STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2964 By: Nelson

COMMITTEE SUBSTITUTE

An Act relating to victims rights; amending 19 O.S. 2001, Section 215.33, as last amended by Section 113, Chapter 234, O.S.L. 2009 (19 O.S. Supp. 2009, Section 215.33), which relates to victims and witnesses rights; deleting list of rights and certain duties of the district attorney and victim-witness coordinators; amending 21 O.S. 2001, Sections 142A and 142A-1, which relate to the Victim's Rights Act; updating statutory references; modifying name of certain act; adding definitions; directing district attorneys and victim-witness coordinators to inform victims of certain rights; requiring peace officers to provide written notification of rights to victims of certain crimes; providing procedures for victim restitution; requiring victims to have a priority interest in certain proceeds received by an offender; stating victims right to participate in the Address Confidentiality Program; declaring victims right to wear buttons during certain criminal trial; providing for the return of certain property used in criminal actions or proceedings; stating victims right to contest parole for an offender; stating guidelines for providing written notification to victims; directing Pardon and Parole Board to give written notification to victims when granting a pardon or parole; requiring designated area be provided to victims and certain persons to witness executions in person or by other means; defining terms; amending 22 O.S. 2001, Sections 984.1, as last amended by Section 1, Chapter 100, O.S.L. 2008 and 984.2, as amended by Section 1, Chapter 197, O.S.L. 2006 (22 O.S. Supp. 2009, Sections 984.1 and 984.2), which relate to use of victim impact statements and disclosure of personal information of victims and witnesses;

clarifying language; repealing 22 O.S. 2001, Section 40.1, as last amended by Section 7, Chapter 171, O.S.L. 2007 (22 O.S. Supp. 2009, Section 40.1), which relates to notice of rights to certain victims; repealing Section 5, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Section 60.15), which relates to the Protection from Domestic Abuse Act; repealing 22 O.S. 2001, Section 984, as amended by Section 2, Chapter 163, O.S.L. 2009 and Section 2, Chapter 165, O.S.L. 2009 (22 O.S. Supp. 2009, Sections 984 and 984.4), which relate to definitions and notification rights of certain crime victims; providing for codification; providing for recodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 19 O.S. 2001, Section 215.33, as last amended by Section 113, Chapter 234, O.S.L. 2009 (19 O.S. Supp. 2009, Section 215.33), is amended to read as follows:

Section 215.33 ~~A. The district attorney's office shall inform the victims and witnesses of crimes of the following rights:~~

~~1. To be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court;~~

~~2. To receive protection from harm and threats of harm arising out of the cooperation of the person with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available and how to access protection;~~

~~3. To be informed of financial assistance and other social services available as a result of being a witness or a victim,~~

~~including information on how to apply for the assistance and services;~~

~~4. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which the victim or witness is entitled;~~

~~5. To be informed of the procedure to be followed in order to apply for and receive any restitution to which the victim is entitled;~~

~~6. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;~~

~~7. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person;~~

~~8. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize the loss of pay and other benefits of the employee resulting from court appearances;~~

~~9. To have the family members of all homicide victims afforded all of the services under this section, whether or not the person is to be a witness in any criminal proceedings;~~

~~10. To be informed of any plea bargain negotiations;~~

~~11. To have victim impact statements filed with the judgment and sentence;~~

~~12. To be informed if a sentence is overturned, remanded for a new trial or otherwise modified by the Oklahoma Court of Criminal Appeals;~~

~~13. To be informed in writing of all statutory rights;~~

~~14. To be informed that when any family member is required to be a witness by a subpoena from the defense, there must be a showing that the witness can provide relevant testimony as to the guilt or innocence of the defendant before the witness may be excluded from the proceeding by invoking the rule to remove potential witnesses;~~

~~15. To be informed that the Oklahoma Constitution allows upon the recommendation of the Pardon and Parole Board and the approval of the Governor the commutation of any sentence, including a sentence of life without parole;~~

~~16. To receive written notification of how to access victim rights information from the interviewing officer or investigating detective; and~~

~~17. To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy~~

~~resolution of the charges under the same standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.~~

~~B. Victim-witness coordinators may inform the crime victim of an offense committed by a juvenile of the name and address of the juvenile found to have committed the crime, and shall notify the crime victim of any offense listed in Section 2-5-101 of Title 10A of the Oklahoma Statutes of all court hearings involving that particular juvenile act. If the victim is not available, the victim-witness coordinator shall notify an adult relative of the victim of said hearings.~~

~~C. Victim-witness coordinators shall inform victims of violent crimes, as defined in Section 984 of Title 22 of the Oklahoma Statutes, and members of the immediate family of such victims of their rights under Sections 984.1 and 984.2 of Title 22 of the Oklahoma Statutes and Section 332.2 of Title 57 of the Oklahoma Statutes.~~

~~D. In any felony case involving a violent crime or a sex offense, the victim witness coordinator shall inform the victim, as soon as practicable, or an adult member of the immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of the progress of pretrial proceedings which could substantially delay the prosecution of the case.~~

~~E.~~ All victim-witness coordinators appointed to perform the services specified in subsection A of Section 4 of this ~~section~~ act shall complete a minimum of twelve (12) hours in-service training annually. ~~Said~~ The training shall be conducted pursuant to the direction of the District Attorneys Council and the Crime Victims Compensation Board.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 142A, is amended to read as follows:

Section 142A. ~~Section~~ Sections 142A ~~et seq.~~, 142A-1 and 142B of this title and Sections 4 through 11 of this act shall be known and may be cited as the "Oklahoma Victim's Rights Act".

SECTION 3. AMENDATORY 21 O.S. 2001, Section 142A-1, is amended to read as follows:

Section 142A-1. For purposes of the Oklahoma Victim's Rights Act:

1. "Crime victim" or "victim" means any person against whom a crime was committed, except homicide, in which case the victim may be a surviving family member including a stepbrother, stepsister or

stepparent, or the estate when there are no surviving family members other than the defendant, and who, as a direct result of the crime, suffers injury, loss of earnings, out-of-pocket expenses, or loss or damage to property, and who is entitled to restitution from an offender pursuant to an order of restitution imposed by a sentencing court under the laws of this state;

2. "Injury" means any physical, mental, or emotional harm caused by the conduct of an offender and includes the expenses incurred for medical, psychiatric, psychological, or generally accepted remedial treatment of the actual bodily or mental harm, including pregnancy and death, directly resulting from a crime and aggravation of existing physical injuries, if additional losses can be attributed to the direct result of the crime;

3. "Loss of earnings" means the deprivation of earned income or of the ability to earn previous levels of income as a direct result of a crime and the loss of the cash equivalent of social security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support, where the payment is the primary source of the victim's income, and where the victim is deprived of the money as a direct result of the crime;

4. <u>"Members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, or a sibling of each victim;</u>

5. "Out-of-pocket loss" means the unreimbursed and nonreimbursable expenses or indebtedness incurred for medical care, nonmedical care, or other services necessary for the treatment of the actual bodily or mental harm, including pregnancy and funeral expenses, directly resulting from the crime and aggravation of existing physical injuries, if additional losses can be attributed directly to the crime; the unreimbursed and nonreimbursable expenses for damage to real and personal property as a direct result of the crime, and unreimbursed and nonreimbursable economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime;

~~5.~~ 6. "Property" means any real or personal property; ~~and~~

~~6.~~ 7. "Restitution" means the return of property to the crime victim or payments in cash or the equivalent thereof, and payment in cash or the equivalent thereof as reparation for injury, loss of earnings, and out-of-pocket loss ordered by the court in the disposition of a criminal proceeding;

8. "Victim impact statements" means information about the financial, emotional, psychological, and physical effects of a violent crime on each victim and members of their immediate family, or person designated by the victim or by family members of the victim and includes information about the victim, circumstances surrounding the crime, the manner in which the crime was

perpetrated, and the opinion of the victim of a recommended sentence; and

9. "Violent crime" means any crime listed in paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes or any attempt, conspiracy or solicitation to commit any such crime or the crime of negligent homicide pursuant to Section 11-903 of Title 47 of the Oklahoma Statutes or the crime of causing great bodily injury while driving under the influence of intoxicating substance pursuant to Section 11-904 of Title 47 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The district attorney's office shall inform the victims and witnesses of crimes of the following rights:

1. To be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled, in order to save the person an unnecessary trip to court;

2. To receive protection from harm and threats of harm arising out of the cooperation of the person with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available and how to access protection;

3. To be informed of financial assistance and other social services available as a result of being a witness or a victim,

including information on how to apply for the assistance and services;

4. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which the victim or witness is entitled;

5. To be informed of the procedure to be followed in order to apply for and receive any restitution to which the victim is entitled;

6. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;

7. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person;

8. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize the loss of pay and other benefits of the employee resulting from court appearances;

9. To have the family members of all homicide victims afforded all of the services under this section, whether or not the person is to be a witness in any criminal proceeding;

10. To be informed of any plea bargain negotiations;

11. To have victim impact statements filed with the judgment and sentence;

12. To be informed if a sentence is overturned, remanded for a new trial or otherwise modified by the Oklahoma Court of Criminal Appeals;

13. To be informed in writing of all statutory rights;

14. To be informed that when any family member is required to be a witness by a subpoena from the defense, there must be a showing that the witness can provide relevant testimony as to the guilt or innocence of the defendant before the witness may be excluded from the proceeding by invoking the rule to remove potential witnesses;

15. To be informed that the Oklahoma Constitution allows, upon the recommendation of the Pardon and Parole Board and the approval of the Governor, the commutation of any sentence, including a sentence of life without parole;

16. To receive written notification of how to access victim rights information from the interviewing officer or investigating detective; and

17. To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy

resolution of the charges under the same standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.

B. The district attorney's office may inform the crime victim of an offense committed by a juvenile of the name and address of the juvenile found to have committed the crime, and shall notify the crime victim of any offense listed in Section 2-5-101 of Title 10A of the Oklahoma Statutes of all court hearings involving that particular juvenile act. If the victim is not available, the district attorney's office shall notify an adult relative of the victim of said hearings.

C. The district attorney's office shall inform victims of violent crimes and members of the immediate family of such victims of their rights under Sections 14 and 15 of this act and Section 332.2 of Title 57 of the Oklahoma Statutes.

D. In any felony case involving a violent crime or a sex offense, the district attorney's office shall inform the victim, as

soon as practicable, or an adult member of the immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of the progress of pretrial proceedings which could substantially delay the prosecution of the case.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Upon the preliminary investigation of a violent crime, it shall be the duty of the officer who interviews the victim of such crime to inform the victim, or a responsible adult if the victim is a minor child or an incompetent person, or the family member who receives death notification in the case of a homicide, in writing, of their rights as a crime victim. Written notification shall consist of handing the victim, responsible adult, if the victim is a minor child or an incompetent person, or family member receiving death notification, a preprinted card or brochure that, at a minimum, includes the following information:

1. A statement that reads, "As a victim of crime, you have certain rights";

2. Telephone and address information for the local District Attorney Victim-Witness Coordinator; and

3. The website address where victims can access a full list of their rights, additional information, and how to apply for crime victim compensation assistance.

B. A victim of domestic abuse has the right to be informed by the first peace officer who interviews the victim of domestic abuse of the twenty-four-hour statewide telephone communication service established by Section 18p-5 of Title 74 of the Oklahoma Statutes and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services; and

4. The right to file a petition for a protective order or, when the domestic abuse occurs when the court is not open for business, to request an emergency temporary protective order."

C. The victim of rape or forcible sodomy has the right to be informed by the officer who interviews the victim of the rape or forcible sodomy, or a responsible adult if the victim is a minor child or an incompetent person, of the twenty-four-hour statewide

telephone communication service established by the Office of the Attorney General for victims of sexual assault pursuant to Section 18p-5 of Title 74 of the Oklahoma Statutes and to give notice to the victim or such responsible adult of certain rights of the victim. The notice shall consist of handing such victim or responsible adult a written statement in substantially the following form:

"As a victim of the crime of rape or forcible sodomy, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;

2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;

3. The right to be informed of financial assistance and other social services available to victims, including information on how to apply for the assistance and services;

4. The right to a free forensic medical examination; and

5. The right to be informed by the district attorney of other victim's rights available pursuant to Section 142A-2 of Title 21 of the Oklahoma Statutes."

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the Protection from Domestic Abuse Act. The person seeking relief shall prepare the petition for a protective order or, at the request of the plaintiff, the court clerk or the victim-witness coordinator, victim support person, or court case manager shall prepare or assist the plaintiff in preparing the petition.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-5 of Title 21, unless there is created a duplication in numbering, reads as follows:

The district attorney's office shall provide all victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss. The unexcused failure or refusal of the crime victim to provide all or part of the requisite

information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-6 of Title 21, unless there is created a duplication in numbering, reads as follows:

The victims and the legal representative of a victim of a crime shall have a priority interest in any proceeds or profits received by a district court from an offender or any other person with the cooperation of the offender, who is required to forfeit any proceeds or profits from any source, as a direct or indirect result of the crime or sentence, or the notoriety which the crime or sentence has conferred upon the offender pursuant to the provisions of Section 17 of Title 22 of the Oklahoma Statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 124A-7 of Title 21, unless there is created a duplication in numbering, reads as follows:

An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined by Section 1-111 of Title 30 of the Oklahoma Statutes, may apply to the Attorney General to have an address designated by the Attorney General serve as the address of the person or the address of the minor or incapacitated person pursuant to the Address

Confidentiality Program established in Section 60.14 of Title 22 of the Oklahoma Statutes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-11 of Title 21, unless there is created a duplication in numbering, reads as follows:

If the owner of an exhibit that has been introduced, filed, or held in custody of the state in any criminal action or proceeding is the victim of the offense for which such exhibit is held, the victim may make application to the court at any time prior to the final disposition of the action or proceeding for the return of the exhibit.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-12 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any victim or representative of a victim of a violent crime as provided in paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes may contest the granting of parole as provided in Section 332.7 of Title 57 of the Oklahoma Statutes.

B. The Pardon and Parole Board shall notify all victims or representatives of a victim, if requested, in writing at least twenty (20) days before an inmate is considered for parole by the Board. The notice shall include the date, time and place of the scheduled meeting and the rules for attendance and providing information. The victim or representative of the victim shall be

allowed at least five (5) minutes to address the Board. The Board shall notify all victims or representatives of a victim of the decision of the Board within twenty (20) days after the inmate is considered for parole by the Board.

C. It is the responsibility of the victim or representative of the victim to provide the Pardon and Parole Board a current mailing address. The district attorney's office shall assist the victim or representative of the victim with supplying the address of the victim to the Board if the victim wishes to be notified. Upon failure of the Pardon and Parole Board to notify a victim who has requested notification and has provided a current mailing address, the final decision of the Board may be voidable, provided the victim who failed to receive notification requests a reconsideration hearing within thirty (30) days of the recommendation by the Board for parole.

D. If requested by the victim of a crime, the Pardon and Parole Board shall provide written notification of the placement of the inmate on specialized parole within the county or incorporated city or town to any victim of the crime for which the inmate was convicted by mailing the notification to the last-known address of the victim. The Board shall not give the address of the inmate to any victim of the crime for which the inmate was convicted.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-13 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Upon the granting of a parole by the Governor, and release of the inmate to the community, the Pardon and Parole Board shall provide written notification to any victim of the crime for which the parolee was convicted by mailing the notification to the last-known address of the victim, if such information is requested by the victim. The Pardon and Parole Board shall not give the address of the parolee to any victim of the crime for which the parolee was convicted.

B. Upon the granting of a pardon by the Governor, the Pardon and Parole Board shall provide written notification to any victim of the crime for which the person receiving the pardon was convicted by mailing the notification to the last-known address of the victim, if such information is requested by the victim. The Pardon and Parole Board shall not give the address of the person receiving the pardon to any victim of the crime for which the person receiving the pardon was convicted.

C. The notification shall be made on a monthly basis by the tenth day of the month following the granting of the pardon or parole.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-14 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. A judgment of death must be executed at the Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to be designated by the court by which judgment is to be rendered. A place shall be provided at the Oklahoma State Penitentiary at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area to which other nonfamily member witnesses are admitted, provided, however, if there are multiple deceased victims, the Department of Corrections shall not be required to provide separate areas for each family of each deceased victim. If facilities are not capable or sufficient to provide all immediate family members with a direct view of the execution, the Department may broadcast the execution by means of a closed circuit television system to an area in which other immediate family members may be located.

B. Immediate family members may request individuals not directly related to the deceased victim but who serve a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister

or licensed counselor. The warden in consultation with the Director of the Department of Corrections shall approve or disapprove such requests. Provided further, the Department may set a limit on the number of witnesses or viewers within occupancy limits.

C. Any surviving victim of the defendant who is eighteen (18) years of age or older may view the execution by closed circuit television with the approval of both the Director of the Department of Corrections and the warden. The Director and warden shall prioritize persons to view the execution, including immediate family members, surviving victims, and supporting persons, and may set a limit on the number of viewers within occupancy limits. Any surviving victim approved to view the execution of their perpetrator may have an accompanying support person as provided for members of the immediate family of a deceased victim.

D. As used in this section:

1. "Members of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, a grandparent, a grandchild, a sibling of a deceased victim, or the spouse of any immediate family member; and

2. “Surviving victim" means any person who suffered serious harm or injury due to the criminal acts of the defendant of which the defendant has been convicted in a court of competent jurisdiction.

SECTION 14. AMENDATORY 22 O.S. 2001, Section 984.1, as last amended by Section 1, Chapter 100, O.S.L. 2008 (22 O.S. Supp. 2009, Section 984.1), is amended to read as follows:

Section 984.1 A. Each victim, or members of the immediate family of each victim or person designated by the victim or by family members of the victim, may present a written victim impact statement, which may include religious invocations or references, or may appear personally at the sentence proceeding and present the statements orally. Provided, however, if a victim or any member of the immediate family or person designated by the victim or by family members of a victim wishes to appear personally, ~~such~~ the person shall have the absolute right to do so. Any victim or any member of the immediate family or person designated by the victim or by family members of a victim who appears personally at the formal sentence proceeding shall not be cross-examined by opposing counsel; provided, however, such cross-examination shall not be prohibited in a proceeding before a jury or a judge acting as a finder of fact. A written victim impact statement introduced at a formal sentence proceeding shall not be amended by any person other than the author, nor shall ~~such~~ the statement be excluded in whole or in part from the court record. The court shall allow the victim impact statement to be read into the record.

B. If a presentence investigation report is prepared, the person preparing the report shall consult with each victim or

members of the immediate family or a designee of members of the immediate family if the victim is deceased, incapacitated or incompetent, and include any victim impact statements in the presentence investigation report. If the individual to be consulted cannot be located or declines to cooperate, a notation to that effect shall be included.

C. The judge shall make available to the parties copies of any victim impact statements.

D. In any case which is plea bargained, victim impact statements shall be presented at the time of sentencing or attached to the district attorney narrative report. In determining the appropriate sentence, the court shall consider among other factors any victim impact statements if submitted to the jury, or the judge in the event a jury was waived.

E. The Department of Corrections and the Pardon and Parole Board, in deciding whether to release an individual on parole, shall consider any victim impact statements submitted to the jury, or the judge in the event a jury was waived.

SECTION 15. AMENDATORY 22 O.S. 2001, Section 984.2, as amended by Section 1, Chapter 197, O.S.L. 2006 (22 O.S. Supp. 2009, Section 984.2), is amended to read as follows:

Section 984.2 The court, upon the request of a victim, witness, or the district attorney, may order that the <u>residential</u> address, telephone number, place of employment, or other personal information

of the victim or witness shall not be disclosed in any law enforcement record or any court document, other than the transcript of a court proceeding, if it is determined by the court to be necessary to protect the victim, witness, or immediate family of the victim or witness from harassment or physical harm and if the court determines that the information is immaterial to the defense.

SECTION 16. REPEALER 22 O.S. 2001, Section 40.1, as last amended by Section 7, Chapter 171, O.S.L. 2007 (22 O.S. Supp. 2009, Section 40.1), is hereby repealed.

SECTION 17. REPEALER Section 5, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2009, Section 60.15), is hereby repealed.

SECTION 18. REPEALER 22 O.S. 2001, Section 984, as amended by Section 2, Chapter 163, O.S.L. 2009 and Section 2, Chapter 165, O.S.L. 2009 (22 O.S. Supp. 2009, Sections 984 and 984.4), are hereby repealed.

SECTION 19. RECODIFICATION 22 O.S. 2001, Section 984.1, as last amended by Section 14 of this act, shall be recodified as Section 142A-8 of Title 21 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 20. RECODIFICATION 22 O.S. 2001, Section 984.2, as last amended by Section 15 of this act, shall be recodified as Section 142A-9 of Title 21 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 21. RECODIFICATION Section 2, Chapter 119, O.S.L. 2007 (22 O.S. Supp. 2009, Section 984.3), shall be recodified as Section 142A-10 of Title 21 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 22. This act shall become effective November 1, 2010.

52-2-9833 GRS 02/16/10