

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2964

By: Nelson

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5
6 AS INTRODUCED

7 An Act relating to victims rights; amending 21 O.S.
8 2001, Sections 142A and 142A-1, which relate to the
9 Victim's Rights Act; updating statutory references;
10 adding definition; directing district attorneys and
11 victim-witness coordinators to inform victims of
12 certain rights; requiring peace officers to provide
13 written notification of rights to victims of certain
14 crimes; providing procedures for victim restitution;
15 requiring victims to have a priority interest in
16 certain proceeds received by an offender; stating
17 victims right to participate in the Address
18 Confidentiality Program; declaring victims right to
19 wear buttons during certain criminal trial; providing
20 for the return of certain property used in criminal
21 actions or proceedings; stating victims right to
22 contest parole for an offender; requiring certain
23 written notification to victims; providing for
24 codification; and providing an effective date.

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

SECTION 1. 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 3 through 10 of this act shall be known and
may be cited as the "Oklahoma Victim's Rights Act".

1 SECTION 2. AMENDATORY 21 O.S. 2001, Section 142A-1, is
2 amended to read as follows:

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

4 1. "Crime victim" or "victim" means any person against whom a
5 crime was committed, except homicide, in which case the victim may
6 be a surviving family member including a stepbrother, stepsister or
7 stepparent, or the estate when there are no surviving family members
8 other than the defendant, and who, as a direct result of the crime,
9 suffers injury, loss of earnings, out-of-pocket expenses, or loss or
10 damage to property, and who is entitled to restitution from an
11 offender pursuant to an order of restitution imposed by a sentencing
12 court under the laws of this state;

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

20 3. "Loss of earnings" means the deprivation of earned income or
21 of the ability to earn previous levels of income as a direct result
22 of a crime and the loss of the cash equivalent of social security,
23 railroad retirement, pension plan, retirement plan, disability,
24 veteran's retirement, court-ordered child support or court-ordered

1 spousal support, where the payment is the primary source of the
2 victim's income, and where the victim is deprived of the money as a
3 direct result of the crime;

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

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

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

21 7. "Violent crime" means any crime listed in paragraph 2 of
22 Section 571 of Title 57 of the Oklahoma Statutes or any attempt,
23 conspiracy or solicitation to commit any such crime or the crime of
24 negligent homicide pursuant to Section 11-903 of Title 47 of the

1 Oklahoma Statutes or the crime of causing great bodily injury while
2 driving under the influence of intoxicating substance pursuant to
3 Section 11-904 of Title 47 of the Oklahoma Statutes.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 142A-2 of Title 21, unless there
6 is created a duplication in numbering, reads as follows:

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

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

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

16 3. To be informed of financial assistance and other social
17 services available as a result of being a witness or a victim,
18 including information on how to apply for the assistance and
19 services;

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

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

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

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

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

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

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

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

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

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

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

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

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

17 17. To a speedy disposition of the charges free from
18 unwarranted delay caused by or at the behest of the defendant or
19 minor. In determining a date for any criminal trial or other
20 important criminal or juvenile justice hearing, the court shall
21 consider the interests of the victim of a crime to a speedy
22 resolution of the charges under the same standards that govern the
23 right to a speedy trial for a defendant or a minor. In ruling on
24 any motion presented on behalf of a defendant or minor to continue a

1 previously established trial or other important criminal or juvenile
2 justice hearing, the court shall inquire into the circumstances
3 requiring the delay and consider the interests of the victim of a
4 crime to a speedy resolution of the case. If a continuance is
5 granted, the court shall enter into the record the specific reason
6 for the continuance and the procedures that have been taken to avoid
7 further delays.

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

16 C. Victim-witness coordinators shall inform victims of violent
17 crimes and members of the immediate family of such victims of their
18 rights under Sections 984.1 and 984.2 of Title 22 of the Oklahoma
19 Statutes and Section 332.2 of Title 57 of the Oklahoma Statutes.

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

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

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 142A-3 of Title 21, unless there
10 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

21 4. The right to file a petition for a protective order or, when
22 the domestic abuse occurs when the court is not open for business,
23 to request an emergency temporary protective order."
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1 C. A victim of domestic abuse, a victim of stalking, a victim
2 of harassment, a victim of rape, any adult or emancipated minor
3 household member on behalf of any other family or household member
4 who is a minor or incompetent, or any minor age sixteen (16) or
5 seventeen (17) years may seek relief under the provisions of the
6 Protection from Domestic Abuse Act. The person seeking relief shall
7 prepare the petition for a protective order or, at the request of
8 the plaintiff, the court clerk or the victim-witness coordinator,
9 victim support person, and court case manager shall prepare or
10 assist the plaintiff in preparing the petition.

11 D. The victim of rape or forcible sodomy has the right to be
12 informed by the officer who interviews the victim of the rape or
13 forcible sodomy to inform the victim, or a responsible adult if the
14 victim is a minor child or an incompetent person, of the twenty-
15 four-hour statewide telephone communication service established by
16 the Office of the Attorney General for victims of sexual assault
17 pursuant to Section 18p-5 of Title 74 of the Oklahoma Statutes and
18 to give notice to the victim or such responsible adult of certain
19 rights of the victim. The notice shall consist of handing such
20 victim or responsible adult a written statement in substantially the
21 following form:

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

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

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

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

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

11 5. The right to be informed by the district attorney of other
12 victim's rights available pursuant to Section 215.33 of Title 19 of
13 the Oklahoma Statutes."

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 142A-4 of Title 21, unless there
16 is created a duplication in numbering, reads as follows:

17 A. In all criminal prosecutions and juvenile proceedings in
18 this state, when the court enters an order directing the offender to
19 pay restitution to any victim for economic loss, the order, for
20 purposes of validity and collection, shall remain a continuing
21 obligation of the offender until fully satisfied, and the obligation
22 shall not be considered a debt, nor shall the obligation be
23 dischargeable in any bankruptcy proceeding. The court order shall
24 continue in full force and effect with the supervision of the state

1 until fully satisfied, and the state shall use all methods of
2 collection authorized by law.

3 B. Any victim of a crime is entitled to be provided with an
4 official request for restitution form from the district attorney's
5 office. The unexcused failure or refusal of the crime victim to
6 provide all or part of the requisite information prior to the
7 sentencing, unless disclosure is deferred by the court, shall
8 constitute a waiver of any grounds to appeal or seek future
9 amendment or alteration of the restitution order predicated on the
10 undisclosed available information.

11 C. 1. Restitution to a victim of identity theft may be ordered
12 in addition to any criminal penalty imposed by the court. The
13 victim of identity theft may bring a civil action for damages
14 against any person participating in furthering the crime or
15 attempted crime of identity theft.

16 2. Victims of identity theft have the right to contact the
17 local law enforcement agency where the victim is domiciled and have
18 an incident report about the identity theft prepared and filed. The
19 local law enforcement agency that prepares and files the incident
20 report shall, upon request, provide the victim with a copy of the
21 incident report.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 142A-5 of Title 21, unless there
24 is created a duplication in numbering, reads as follows:

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

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 124A-6 of Title 21, unless there
11 is created a duplication in numbering, reads as follows:

12 An adult person, a parent or guardian acting on behalf of a
13 minor, or a guardian acting on behalf of an incapacitated person, as
14 defined by Section 1-111 of Title 30 of the Oklahoma Statutes, has
15 the right to apply to the Attorney General to have an address
16 designated by the Attorney General serve as the address of the
17 person or the address of the minor or incapacitated person pursuant
18 to the Address Confidentiality Program established in Section 60.14
19 of Title 22 of the Oklahoma Statutes. An adult or minor child who
20 resides with the applicant who also needs to be a program
21 participant in order to ensure the safety of the applicant may
22 apply. Each adult living in the household must complete a separate
23 application. An adult may apply on behalf of a minor. Applicants
24 shall be certified for four (4) years following the date of filing

1 unless the certification is withdrawn or invalidated before that
2 date. A program participant may request that state and local
3 agencies use the address designated by the Attorney General as the
4 address of the participant.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 142A-7 of Title 21, unless there
7 is created a duplication in numbering, reads as follows:

8 The spouse, children by birth or adoption, stepchildren, parents
9 or stepparents, grandparents, grandchildren, siblings, aunts, uncles
10 or cousins of the murder victim have the right to wear buttons
11 containing a picture of the victim as a symbol of grief in a trial.
12 The button shall not exceed four (4) inches in diameter.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 142A-8 of Title 21, unless there
15 is created a duplication in numbering, reads as follows:

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

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 142A-9 of Title 21, unless there
24 is created a duplication in numbering, reads as follows:

1 Any victim or representative of a victim of a violent crime as
2 set forth in Section 571 of Title 57 of the Oklahoma Statutes or of
3 a crime for which the offender is required by law to serve a minimum
4 of eighty-five percent (85%) of any term of incarceration shall,
5 prior to the vote by the Pardon and Parole Board of whether parole
6 should be recommended, have the right to appear and contest the
7 granting of parole to that offender.

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

15 SECTION 11. This act shall become effective November 1, 2010.

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