

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

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A Bill

HOUSE BILL 2103

4
5 By: Representatives Ferrell, Schexnayder, Northcutt, Wood, Jones, Lynn, Hale, Roberts, Walker, Ammons, *Judy Smith, Dianne*
6 *Hudson, Bond, Wilkins, Shoffner, Faris, Vess, Malone, Hall, Laverty, Lancaster, Pappas, Wilkinson, and Willems*
7 By: Senator Bradford

8
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For An Act To Be Entitled

11 "AN ACT TO ENHANCE THE RIGHTS OF VICTIMS OF CRIME."

12

Subtitle

14 "AN ACT TO ENHANCE THE RIGHTS OF VICTIMS
15 OF CRIME."

16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 SECTION 1. DEFINITIONS. In this act:

20 (1) "Crime" means an act or omission committed by a person, whether or
21 not competent or an adult, which, if committed by a competent adult, is
22 punishable by incarceration.

23 (2) "Member of the victim's family" means the spouse, a child by birth
24 or adoption, a stepchild, a parent, a stepparent, a sibling, or an individual
25 designated by the victim or by a court in which the crime is being or could be
26 prosecuted, but does not include an individual who is accountable for the
27 crime or a crime arising from the same conduct, criminal episode, or plan.

28 (3) "Offense against a victim who is a minor" means:

29 (A) Kidnapping pursuant to A.C.A. 5-11-102(a)(4) when the victim
30 is a minor and the offender is not the parent of the victim;

31 (B) False imprisonment in the first degree pursuant to A.C.A. 5-
32 11-103 when the victim is a minor and the offender is not the parent of the
33 victim.

34 (C) Permanent detention or restraint pursuant to A.C.A. 5-11-106
35 when the victim is a minor and the offender is not the parent of the victim;

36 (D) Any sex offense when the victim is a minor;

1 (E) An attempt, solicitation, or conspiracy to commit any of the
2 offenses enumerated in this subsection (3);

3 (F) An adjudication of guilt for an offense of the law of another
4 state, for a federal offense, or for a military offense, which is
5 substantially equivalent to any of the offenses enumerated in this subsection
6 (3); or

7 (G) A violation of any former law of this state which is
8 substantially equivalent to any of the offenses enumerated to this subsection
9 (3);

10 (4) "Person" means an individual, corporation, estate, trust,
11 partnership, association, joint venture, governmental entity, agency, or
12 instrumentality, or any other legal entity.

13 (5) "Representative of the victim" means a member of the victim's
14 family or an individual designated by the victim or by a court in which the
15 crime is being or could be prosecuted.

16 (6) "Sex offense" means:

17 (A) Rape - 5-14-103;

18 (B) Carnal abuse in the first degree - 5-14-104;

19 (C) Carnal abuse in the second degree - 5-14-105;

20 (D) Central abuse in the third degree - 5-14-106;

21 (E) Sexual misconduct - 5-14-107;

22 (F) Sexual abuse in the first degree - 5-14-109;

23 (G) Sexual abuse in the second degree - 5-14-109;

24 (H) Sexual solicitation of a child - 5-14-110;

25 (I) Violation of minor in the first degree - 5-14-120;

26 (J) Violation of a minor in the second degree - 5-14-121;

27 (K) Incest - 5-26-202;

28 (L) Engaging children in sexually explicit conduct for use in
29 visual or print medium - 5-27-303;

30 (M) Transportation of minors for prohibited sexual conduct - 5-
31 27-305;

32 (N) Employing or consenting use of child in sexual performance -
33 5-27-402;

34 (O) Producing, directing or promotions sexual performance - 5-27-
35 403;

36 (P) Promoting prostitution in the first degree - 5-70-104;

1 (Q) Stalking - 5-71-229;

2 (R) An attempt, solicitation, or conspiracy to commit any of the
3 offenses enumerated in this subsection (6);

4 (S) An adjudication of guilt for an offense of the law of another
5 state, for a federal offense, or for military offense, which is substantially
6 equivalent to any of the offenses enumerated in this subsection (6);

7 (T) A violation of any former law of this state which is
8 substantially equivalent to any of the offenses enumerated in this subsection
9 (6);

10 (7) "State" means a state of the United States, the District of
11 Columbia, the Commonwealth of Puerto Rico, or any territory or insular
12 possession subject to the jurisdiction of the United States.

13 (8) "Victim" means a victim of a sex offense or an offense against a
14 victim who is a minor, and a victim of any violent crime, but does not include
15 a person who is accountable for the crime or a crime arising from the same
16 conduct, criminal episode, or plan and does not include a governmental entity.

17 (9) Violent Crime means any felony which resulted in physical injury
18 to the victim, any felony involving the use of a deadly weapon, terroristic
19 threatening in the first degree, and stalking as defined in Arkansas Code
20 Annotated § 5-7-229.

21

22 SECTION 2. COMPLIANCE WITH ACT. Failure to comply with this act does
23 not create a claim for damages against a government employee, official, or
24 entity.

25

26 SECTION 3. NONDISCLOSURE OF INFORMATION ABOUT VICTIM.

27 (a) A court may not compel a victim or a member of the victim's family
28 testifying in a criminal justice proceeding to disclose a residential address
29 or place of employment on the record in open court unless the court finds that
30 disclosure of the information is necessary.

31 (b) A law enforcement agency shall not disclose to the public
32 information directly or indirectly identifying the victim of a sex crime
33 except to the extent that disclosure is of the site of the crime, is required
34 by law, is necessary for law enforcement purposes, or is permitted by the
35 court for good cause.

36

1 SECTION 4. PRESENCE AT COURT PROCEEDINGS.

2 The victim or a representative of the victim may be present whenever the
3 defendant has a right to be present during a court proceeding concerning the
4 crime charged other than a grand jury proceeding, unless the court determines
5 that exclusion of the victim or the victims representative is necessary to
6 protect the defendant's right to a fair trial or the confidentiality or
7 fairness of a juvenile proceeding. If the victim is present, the court, at
8 the victim's request, shall permit the presence of an individual to provide
9 support to the victim, unless the court determines that exclusion of the
10 individual is necessary to protect the defendant's right to a fair trial.

11

12 SECTION 5. PROMPT RETURN OF PROPERTY. Any person holding property of a
13 victim shall take reasonable care of the property. The responsible official
14 shall promptly return the property to the victim when it is no longer needed
15 for evidentiary purposes unless it is contraband or subject to forfeiture.

16

17 SECTION 6. LIMITATIONS ON EMPLOYER. An employer may not discharge or
18 discipline a victim or a representative of the victim for:

19 (1) participation at the prosecuting attorneys request in preparation
20 for a criminal justice proceeding; or

21 (2) attendance at a criminal justice proceeding if the attendance is
22 reasonably necessary to protect the interests of the victim.

23

24 SECTION 7. INFORMATION FROM LAW ENFORCEMENT AGENCIES.

25 (a) After initial contact between a victim and a law enforcement agency
26 responsible for investigating a crime, the agency shall promptly give in
27 writing to the victim:

28 (1) an explanation of the victim's rights under this act; and

29 (2) information concerning the availability of:

30 (i) assistance to victims, including medical, housing,
31 counseling, financial, social, legal, and emergency services;

32 (ii) compensation for victims under the Arkansas Crime
33 Victims Reparations Act and the name, street address, and telephone number of
34 the agency to contact;

35 (iii) protection of the victim, including protective court
36 orders; and

1 (iv) access by the victim and the defendant to public
2 records related to the case.

3 (b) As soon as practicable, the law enforcement agency shall give to
4 the victim, as relevant, the following:

5 (1) information as to the suspect's identity unless inconsistent
6 with law enforcement purposes;

7 (2) information as to whether the suspect has been taken into
8 custody, has escaped, or has been released, and any conditions imposed on the
9 release when such information has been made known to the law enforcement
10 agency;

11 (3) the file number of the case and the name, office address, and
12 office telephone number of a law enforcement officer assigned to investigate
13 the case; and

14 (4) the prosecuting attorneys name, office address, and office
15 telephone number.

16

17 SECTION 8. INFORMATION CONCERNING APPEAL OR POST-CONVICTION REMEDIES.

18 If the defendant appeals or pursues a post-conviction remedy, the Attorney
19 General shall, as to cases handled by the Attorney General, promptly inform
20 the victim of that fact, of the date, time, and place of any hearing, and of
21 the decision.

22

23 SECTION 9. INFORMATION CONCERNING CONFINEMENT. (a) Upon request of

24 the victim, the Department of Correction, State Hospital and any other
25 facility to which the defendant is committed by the court shall:

26 (1) promptly inform the victim of the estimated date of the defendant's
27 release from confinement, if reasonably ascertainable;

28 (2) inform the victim at least thirty (30) days before release of the
29 defendant on furlough or to a work-release, half-way house, or other community
30 program; and

31 (3) promptly inform the victim of the occurrence of any of the following
32 events concerning the defendant:

33 (i) an escape from a correctional or mental-health facility or
34 community program;

35 (ii) a recapture;

36 (iii) a decision of the Governor to commute the sentence or to

1 pardon;

2 (iv) a release from confinement and any conditions attached to the
3 release; and

4 (v) the defendant's death.

5 (b) At least thirty (30) days before a Post Prison Transfer Board
6 hearing concerning the defendant, if requested by the victim, the board shall
7 inform the victim of the hearing and of the victim's right to submit to the
8 Post Prison Transfer Board a victim-impact statement and shall promptly inform
9 the victim of any decision of the board. It is the responsibility of the
10 victim or his next of kin to notify the board of any change in address or
11 telephone number. It is the responsibility of the victim or his next of kin
12 to notify the board after the date of commitment of any change in regard to
13 the desire to be notified of any future parole hearings.

14

15 SECTION 10. GENERAL REQUIREMENTS FOR INFORMATION.

16 (a) Unless otherwise provided by this act, information required to be
17 furnished to the victim or other person authorized to receive notice may be
18 furnished either orally or in writing. It is the responsibility of the victim
19 or other person authorized to receive notice to furnish to the proper
20 authorities, and keep current, the victims mailing address and phone number.

21 (b) The person responsible for furnishing information shall promptly
22 inform the victim of significant changes in the information to be furnished.

23 (c) The person responsible for furnishing information may rely upon the
24 most recent name, address, and telephone number furnished by the victim. The
25 address and telephone number of the victim or the immediate family member
26 shall be exempt from the Arkansas Freedom of Information Act, §§ 25-19-101, et
27 seq. It is the responsibility of the victim or his next of kin to notify the
28 person responsible for providing notice under this act regarding any change in
29 the victim's name, address, or telephone number.

30

31 SECTION 11. PRESENTENCE REPORT. In preparing a presentence report, the
32 person preparing the report shall make a reasonable effort to confer with the
33 victim. If the victim is not available or declines to confer, the person
34 preparing the report shall record that information in the report.

35

36 SECTION 12. VICTIM-IMPACT STATEMENT.

1 (a) Before imposing sentence, the court shall permit the victim to
2 present a victim-impact statement concerning the effects of the crime on the
3 victim, the circumstances surrounding the crime, the manner in which the crime
4 was perpetrated. The victim may present the statement in writing before the
5 sentencing proceeding, or orally under oath at the sentencing proceeding.

6 (b) The court shall give copies of all written victim-impact statements
7 to the prosecuting attorney and the defendant.

8 (c) The sentencing court shall consider the victim-impact statement
9 along with other factors, but if the victim-impact statement includes new,
10 material factual information upon which the court intends to rely, the court
11 shall adjourn the sentencing proceeding or take other appropriate action to
12 allow the defendant adequate opportunity to respond.

13

14 SECTION 13. CONSIDERATION OF VICTIM-IMPACT STATEMENT AT PAROLE HEARING.

15 (a) Before determining whether to release the defendant on parole, the
16 Post Prison Transfer Board shall permit a victim to present a written victim-
17 impact statement concerning the effects of the crime on the victim, the
18 circumstances surrounding the crime, the manner in which the crime was
19 perpetrated, and the victim's opinion regarding whether the defendant should
20 be released on parole. At the victim's option, the victim may present the
21 statement orally at the parole hearing. The Post Prison Transfer Board shall
22 give the defendant a copy of all written victim-impact statements.

23 (b) The Post Prison Transfer Board, in deciding whether to release a
24 prisoner on parole, shall consider among other factors:

25 (1) victim-impact statements presented under subsection (a); and

26 (2) victim-impact statements presented to the sentencing court
27 under section 12.

28

29 SECTION 14. DERIVATIVE RIGHTS OF MEMBER OF VICTIM'S FAMILY. If a
30 victim is a minor or is incapacitated, incompetent, or deceased, a member of
31 the victim's family may exercise the rights of the victim under this act. If
32 more than one member of the victim's family attempts to exercise those rights,
33 the court may designate which of them may exercise those rights.

34

35 SECTION 15. None of the provisions of this act shall be deemed to
36 relieve any person of the duty of providing information or notices required by

1 any other law.

2

3 SECTION 16. Arkansas Code 16-21-106 is amended to read as follows:

4 "§ 16-21-106. Assistance to victims and witnesses of crimes - Victim of
5 crimes case coordinator.

6 (a)(1) The prosecuting attorneys shall, upon request, provide to a
7 victim and the immediate family members of all homicide victims, whether or
8 not they are witnesses in criminal proceedings, notice of critical events in
9 the criminal justice process, which shall include but not be limited to:

10 (A) notice of motions or hearings to establish or reduce
11 bail or authorize other pre-trial release from custody;

12 (B) notice of proceedings in which any plea agreement may
13 be submitted;

14 (C) notice of trial;

15 (D) notice of any motion that may substantially delay the
16 prosecution.

17 (E) notice that a court proceeding for which the victim had
18 been subpoenaed will not transpire as scheduled;

19 (F) notice of the date, time, and place of the defendant's
20 appearance before a judicial officer;

21 (G) the function of a presentence report, the name, street
22 address, and telephone number of the agency preparing the report, and the
23 defendant's right of access to the report;

24 (H) notice of the victim's right under this act to present a
25 victim-impact statement and the defendant's right to be present at the
26 sentencing proceeding;

27 (I) notice of the date, time, and place of any sentencing
28 proceeding;

29 (J) notice of the date, time, and place of any hearing for
30 reconsideration of a sentence imposed;

31 (K) notice of any sentence imposed and any modification of
32 that sentence; and

33 (L) notice of the right to receive information from the
34 Department of Correction, State Hospital and any other facility to which the
35 defendant is committed by the court.

36 (2) After a prosecution is commenced, the prosecuting attorney

1 shall promptly inform a victim of:

2 (A) relevant criminal justice procedures;

3 (B) the crime with which the defendant has been charged,

4 including an explanation of the elements of crime if necessary to an

5 understanding of the nature of the crime; and

6 (C) the file number of the case and the prosecuting

7 attorneys name, office address, and telephone number.

8 (3) The notices may be accomplished by providing the victim or
9 immediate family member with a telephone number to a computer notification
10 program. Prosecutors remain responsible for providing the notice in instances
11 where no computer notification program exists.

12 (4) When an immediate family member has been charged with the
13 homicide, that person shall not be notified in accordance with this section.

14 (b) Prosecuting attorneys shall confer with the victim before amending
15 or dismissing a charge or agreeing to a negotiated plea or pretrial diversion.
16 Failure of the prosecuting attorney to confer with the victim does not affect
17 the validity of an agreement between the prosecuting attorney and the
18 defendant or of an amendment, dismissal, plea, pretrial diversion, or other
19 disposition.

20 (c) The prosecuting attorney of the county from which the inmate was
21 committed shall notify the Post Prison Transfer Board at the time of
22 commitment of the desire of the victim, or member of the victims family, to
23 be notified of any future parole hearings and to forward to the board the last
24 known address and telephone number of the victim or member of the victims
25 family. It shall be the responsibility of the victim or his next of kin to
26 notify the board after the date of commitment of any change in regard to the
27 desire to be notified of any future parole hearings.

28 ~~(a) (d)~~ The ~~several~~ prosecuting attorneys and deputy prosecuting
29 attorneys ~~may~~ shall provide the following services to victims of crimes and
30 witnesses of crimes and the family members of all homicide victims, whether or
31 not they are witnesses in criminal proceedings:

32 ~~_____ (1) Notify such persons that a court proceeding for which they~~
33 ~~have been subpoenaed will not transpire as scheduled;~~

34 ~~_____ (2) (1)~~ Assist such persons in obtaining protection from harm and
35 threats of harm arising out of their cooperation with law enforcement and
36 prosecution efforts;

1 ~~_____ (3)~~ (2) Assist such persons in applying for financial assistance
2 and other social services available as a result of being a witness or victim
3 of a crime;

4 ~~_____ (4)~~ (3) Assist such persons in applying for any witness fees to
5 which they are entitled;

6 ~~_____ (5)~~ (4) Provide, when possible, a secure waiting area during
7 court proceedings that does not require such persons to be in close proximity
8 to the defendants and families and friends of the defendants and otherwise
9 make a reasonable effort to minimize unwanted contact between the victim,
10 members of the victims family, or prosecution witnesses and the defendant,
11 members of the defendants family, or defense witnesses before, during, and
12 immediately after a judicial proceeding; and

13 ~~_____ (6) Assure that any stolen property or other personal property,~~
14 ~~other than contraband, belonging to such persons is expeditiously returned to~~
15 ~~them when no longer needed as evidence;~~

16 ~~_____ (7)~~ (5) Intercede with such persons' employers to assure that the
17 employers cooperate with the criminal justice process in order to minimize
18 loss of pay and other benefits resulting from court appearances.

19 ~~_____ (b)~~ (e) In order to enable the prosecuting attorney to perform the
20 additional duties provided in this section:

21 (1) The prosecutor may request the county judge of the county to
22 designate or provide an appropriate room or area in the county courthouse,
23 reasonably close to the courtroom, to serve as a waiting area during court
24 proceedings to accommodate the families and friends of the defendants, as
25 provided in subsection ~~(a)~~ (d) of this section; and

26 (2) The prosecutor may request the quorum court of the county to
27 provide additional employees for his office to be known as victim of crimes
28 case coordinators at such salary as may be determined by the quorum court, to
29 be in addition to any other position available to the prosecutor's office."
30

31 SECTION 17. Arkansas Code 16-93-702(b) is amended to read as follows:

32 "(b) If the person whose parole is being considered by the board was
33 convicted of capital murder or of a Class Y, Class A, or Class B felony, or
34 any violent or sexual offense, the board shall also notify the victim of the
35 crime, or the victim's next of kin, of the parole hearing and shall solicit
36 written or oral recommendations of the victim or his next of kin regarding the

1 granting of the parole, unless the prosecuting attorney has notified the board
2 at the time of commitment of the prisoner that the victim or his next of kin
3 do not want to be notified of future parole hearings."

4

5 SECTION 18. This act becomes effective on January 1, 1998.

6

7 SECTION 19. All provisions of this act of a general and permanent
8 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
9 Code Revision Commission shall incorporate the same in the Code.

10

11 SECTION 20. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.

16

17 SECTION 21. All laws and parts of laws in conflict with this act are
18 hereby repealed.

19

20 SECTION 22. Arkansas Code 16-93-707 is repealed.

21 ~~§ 16-93-707. Future parole hearings - Notice to victim or victim's next
22 of kin.~~

23 ~~— (a) It shall be the responsibility of the prosecuting attorney of the
24 county from which the inmate was committed to notify the Board of Pardons and
25 Paroles at the time of commitment of the desire of the victim, or his next of
26 kin, to be notified of any future parole hearings and to forward to the board
27 the last known address and telephone number of the victim or his next of kin.~~

28 ~~— (b) It shall be the responsibility of the victim or his next of kin to
29 notify the board of any change in address or telephone number.~~

30 ~~— (c) It shall be the responsibility of the victim or his next of kin to
31 notify the board after the date of commitment of any change in regard to the
32 desire to be notified of any future parole hearings.~~

33

34 SECTION 23. Arkansas Code 16-97-102(4) is repealed.

35 ~~— (4) A victim shall be given notice by the prosecuting attorney that an
36 offender is to be sentenced and of his right to appear and be heard at any~~

1 ~~sentencing hearing or proceeding whenever it follows a plea or court trial.~~

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/s/Rep. Ferrell, et al

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