

CHAPTER 12.1-34
FAIR TREATMENT OF VICTIMS AND WITNESSES

12.1-34-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no-account checks; all violations of chapters 12.1-17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.
3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.
4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state penitentiary or Missouri River correctional center, state hospital, or any other inpatient mental health or treatment facility to which a criminal defendant may be sentenced or referred.
5. "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.
6. "Family member" includes a spouse, child, sibling, parent, grandparent, grandchild, legal guardian, or custodian of a victim, and any person with a relationship to the victim which is substantially similar to a relationship specified in this section.
7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
8. "Registered victim" or "registered witness" means a victim or witness registered with the statewide automated victim information and notification system.
9. "System" means the statewide automated victim information and notification system.
10. "Victim" means a person who suffers direct or threatened physical, financial, or psychological harm as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.
11. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

12.1-34-02. Fair treatment standards for victims and witnesses.

Victims and witnesses of crime must be afforded the following rights where applicable:

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system or must be able to opt out of the system. A victim has the right to:
 - a. Prevent the disclosure of confidential or privileged information about the victim or the victim's family; and
 - b. Be notified of any request for identifying information or confidential or privileged information about the victim or victim's family.
2. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed. A victim, upon request, must be allowed to confer with the prosecuting attorney.

3. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.
4. Notice of pretrial release.
 - a. Registered victims must be given prompt notice of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender is scheduled to be released prior to an appearance in court, prompt notice must be given to the registered victim and witness.
 - b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.
 - c. Victims and witnesses must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.
5. Notice as to victims' and witnesses' participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims and witnesses must be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and witnesses shall provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.
6. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hotlines, social service agencies, and domestic violence programs. Victims and witnesses must be informed of the right to seek the advice of an attorney. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.
7. Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
8. Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.

9. Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant, the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.
10. Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.
11. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court. Records of a criminal justice agency as defined by section 44-04-18.7, a correctional facility as defined in section 12-44.1-01, and the department of corrections and rehabilitation containing the address, telephone number, place of employment, or other information that could be used to locate the victim or witness to a crime, are exempt.
12. Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.
13. Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.
14. Notice as to scheduling of hearing. Registered victims must be informed of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a sentencing hearing. Victims who are not registered must be given the same information by the prosecuting attorney. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.
15. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the

- discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.
16. Notice of final disposition and parole procedures. Registered victims and witnesses must be informed of the final disposition of any criminal case. Victims who are not registered must be given the same notice by the prosecuting attorney. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.
 17. Prompt notice of custodial release. Registered victims and witnesses must be informed whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Victims who are not registered must be given the same notice by the appropriate custodial authority. Notification must include the transfer of the defendant to a work-release or education release program, a community residential program, or transfer to a mental health facility. All notices to the registered victim and witnesses concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.
 18. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Notice must be given by the parole board, pardon clerk, or authorized representative informing the registered victim of the pending review. The registered victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.
 19. Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.
 20. Access to law enforcement report. Upon request of the child sexual abuse victim over the age of eighteen, the prosecuting attorney or law enforcement authority shall provide the victim with a copy of the law enforcement report corresponding with the victim's case number.
 21. Preservation of evidence. A prosecuting attorney, law enforcement authority, criminal laboratory, or evidentiary storage facility may not destroy or dispose of any evidence to a criminal offense before the limitation period for prosecution for the offense has ended or the offense has been adjudicated.
 22. If the victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim which is substantially similar to a listed relationship, may exercise the rights granted to a victim under this chapter.

12.1-34-02.1. Sexual violence survivor rights.

1. As used in this section:
 - a. "Sexual assault victim advocate" means a victim advocate of a domestic violence sexual assault organization as defined under section 14-07.1-01, or a victim advocate from a children's advocacy center as defined in section 50-25.1-02.
 - b. "Sexual violence survivor" means an individual who is a victim of a crime defined under section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, or 12.1-20-12.3.
2. In addition to the rights provided under section 12.1-34-02, a sexual violence survivor must be afforded the following rights:
 - a. The right to consult with a sexual assault victim advocate during any forensic medical examination, unless the advocate is not available in a timely manner. A survivor's:
 - (1) Communication with a sexual assault victim advocate is privileged, unless waived by the survivor; and
 - (2) Waiver of the right to a sexual assault victim advocate is privileged.
 - b. The right to the presence of privately retained counsel when speaking with law enforcement regarding the alleged assault, unless law enforcement is conducting a forensic interview with an alleged child victim.
 - c. Except as provided by law, the right to access the law enforcement report prepared for the survivor's case at no cost.
 - d. The right to a document prepared by the attorney general explaining the rights of sexual violence survivors under this section and other relevant law, which must be provided by a medical provider or law enforcement officer upon initial contact with the survivor.

12.1-34-03. Responsibilities of victims and witnesses.

Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify the system, law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of contact information. Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, all contact information provided must be kept confidential.

12.1-34-04. Victim and witness services.

Each prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in this chapter. Those services include all of the following:

1. Court appearance notification services, including cancellations of appearances.
2. Informational services relative to the availability of the collection of witness fees, victim compensation, or restitution.
3. Escort and other transportation services related to the investigation or prosecution of the case, if necessary.
4. Case process notification services.
5. Employer intercession services.
6. Expedited return of property services.
7. Protection services.
8. Family support services, including child and other dependent care services.
9. Waiting facilities.
10. Social service and other public or private agency referrals.

12.1-34-05. Cause of action for damages or injunctive relief.

Nothing in this chapter may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a victim under this chapter is not grounds for the defendant to seek to have the conviction or sentence set aside. This chapter does not limit any rights to which victims and witnesses of crime are otherwise entitled.

12.1-34-06. Statewide automated victim information and notification system.

1. The office of the attorney general shall maintain a statewide automated victim information and notification system that must:
 - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public website.
 - b. Notify a registered victim by telephone, mail, text message, or electronic mail in accordance with this chapter.
 - c. Notify a registered victim by telephone, mail, text message, or electronic mail when the offender has a scheduled court proceeding, a parole review, or a change in the status of the offender's parole or probation status, including a change in the offender's address.
 - d. Notify a registered victim by telephone, mail, text message, or electronic mail when a protective order requested by the victim has been served upon the respondent.
 - e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility by calling the system on a toll-free telephone number or by accessing the system through a public website.
2. The provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.
3. The user agency shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.
4. All affected entities, including custodial authorities, prosecuting attorneys, law enforcement agencies, courts, the attorney general's office, and the parole clerk, shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

12.1-34-07. Medical screening and acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.

1. An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct or domestic violence for the purpose of gathering evidence of an alleged crime and is performed within one hundred twenty hours after the alleged crime unless good cause is shown for the delay in performing the examination. When an acute forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the acute forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged victim.
2. A child forensic medical examination is an examination performed on an alleged child victim of criminal sexual conduct, physical abuse, or neglect for the purpose of gathering evidence of an alleged crime. When a child forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the child forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged child victim or the child's parent, guardian, or custodian.

3. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse from the general fund the health care facility or a health care professional for the reasonable costs incurred in performing the medical screening and acute forensic medical examination. The attorney general, subject to legislative appropriations, shall reimburse from the general fund each accredited children's advocacy center located in the state for a forensic interview that is not reimbursable by Medicaid or crime victims compensation.
4. Evidence obtained during a medical examination under this section may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

12.1-34-08. Victim's rights card.

The attorney general shall develop a card containing the rights of victims as provided in this chapter and section 25 of article I of the Constitution of North Dakota to be distributed to all crime victims.