

ARTICLE 2 - VICTIM AND WITNESS BILL OF RIGHTS

1-40-201. Short title.

This act may be cited as the "victims bill of rights".

1-40-202. Definitions.

(a) As used in this act:

(i) "Criminal act" means conduct which would constitute a crime as defined by the laws of this state;

(ii) "Victim" means an individual who has suffered direct or threatened physical, emotional or financial harm as the result of the commission of a criminal act or a family member of a victim who is a minor or an incompetent or a surviving family member of a homicide victim;

(iii) "Witness" means a person who is likely to testify in a criminal proceeding;

(iv) "Key witness" means any witness identified in writing by the prosecution as being entitled to the rights provided by this act;

(v) "This act" means W.S. 1-40-201 through 1-40-210.

1-40-203. Victim and witness bill of rights.

(a) All victims and witnesses of crime shall be treated with compassion, respect and sensitivity.

(b) Crime victims, key witnesses and, upon request, other witnesses shall have the following rights:

(i) To be provided notification and information about events affecting the status of the case. These events shall include, but are not limited to, the following as specified in W.S. 1-40-204:

(A) The general status of the case, provided the release of information does not compromise the investigation or endanger witnesses;

(B) The scheduled hearings and dispositions of the case;

(C) The sentencing phase of the case;

(D) The imprisonment or release of the accused or convicted defendant.

(ii) To be provided information about the right to receive judicially ordered restitution as provided in W.S. 7-9-102;

(iii) To be provided information about their rights, privileges and interests under this act as provided in W.S. 1-40-204;

(iv) To be provided information about compensation available under the Crime Victims Compensation Act as provided in W.S. 1-40-101 through 1-40-119;

(v) To be provided information about services and assistance available to victims and witnesses as provided in W.S. 1-40-204;

(vi) To be provided information about available legal recourse and other measures if subjected to threats or intimidation as provided in W.S. 1-40-205;

(vii) To be provided, at the discretion of the prosecuting attorney or criminal justice personnel, reasonable protection and safety immediately before, during and after criminal justice proceedings;

(viii) To be provided with the names, official telephone numbers and official addresses of the primary law enforcement officer and prosecutor assigned to investigate the case;

(ix) To attend and participate in criminal justice system proceedings as provided in W.S. 1-40-206;

(x) To have the accused brought to trial as provided in W.S. 1-40-207. Nothing in this paragraph shall inhibit the ability of counsel for the state and the defendant from entering into any negotiated disposition of any charge or charges which have been levied against the accused;

(xi) To prompt return of property seized as evidence as provided in W.S. 1-40-208;

(xii) To be protected from discharge or discipline by an employer due to involvement with the criminal justice process as provided in W.S. 1-40-209;

(xiii) To be notified about the defendant's conviction as provided in W.S. 7-21-102(a);

(xiv) To be notified about the victim's opportunity to make a victim impact statement for use in the preparation of a presentence investigation report concerning the defendant as provided in W.S. 7-21-102(a)(iii);

(xv) To be provided with the address and telephone number of each probation office which is to prepare the presentence investigation as provided in W.S. 7-21-102(a)(iv);

(xvi) To be notified that the presentence investigation report and any statement of the victim in the report will be made available to the defendant as provided in W.S. 7-21-102(a)(v);

(xvii) To be notified about the opportunity to make an impact statement at sentencing as provided in W.S. 7-21-102(a); and

(xviii) To be notified of the time and place of the sentencing proceeding and any changes thereof as provided in W.S. 7-21-102(a)(vii).

(c) Courts shall enforce crime victim and witness rights under this act to the extent the recognition of those rights do not conflict with constitutional and statutory rights of the defendant.

1-40-204. Rights of victims and witnesses to be informed during the criminal justice process.

(a) Victims of a criminal act shall be informed without undue delay by law enforcement about:

(i) The rights enumerated in this act;

(ii) The right to be informed of the status of the case from the initial police investigation to the final appellate review;

(iii) The fact that financial assistance or other social service options may be available to the victim;

(iv) The existence of the Crime Victims Compensation Act and that compensation may be available to the victim;

(v) The right to have an interpreter or translator to inform the victim of these rights;

(vi) The name and official telephone number of the primary law enforcement officer assigned to investigate the case together with the official address and telephone number of the criminal justice agency investigating the case;

(vii) The right to seek legal counsel and to employ an attorney.

(b) Victims and key witnesses of a criminal act shall be informed in writing by the prosecuting attorney about:

(i) Subject to order of the court, the right to attend all hearings and proceedings involving the case, including the right to be notified, upon request, of the date, time and place of those hearings;

(ii) The right to be notified in advance, if reasonable, when a court proceeding has been rescheduled or canceled;

(iii) The right to be advised of the potential for plea negotiations and, prior to sentencing, the right to be informed of the existence of a negotiated plea, the essentials of the agreement, and the reasons for the disposition;

(iv) The right to know the accused has obtained a pretrial or presentence release;

(v) The right to discuss the case with the prosecutor, and the official address and official telephone number of the prosecutor;

(vi) The availability of other remedies, including the right to proceed in civil litigation generally and the right to any profits attributable to the offender as a result of publication or media coverage resulting from the crime;

(vii) The fact that the attorneys involved and their investigators are advocates either for the state or for the defendant;

(viii) The right to refuse to talk to attorneys, private investigators, law enforcement, or anyone else unless on the witness stand or under subpoena;

(ix) If known to the prosecutor, the schedule of any post sentence hearings affecting the probation of the offender;

(x) The right to provide an affidavit asserting acts or threats of physical violence by the accused or at the accused's direction against the victim or a relative of the victim, the survivor or designated key witness;

(xi) The right to request notification that the offender has filed a petition for expungement of the records of conviction and advance notice of any hearing or proceeding thereon.

(c) Victims, key witnesses, offices of prosecutors, victim witness coordinators and advocates who have participated in the criminal prosecution shall be offered the opportunity to be informed in writing by the department of corrections about:

(i) The commencement of the offender's imprisonment to serve the sentence imposed and the name, official address and security classification of the place of confinement;

(ii) The earliest date upon which the offender could be released and the date released;

(iii) Any transfer of the offender to another facility including the security classification of that facility;

(iv) Any placement of the offender in a community correctional program;

(v) Any change in location of the offender's parole supervision;

(vi) The escape, recapture or death of an offender;

(vii) Any reduction or extension of the offender's sentence.

(d) Victims, key witnesses, offices of prosecutors, victim witness coordinators and advocates who have participated in the criminal prosecution shall be offered the opportunity to be informed in writing by the board of parole about:

(i) Any decision to grant or modify parole and any conditions imposed;

(ii) Any pending revocation of parole, any associated return to custody, the revocation hearing date and disposition of revocation proceedings;

(iii) Any absconscion from supervision and subsequent apprehension;

(iv) Any rescission of parole;

(v) Discharge from parole.

(e) The governor's office shall ensure that the appropriate government agency shall notify in writing, or in person, victims, key witnesses, prosecutors, victim witness coordinators and advocates who have participated in the criminal prosecution of an application for a pardon or the pending commutation of the offender.

(f) Victims, key witnesses, prosecutors, victim witness coordinators and advocates who have participated in the criminal prosecution who wish to receive notification and information shall provide the appropriate criminal justice agencies with their current address and telephone number. This address will only be used for notification purposes.

(g) Nothing in subsections (c) through (e) of this section shall mean the victim, key witnesses, prosecutors, victim witness coordinators or advocates who have participated in the criminal prosecution shall be given information that could jeopardize the safety or security of any person.

1-40-205. Victims and witnesses of crime; free from intimidation.

(a) A victim or witness has the right to be free from any form of harassment, intimidation or retribution.

(b) When waiting to testify in any proceeding regarding a criminal act, a victim or key witness has the right to be

provided, upon request, with a waiting area separate from other witnesses.

(c) When the threat of harassment, intimidation or retribution cannot be avoided, the court shall take appropriate measures to protect the victim or key witness.

(d) Law enforcement officers and prosecuting attorneys shall provide information regarding law enforcement measures available to protect victims and key witnesses.

1-40-206. Victims of crime; present in court.

Unless the court for good cause shown shall find to the contrary, the victim, the victim's designee or both shall have the right to be present at all trial proceedings which may be attended by the defendant.

1-40-207. Victims; timing of trial of accused.

(a) The court shall consider the victim's interest and circumstances when setting any date for trial or in granting or denying continuances.

(b) Nothing in this section shall infringe upon any rights of the accused in a criminal case or inhibit the ability of the prosecution and defense from entering into any agreement as to trial setting or negotiated disposition of any charge or charges pending against the defendant.

1-40-208. Prompt return of property; photographs in lieu of property.

(a) Victims and witnesses have the right to have any personal property, which is not contraband, promptly returned and any real estate, subject to declaration as uninhabitable under W.S. 35-9-156(d), released to the control of the real estate owner, provided it does not interfere with prosecution, trial or appellate review of the case.

(b) Criminal justice agencies shall work together to expedite the return of property, which is not contraband, when it is no longer needed. Prosecuting attorneys shall promptly notify law enforcement agencies when evidence is no longer needed. The prosecuting attorney shall notify the attorneys for the defendants of the intention to return the property twenty (20) days prior to its return to enable the defendants to seek

relief from the court. No notice is required in the absence of a known suspect or defendant unless otherwise ordered by the court. No later than sixty (60) days after the property is taken as evidence, the prosecuting attorney shall make an initial determination whether to expedite the return of property to the victim or witness. The prosecuting attorney in exercising discretion to expedite the return of property shall consider whether:

(i) Photographs of the property would be admissible as evidence in lieu of the property;

(ii) Submitting the photographs into evidence in lieu of the property will substantially prejudice any criminal proceeding;

(iii) The property is required for evidentiary analysis; and

(iv) Ownership of the property is disputed.

(c) The trial court exercising jurisdiction over a criminal proceeding shall, if requested, enter appropriate orders to preserve the property for evidentiary analysis or use, or return the property to the victim or witness as appropriate.

1-40-209. Victims and witnesses have a right to preservation of employment.

(a) A victim or witness who responds to a subpoena from either the prosecution or defense in a criminal case during working hours shall not suffer any change in terms of employment solely because of the act of responding to a subpoena.

(b) A victim or witness, upon request, shall be assisted by law enforcement agencies, the prosecuting attorney or defense attorney in informing an employer that the need for victim or witness cooperation may necessitate the absence of the victim or witness from work.

(c) A victim or witness, who as a direct result of a criminal act or of cooperation with law enforcement agencies, prosecuting attorney or defense attorney, experiences financial hardship, shall be assisted by those agencies, the prosecuting attorney or defense attorney in explaining to employers and creditors the reasons for that financial hardship.

1-40-210. No civil liability created; testimony inadmissible; no relief by appeal.

(a) Nothing in this act shall be construed to create any civil cause of action for monetary damages against any person nor shall it constitute grounds for any claim or motion raised by either the state or defendant in any proceedings.

(b) Testimony or argument regarding the compliance or noncompliance with this act is inadmissible in any criminal trial.

(c) The failure of a victim, designee or any criminal justice agency personnel to exercise or enforce any right granted by the provisions of this act shall not be grounds for relief during proceedings or for any appeal of a conviction by a defendant or grounds for any court to set aside, reverse or remand a criminal conviction.