

1 State of Arkansas  
2 81st General Assembly  
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# A Bill

SENATE BILL 710

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

## For An Act To Be Entitled

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

### Subtitle

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

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

#### SECTION 1. DEFINITIONS. In this act:

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

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

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

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

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

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

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

(E) An attempt, solicitation, or conspiracy to commit any of the

1 offenses enumerated in this subsection (3);

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

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

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

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

15 (6) "Sex offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16  
17           SECTION 2. COMPLIANCE WITH ACT.

18           (a) Prosecuting attorneys shall enforce compliance with this act on  
19 behalf of victims and members of victims' families.

20           (b) Failure to comply with this act does not create a claim for damages  
21 against a government employee, official, or entity, but a governmental  
22 employer may be held liable for violating Section 7.

23  
24           SECTION 3. NONDISCLOSURE OF INFORMATION ABOUT VICTIM.

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

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

34  
35           SECTION 4. PRETRIAL RELEASE. At the pretrial release hearing or a  
36 hearing to consider the reduction or modification of bail for a person

1 arrested for a sexual or violent crime, the victim or the next of kin of the  
2 victim shall have the right to address the court concerning the conditions of  
3 release and the amount of any bond.

4

5 SECTION 5. PRESENCE AT COURT PROCEEDINGS.

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

15

16 SECTION 6. PROMPT RETURN OF PROPERTY. Any person holding property of a  
17 victim shall take reasonable care of the property. The responsible official  
18 shall promptly return the property to the victim when it is no longer needed  
19 for evidentiary purposes unless it is contraband or subject to forfeiture.

20

21 SECTION 7. LIMITATIONS ON EMPLOYER. An employer may not discharge or  
22 discipline a victim or a representative of the victim for:

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

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

27

28 SECTION 8. INFORMATION FROM LAW ENFORCEMENT AGENCIES.

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

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

33 (2) information concerning the availability of:

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

36 (ii) compensation for victims under the Arkansas Crime

1 Victims Reparations Act and the name, street address, and telephone number of  
2 the agency to contact;

3 (iii) protection of the victim, including protective court  
4 orders; and

5 (iv) access by the victim and the defendant to public  
6 records related to the case.

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

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

11 (2) information as to whether the suspect has been taken into  
12 custody, has escaped, or has been released, and any conditions imposed on the  
13 release;

14 (3) the file number of the case and the name, work address, and  
15 work telephone number of a law enforcement officer assigned to investigate the  
16 case; and

17 (4) the prosecuting attorneys name, office address, and telephone  
18 number.

19

20 SECTION 9. INFORMATION CONCERNING APPEAL OR POST-CONVICTION REMEDIES.

21 If the defendant appeals or pursues a post-conviction remedy, the Attorney  
22 General shall promptly inform the victim of that fact, of the date, time, and  
23 place of any hearing, and of the decision.

24

25 SECTION 10. INFORMATION CONCERNING CONFINEMENT. (a) Upon request of  
26 the victim, the Department of Correction, State Hospital and any other  
27 facility to which the defendant is committed by the court shall:

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

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

33 (3) promptly inform the victim of the occurrence of any of the following  
34 events concerning the defendant:

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

- 1           (ii) a recapture;  
2           (iii) a decision of the Governor to commute the sentence or to  
3 pardon;  
4           (iv) a release from confinement and any conditions attached to the  
5 release; and  
6           (v) the defendant's death.

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

16

17           SECTION 11. GENERAL REQUIREMENTS FOR INFORMATION.

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

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

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

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33           SECTION 12. PRESENTENCE REPORT. In preparing a presentence report, the  
34 person preparing the report shall make a reasonable effort to confer with the  
35 victim. If the victim is not available or declines to confer, the person  
36 preparing the report shall record that information in the report.

1

2 SECTION 13. VICTIM-IMPACT STATEMENT.

3 (a) Before imposing sentence, the court shall permit the victim to  
4 present a victim-impact statement concerning the effects of the crime on the  
5 victim, the circumstances surrounding the crime, the manner in which the crime  
6 was perpetrated, and the victim's opinion regarding an appropriate sentence.  
7 At the victim's option, the victim may present the statement in writing before  
8 the sentencing proceeding, orally under oath at the sentencing proceeding, or  
9 both.

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

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

17

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

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

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

- 29 (1) victim-impact statements presented under subsection (a); and  
30 (2) victim-impact statements presented to the sentencing court  
31 under section 13.

32

33 SECTION 15. DERIVATIVE RIGHTS OF MEMBER OF VICTIM'S FAMILY. If a  
34 victim is a minor or is incapacitated, incompetent, or deceased, a member of  
35 the victim's family may exercise the rights of the victim under this act. If  
36 more than one member of the victim's family attempts to exercise those rights,

1 the court may designate which of them may exercise those rights.

2

3 SECTION 16. None of the provisions of this act shall be deemed to  
4 relieve any person of the duty of providing information or notices required by  
5 any other law.

6

7 SECTION 17. Arkansas Code 16-21-106 is amended to read as follows:

8 "§ 16-21-106. Assistance to victims and witnesses of crimes - Victim of  
9 crimes case coordinator.

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

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

16 (B) notice of proceedings in which any plea agreement may  
17 be submitted;

18 (C) notice of trial;

19 (D) notice of any motion that may substantially delay the  
20 prosecution.

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

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

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

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

31 (I) notice of the date, time, and place of any sentencing  
32 proceeding;

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

35 (K) notice of any sentence imposed and any modification of  
36 that sentence; and



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

4                   (2) After a prosecution is commenced, the prosecuting attorney  
5 shall promptly inform a victim of:

6                   (A) relevant criminal justice procedures;

7                   (B) the crime with which the defendant has been charged,  
8 including an explanation of the elements of crime if necessary to an  
9 understanding of the nature of the crime; and

10                  (C) the file number of the case and the prosecuting  
11 attorneys name, office address, and telephone number.

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

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

18                  (b) The prosecuting attorney shall inform the court of the victim's  
19 position on any motion that may substantially delay the prosecution. If a  
20 victim objects to a delay, the court shall consider the victim's objection  
21 and, if it grants the motion, state in writing or on the record that it has  
22 considered the objection.

23                  (c) Prosecuting attorneys shall confer with the victim before amending  
24 or dismissing a charge or agreeing to a negotiated plea or pretrial diversion.  
25 Failure of the prosecuting attorney to confer with the victim does not affect  
26 the validity of an agreement between the prosecuting attorney and the  
27 defendant or of an amendment, dismissal, plea, pretrial diversion, or other  
28 disposition.

29                  (d) The prosecuting attorney of the county from which the inmate was  
30 committed shall notify the Post Prison Transfer Board at the time of  
31 commitment of the desire of the victim, or member of the victims family, to  
32 be notified of any future parole hearings and to forward to the board the last  
33 known address and telephone number of the victim or member of the victims  
34 family. It shall be the responsibility of the victim or his next of kin to  
35 notify the board after the date of commitment of any change in regard to the  
36 desire to be notified of any future parole hearings.

1        ~~(a)~~ (e) The ~~several~~ prosecuting attorneys and deputy prosecuting  
 2 attorneys ~~may~~ shall provide the following services to victims of crimes and  
 3 witnesses of crimes and the family members of all homicide victims, whether or  
 4 not they are witnesses in criminal proceedings:

5        ~~\_\_\_\_\_ (1) Notify such persons that a court proceeding for which they~~  
 6 ~~have been subpoenaed will not transpire as scheduled;~~

7        ~~\_\_\_\_\_ (2)~~ (1) Assist such persons in obtaining protection from harm and  
 8 threats of harm arising out of their cooperation with law enforcement and  
 9 prosecution efforts;

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

13       ~~\_\_\_\_\_ (4)~~ (3) Assist such persons in applying for any witness fees to  
 14 which they are entitled;

15       ~~\_\_\_\_\_ (5)~~ (4) Provide, when possible, a secure waiting area during  
 16 court proceedings that does not require such persons to be in close proximity  
 17 to the defendants and families and friends of the defendants and otherwise  
 18 make a reasonable effort to minimize unwanted contact between the victim,  
 19 members of the victims family, or prosecution witnesses and the defendant,  
 20 members of the defendants family, or defense witnesses before, during, and  
 21 immediately after a judicial proceeding; and

22       ~~\_\_\_\_\_ (6) Assure that any stolen property or other personal property,~~  
 23 ~~other than contraband, belonging to such persons is expeditiously returned to~~  
 24 ~~them when no longer needed as evidence;~~

25       ~~\_\_\_\_\_ (7)~~ (5) Intercede with such persons' employers to assure that the  
 26 employers cooperate with the criminal justice process in order to minimize  
 27 loss of pay and other benefits resulting from court appearances.

28       ~~\_\_\_\_\_ (b)~~ (f) In order to enable the prosecuting attorney to perform the  
 29 additional duties provided in this section:

30                (1) The prosecutor may request the county judge of the county to  
 31 designate or provide an appropriate room or area in the county courthouse,  
 32 reasonably close to the courtroom, to serve as a waiting area during court  
 33 proceedings to accommodate the families and friends of the defendants, as  
 34 provided in subsection ~~(a)~~ (e) of this section; and

35                (2) The prosecutor may request the quorum court of the county to  
 36 provide additional employees for his office to be known as victim of crimes

1 case coordinators at such salary as may be determined by the quorum court, to  
2 be in addition to any other position available to the prosecutor's office."

3

4 SECTION 18. Arkansas Code 16-93-702(b) is amended to read as follows:

5 "(b) If the person whose parole is being considered by the board was  
6 convicted of capital murder or of a Class Y, Class A, or Class B felony, or  
7 any violent or sexual offense, the board shall also notify the victim of the  
8 crime, or the victim's next of kin, of the parole hearing and shall solicit  
9 written or oral recommendations of the victim or his next of kin regarding the  
10 granting of the parole, unless the prosecuting attorney has notified the board  
11 at the time of commitment of the prisoner that the victim or his next of kin  
12 do not want to be notified of future parole hearings."

13

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

17

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

23

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

26

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

28 ~~§ 16-93-707. Future parole hearings - Notice to victim or victim's next~~  
29 ~~of kin.~~

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

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

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

4

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

6 ~~(4) A victim shall be given notice by the prosecuting attorney that an~~  
7 ~~offender is to be sentenced and of his right to appear and be heard at any~~  
8 ~~sentencing hearing or proceeding whenever it follows a plea or court trial.~~

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