

House Bill 567

By: Representatives Parsons of the 42nd and Willard of the 49th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 17 of Title 17 of the Official Code of Georgia Annotated, relating to the
2 "Crime Victims' Bill of Rights," so as to change certain provisions relating to the rights of
3 crime victims; to clarify the rights of crime victims and the method for notifying victims in
4 certain proceedings; to provide for proceedings for the enforcement of such rights; to provide
5 for related matters; to provide an effective date; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 17 of Title 17 of the Official Code of Georgia Annotated, relating to the "Crime
10 Victims' Bill of Rights," is amended by revising Code Section 17-17-1, relating to a
11 declaration of policy, as follows:

12 "17-17-1.

13 (a) The General Assembly hereby finds and declares it to be the policy of this state that
14 victims of crimes should be accorded certain basic rights just as the accused are accorded
15 certain basic rights. Among these rights are:

16 (1) The right to be reasonably protected from the accused;

17 (2) The right to reasonable, accurate, and timely notice of any public proceeding
18 involving the crime perpetuated against them or of any release or escape of the accused;

19 (3) The right not to be excluded from any such public proceeding, unless the court, after
20 receiving clear and convincing evidence, determines that testimony by the victim would
21 be materially altered if the victim heard testimony from a witness;

22 (4) The right to be heard at any public proceeding involving the release, plea, sentencing,
23 or parole of the accused;

24 (5) The right to confer with the attorney for the state in any criminal prosecution related
25 to the state;

26 (6) The right to restitution as provided by law;

27 (7) The right to proceedings free from unreasonable delay; and
 28 (8) The right to be treated fairly and with respect for the victim's dignity.
 29 (b) The crime victim or victim's lawful representative, and the attorney for the state's
 30 prosecution, may assert the rights described in this chapter. The accused shall not be
 31 authorized to obtain any form of relief under this chapter. The rights afforded by this
 32 chapter shall be asserted in the court in which a defendant is being prosecuted for the crime
 33 or, if no prosecution is underway, in the court having jurisdiction over the location where
 34 the crime occurred. A court shall timely decide any motion asserting a victim's rights. If
 35 a court denies the relief sought, the reasons for the denial shall be clearly stated on the
 36 record, and the movant may petition the court of appeals for a writ of mandamus
 37 challenging such decision. The court of appeals may issue the writ and shall consider and
 38 decide such application within 72 hours after the petition has been filed. In no event shall
 39 the proceedings provided by this subsection be stayed or subject to a continuance of more
 40 than five days. Where the court of appeals denies the relief sought, the reasons for the
 41 denial shall be clearly stated on the record."

42 **SECTION 2.**

43 Said chapter is further amended by revising Code Section 17-17-5, relating to notification
 44 to victim of accused's arrest, release from custody, and any judicial proceedings at which
 45 such release is considered, as follows:

46 "17-17-5.

47 (a) All victims, wherever practicable, shall be entitled to notification as defined by
 48 paragraph (7) of Code Section 17-17-3 of the accused's arrest, of the accused's release from
 49 custody, and of any judicial proceeding at which the release of the accused will be
 50 considered. No such notification shall be required unless the victim provides a landline or
 51 cellular telephone number ~~other than a pocket pager or electronic communication device~~
 52 ~~number, mailing address, or e-mail address~~ to which such notice can be directed. A victim
 53 requesting notification by more than one means of notification shall be so notified.

54 (b) The investigating law enforcement agency, prosecuting attorney, or custodial authority
 55 who is required to provide notification pursuant to this chapter shall advise the victim of
 56 his or her right to notification and of the requirement of the victim's providing ~~a landline~~
 57 ~~telephone number other than a pocket pager or electronic communication device number~~
 58 contact information to which the notification shall be directed. Such victim shall transmit
 59 the ~~telephone number~~ contact information described in this ~~subsection~~ Code section to the
 60 appropriate investigating law enforcement agency, prosecuting attorney, or custodial
 61 authority as provided for in this chapter."

62 **SECTION 3.**

63 Said chapter is further amended by revising Code Section 17-17-6, relating to notification
 64 to victim of accused's pretrial release and of victims' rights and the availability of the victims'
 65 compensation and services, as follows:

66 "17-17-6.

67 (a) Upon initial contact with a victim, all law enforcement and court personnel shall make
 68 available to the victim the following information written in plain language:

69 (1) The possibility of pretrial release of the accused, the victim's rights and role in the
 70 stages of the criminal justice process, and the means by which additional information
 71 about these stages can be obtained;

72 (2) The availability of victim compensation and restitution where applicable; and

73 (3) The availability of community based victim service programs.

74 (b) The Criminal Justice Coordinating Council is designated as the coordinating entity
 75 between various law enforcement agencies, the courts, and social service delivery agencies.
 76 The Criminal Justice Coordinating Council shall develop and disseminate written
 77 information upon which law enforcement personnel may rely in disseminating the
 78 information required by this chapter."

79 **SECTION 4.**

80 Said chapter is further amended by revising Code Section 17-17-12, relating to notification
 81 to the victim of an accused's motion for new trial or appeal, release on bail or recognizance,
 82 appellate proceedings, and outcome of appeal, notifications regarding death penalty cases,
 83 and victim's rights retained at a new trial or on appeal, as follows:

84 "17-17-12.

85 (a) Upon the written request of the victim, the prosecuting attorney shall notify the victim
 86 of the following:

87 (1) That the accused has filed a motion for new trial, an appeal of his or her conviction,
 88 or an extraordinary motion for new trial;

89 (2) Whether the accused has been released on bail or other recognizance pending the
 90 disposition of the motion or appeal;

91 (3) The time and place of any appellate court proceedings relating to the motion or
 92 appeal and any changes in the time or place of those proceedings; and

93 (4) The result of the motion or appeal.

94 It shall be the duty of the prosecuting attorney to notify the victim of the need to make such
 95 request in writing.

96 (b) Upon the written request of the victim ~~as defined in paragraph (11) of Code Section~~
 97 ~~17-17-3~~, in cases in which the accused is convicted of a capital offense or other violent

98 offense against the victim, including, but not limited to, assault, battery, child molestation,
 99 rape, or other sexual assault, and receives the death penalty or other sentence, it shall be
 100 the duty of the Attorney General to:

101 (1) Notify the victim of the filing and disposition of all collateral attacks on such
 102 conviction which are being defended by the Attorney General, including, but not limited
 103 to, petitions for a writ of habeas corpus, and the time and place of any such proceedings
 104 and any changes in the time or place of those proceedings; and

105 (2) Provide the victim with a report on the status of all pending appeals, collateral
 106 attacks, and other litigation concerning such conviction which is being defended by the
 107 Attorney General at least every six months until the accused dies or the sentence or
 108 conviction is overturned or commuted or otherwise reduced to a sentence other than the
 109 death penalty.

110 It shall be the duty of the prosecutor at or prior to the date of conviction and any post
 111 conviction appeal, or the Attorney General following the date of the filing of a habeas
 112 action, to make a reasonable attempt to notify the victim of the need to make such request
 113 in writing and to provide information regarding how to contact the office of the Attorney
 114 General.

115 (c) In the event the accused is granted a new trial or the conviction is reversed or remanded
 116 and the case is returned to the trial court for further proceedings, the victim shall continue
 117 to be entitled to request the rights and privileges provided by this chapter."

118 **SECTION 5.**

119 Said chapter is further amended by revising Code Section 17-17-13, relating to notification
 120 to the victim of impending parole or clemency proceedings, as follows:

121 "17-17-13.

122 The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim
 123 whenever it considers making a final decision to grant parole or any other manner of
 124 executive clemency action to release a defendant ~~for a period exceeding 60 days;~~ and the
 125 board shall provide the victim with an opportunity to file a written objection ~~to~~ or other
 126 statement or information regarding such action. No notification need be given unless the
 127 victim has ~~expressed objection to release or has expressed a desire for such notification and~~
 128 has provided the State Board of Pardons and Paroles with a current mailing address ~~and,~~
 129 e-mail address, or telephone number. At the time of conviction of an accused, the
 130 prosecutor shall advise a victim of his or her right to notification under this Code section
 131 and provide contact information for the State Board of Pardons and Paroles to the victim."

132 **SECTION 6.**

133 Said chapter is further amended by revising Code Section 17-17-15, relating to the failure
 134 to provide notice not rendering responsible person liable or comprising a basis for error,
 135 chapter not conferring standing, existing rights not affected, and waiver of rights by victim,
 136 as follows:

137 "17-17-15.

138 (a) Failure to provide or to timely provide any of the information or notifications required
 139 by this chapter shall not subject the person responsible for such notification or that person's
 140 employer to any liability for damages.

141 (b) Failure to provide a victim with any of the rights required by law shall not give an
 142 accused a basis for error in either an appellate action or a post-conviction writ of habeas
 143 corpus. In no case shall a failure to afford a right under this chapter provide grounds for
 144 a new trial; provided, however, that in any appeal in a criminal case, the prosecutor may
 145 assert as error the court's denial of any crime victim's right in the proceeding to which the
 146 appeal relates.

147 (c) This chapter ~~does~~ shall not confer upon a victim any standing to participate as a party
 148 in a criminal proceeding or to contest the disposition of any charge; provided, however,
 149 that a victim may make a motion to reopen a plea or sentence if:

150 (1) The victim has asserted the right to be heard before or during the proceeding at issue
 151 and such right was denied;

152 (2) The victim petitions the court of appeals for a writ of mandamus within ten days; and

153 (3) In the case of a plea, the accused has not pled to the highest offense charged.

154 (d) The enumeration of these rights shall not be construed to deny or diminish other
 155 notification rights granted by state law.

156 (e) The victim may waive any of the information or notification or other rights provided
 157 for by this chapter."

158 **SECTION 7.**

159 This Act shall become effective upon its approval by the Governor or upon its becoming law
 160 without such approval.

161 **SECTION 8.**

162 All laws and parts of laws in conflict with this Act are repealed.