

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SIRIANNI, J. TAYLOR, E. Z. TAYLOR AND BIRMELIN, MARCH 19,
1986

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 1986

AN ACT

1 Providing for the rights of victims of crimes; providing for
2 further duties of district attorneys and courts, for certain
3 notices, for restitution and for the right to make certain
4 statements; and providing penalties.

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10 grounds to set aside conviction or sentence.
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13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Short title.

16 This act shall be known and may be cited as the Crime
17 Victims' Rights Act.

18 Section 2. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Crime." A misdemeanor, felony or murder.

23 "Defendant." A person charged with or convicted of having
24 committed a crime against a victim.

25 "Final disposition." The ultimate termination of the
26 criminal prosecution of a defendant, including, but not limited
27 to, dismissal, acquittal or imposition of sentence by the court.

28 "Prisoner." A person who has been convicted and sentenced to
29 imprisonment for having committed a crime against a victim.

30 "Victim." Except as provided in section 15, any of the

1 following:

2 (1) An individual who suffers direct or threatened
3 physical, financial or emotional harm as a result of the
4 commission of a crime.

5 (2) The following relations of a deceased victim if the
6 relation is not the defendant:

7 (i) The spouse.

8 (ii) An adult child if there is no spouse.

9 (iii) A parent if there is no spouse or adult child.

10 (iv) A sibling if there is no spouse, adult child or
11 parent.

12 (v) A grandparent if there is no spouse, adult
13 child, parent or sibling.

14 (3) A parent, guardian or custodian of a victim who is a
15 minor or legally incapacitated person.

16 Section 3. Initial notice to victim.

17 Within 24 hours after the initial contact between the victim
18 of a reported crime and the law enforcement agency having the
19 responsibility for investigating that crime, that agency shall
20 give to the victim the following information:

21 (1) The availability of emergency and medical services,
22 if applicable.

23 (2) The availability of victims' compensation benefits
24 and the address of the Crime Victim's Compensation Board.

25 (3) The address and phone number of the district
26 attorney whom the victim should contact to obtain information
27 about victims' rights.

28 (4) The following statement: "If within six months, you
29 are not notified of an arrest in your case, you may call the
30 law enforcement agency's telephone number for the status of

1 the case."

2 Section 4. Return of property.

3 The law enforcement agency having responsibility for
4 investigating the reported crime shall promptly return to the
5 victim property belonging to that victim which is taken in the
6 course of the investigation. The agency shall not return
7 property which is contraband. The agency shall not return
8 property if the ownership of the property is disputed until the
9 dispute is resolved. The agency shall retain as evidence any
10 weapon used in the commission of the crime and any other
11 evidence if the district attorney certifies that there is a need
12 to retain that evidence in lieu of a photograph or other means
13 of indicating its possession by the agency.

14 Section 5. Protection of victim.

15 (a) Notice.--Not later than 24 hours after the arraignment
16 of the defendant for a crime, the law enforcement agency having
17 responsibility for investigating the crime shall inform the
18 victim as to whether or not the defendant has been released from
19 custody.

20 (b) Revocation of bond.--Based upon the victim's affidavit
21 asserting threats of physical violence or intimidation by the
22 defendant or at the defendant's direction against the victim or
23 the victim's immediate family, the district attorney may move
24 that the bond or personal recognizance of a defendant be
25 revoked.

26 Section 6. Further notice to victim.

27 (a) Content, etc.--Not later than seven days after the
28 arraignment of the defendant for a crime, but not less than 24
29 hours before a preliminary examination, the court shall give to
30 each victim a written notice of each of the following:

1 (1) A brief statement in plain English of the procedural
2 steps in the processing of a criminal case.

3 (2) The rights and procedures under this act.

4 (3) Suggested procedures if the victim is subjected to
5 threats or intimidation.

6 (4) The person to contact for further information.

7 If requested by the victim, the district attorney shall give to
8 the victim notice of any scheduled court proceedings and notice
9 of any changes in that schedule. The district attorney shall
10 obtain the views of the victim about the disposition of a crime,
11 including the victim's views about dismissal, plea or sentence
12 negotiations, and pretrial diversion programs. A victim who
13 receives a notice under this section and who chooses to receive
14 any other notice or notices under this act shall keep the court
15 informed of his current address.

16 (b) Notice.--If a victim, as defined in section 2(1) of the
17 definition of "victim," is physically unable to exercise the
18 privileges and rights under this act, he may designate by
19 written instrument his spouse or an adult child, parent, sibling
20 or grandparent to act in place of the victim during the duration
21 of the physical disability. During the physical disability,
22 notices to be provided under this act to the victim shall
23 continue to be sent only to the victim.

24 Section 7. Waiting areas.

25 The court shall provide a waiting area for the victim
26 separate from the defendant, defendant's relations and defense
27 witnesses if such an area is available and the use of the area
28 is practical. If a separate waiting area is not available or
29 practical, the court shall provide other safeguards to minimize
30 the victim's contact with the defendant, defendant's relations

1 and defense witnesses during court proceedings.

2 Section 8. Identity and address of victim.

3 (a) Testimony as to identity.--Based upon the victim's
4 reasonable apprehension of acts or threats of physical violence
5 or intimidation by the defendant or at the defendant's direction
6 against the victim or his immediate family, the district
7 attorney may move that the victim or any other witness not be
8 compelled to testify at pretrial proceedings or at trial for
9 purposes of identifying the victim as to his address, place of
10 employment or other personal identification without the victim's
11 consent. A hearing on the motion shall be in camera.

12 (b) Court records.--The address of the victim shall not be
13 in the court file or ordinary court documents unless it is
14 contained in a transcript of the trial or unless it is used to
15 identify the place of the crime. The phone number of the victim
16 shall not be in the court file or ordinary court documents
17 except as contained in a transcript of the trial.

18 Section 9. Speedy trial.

19 A speedy trial may be scheduled for any case in which the
20 victim is averred by the district attorney to be either of the
21 following:

22 (1) A victim of child abuse, including sexual abuse or
23 any other assaultive crime.

24 (2) A victim of criminal sexual conduct in the first,
25 second or third degree or of an assault with intent to commit
26 criminal sexual conduct involving penetration or to commit
27 criminal sexual conduct in the second degree.

28 The chief judge, upon motion of the district attorney for a
29 speedy trial for a case described above shall set a hearing date
30 within ten days of the date of the motion. If the motion is

1 granted, the trial shall not be scheduled earlier than 20 days
2 from the date of the hearing.

3 Section 10. Conference with district attorney.

4 Upon request of the victim, the district attorney shall
5 confer with the victim prior to the selection of the jury and
6 prior to the trial of the defendant.

7 Section 11. Presence of victim at trial.

8 The victim has the right to be present throughout the entire
9 trial of the defendant, unless the victim is going to be called
10 as a witness. If the victim is going to be called as a witness,
11 the court may, for good cause shown, order the victim to be
12 sequestered until the victim first testifies.

13 Section 12. Penalty for discharge or discipline of victim by
14 employer.

15 An employer or the employer's agent who threatens to
16 discharge or discipline or who discharges or disciplines, or who
17 causes to be discharged or disciplined, a victim because that
18 victim is subpoenaed or requested by the attorney to attend
19 court for the purpose of giving testimony commits a misdemeanor
20 of the third degree.

21 Section 13. Additional notice.

22 (a) Content.--The court shall give to the victim notice of
23 the following:

24 (1) The defendant's conviction.

25 (2) The crimes for which the defendant was convicted.

26 (3) The victim's right to make a written or oral impact
27 statement for use in the preparation of a presentence
28 investigation report concerning the defendant.

29 (4) The address and telephone number of the probation
30 office which is to prepare the presentence investigation

1 report.

2 (5) That a presentence investigation report and any
3 statement of the victim included in the report will be made
4 available to the defendant unless exempted from disclosure by
5 the court.

6 (6) The victim's right to make an impact statement at
7 sentencing.

8 (7) The time and place of the sentencing proceeding.

9 (b) Impact statement.--A notice given under subsection (a)
10 shall inform the victim that his impact statement may include,
11 but shall not be limited to, the following:

12 (1) An explanation of the nature and extent of any
13 physical, psychological or emotional harm or trauma suffered
14 by the victim.

15 (2) An explanation of the extent of any economic loss or
16 property damage suffered by the victim.

17 (3) An opinion of the need for and extent of restitution
18 and whether the victim has applied for or received
19 compensation for loss or damage.

20 (4) The victim's recommendation for an appropriate
21 sentence.

22 Section 14. Statement to probation officer.

23 (a) Written statement.--The victim may submit or make a
24 written or oral impact statement to the probation officer for
25 use by that officer in preparing a presentence investigation
26 report. A victim's written statement shall, upon his request, be
27 included in the presentence investigation report.

28 (b) Oral statement at sentencing.--The victim shall have the
29 right to appear and make an oral impact statement at the
30 sentencing of the defendant.

1 Section 15. Restitution.

2 (a) Order.--The court, when sentencing a defendant, may
3 order, in addition to or in lieu of any other penalty authorized
4 by law, that the defendant make restitution to any victim or
5 victim's estate. If the court does not order restitution, or
6 orders only partial restitution, the court shall state on the
7 record the reasons for that action.

8 (b) Damage or loss of property.--If a crime results in
9 damage to or loss or destruction of property of a victim, the
10 order of restitution may require that the defendant do either of
11 the following:

12 (1) Return the property to the owner thereof.

13 (2) If return of the property under paragraph (1) is
14 impossible, impractical or inadequate, pay an amount equal to
15 the greater of subparagraph (i) or (ii), less the value,
16 determined as of the date the property is returned, of that
17 property or any part of the property that is returned:

18 (i) The value of the property on the date of the
19 damage, loss or destruction.

20 (ii) The value of the property on the date of
21 sentencing.

22 (c) Personal injury.--If a crime results in physical or
23 psychological injury to a victim, the order of restitution may
24 require that the defendant do one or more of the following, as
25 applicable:

26 (1) Pay an amount equal to the cost of actual medical
27 and related professional services and devices relating to
28 physical and psychological care.

29 (2) Pay an amount equal to the cost of actual physical
30 and occupational therapy and rehabilitation.

1 (3) Reimburse the victim or the victim's estate for
2 after-tax income loss suffered by the victim as a result of
3 the offense.

4 (4) Pay an amount equal to the cost of psychological and
5 medical treatment for members of the victim's family which
6 has been incurred as a result of the offense. defendant.

7 (d) Funeral expenses.--If a crime resulting in bodily injury
8 also results in the death of a victim, the order of restitution
9 may require that the defendant pay an amount equal to the cost
10 of actual funeral and related services.

11 (e) Restitution in services, etc.--Instead of restitution
12 under subsection (b), (c) or (d), if the victim or victim's
13 estate consents, the order of restitution may require that the
14 defendant make restitution in services in lieu of money, or make
15 restitution to a person designated by the victim or victim's
16 estate if that person provided services to the victim as a
17 result of the crime.

18 (f) Terms and procedure.--If the court orders restitution
19 under this section, the court shall, if the victim is deceased,
20 order that the restitution be made to the victim's estate. Any
21 order of restitution shall be as fair as possible to the victim
22 or victim's estate without unduly complicating or prolonging the
23 sentencing process. The court shall not order restitution with
24 respect to a loss for which the victim or victim's estate has
25 received or is to receive compensation, including insurance,
26 except that the court may, in the interest of justice, order
27 restitution to the Crime Victim's Compensation Board or to any
28 person who has compensated the victim or victim's estate for
29 such a loss to the extent that the Crime Victim's Compensation
30 Board or the person paid the compensation. An order of

1 restitution shall require that all restitution to a victim or
2 victim's estate under the order be made before any restitution
3 to any other person under that order is made.

4 (g) Set-off.--Any amount paid to a victim or victim's estate
5 under an order of restitution shall be set off against any
6 amount later recovered as compensatory damages by the victim or
7 the victim's estate in any Federal or State civil proceeding and
8 shall reduce the amount payable to a victim or a victim's estate
9 by an award from the Crime Victim's Compensation Board made
10 after an order of restitution under this section.

11 (h) Time of restitution, probation and parole.--

12 (1) If not otherwise provided by the court, restitution
13 shall be made immediately. However, the court may require
14 that the defendant make restitution within a specified period
15 or in specified installments. The end of the period or the
16 last installment shall not be later than the following:

17 (i) The end of the period of probation, if probation
18 is ordered.

19 (ii) Two years after the end of imprisonment or
20 discharge from parole, whichever occurs later, if the
21 court does not order probation.

22 (iii) Three years after the date of sentencing in
23 any other case.

24 (2) If the defendant is placed on probation or paroled,
25 any restitution ordered under this section shall be a
26 condition of that probation or parole. The court may revoke
27 probation and the parole board may revoke parole if the
28 defendant fails to comply with the order and if the defendant
29 has not made a good faith effort to comply with the order. In
30 determining whether to revoke probation or parole, the court

1 or parole board shall consider the defendant's employment
2 status, earning ability, financial resources and the
3 willfulness of the defendant's failure to pay and any other
4 special circumstances that may have a bearing on the
5 defendant's ability to pay.

6 (i) Enforcement.--

7 (1) A defendant who is required to pay restitution and
8 who is not in willful default of the payment of the
9 restitution, at any time, may petition the court for a
10 cancellation of any unpaid portion of restitution. If it
11 appears to the satisfaction of the court that payment of the
12 amount due will impose a manifest hardship on the defendant
13 or his immediate family, the court may cancel all or part of
14 the amount due in restitution or modify the method of
15 payment.

16 (2) An order of restitution may be enforced by the
17 district attorney or a victim or victim's estate named in the
18 order to receive the restitution in the same manner as a
19 judgment in a civil action.

20 (3) Notwithstanding any other provision of this section,
21 a defendant shall not be imprisoned, jailed or incarcerated
22 for a violation of parole or probation, or otherwise, for
23 failure to pay restitution as ordered under this section
24 unless the court determines that the defendant has the
25 resources to pay the ordered restitution and has not made a
26 good faith effort to do so.

27 (j) Definition.--As used in this section the term "victim"
28 means an individual who suffers direct or threatened physical,
29 financial or emotional harm as a result of the commission of a
30 crime.

1 Section 16. Financial information.

2 (a) General rule.--The court, in determining whether to
3 order restitution under section 15 and the amount of that
4 restitution, shall consider the amount of the loss sustained by
5 any victim as a result of the offense, the financial resources
6 and earning ability of the defendant, the financial needs of the
7 defendant and the defendant's dependents and such other factors
8 as the court considers appropriate.

9 (b) Information.--The court may order the probation officer
10 to obtain information pertaining to the factors set forth in
11 subsection (a). The probation officer shall include the
12 information collected in the presentence investigation report or
13 in a separate report, as the court directs. The court shall
14 disclose to both the defendant and the district attorney all
15 portions of the presentence or other report pertaining to the
16 matters described in subsection (a).

17 (c) Evidence.--Any dispute as to the proper amount or type
18 of restitution shall be resolved by the court by a preponderance
19 of the evidence. The burden of demonstrating the earning ability
20 of the defendant and the amount of loss sustained by a victim as
21 a result of the offense shall be on the district attorney. The
22 burden of demonstrating the financial resources of the defendant
23 and the financial needs of the defendant and the defendant's
24 dependents shall be on the defendant. The burden of
25 demonstrating such other matters as the court deems appropriate
26 shall be upon the party designated by the court as justice
27 requires.

28 Section 17. Criminals not to benefit from crime.

29 (a) General rule.--A person convicted of a crime shall not
30 derive any profit from the sale of his or her recollections,

1 thoughts and feelings with regard to the offense committed by
2 that person until the victim receives any restitution or
3 compensation ordered for him or her against the defendant and
4 expenses of incarceration are recovered as provided in
5 subsection (c) and until the escrow account created under
6 subsection (b) is terminated under subsection (d).

7 (b) Forfeiture of proceeds.--Upon the conviction of a
8 defendant for a crime involving a victim, and after notice to
9 any interested party, the district attorney for the county in
10 which the conviction occurred or the Attorney General may
11 petition the court in which the conviction occurred to order
12 that the defendant forfeit all or any of proceeds received or to
13 be received by the defendant, or the defendant's representatives
14 or assignees, from contracts relating to the depiction of the
15 crime or the defendant's recollections, thoughts or feelings
16 about the crime, in books, magazines, media entertainment or
17 live entertainment. The proceeds shall be held in escrow for a
18 period of not more than five years.

19 (c) Distribution.--During the existence of the escrow
20 account, proceeds in the account shall be distributed in the
21 following priority for the following purposes:

22 (1) To satisfy an order of restitution.

23 (2) To satisfy any civil judgment in favor of the victim
24 against that defendant.

25 (3) Reimbursement of the county or the Commonwealth for
26 the costs of incarceration.

27 (d) Remainder.--Fifty percent of the balance remaining in
28 the escrow account at the end of the escrow period shall be
29 payable to the defendant and the remaining 50% of the balance
30 shall be payable to the Crime Victim's Compensation Fund for use

1 by the Crime Victim's Compensation Board to pay compensation
2 claims.

3 Section 18. Further information.

4 A victim shall be entitled to the following information from
5 the court:

6 (1) Notice of the calculation of the earliest release
7 date of the prisoner, or the earliest parole eligibility date
8 of the prisoner, with all potential good time or disciplinary
9 credits considered if the sentence of imprisonment exceeds 90
10 days. The victim may request one-time-only notice of this
11 calculation.

12 (2) Notice of the transfer or pending transfer of the
13 prisoner to a minimum security facility and the address of
14 that facility.

15 (3) Notice of the release or pending release of the
16 prisoner in a community residential program, under extended
17 furlough or any other transfer of a prisoner to community
18 status.

19 (4) Notice of any reduction in the minimum sentence
20 resulting from prison overcrowding.

21 (5) Notice of the escape of the person accused,
22 convicted or imprisoned for committing a crime against the
23 victim.

24 (6) Notice of the victim's right to address or submit a
25 written statement for consideration by a parole board member
26 or a member of any other agency having authority over the
27 prisoner's release on parole as provided in section 19.

28 (7) Notice of the decision of a parole board or other
29 agency having authority over the prisoner's release on
30 parole, after a parole review, as provided in section 19.

1 (8) Notice of the release of a prisoner 90 days before
2 the date of the prisoner's discharge from prison where
3 practical, unless the notice has been otherwise provided
4 under this act.

5 (9) Notice of a public hearing regarding a reprieve,
6 commutation or pardon of the prisoner's sentence by the
7 Governor.

8 Section 19. Parole.

9 A victim shall have the right to address or submit a written
10 statement for consideration by a parole board member or a member
11 of any other agency having authority over the prisoner's release
12 on parole. Not less than 30 days before a review of the
13 prisoner's release, a victim shall be given written notice by
14 the Department of Corrections informing the victim of the
15 pending review and of victims' rights under this section. The
16 victim, at his own expense, may be represented by counsel at the
17 review. A victim shall receive notice of the decision of the
18 board or agency and, if applicable, notice of the date of the
19 prisoner's release on parole. Notice shall be mailed within a
20 reasonable time after the board or agency reaches its decision
21 but not later than 14 days thereafter.

22 Section 20. Construction of act.

23 Nothing in this act shall be construed as creating a cause of
24 action for damages against the Commonwealth, a county or a
25 municipality, or any of their agencies, instrumentalities or
26 employees.

27 Section 21. Failure to comply with act not to provide grounds
28 to set aside conviction or sentence.

29 The failure to provide a right, privilege or notice to a
30 victim under this act shall not be grounds for the defendant to

1 seek to have the conviction or sentence set aside.

2 Section 22. Application of act.

3 This act shall apply to crimes committed on and after the
4 effective date hereof.

5 Section 23. Effective date.

6 This act shall take effect in 90 days.