victim do not have a right to be heard at this appeal process, you are permitted to be present at any appellate proceeding that is an open hearing.*

## What happens if the defendant has been released on bail pending the outcome of the appeal?

- ✦ The agency that has custody of the defendant shall notify the investigating law enforcement agency as soon as practicable, and within 72 hours of receipt of the notification the investigating law enforcement agency shall notify you that the defendant has been released.

## What happens if the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is then sent to the superior court for a new trial?

- ✦ You **shall** be entitled to the same rights under this Article as if the first trial did not take place

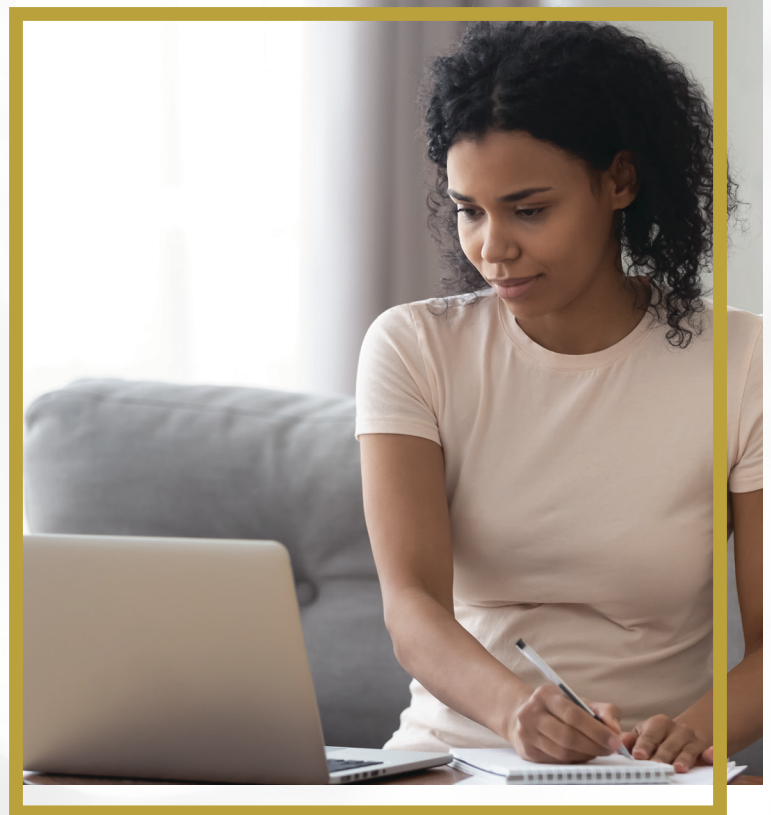
# WHAT ARE MY RIGHTS WHEN THE DEFENDANT IS INCARCERATED?

Upon the judge giving a final judgement and moving into the commitment phase of a trial, what rights am I entitled to?

## Responsibilities of agency with custody of defendant:

When a form requesting notification is included with the final judgment and commitment, or when you have filed a written request for notification with the custodial agency (jail/prison facility), the custodial agency **shall** notify the victim of the following within 60 days of the date the custodial agency takes custody of the defendant or within 60 days of the event requiring notification, or as otherwise specified:

- ✦ The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.
- ✦ An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.
- ✦ Your right to submit any concerns to the agency with custody and be made aware of the procedure for submitting such concerns.
- ✦ **The defendant's escape from custody, within 72 hours, except if you have notified the agency in writing that the defendant has issued a specific threat against the victim, the agency shall notify you as soon as possible and within 24 hours at the latest.**
- ✦ The defendant's capture, within 24 hours.
- ✦ The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release. In no event shall notice be given less than seven days before release.
- ✦ The defendant's death.
- ✦ The procedure for alleging a failure of the custodial agency to notify the victim as required by this section.



# WHAT ARE MY RIGHTS IF THE DEFENDANT IS GIVEN PROBATION?

If the defendant is sentenced to probation or post-release supervision, whether an adult or a juvenile, the agency responsible for this supervision is the Community Corrections of the Division of Adult Correction and Juvenile Justice. The Community Corrections Division is responsible for and shall notify you of the following within 30 days of the event requiring notification, or as otherwise specified:

- ✦ The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.
- ✦ The date and location of any hearing to determine whether the defendant's supervision should be revoked, continued, modified, or terminated.
- ✦ The final disposition of any of the above hearings.
- ✦ Any restitution modification.
- ✦ The defendant's movement into or out of any intermediate sanction.
- ✦ The defendant's absconding supervision, within 72 hours.
- ✦ Within 72 hours of the capture of a defendant following his or her absconding.
- ✦ The date when the defendant is terminated or discharged.
- ✦ The defendant's death.



# WHAT RIGHTS AM I ENTITLED TO SHOULD THE DEFENDANT BE PARDONED OR THE SENTENCE COMMUTED?

If the defendant is pardoned (forgiven), or if the sentence is commuted (reduced), you are entitled to be informed by the Governor's Clemency Office of these decisions.

## Notice of a pardon or commuted sentence:

- ✦ The Governor's Clemency Office **shall** notify you when it is considering commuting the defendant's sentence or pardoning the defendant.
- ✦ The Governor's Clemency Office **shall** also give notice that you have the right to present a written statement to be considered by the Governor's Clemency Office before the defendant's sentence is commuted or the defendant is pardoned.
- ✦ The Governor's Clemency Office **shall** notify you of its decision. This notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

## *Pursuant to this Article:*

### **No money damages:**

\*This Article, including the provision of a service pursuant to this Article through the Statewide Automated Victim Assistance and Notification System established by the Governor's Crime Commission, **does not create a claim for damages against** the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

\*TRANSLATION: You cannot sue the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees for damages



What rights am I entitled to should the defendant be pardoned or the sentence commuted?

# WHAT OTHER RIGHTS DO I HAVE THAT MAY HELP ME AS A CRIME VICTIM?

## You have the right to an interpreter if English is NOT your primary language:

- ✦ The court shall require an interpreter (at the state's expense) for any court proceeding involving a party who speaks a language other than English as their primary language and has a limited ability to read, speak, or understand English.
- ✦ If you are scheduled to appear in a court proceeding for which interpreters are needed at state expense, you or your attorney should submit a request for an interpreter to the local Language Access Coordinator (LAC). Written requests should be submitted electronically by completing the Request for Spoken Foreign Language Court Interpreter Form.
- ✦ Requests for interpreters should be submitted at least 10 business days prior to the scheduled court proceeding.
- ✦ If you have not requested an interpreter prior to the court date, you should notify the courtroom clerk or magistrate that you need an interpreter as soon as you arrive for the court proceeding. If the LAC does not have sufficient time to find a qualified court interpreter, your proceeding will be continued.

## You have the right to hire an attorney:

- ✦ The District Attorney is not your attorney. The District Attorney is representing the interests of the state and since your interests as a crime victim and the interests of the state are closely aligned, the district attorney is interested in including your voice as proceedings begin and move forward. However, they must balance the victim's needs with that of the community at large and the safety of the general public.
- ✦ You may hire your own attorney to ensure you have representation that focuses exclusively on your rights and needs as a crime victim. Your attorney will not participate in the prosecution of the accused.

## You have rights regarding Rape Kit Testing:

"The Survivor Act" provides sexual assault victims, for whom a forensic examination was performed after the assault, the right to be informed on requirements that include specific timelines for various aspects of processing by agencies involved and specific protocols for how all unprocessed kits shall be tracked. For more information on the Survivor Act:

- ✦ These requirements are designed to assure the timely processing by health providers, law enforcement, and the State Crime Lab of the resulting "rape kits".
- ✦ The results of the testing eventually become part of the evidence in the case and are uploaded to CODIS, a nationwide law enforcement database.
- ✦ The law now also requires law enforcement agencies to establish review teams to survey their entire untested Sexual Assault Evidence Collection Kit (SAECK) inventory to determine a priority submission order for testing.
- ✦ The Public Protection Section of the Attorney General's Office can address questions and provide additional information by email at [publicprotection@ncdoj.gov](mailto:publicprotection@ncdoj.gov), or by calling (919) 716-6780.



# NORTH CAROLINA VICTIM ASSISTANCE NETWORK

## NORTH CAROLINA CRIME VICTIMS' RIGHTS ACT COMPARISON CHART

The North Carolina Crime Victims' Rights Act (CVRA) has set forth state constitutional rights to be afforded to crime victims which provide them with services and information as they move through the criminal and judicial legal processes. However, in the previous CVRA, notification methods were not defined and compliance enforcement was not included for crime victims. This chart offers a quick comparison of our current CVRA (Marsy's Law) to our previous CVRA so that you can better grasp what has changed from then to now.

2019 CVRA	1998 CVRA
A victim has a right "to be reasonably heard <u>at any court proceeding involving the plea, conviction, adjudication, sentencing, or release of the accused.</u> "	A victim has the right to be reasonably heard at sentencing of the accused "in a manner and at other times <u>as prescribed by law or deemed appropriate by the court.</u> "
If the victim is a minor or is legally incapacitated, <u>a parent, guardian, or legal custodian may assert all of the minor's victim rights.</u>	When a victim is mentally or physically incompetent or when the victim is a minor, the victim's rights may be exercised by the victim's next of kin or legal guardian.
A victim has the right to receive notifications from the DA's office in a <u>reasonable, accurate, and timely method: electronically, by phone, or otherwise requested.</u>	All notices by the district attorney's office shall be given in a manner that is <u>reasonably calculated to be received prior to the date of the court proceeding</u>
Crime victims of an act of delinquency, that is against or involving the person of the victim or is equivalent to a felony property crime are afforded rights	No specific rights afforded to victims of crimes by a juvenile defendant.
A victim may allege a <u>violation</u> of his or her victim's rights by a three step method: <b>1)</b> victim seeks to reasonably resolve the alleged violation initially with the violating agency; <b>2)</b> if unsolved, then by motion to the clerk of superior court; <b>3)</b> finally if still unresolved, then by appeal to the NC Court of Appeals	No specific enforcement process was afforded to victims of crime who alleged a violation of their victim rights.
Felony crimes against a person have been expanded. Felony property crimes have been included. Serious misdemeanors have been expanded if the elements of the offense involves communicating a threat or stalking.	Victims of specific felony crimes and serious misdemeanor offenses were afforded rights when the offense was committed between persons who have a personal relationship
Division of Community Corrections/ Adult Correction and Juvenile Justice have responsibilities to crime victims associated with the post trial sanctions	Only Division of Community Corrections/Adult Correction was responsible for post trial rights for victims of crime.
A person who is a victim of a human trafficking offense is entitled to benefits and services. A person who is a victim of and/or witness to a sexual assault shall not be required to submit to a polygraph examination in order to have an investigation conducted into the matter	There were no specific rights afforded to victims of human trafficking offenses. In NC Statute, polygraph examinations of specific crime victims contained limited responsibilities but no specific rights.

**Remember:** Victims must "request" or "opt-in" to receive their rights. This means that when the District Attorney's Office informs you of your rights, you must in return communicate to the District Attorney's Office that you want to exercise all of your rights, some of your rights, or none of your rights.

## MISSION

Through advocacy, training, and technical assistance, North Carolina Victim Assistance Network supports the rights and well-being of surviving loved ones of homicide victims and others harmed by violent crime in North Carolina.



**North Carolina**  
**Victim Assistance Network**

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