

Welcome to the



Crime Victim's Bill of Rights

HB 567

2010 Act 403

Ga. L. 2010, p. _____





- **Kim McCoy**

- Director, Victim Witness Unit, Office of the District Attorney, Cobb Judicial Circuit
- 770/528-3042
- KMcCoy@cobbcounty.org

- **Chuck Olson**

- General Counsel, Prosecuting Attorneys' Council, Atlanta, GA
- 404.969.4006
- colson@pacga.org



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Crime Victim's Bill of Rights

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Background





Sponsors

- **Rep. Don Parsons**
 - Republican, Cobb Co.
 - Telecom Consultant
 - Chairman, Energy, Utilities & Telecommunications Committee
- **Rep. Wendell Willard**
 - Republican, Fulton Co.
 - Attorney
 - Chairman, Judiciary Committee (Civil)





Rep. Don Parsons

- **"This legislation greatly strengthens the legal rights of victims of crime to be notified, to be present and to be heard at proceedings. It also clarifies and strengthens the law relating to restitution,"**





The Advocates

- **Crime Victims Advocacy Council (CVAC)**
 - Gordon Rondeau
 - Daughter murdered in Illinois in 1994
 - Rev. Bruce Cook
 - Brother murdered
 - Former executive director of CVAC





What Was Proposed

18 U.S.C. § 3771



- **Right to be present at all public court proceedings involving the crime**
- **Right to be “reasonably heard” at any public proceeding involving release, plea, sentencing, or any parole proceeding**
- **Right “to be reasonably protected from the accused”**
- **Right to bring legal proceeding against criminal justice agencies or courts**
- **Right to bring legal proceeding to re-open a plea or sentence when the right to be heard was denied**

The Gate Keepers

House Non-Civil Judiciary Committee

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JUDICIARY COMMITTEE

CHAIRMAN

Rep. Mary Margaret Oliver

BANKS and BANKING

Rep. Johnny Floyd



The Mandate to Prosecutors

- **“You need to get with those folks and get with this Bill because we are going to pass a Victim Rights Bill”**
 - Rep. Rich Golick
 - Chairman, House Judiciary Committee (Non-Civil)





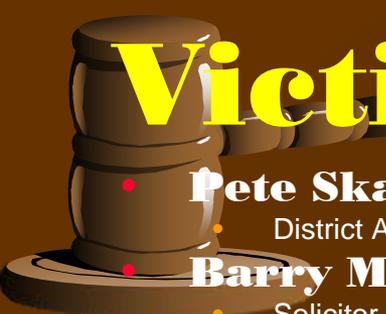
The Model

- **Arizona Revised Statutes § 13-1401, et seq.**



“the judicial construction already placed upon a similar statute of another State in effect at the time of the adoption of the Georgia Act is considered to accompany it and is treated as incorporated therein.”

Todd v. State, 228 Ga. 746, 750 (1972)



Victim Services Committee

- **Pete Skandalakis**
 - District Attorney, Coweta Judicial Circuit - Co-Chair
- **Barry Morgan**
 - Solicitor General, Cobb County - Co-Chair
- **Hayward Altman**
 - District Attorney, Middle Judicial Circuit
- **Sherry Boyd**
 - VWAP Director, Brunswick Judicial Circuit
- **Helen Bradley**
 - Director of Victim Services, Eastern Judicial Circuit
- **Vonda Darrisa**
 - Director Victim-Witness Assistance Program, Dublin Judicial Circuit
- **Brenda Hoffmeyer**
 - Director VWAP, Conasauga Judicial Circuit
- **Ashley Ivey**
 - Victim Advocate, Western Judicial Circuit
- **Spencer Lawton**
 - Retired District Attorney, Eastern Judicial Circuit
- **Kristy Lindstrom**
 - Director of Prosecution-based Victim Witness Advocacy, PAC (Resigned 1/2010)
- **Kim McCoy**
 - Director Victim Witness Unit, Cobb Judicial Circuit
- **Linda Tipton**
 - Operations Manager/Victim Services Director Coweta Judicial Circuit
- **Carla William**
 - Victim Services Coordinator, Southern Judicial Circuit



What Emerged

- **Right to be present at all public court proceedings involving the crime**
- **Enhanced right to notice of release**
- **Right to be “reasonably heard” at any public proceeding involving release, plea, sentencing, or any parole proceeding**
- **Right to be reasonably protected from the accused or accused’s agents**
- **Right to be advised about how to file complaint with Judicial Qualification Commission if judge denies right to be heard**



What Didn't Change

- **General notification procedures for prosecution, law enforcement that we are already used to**
- **Right for victim to be notified and to participate, to provide restitution and victim impact information at local courts, with DOC and P&P**
- **Scope of Crime Victims' Bill of Rights**

Crime Victim Bill of Rights

Effective

July 1, 2010





Overview of HB 567

- **Section 1 - Juvenile court procedure - victim impact statements**
- **Section 2 - Juvenile court - victim access**
- **Section 3 - Juvenile court - mental competency**
- **Section 4 - Victim impact statements - sentencing in felony cases**
- **Section 5 - Restitution**
- **Section 6 - Summary of victim's rights**
- **Section 7 - CVBOR definitions**
- **Section 8 - Notice of release from custody - generally**
- **Section 9 - Notice of release by Dept. of Behavioral Health and Developmental Disabilities**
- **Section 10 - Duties of prosecuting attorney**
- **Section 11 - Victim's right to refuse defense interview**
- **Section 12 - Victim's right to be present in court**
- **Section 13 - Crime victim - victim advocate communications**
- **Section 14 - Notice of post-conviction proceedings**
- **Section 15 - Inmate communication with victim**
- **Section 16 - Victim's right to be present in court**
- **Section 17 - Transfer of defendant pending appeal**

**Rushing Can be
Hazardous to
Your Case
&
You**





Parts of the Bill to Watch Out For



Section 1

O.C.G.A. §15-11-64.2

- **Victim impact form for juvenile court same as for superior/state court**
- **Procedures for use of victim impact form – follow superior/state court procedures**



Section 1

O.C.G.A. §15-11-64.2(d)

- **“Juvenile court shall permit the victim to address the juvenile court”**
- **Juvenile court must “advise the victim of the right to address the court prior to the entry of a dispositional order”**



Section 1



O.C.G.A. §15-11-64.2(e)

- **If Judge intentionally refuses to comply with 15-11-64(d)**
- **Victim can file complaint with Judicial Qualifications Commission**

Code of Judicial Conduct

Canon 3(B)(7)

“Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.”



Section 2

O.C.G.A. § 15-11-78

- **Victim has the right to attend delinquency proceedings**

Cross Reference: O.C.G.A. § 24-9-61.1, as amended



Section 3

O.C.G.A. § 15-11-155

- **Applies to mental competency disposition hearing in juvenile court**
- **Conforms references to “victim impact form”**



Section 4

O.C.G.A. § 17-10-1.2





Section 4



O.C.G.A. § 17-10-1.2(a)(3)

- **Changes apply to non-death penalty cases**
- **Victim has “right to testify about the impact of the crime” at sentencing hearing**
- **Judge has discretion as to admissibility of victim testimony at sentencing**
- **If judge excludes testimony of victim, State can submit proffer**



Section 4



O.C.G.A. § 17-10-1.2(a)(5)

- **Applies to sentencing hearings for:**

- Murder, felony murder, attempted murder
- Armed robbery
- Kidnapping
- Rape
- Aggravated child molestation
- Aggravated sodomy
- Aggravated sexual battery
- Stalking
- Aggravated stalking
- Destructive devices (making, transporting, distributing, etc) & hoax devices
- Conspiracy to violate above crimes



Section 4



O.C.G.A. § 17-10-1.2(a)(5)

- **Sentencing hearing**
 - Victim has absolute right to attend
 - If victim not present:
 - Court must ask prosecutor if victim was notified of hearing
 - Prosecutor must make “reasonable effort” to notify victim of hearing
 - If “reasonable effort” not made, testimony at the hearing may continue but
 - Must be recessed until victim has been notified and given opportunity to be present!



Section 4



O.C.G.A. § 17-10-1.2(a)(5)

- **SENTENCE CANNOT BE IMPOSED without victim unless victim waives being at the hearing!**



Section 4



O.C.G.A. § 17-10-1.2(a)(5)

- **Applies to sentencing hearings for:**
 - Murder, felony murder, attempted murder
 - Armed robbery
 - Rape
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 - Aggravated child molestation
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 - Destructive devices (making, transporting, distributing, etc) & hoax devices
 - Conspiracy to violate above crimes



Section 4



O.C.G.A. § 17-10-1.2(a)(5)

- **Requires constant communication between prosecutor and victim advocate!**
- **Applies to pleas & trials**



Section 4

O.C.G.A. § 17-10-1.2(d)

- **If Judge intentionally refuses to comply with 17-10-1.2**
- **Victim can file complaint with Judicial Qualifications Commission**

Code of Judicial Conduct

Canon 3(B)(7)

“Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.”



Section 5

O.C.G.A. § 17-14-3

- **Amends Restitution Act**
 - Victim has right to attend hearings
 - Judge must make a finding “as to the amount of restitution due any victim.”
 - Finding required even if defendant does not have present ability to pay
 - Allows Corrections & Pardons and Paroles to collect restitution from defendant who acquires assets
 - Prison Industry Enhancement Program
 - Transition Release Center



Section 6

O.C.G.A. § 17-17-1

- **The General Assembly hereby finds and declares it to be the policy of this state that victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights. These rights include:**



Section 6 (cont)

O.C.G.A. § 17-17-1

- **What has not changed: the right to:**
 - (1) reasonable, accurate, and timely notice of any scheduled court proceedings or any changes to such proceedings;
 - (2) reasonable, accurate, and timely notice of the arrest, release, or escape of the accused;
 - (5) file a written objection in any parole proceedings involving the accused;
 - (6) confer with the prosecuting attorney in any criminal prosecution related to the victim;
 - (7) to restitution as provided by law;
 - (8) to proceedings free from unreasonable delay;
 - (9) to be treated fairly and with dignity by all criminal justice agencies involved in the case.



Section 6 (cont)

O.C.G.A. § 17-17-1

- **NEW - enhances or re-emphasizes based on language in previous sections:**
 - (3) The right not to be excluded from any scheduled court proceedings, except as provided in this chapter or as otherwise provided by law;
 - (4) The right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused;



Section 7

O.C.G.A. § 17-17-3

- **Changes some definitions**
- **(1.1) ‘arrest’ means an actual custodial restraint of a person or the person’s submission to custody and includes the taking of a child into custody.**
- **(4.1) “criminal justice agency” to include:**
 - Arresting law enforcement agency;
 - Custodial authority;
 - Investigating law enforcement agency;
 - Prosecuting attorney;
 - State Board of Pardons and Paroles.

Becomes relevant in some other sections that specify obligations of the “criminal justice agency” – see section 8 (c).



Section 7 (cont)

O.C.G.A. § 17-17-3



BIG CHANGE

- **(4): expands types of crimes that Crime Victim's Bill of Rights applies**



CVBOR Offenses

- **Title 16**

- Chapter 5 – Crimes Against Persons
- Chapter 6 – Sex Crimes
 - (All offenses)
- Chapter 7 – Articles 1, 3, or 4 (burglary/arson)
- Chapter 8 – Articles 1 or 2 (theft, robbery, etc)
- Chapter 9 – Forgery
- Chapter 12 – Part 3, Article 3 (Sale or distribution of harmful materials to minors)
 - **Eliminated sexual exploitation of children**

- **O.C.G.A. § 30-5-8 (Elder abuse)**

- **Title 40**

- Homicide by vehicle
- Feticide by vehicle
- Serious injury by vehicle



Section 8

O.C.G.A. § 17-17-5

- **Added provision:**
 - Victims be notified if:
 - accused on electronic release and monitoring program, and
 - an arrest warrant is issued for the accused; and
 - the accused is prohibited from contacting the victim.



Section 8

O.C.G.A. § 17-17-5

- **(b) – removes requirement for victims to provide ‘landline’ phone for notification – now says current address and telephone number.**



Section 8

O.C.G.A. § 17-17-5

- **(c) – where any CJA**
 - (see slide on section 7)
- **having knowledge of an event described in subsection (a) of this Code Section shall provide notice to the victim of such event.**



Section 9

O.C.G.A. § 17-7-5.1

- **Applies to:**
 - Department of Behavioral Health and Developmental Disabilities (DBHDD) and
 - Defendant committed to DBHDD:
 - For evaluation, or
 - As mentally incompetent to stand trial; or
 - As not guilty by reason of insanity at the time of the crime
- **Victim entitled to notice of release**
- **Prosecutor provides contact information**



Section 10

O.C.G.A. § 17-17-8

- **(a) Upon initial contact with a victim, a prosecuting attorney shall give prompt notification to the victim of the following:**
 - (5) The names and telephone numbers of contact persons at the office of the investigating agency where the victim may make application for the return of any of the victim's property that was taken during the course of the investigation, as provided by Code Section 17-5-50.



Section 10

O.C.G.A. § 17-17-8(b)

- **(b) adds restitution hearings to the list of hearings that victims must be given notice.**



Section 10

O.C.G.A. § 17-17-8(c)



- **All new language and mandates**
- **Personal information from victim for restitution is confidential**
 - Not subject to Open Records
 - Not subject to “subpoena, discovery, or introduction into evidence in any civil or criminal proceeding”



Section 11

O.C.G.A. § 17-17-8.1

**Defense interviews
of victim**





Section 11

O.C.G.A. § 17-17-8.1

- **Defense interviews of victim**
 - Does NOT apply to peace officers if:
 - Officer became victim while “acting within the scope of the officer's official duties.”
 - O.C.G.A. § 17-17-8.1(d)



Section 11

O.C.G.A. § 17-17-8.1(a)

- **“A victim shall have the right to refuse to submit to an interview by the accused, the accused's attorney, or an agent of the accused.”**

New Code section – NOT NEW LAW

Emmett v. State, 232 Ga. 110, 113 (1974)



Section 11

O.C.G.A. § 17-17-8.1(a)

- **“It shall be the duty of the prosecuting attorney to advise a victim that he or she has the right to agree to such an interview or to refuse such an interview.”**

Former law was prosecutor could advise

Rutledge v. State, 245 Ga. 768, 770 (1980)



Section 11

O.C.G.A. § 17-17-8.1(e)

- **“Except as provided in this Code section, the prosecuting attorney shall not take any action to deny an accused's attorney access to a victim for the purpose of interviewing such victim.”**



GRPC Rule 3.4



Fairness to Opposing Party and Counsel

- **“A lawyer shall not . . . unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act”**

The maximum penalty for a violation of this Rule is disbarment.



GRPC Rule 5.1 & 5.3



Supervisory Responsibility

- **“A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Georgia Rules of Professional Conduct.”**
- **“A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer”**

The maximum penalty for a violation of this Rule is disbarment.



Denying Access to Witness

- **Violates due process**
 - *Wilson v. State*, 93 Ga. App. 229 (1956)
 - *Freeman v. Georgia*, 599 F.2d 65, 69 (5th Cir. 1979), cert. denied 444 U.S. 1013, 100 S. Ct. 661, 62 L. Ed. 2d 641 (1980)
- **Conviction can be reversed**



Query



- **What do you do if victim tells you he or she does not want to be interviewed by defense counsel?**
 - What does the advocate do?
 - What does the prosecutor do?
 - Is there an obligation to tell defense counsel?



Suggested Rights Statement

- **As the victim of a crime, you have the right to refuse or agree to be interviewed by the accused, the accused's attorney, or anyone who represents or contacts you on behalf of the accused in this case.**
- **If you agree to be interviewed, you may set conditions for the interview such as the time, date, and location of the interview, who may be present, any security arrangements for the interview, and whether or not the interview may be recorded. You also have the right to terminate the interview at any time or to refuse to answer any question during the interview.**
- **If you have any questions, you may contact the District Attorney's/Solicitor-General's office at (phone number).**



Section 11



O.C.G.A. § 17-17-8.1(b)

- **“Victim may set conditions for such interview as he or she desires”**
 - Time
 - Place
 - Location
 - Who may be present
 - Prosecutor if asked by victim
 - Security arrangements
 - Recording
- **Victim may refuse to answer any question**
- **Victim can terminate at any point**



Victim is Minor



- **Parent or guardian makes decision**
 - Can refuse to allow minor to be interviewed
 - *Perkins v. State*, 260 Ga. 292, 295 (1990)
 - *Dover v. State*, 250 Ga. 209, 211-212 (1982)



Section 11

O.C.G.A. § 17-17-8.1(c)

- **Accused, the accused's attorney, and any agent of the accused shall not contact a victim in an unreasonable manner**
- **“If a victim has clearly expressed to any such party a desire not to be contacted, no contact shall be made”**
- **“Accused's attorney or an agent of the accused shall make a clear statement that he or she is contacting the victim on behalf of the accused”**



GRPC Rule 8.4

Misconduct

- **“It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to . . .engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation”**

The maximum penalty for a violation of this Rule is disbarment.



GRPC Rule 5.1 & 5.3

Supervisory Responsibility

- **“A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Georgia Rules of Professional Conduct.”**
- **“A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer”**

The maximum penalty for a violation of this Rule is disbarment.

Section 12

O.C.G.A. § 17-17-9

Victim's Right to Attend Court Proceedings





Section 12

O.C.G.A. § 17-17-9(a)

- **“A victim has the right to be present at all criminal proceedings in which the accused has the right to be present.”**



Section 12

O.C.G.A. § 17-17-9(a)

- **“A victim or member of the immediate family of a victim shall not be excluded from any portion of any hearing, trial, or proceeding pertaining to the offense based solely on the fact that such person is subpoenaed to testify unless it is established that such victim or family member is a material and necessary witness to such hearing, trial, or proceeding and the court finds that there is a substantial probability that such person's presence would impair the conduct of a fair trial.”**



Section 12

O.C.G.A. § 17-17-9(a)



To exclude victim/family member

- **Defense must:**

- File motion prior to jeopardy attaching
- Show witness is material and necessary
 - what is expected to be proved by witnesses testimony
 - how it bears on the case to be tried
 - *Reid v. State*, 119 Ga. App. 368, 371 (1969)

- **Court must:**

- Decide before jeopardy attaches
- Find “substantial probability that such person's presence would impair the conduct of a fair trial”



Section 12

O.C.G.A. § 17-17-9(b)

- **“A victim of a criminal offense who has been or may be subpoenaed to testify at such hearing or trial shall be exempt from the provisions of Code Section 24-9-61 requiring sequestration; provided, however, that the court shall require that the victim be scheduled to testify as early as practical in the proceedings.”**



Section 13

O.C.G.A. § 17-17-9.1

Prosecution-Based Victim Advocate
Work Product Privilege





Section 13

O.C.G.A. § 17-17-9.1

- **Not based on Arizona law but Massachusetts & New Mexico**





Section 13

O.C.G.A. § 17-17-9.1

- **Communications**
 - between a victim and victim assistance personnel appointed by a prosecuting attorney
 - Does not apply to peace officer
 - Any notes, memoranda, or other records made by such victim assistance personnel of such communication
- **Are work product of the prosecuting attorney**
- **Not subject to disclosure except where such disclosure is required by law.**
- **Such work product shall be subject to other exceptions that apply to attorney work product generally.**



Section 13

O.C.G.A. § 17-17-9.1

- **Only applies to “victim assistance personnel appointed by a prosecuting attorney”**



Advocate Work Product



- **Does NOT apply to**
 - *Brady/Giglio* materials
 - Exculpatory information must be disclosed because “such disclosure is required by law”
 - Victim statements relating to facts of the case



Work Product



- **Not otherwise subject to discovery in criminal case**
 - *Waldrip v. Head*, 279 Ga. 826, 827 (2005)
- **Not subject to Open Records Act**
 - O.C.G.A. § 50-18-72(e)(2)
- **Limited discovery in civil cases**
 - O.C.G.A. § 9-11-26(b)(3)
- **Waived if advocate testifies in prosecution's case**
 - *United States v. Nobles*, 422 U.S. 225, 239-240 (1975)



Section 14

O.C.G.A. § 17-17-12

- **Notice of post-conviction proceedings**
 - Attorney General is to notify DA or SG
 - If victim has requested notice, Attorney General notifies



Section 15

O.C.G.A. § 17-17-12.1

- **Blocking Inmate mail to victim**
 - Applies to
 - Department of Corrections
 - Department of Juvenile Justice
 - Sheriffs?
 - Post-conviction
 - Mail includes email & electronic communication
- **Victim must request**





Section 16

O.C.G.A. § 24-9-61.1

- **“Subject to the provisions of Code Section 17-17-9, the victim of a criminal offense shall be entitled to be present in any court exercising jurisdiction over such offense.”**

Cross Reference is to Section 12



Section 17

O.C.G.A. § 42-5-50

- **Convicted felons no longer can remain in county jail pending appeal.**





What Happens Next?

- **Educate your:**
 - Office
 - Judges,
 - Clerks of court
 - Court administrators
 - Law enforcement
 - Public defenders
- **Departments of Corrections, Juvenile Justice and Behavioral Health and Developmental Disabilities and Board of Pardons & Paroles adopt procedures.**



Questions?





Prosecuting Attorneys' Council of Georgia

Suite 400

*104 Marietta Street
Atlanta, Georgia 30303*

Phone 404.969.4001

Fax 404.969.0020

