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# CRIMINAL PROCEDURE, COURTS Crime Victims' Bill of Rights: Provide for Crime Victims' Rights; Increase Maximum Amount of Compensation Payable to Victims of Crimes; District Attorneys: Provide for Additional Duties of District Attorneys with Respect to Crime Victims' Rights

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## CRIMINAL PROCEDURE, COURTS

### *Crime Victims' Bill of Rights: Provide for Crime Victims' Rights; Increase Maximum Amount of Compensation Payable to Victims of Crimes; District Attorneys: Provide for Additional Duties of District Attorneys with Respect to Crime Victims' Rights*

**CODE SECTIONS:** O.C.G.A. §§ 15-18-6, -14, 17-15-8 (amended), 17-17-1 to -15 (new), 42-1-11 (amended)

**BILL NUMBERS:** HB 170, HB 178

**ACT NUMBERS:** 289, 290

**GEORGIA LAWS:** 1995 Ga. Laws 385, 1995 Ga. Laws 394

**SUMMARY:** Act 289, originating as HB 170, provides for a victims' "Bill of Rights." Crime victims must be notified of specific events in the judicial process, including the capture, charging, or conviction of a suspect or when a convict is under parole consideration. Act 289 also increases the compensation available to crime victims to a maximum aggregate amount of \$10,000. Act 290, originating as HB 178, authorizes the appointment of additional assistant district attorneys and expands their duties. Under Act 290, district attorneys and assistant district attorneys will be responsible for assisting crime victims through the criminal justice process.

**EFFECTIVE DATE:** July 1, 1995

#### *History*

With the introduction of HB 170, the "Crime Victims' Bill of Rights," Georgia joined the national trend to acknowledge crime victims and emphasize the rights of victims in the criminal justice system.<sup>1</sup> Both Governor Zell Miller and his opponent in the 1994 gubernatorial race, Guy Millner, proposed a crime

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1. *Legislature in Brief: 'Official Language' Bill Passes in Senate*, ATLANTA CONST., Feb. 10, 1995, at E5.

victims' bill of rights in their campaigns.<sup>2</sup> HB 170 was originally part of the proposed crime legislation Governor Miller unveiled during the 1994 campaign.<sup>3</sup> The purpose of the bill was to codify, in one location, the rights of victims as their offenders are processed through the criminal justice system.<sup>4</sup> According to Governor Miller's Communications Director, Rick Dent, the bill "was about codifying a statement of principle that we were sick and tired of the system mistreating and mishandling victims."<sup>5</sup>

Before the introduction of HB 170, several state legislatures had already enacted victims' rights measures, either in the form of legislation or as constitutional amendments.<sup>6</sup> In drafting the Georgia legislation, the Governor's office sought to include elements from laws of other states that have aggressively addressed victims' rights.<sup>7</sup> Initially, both a constitutional amendment and a legislative enactment were considered for the Georgia measure.<sup>8</sup> Ultimately, the Governor's office found no appreciable difference in the enforceability of enacted legislation as opposed to a constitutional amendment.<sup>9</sup> The Governor chose the legislative route because legislation could take effect on July 1, 1995, whereas a constitutional amendment would require voter approval in a November election.<sup>10</sup>

As introduced, HB 170 emphasized that crime victims should be notified as their offenders move through the criminal justice system.<sup>11</sup> A provision requiring notification to crime victims of any change in the custodial status of their offenders was enacted

2. Ben Smith, III, *Candidates Offer Crime Victim Plans: Goal is to Enhance Rights of Those Hurt*, ATLANTA J., Aug. 23, 1994, at F1.

3. *See id.*

4. Telephone Interview with Rick Dent, Communications Director for Governor Miller (Apr. 7, 1995) [hereinafter Dent Interview].

5. *Id.*

6. *See, e.g.*, ARIZ. CONST. art. II, § 2.1; CAL. CONST. art. I, § 28(a)-(b); FLA. CONST. art. I, § 16(b); ILL. CONST. art. I, § 8.1; MICH. CONST. art. I, § 4; MO. CONST. art. I, § 32; N.J. CONST. art. II, § 3; R.I. CONST. art. I, § 3; TEX. CONST. art. I, § 30; WASH. CONST. art I, § 35; N.J. STAT. ANN. § 2:4B-36 (West Supp. 1995); PA. STAT. ANN. tit. 71, § 180-9.3 (1990); TENN. CODE ANN. §§ 40-38-101 to -103 (Supp. 1994); WYO. STAT. § 1-40-203 (Supp. 1995).

7. Dent Interview, *supra* note 4.

8. Dent Interview, *supra* note 4.

9. Dent Interview, *supra* note 4.

10. Dent Interview, *supra* note 4.

11. Dent Interview, *supra* note 4.

during the 1993 legislative session.<sup>12</sup> However, the 1993 legislation would not take effect until six months after the effective date of an appropriations act specifically funding the provision.<sup>13</sup> No such funds were appropriated during the 1993 or 1994 legislative sessions.<sup>14</sup> To keep the victims' bill of rights from becoming another "unfunded mandate,"<sup>15</sup> the Governor's office envisioned HB 178 as a vehicle for funding the victim notification process called for in HB 170.<sup>16</sup>

The funding for additional assistant district attorneys provided by HB 178 was a response to the growing case load in the criminal justice system.<sup>17</sup> However, the Governor's office recognized that these new positions could enhance the enforcement of victims' rights.<sup>18</sup> Thus, HB 178 was introduced to provide for the addition of new assistant district attorneys and to expand the duties of district attorneys and assistant district attorneys to include protecting the rights of crime victims.<sup>19</sup>

### *HB 170*

The Act adds chapter 17 to title 17 of the Code: the "Crime Victims' Bill of Rights."<sup>20</sup> In the Act, the General Assembly declares that it is state policy that "victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights."<sup>21</sup>

"Victim" is defined in the Code as "[a] person against whom a crime has been perpetrated."<sup>22</sup> If the victim has died, the Code

12. 1993 Ga. Laws 1728 (formerly found at O.C.G.A. § 42-1-11 (1994)); see also *Legislative Review*, 10 GA. ST. U. L. REV. 176 (1993).

13. 1993 Ga. Laws 1728.

14. O.C.G.A. § 42-1-11 annot. (1994) (noting that funds were never appropriated).

15. Dent Interview, *supra* note 4.

16. Dent Interview, *supra* note 4.

17. Dent Interview, *supra* note 4.

18. Dent Interview, *supra* note 4.

19. Dent Interview, *supra* note 4; see also HB 178, as introduced, 1995 Ga. Gen. Assem.

20. O.C.G.A. § 17-17-2 (Supp. 1995).

21. *Id.* § 17-17-1.

22. *Id.* § 17-17-3(11)(A). The definition of "victim" was eliminated from HB 170 by the House Special Judiciary Committee because the term was adequately defined in O.C.G.A. § 17-17-3(11)(A). Dent Interview, *supra* note 4; see also HB 170 (HCS), 1995 Ga. Gen. Assem.

designates in preferential order the victim's spouse, adult child, parent, sibling, or grandparent as the victim within the meaning of the statute, provided that none of these persons is in custody or is the defendant.<sup>23</sup> Likewise, a parent, guardian, or custodian of a victim who is a minor or a legally incapacitated person assumes the rights of the victim, so long as none of these persons is in custody or is the defendant.<sup>24</sup> Crimes covered by the Act include serious felonies: murder, assault and battery, kidnapping, reckless conduct, sexual exploitation of or cruelty to children, sexual offenses, burglary, arson, theft, robbery, and some offenses involving a vehicle.<sup>25</sup> The bulk of the Act deals with victim notification, which is defined as "written notice when time permits or, failing such, a documented effort to reach the victim by telephonic or other means."<sup>26</sup>

Under the Act, victims are entitled to notification of an accused's arrest or release from custody or of any judicial proceeding in which the accused's release will be considered.<sup>27</sup> The Act makes the victim responsible for providing the prosecuting attorney, law enforcement agencies, and custodial authorities with the victim's current address and telephone number.<sup>28</sup> The Act requires that the prosecuting attorney, custodial authority, or law enforcement agency responsible for the notification advise the victim of the right to notification and of the requirement that the victim furnish a telephone

23. O.C.G.A. § 17-17-3(11)(B) (Supp. 1995).

24. *Id.* § 17-17-3(11)(C).

25. Dent Interview, *supra* note 4; *see also* O.C.G.A. §§ 17-17-3(4), 42-1-11(a)1 (Supp. 1995). The Act amends O.C.G.A. § 42-1-11 to include victims of sexual offenses in the class of persons entitled to notification when their offenders are released from custody. O.C.G.A. § 42-1-11 (Supp. 1995). HB 170 was amended by the House Special Judiciary Committee to make the definition of "crime" in O.C.G.A. § 42-1-11(a)(1) consistent with the definition provided in O.C.G.A. § 17-17-3(4). Dent Interview, *supra* note 4; *see also* HB 170 (HCS), 1995 Ga. Gen. Assem. As a result of a subsequent Senate committee amendment, the final version of the bill also included vehicular crimes in the definition of "crime" provided in O.C.G.A. § 17-17-3(4). *Compare* HB 170 (HCS), 1995 Ga. Gen. Assem. *with* O.C.G.A. § 17-17-3(4) (Supp. 1995).

26. O.C.G.A. § 17-17-3(7) (Supp. 1995).

27. *Id.* § 17-17-5(a).

28. *Id.* § 17-17-14(a). The telephone number may not be for a pager or other electronic communication device. *Id.* § 17-17-5(a).

number.<sup>29</sup> The victim's address and telephone number must be kept confidential.<sup>30</sup> As a condition of release of this information, the court may prohibit its transmittal to the defendant.<sup>31</sup>

Upon the victim's initial contact with law enforcement or court personnel, the victim is entitled to written information explaining "in plain language" the possibility of a pretrial release of an accused, the victim's rights and role in the criminal justice process, and how the victim may obtain additional information about the stages of the criminal justice process.<sup>32</sup> Law enforcement and court personnel must also explain the availability of victim compensation and victim service programs.<sup>33</sup> The Criminal Justice Coordinating Council (Council) is responsible for disseminating information to law enforcement agencies to assist them in this process.<sup>34</sup> The Act designates the Council as the coordinating body between law enforcement agencies, the courts, and social service providers.<sup>35</sup> Further, the investigating law enforcement authority, defined as the authority responsible for investigating the crime,<sup>36</sup> must promptly notify a victim when an accused has been arrested.<sup>37</sup> Prompt notification means notification "as soon as practically possible" to afford the victim a "meaningful opportunity to exercise his or her rights."<sup>38</sup>

The prosecuting attorney is responsible for the bulk of the notification requirements.<sup>39</sup> Upon initial contact with the victim, the prosecuting attorney must promptly inform the victim of the procedural steps in the case and the rights of the victim under the Act.<sup>40</sup> The prosecuting attorney must also tell the victim what to do if the victim is threatened and must provide the victim with telephone numbers of contact persons within the prosecutor's office and the office of the appropriate custodial

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29. *Id.* § 17-17-5(b).

30. *Id.* § 17-17-14(b).

31. *Id.* § 17-17-10.

32. *Id.* § 17-17-6(a).

33. *Id.*

34. *Id.* § 17-17-6(b).

35. *Id.*

36. *Id.* § 17-17-3(6).

37. *Id.* § 17-17-7(a).

38. *Id.* § 17-17-3(9).

39. Dent Interview, *supra* note 4.

40. O.C.G.A. § 17-17-8(a)(1)-(2) (Supp. 1995).

authority.<sup>41</sup> Further, the prosecuting attorney is charged with notifying the victim, whenever possible, before any proceeding in which the accused may be released.<sup>42</sup> The Act provides that the victim shall have the opportunity, whenever possible, to voice an opinion on the release of the accused before any judicial proceeding.<sup>43</sup> If the court grants a pretrial release, the victim can file a complaint with the prosecuting attorney asserting any acts or threats of physical violence or intimidation by the accused against the victim or the victim's family.<sup>44</sup> The prosecuting attorney may then file a motion to revoke the accused's release based on the victim's complaint or other evidence.<sup>45</sup> The victim must also have the opportunity to voice views regarding plea and sentence negotiations or the possibility of participation in pretrial or post-conviction diversion programs.<sup>46</sup>

If the victim makes a written request, the prosecuting attorney must give the victim advance notice of all scheduled court proceedings and any changes to the schedule.<sup>47</sup> The prosecuting attorney is required to inform the victim that such a request must be made in writing.<sup>48</sup> Further, upon the written request of the victim, the prosecuting attorney must notify the victim if the accused moves for a new trial, appeals the conviction, or has been released pending an appeal.<sup>49</sup> Additionally, the victim must be informed of the time and place of the appeal as well as the result.<sup>50</sup>

The Act requires the custodial authority, defined as any law enforcement officer having custody of the accused,<sup>51</sup> to notify the victim promptly of the release of the accused.<sup>52</sup> Further, the State Board of Pardons and Paroles must give the victim twenty days advance notice whenever it considers parole of the accused and must afford the victim an opportunity to file a written

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41. *Id.* § 17-17-8(a)(3)-(4).

42. *Id.* § 17-17-7(c).

43. *Id.* § 17-17-7(d).

44. *Id.* § 17-17-7(f).

45. *Id.*

46. *Id.* § 17-17-11.

47. *Id.* § 17-17-8(b).

48. *Id.*

49. *Id.* § 17-17-12(a).

50. *Id.*

51. *Id.* § 17-17-3(5).

52. *Id.* § 17-17-7(e).

objection.<sup>53</sup> The Act also amends Code section 42-1-11, which formerly required the Commissioner of Corrections to notify the victim that an offender was to be released from custody.<sup>54</sup> The amendment places the responsibility of notification on the custodial authority, thus aligning the definitions in Code section 42-1-11 with the definitions in Code section 17-17-3.<sup>55</sup> The Act also requires the custodial authority to notify the victim if the offender is granted work release or extended furlough<sup>56</sup> or if the offender escapes.<sup>57</sup>

In addition to the notice requirements, the Act gives victims the right to wait in a separate area from the accused during any judicial proceeding.<sup>58</sup>

The Act also increases the maximum aggregate compensation award available to a victim to \$10,000.<sup>59</sup> Originally, HB 170 did not include the increase in victim compensation awards.<sup>60</sup> This provision of the Act was adopted from another bill and added by the House Special Judiciary Committee in an effort to combine victims' rights' legislation in one bill.<sup>61</sup> The increased victim compensation awards will be funded by DUI fines, parole fees, and federal matching funds.<sup>62</sup>

Finally, the Act provides that failure to give the required notifications will not subject the person responsible to any

53. *Id.* § 17-17-13.

54. 1993 Ga. Laws 1728 (formerly found at O.C.G.A. § 42-1-11 (1994)).

55. Compare O.C.G.A. § 17-17-3 (Supp. 1995) with *id.* § 42-1-11. Originally, HB 170 left the responsibility of victim notification with the Commissioner of Corrections. HB 170, as introduced, 1995 Ga. Gen. Assem. The House Special Judiciary Committee eliminated the term "commissioner" and replaced it throughout the bill with "custodial authority" to keep the language in Code section 42-1-11 consistent with the definitions in Code section 17-17-3. Dent Interview, *supra* note 4; see also HB 170 (HCS), 1995 Ga. Gen. Assem.

56. O.C.G.A. § 42-1-11(b) (Supp. 1995).

57. *Id.* § 42-1-11(d).

58. *Id.* § 17-17-9.

59. *Id.* § 17-15-8(c)(1). The limit was previously \$5000. 1994 Ga. Laws 1800, § 6, at 1809 (formerly found at O.C.G.A. § 17-15-8(c)(1) (Supp. 1994)).

60. See HB 170, as introduced, 1995 Ga. Gen. Assem.

61. Dent Interview, *supra* note 4. The victim compensation award increase was originally introduced in HB 55. Dent Interview, *supra* note 4.

62. Record of Proceedings on the House floor (Feb. 15, 1995) (remarks by Rep. Thurbert E. Baker, House District No. 70) (available in Georgia State University College of Law Library).



liability.<sup>63</sup> However, because the Act's notification requirements are codified, a court can issue a writ of mandamus to enforce victims' rights as required by the Act.<sup>64</sup>

### *HB 178*

The Act provides for the addition of staff necessary for the enforcement of the Crime Victims' Bill of Rights.<sup>65</sup> The Act provides for the appointment of one additional assistant district attorney in each judicial circuit.<sup>66</sup> As introduced, the bill created a positive duty on the part of the assistant district attorneys to protect the rights of crime victims.<sup>67</sup> The Act requires that district attorneys have the same responsibilities as assistant district attorneys in the area of victims' rights.<sup>68</sup> The enumerated duties of the district attorneys were expanded to include "assist[ing] victims and witnesses of crimes through the complexities of the criminal justice system and ensur[ing] the victims of crimes are apprised of the rights afforded them under the law."<sup>69</sup>

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63. O.C.G.A. § 17-17-15(a) (Supp. 1995).

64. Dent Interview, *supra* note 4.

65. See O.C.G.A. § 15-18-14(b) (Supp. 1995).

66. *Id.* § 15-18-14(b)(2).

67. HB 178, as introduced, 1995 Ga. Gen. Assem. Initially, HB 178 called for assistant district attorneys to "serve as advocates for the protection of the rights of victims." *Id.* The language was changed in a House committee substitute to eliminate the term "advocate" from the Act and to require only that assistant district attorneys "act to protect the rights of victims." See O.C.G.A. § 15-18-14(b)(3) (Supp. 1995). The change was made to address the ethical concerns of district attorneys that the "advocate" language might require them to split their representation between the victims and the State. Dent Interview, *supra* note 4.

68. Dent Interview, *supra* note 4; see O.C.G.A. § 15-18-14(b)(3) (Supp. 1995).

69. O.C.G.A. § 15-18-6(10) (Supp. 1995).