

Changes to Victim's Rights

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What the Law Requires from LEOs

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Roughly twenty years ago, the North Carolina legislature passed the first N.C. Crime Victims' Rights Act. Since that time, the law has required law enforcement officers to provide victims of certain crimes with certain important information. Our agency has used a particular form for this purpose cleverly called the "High Point Police Department Victim Information Attachment Form."¹ This form allows us to gather the victim's information and allows the victim to either opt-in or opt-out of receiving further notices and updates about their case as it goes through the criminal justice system.

This year's General Assembly has modified that law somewhat after voters last fall approved an amendment to the N.C. Constitution that guaranteed protections to certain crime victims. This amendment was named Marsy's Law after University of California Santa Barbara student Marsalee (Marsy) Nicholas who was stalked and killed by an ex-boyfriend in 1983. One week after the murder, the victim's mother and brother walked into a grocery store after visiting Marsy's grave and were confronted by the accused murderer. They had received no notice that the suspect had been released on bail. Since that time, the family has pushed for more protections for victims across the country.

There are many changes to the N.C. Crime Victims' Act under this year's Session Law 2019-216, but many of them have to deal with persons other than law enforcement, such as the District Attorney's office and judicial officials. The changes for law enforcement are most prominent in two areas: (1) which crimes are now covered by this act and (2) what information must be provided to and collected from those victims. But have no fear, two new forms have been provided for your use to make it as easy as possible to comply with these obligations.

Qualifying Crimes Under the Victims' Rights Act

In the most simplest terms, the Crime Victims' Rights Act applies to victims of "an offense against the person" or a "felony property crime."² A "felony property crime" is any felony set out in:

- Subchapter IV of Chapter 14 of the General Statutes which covers G.S. 14-51 through 14-69.3; or
- Subchapter V of Chapter 14 which covers G.S. 14-70 through 14-125.³

"Offense against the person" is defined as an offense involving the person of the victim which constitutes a violation of:

- Subchapter III of Chapter 14 (G.S. 14-17 through 14-50.43 including murder, rape, sex offenses, assaults, and kidnapping);
- Subchapter VII of Chapter 14 (G.S. 14-177 through 208.45 including crimes against nature, prostitution, indecent liberties and similar crimes);

¹ I am under no delusions that we did this every time we should have in the past, but I'm hopeful for better things in the future. Remember that this is the law, and it remains the policy of the legal office that we follow the law.

² G.S. 15A-830(a)(7).

³ Subchapter IV and V statutes cover burglary, breaking and entering, arson, larceny, robbery, embezzlement, fraud, forgery, identity theft, and related offenses.

- Article 39 of Chapter 14 (G.S. 14-313 through 14-321.2);⁴
- Chapter 20 of the General Statutes (traffic laws) if an element of the offense involves impairment of the defendant or injury or death to the victim;
- A valid 50B protective order including G.S. 14-134.3 (domestic criminal trespass) or G.S. 14-269.8 (purchase/possession of firearm while subject to protective order);
- Article 35 or Chapter 14 (G.S. 14-269 through 14-277.5) if the elements of the offense involve communicating a threat or stalking.⁵

Notice that while only felony property crimes are subject to the Act, the offenses against the person include both felonies and misdemeanors.

While I could list all of these offenses out for you,⁶ using the general guideline of “felony property crime” or “offense against the person” will usually give you a pretty good idea of whether the Victims’ Rights Act applies for your particular offense. When in doubt, you can spend time looking up your particular statute or simply err on the side of caution and treat the crime as a Victims’ Rights Act offense. Which brings us to our next question: “What am I required to do when the Victims’ Rights Act applies?”

LEO Requirements Under the Victims’ Rights Act

Our requirements have not changed dramatically under the new law but, instead of one form, it appears that we will have to deal with two different ones at different times. We will have a new form to provide to victims upon the initial investigation and an AOC form (form AOC-CR-180B) that we will use when an arrest is made. The Conference of District Attorneys has designed a form for the initial information which can be modified to include your agency’s logo and contact information along with the information for your local District Attorney’s office. We will call it the “agency form” to distinguish it from the AOC form as we go through our responsibilities.

According to G.S. 15A-831, “Responsibilities of law enforcement agency,” we must provide the agency form to the victim “as soon as practicable but within 72 hours of identifying” that they are covered by the Victims’ Rights Act. This means that the officer who is taking the initial report for a “felony property crime” or an “offense against the person” should go ahead and complete the form and leave a copy with the victim,⁷ even if the suspect is unknown or unapprehended at the time.⁸ A copy of that form should also go to the District Attorney’s office according to G.S. 15A-831(e).⁹ If the victim is unable or unwilling to give the information required by the form at that time, the form may be left with them and they have ten days to return it to the investigating agency.

An officer who arrests a defendant for a crime covered by the Crime Victims’ Rights Act should complete the top part of AOC form CR-180B (also included as an appendix to this update.) This form should also be sent to the District Attorney’s office and they will use it to keep the victim informed of trial and post-trial proceedings. The victim does not need to get a copy of this form. The law requires the victim to be notified by the investigating agency of the defendant’s arrest within 72 hours. If another agency makes the arrest, that agency must notify the

⁴ This is the “protection of minors” section which includes child abuse and related offenses.

⁵ The only crimes in this section whose elements include communicating threats or stalking are (as you might suspect) Communicating Threats (G.S. 14-227.1) and Stalking (G.S. 14-277.3A). The legislature may have meant to include other weapons offenses when the facts (as opposed to an actual element of the crime) included a threat or stalking behavior but that’s not what the law says.

⁶ I have seen such a list and it is nine pages long. In addition, such a list would quickly be out of date as the laws change. I hear grumbling when my legal update is more than four pages, so I know you aren’t going to pay attention to a nine page list of crimes. A good writer should always know his audience.

⁷ Under G.S. 15A-830(b), if the victim is a minor or is legally incapacitated, a parent, guardian, or legal custodian (assuming they are not the offender) may assert the victim’s rights. If the victim is deceased, then a family member may do so according to this order of right: spouse, child, parent, guardian, legal custodian, sibling, or grandparent (again, assuming they are not the offender.)

⁸ The officer should also update the victim’s information in your police records system. That’s not required by law, but it is good policework and will come in handy when an arrest is made.

⁹ Your DA’s office probably won’t really know what to do with this form until an arrest is made, but the statute says we should forward it “promptly” and so we shall.

investigating agency within 72 hours and the investigating agency has another 72 hours to notify the victim that the arrest has been made.

Let's try to sum all this up in a few lines:

1. An officer who takes the initial report for a felony property crime or an offense against the person should complete the agency form, give a copy to the victim, and send a copy to the District Attorney's office. If the case is assigned to a detective, the detective should ensure that this was done by the initial officer.
2. An officer who arrests a subject¹⁰ for a felony property crime or an offense against the person that occurred in his or her jurisdiction should complete AOC form CR-180B and send that to the District Attorney's office. That officer should also notify the victim that the suspect has been arrested within 72 hours of the arrest.
3. An officer who arrests a subject for a felony property crime or an offense against the person that occurred outside his or her jurisdiction should notify the investigating agency of the arrest within 72 hours but does not need to fill out a form.
4. If your agency receives notice that a subject has been arrested outside your jurisdiction for a felony property crime or an offense against the person that occurred in your jurisdiction (and therefore was investigated by your agency), your agency should notify the victim of the arrest and provide the District Attorney's office with AOC form CR-180B within 72 hours.

Although this law puts an extra burden on police and prosecutors,¹¹ please try to do the best that you can to comply with its requirements. After all, we are here to protect and serve and that is especially true for victims of serious crimes.¹² This law was signed by the Governor and went into effect on September 4th so you should start using these forms and following these procedures immediately.

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.



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¹⁰ This will often be the same officer who took the initial report if the arrest is made at the same time as or soon after the crime occurred. In that case, the officer should complete both forms.

¹¹ Interestingly, a recent blog post by the UNC School of Government's Jeff Welty documented that in Mexico, the victim has the right to be represented by an attorney and a prosecutor is required to petition a judge and allow the victim's attorney the right to be heard before dismissing a charge.

¹² You may have noticed a paucity of humorous footnotes in this legal update (although I realize that some (most?) of you never thought my footnotes were funny anyway.) For that, I apologize. You can chalk it up to two main reasons: (1) I thought that humor might be in poor taste given the emphasis on crime victims in this update and (2) I am still severely jet-lagged from my recent trip and don't have the energy that humor requires. Rest assured that it is not (3) I have finally become a mature adult.

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