

## VERMONT GENERAL ASSEMBLY

## The Vermont Statutes Online

### Title 13: Crimes And Criminal Procedure

#### Chapter 165: Victims

##### § 5301. Definitions

As used in this chapter:

(1) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or against whom a finding of sufficient facts for conviction is made.

(2) "Family member" means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a victim.

(3) "Restitution" means money or services which a court orders a defendant to pay or render to a victim as a part of the disposition.

(4) "Victim" means a person who sustains physical, emotional, or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, a person who has been found to be incompetent, or a homicide victim.

(5) "Affected person" means any of the following persons who has requested notification in writing from the court or the Department of Corrections:

(A) witnesses;

(B) jurors;

(C) family members who are not covered by subdivision (4) of this section;

(D) any other persons who demonstrate to the court that the release or escape of a defendant will constitute a threat of physical, emotional, or financial injury or death.

(6) "Release" means release from a correctional facility to furlough or to probation or parole supervision, release from a correctional facility upon expiration of sentence or release from a correctional facility on bail after the defendant's initial appearance.

(7) "Listed crime" means any of the following offenses:

(A) stalking as defined in section 1062 of this title;

(B) aggravated stalking as defined in subdivision 1063(a)(3) or (4) of this title;

(C) domestic assault as defined in section 1042 of this title;

(D) first degree aggravated domestic assault as defined in section 1043 of this title;

(E) second degree aggravated domestic assault as defined in section 1044 of this title;

(F) sexual assault as defined in section 3252 of this title or its predecessor as it was defined in section 3201 or 3202 of this title;

(G) aggravated sexual assault as defined in section 3253 of this title;

(H) lewd or lascivious conduct as defined in section 2601 of this title;

(I) lewd or lascivious conduct with a child as defined in section 2602 of this title;

- (J) murder as defined in section 2301 of this title;
- (K) aggravated murder as defined in section 2311 of this title;
- (L) manslaughter as defined in section 2304 of this title;
- (M) aggravated assault as defined in section 1024 of this title;
- (N) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;
- (O) arson causing death as defined in section 501 of this title;
- (P) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;
- (Q) maiming as defined in section 2701 of this title;
- (R) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;
- (S) unlawful restraint in the second degree as defined in section 2406 of this title;
- (T) unlawful restraint in the first degree as defined in section 2407 of this title;
- (U) recklessly endangering another person as defined in section 1025 of this title;
- (V) violation of abuse prevention order as defined in section 1030 of this title, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);
- (W) operating vehicle under the influence of intoxicating liquor or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);
- (X) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);
- (Y) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);
- (Z) burglary into an occupied dwelling as defined in subsection 1201(c) of this title;
- (AA) the attempt to commit any of the offenses listed in this section;
- (BB) abuse (section 1376 of this title), abuse by restraint (section 1377 of this title), neglect (section 1378 of this title), sexual abuse (section 1379 of this title), financial exploitation (section 1380 of this title), and exploitation of services (section 1381 of this title);
- (CC) aggravated sexual assault of a child in violation of section 3253a of this title;
- (DD) human trafficking in violation of section 2652 of this title; and
- (EE) aggravated human trafficking in violation of section 2653 of this title. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986; amended 1989, No. 290 (Adj. Sess.), § 1; 1995, No. 170 (Adj. Sess.), § 5, eff. Sept. 1, 1996; 1999, No. 4, § 1; 2005, No. 79, § 3; 2009, No. 1, § 13a, eff. March 4, 2009; 2009, No. 58, § 3; 2011, No. 55, § 6; 2013, No. 96 (Adj. Sess.), § 59; 2015, No. 133 (Adj. Sess.), § 3, eff. May 25, 2016.)

### **§ 5302. Reporting to law enforcement agencies**

Victims are eligible for the services set forth under this chapter only if the crime has been reported to law enforcement authorities. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986.)

**§ 5303. Legislative purpose**

(a) The fundamental objective underlying this chapter is the protection of victims of crime. This chapter seeks to ensure that crime victims are treated with the dignity and respect they deserve while functioning in a system in which they find themselves through no fault of their own. This chapter seeks to accommodate that objective and balance crime victims' needs and rights with criminal defendants' rights.

(b) This chapter also seeks to reduce the financial, emotional and physical consequences of criminal victimization, to prevent victimization by the law enforcement and criminal justice system and to assist victims with problems that result from their victimization.

(c) Victims of crime shall be treated with courtesy and sensitivity by the court system and the state's attorney's office. Those responsible should ensure that the process of criminal prosecution moves smoothly and expeditiously and, after the conclusion of a prosecution, should cooperate in an appropriate manner with victims who seek to enforce their civil rights and remedies, which cooperation may include preserving and producing evidence, documents and testimony to the victims for use in such efforts. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986; amended 1995, No. 170 (Adj. Sess.), § 1, eff. Sept. 1, 1996.)

**§ 5304. Victims assistance program**

(a) The Center for Crime Victim Services shall create and maintain a victim assistance program. Except as otherwise provided by law, victim advocates shall provide victims the following services:

(1) Information. Victims shall be informed as to the level of protection available, procedures to be followed in order to receive applicable witness fees, the right to seek restitution as an element of the final disposition of the case, and the right to appear at sentencing in accordance with section 7006 of this title.

(2) Notification. Victims, other than victims of acts of delinquency, shall be notified in a timely manner when a court proceeding involving their case is scheduled to take place and when a court proceeding to which they have been summoned will not take place as scheduled. Victims shall also be notified as to the final disposition of the case, and shall be notified of their right to request notification of a person's release or escape under section 5305 of this title.

(3) Services. Victims shall be entitled to:

(A) receive short-term counseling and support from the victim advocate and referrals for further services;

(B) assistance in obtaining financial assistance and minimizing loss of pay or other benefits resulting from involvement in the criminal justice process;

(C) assistance in documenting and preparing requests for restitution and insurance reimbursement;

(D) assistance in obtaining protection through local law enforcement agencies from harm and threats of harm arising out of their cooperation with the court system;

(E) assistance in the return of property from law enforcement agencies;

(F) assistance and support in dealing with law enforcement agencies;

(G) transportation as needed to court proceedings.

(b) A victim may decline any service provided by the victim assistance program under this section. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986; amended 1989, No. 290

(Adj. Sess.), § 2; 1991, No. 263 (Adj. Sess.), § 2; 1995, No. 170 (Adj. Sess.), § 3, eff. Sept. 1, 1996; 2015, No. 97 (Adj. Sess.), § 75.)

#### **§ 5305. Information concerning release from custody**

(a) Victims, other than victims of acts of delinquency, and affected persons shall have the right to request notification by the agency having custody of the defendant before the defendant is released, including a release on bail or conditions of release, furlough or other community program, upon termination or discharge from probation, or whenever the defendant escapes, is recaptured, dies, or receives a pardon or commutation of sentence. Notice shall be given to the victim or affected person as expeditiously as possible at the address or telephone number provided to the agency having custody of the defendant by the person requesting notice. Any address or telephone number so provided shall be kept confidential.

(b) If the defendant is released on conditions at arraignment, the prosecutor's office shall inform the victim of a listed crime of the conditions of release.

(c) If requested by a victim of a listed crime, the Department of Corrections shall:

(1) at least 30 days before a parole board hearing concerning the defendant, inform the victim of the hearing and of the victim's right to testify before the parole board or to submit a written statement for the parole board to consider; and

(2) promptly inform the victim of the decision of the parole board, including providing to the victim any conditions attached to the defendant's release on parole. (Added 1985, No. 182 (Adj. Sess.), § 2; amended 1989, No. 290 (Adj. Sess.), § 3; 1995, No. 170 (Adj. Sess.), § 4, eff. Sept. 1, 1996; 2015, No. 155 (Adj. Sess.), § 1.)

#### **§ 5306. Victim advocates**

In order to carry out the provisions of the victims assistance program, state's attorneys are authorized to hire victim advocates who shall serve at their pleasure. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986.)

#### **§ 5307. Cooperation**

State's attorneys, local law enforcement agencies, local social service agencies and courts shall cooperate to afford victims of crimes the right and services described in this chapter; however, victim advocates shall not delegate to these agencies or to the courts the duties imposed on them under section 5304 of this title. (Added 1985, No. 182 (Adj. Sess.), § 2, eff. Sept. 1, 1986.)

#### **§ 5308. Notice and right to be present at arraignment**

If practicable the victim of a listed crime shall be given notice of the defendant's arraignment by the law enforcement agency that issued the citation or made the arrest. The victim of a listed crime shall have the right to be present at the defendant's arraignment. The prosecutor's office shall inform the victim about the issues concerning bail and the prosecutor shall advise the court of the victim's position regarding bail. (Added 1995, No. 170 (Adj. Sess.), § 6, eff. Sept. 1, 1996.)

#### **§ 5309. Presence in courtroom**

The victim of a listed crime shall be entitled to be present during all court proceedings subject to the provisions of Rule 615 of the Vermont Rules of Evidence. (Added 1995, No. 170 (Adj. Sess.), § 7, eff. Sept. 1, 1996.)

#### **§ 5310. Nondisclosure of information about victim**

A witness testifying in a criminal proceeding, including any discovery proceedings, shall not be compelled to disclose the victim's residential address or place of employment on the record unless the court finds, based upon a preponderance of the evidence, that nondisclosure of the information will prejudice the defendant. (Added 1995, No. 170 (Adj. Sess.), § 8, eff. Sept. 1, 1996.)

#### **§ 5311. Prompt return of property**

A law enforcement agency holding property of any individual shall take reasonable care of the property. Upon authorization of the prosecutor, the law enforcement agency holding the property, unless it is contraband or subject to forfeiture, shall promptly notify the individual that the property is no longer needed for evidentiary purposes and may be picked up by the individual. (Added 1995, No. 170 (Adj. Sess.), § 9, eff. Sept. 1, 1996.)

#### **§ 5312. Victim's interest in speedy prosecution**

(a) The prosecutor's office shall make every effort to inform a victim of a listed crime of any pending motion that may substantially delay any deposition, change of plea, trial, sentencing hearing, or restitution hearing. The prosecutor shall inform the court of how the victim was notified and the victim's position on the motion, if any. In the event the victim was not notified, the prosecutor shall inform the court why notification did not take place.

(b) If a victim of a listed crime objects to a delay, the court shall consider the victim's objection. (Added 1995, No. 170 (Adj. Sess.), § 9a, eff. Sept. 1, 1996; amended 2007, No. 40, § 2.)

#### **§ 5313. Limitations on employer**

An employer may not discharge or discipline a victim of a listed crime or a victim's family member or representative for honoring a subpoena to testify. (Added 1995, No. 170 (Adj. Sess.), § 9b, eff. Sept. 1, 1996.)

#### **§ 5314. Information from law enforcement agency**

(a) Information to all victims. After initial contact between a victim and a law enforcement agency responsible for investigating a crime, the agency shall promptly give in writing to the victim:

(1) an explanation of the victim's rights under this chapter and chapter 167 of this title;

(2) information concerning the availability of:

(A) assistance to victims, including medical, housing, counseling, and emergency services;

(B) compensation for victims under chapter 167 of this title, and the name, street address, and telephone number of the Center for Crime Victim Services;

(C) protection for the victim, including protective court orders; and

(D) access by the victim and the defendant to records related to the case which are public under the provisions of 1 V.S.A. chapter 5, subchapter 3 (access to public records).

(b) Information to victims of listed crimes. As soon as practicable, the law enforcement agency shall use reasonable efforts to give to the victim of a listed crime, as relevant, all of the following:

(1) Information as to the accused's identity unless inconsistent with law enforcement purposes.

(2) Information as to whether the accused has been taken into custody.

(3) The file number of the case and the name, office street address, and telephone number of the law enforcement officer currently assigned to investigate the case.

(4) The prosecutor's name, office street address, and telephone number.

(5) An explanation that no individual is under an obligation to respond to questions which may be asked outside a courtroom or deposition.

(6) Information concerning any bail or conditions of release imposed on the defendant by a judicial officer prior to arraignment or an initial court appearance. (Added 1995, No. 170 (Adj. Sess.), § 10, eff. Sept. 1, 1996; amended 2015, No. 97 (Adj. Sess.), § 76; 2015, No. 155 (Adj. Sess.), § 2.)

#### **§ 5315. Information concerning appeal or post-conviction remedies**

If the defendant appeals or pursues a post-conviction remedy, the prosecutor's office shall promptly inform the victim of a listed crime of that fact, shall explain the significance of such a proceeding and shall promptly notify the victim of the date, time and place of any hearing and of the decision. (Added 1995, No. 170 (Adj. Sess.), § 11, eff. Sept. 1, 1996.)

#### **§ 5316. Complete identification by prosecution and defense**

Any individual associated with the prosecution or defense of a listed crime, including attorneys, investigators or experts, who comes in contact with the victim or the victim's family shall properly identify himself or herself and by whom he or she is employed. (Added 1995, No. 170 (Adj. Sess.), § 12, eff. Sept. 1, 1996.)

#### **§ 5317. General requirements for information**

(a) The information required to be furnished to victims under this chapter shall be provided upon request of the victim and, unless otherwise specifically provided, may be furnished either orally or in writing.

(b) A person responsible for furnishing information may rely upon the most recent name, address, and telephone number furnished by the victim.

(c) The Court, State's Attorneys, public defenders, law enforcement agencies, and the Departments of Corrections and of Public Safety shall develop and implement an automated notification system to deliver the information required to be furnished to victims under this chapter. (Added 1995, No. 170 (Adj. Sess.), § 13, eff. Sept. 1, 1996; amended 2009, No. 154 (Adj. Sess.), § 109a.)

#### **§ 5318. Derivative rights of member of victim's family**

(a) If the victim is a minor or is unable to exercise his or her rights under the provisions of this chapter, section 7006 of this title, or 28 V.S.A. § 507, a family member of the victim shall be permitted to do so in place of the victim. If more than one family member of the victim's family attempts to exercise the victim's rights, the court may designate one of them to exercise those rights based on the best interest of the victim. If no family member is able to exercise such rights, a victim's advocate or other representative may, in situations where a victim is authorized by law to address the court or Parole Board, attend and read to the court or Parole Board a written statement prepared by the victim or the victim's family member without the assistance of the prosecutor or a law enforcement officer.

(b) If a victim is a minor or is incapacitated, incompetent, or deceased, a family member of the victim may exercise the rights of the victim under sections 5305, 5308-5317, and 7006 of this title; 28 V.S.A. §§ 205, 252, and 507; and 33 V.S.A. § 5233. (Added 1995, No. 170 (Adj. Sess.), § 14, eff. Sept. 1, 1996; amended 2013, No. 131 (Adj. Sess.), § 109.)

**§ 5319. Victim not a party**

The rights of victims contained in this chapter do not entitle a victim to be a party in any proceeding, or to any procedural rights which are not specifically provided for in this chapter, including any right to request a delay or rescheduling of any proceeding. (Added 1995, No. 170 (Adj. Sess.), § 15, eff. Sept. 1, 1996.)

**§ 5320. Repealed. 2007, No. 185 (Adj. Sess.), § 13, eff. June 5, 2008.****§ 5321. Appearance by victim**

(a) The victim of a crime has the following rights in any sentencing proceedings concerning the person convicted of that crime, or in the event a proposed plea agreement filed with the court recommends a deferred sentence, at any change of plea hearing concerning the person charged with committing that crime:

(1) to be given advance notice by the prosecutor's office of the date of the proceedings; and

(2) to appear, personally, to express reasonably his or her views concerning the crime, the person convicted, and the need for restitution.

(b) The change of plea hearing or sentencing shall not be delayed or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.

(c) In accordance with court rules, at the sentencing or change of plea hearing, the court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding sentencing or the proposed deferral of sentencing. In imposing the sentence or considering whether to defer sentencing, the court shall consider any views offered at the hearing by the victim. If the victim is not present, the court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing or the proposed deferral of sentencing and shall take those views into consideration in imposing the sentence or considering whether to defer sentencing.

(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the Commissioner of Corrections and that the Commissioner of Corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release, and other early release programs. In addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.

(e) At or before a change of plea hearing where the plea agreement filed with the court proposes a deferred sentence, the prosecutor's office shall instruct the victim of a listed crime about the significance of a deferred sentence and the potential consequences of a violation of conditions imposed by the court. In addition, the prosecutor's office shall consult with the victim concerning any proposed probation conditions prior to the hearing.

(f) The prosecutor's office shall use all reasonable efforts to keep the victim informed and consult with the victim throughout the plea agreement negotiation process in any case involving a victim of a listed crime. (Added 1999, No. 4, § 3; amended 2015, No. 5, § 2, eff. April 9, 2015; 2015, No. 155 (Adj. Sess.), § 3.)

**§ 5322. Confidentiality**

When responding to a request for public records, or on any State website or State

payment report, the State of Vermont shall not disclose to the public the name or any other identifying information, including the town of residence or the type or purpose of the payment, of an applicant to the Victim's Compensation Program, a victim named in a restitution judgment order, or a recipient of the Domestic and Sexual Violence Survivors' Transitional Employment Program. (Added 2011, No. 55, § 12.)