

The Justice for All Act

Of

2004

Title I –

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Crime Victims' Rights Act

18 U.S.C.A. § 3771

C**Effective: October 30, 2004**United States Code Annotated CurrentnessTitle 18. Crimes and Criminal Procedure (Refs & Annos)Part II. Criminal ProcedureChapter 237. Crime Victims' Rights (Refs & Annos)**→ § 3771. Crime victims' rights****(a) Rights of crime victims.**--A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) Rights afforded.--In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(c) Best efforts to accord rights.--

- (1) **Government.**--Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).
- (2) **Advice of attorney.**--The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).
- (3) **Notice.**--Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and limitations.--

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(1) Rights.--The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) Multiple crime victims.--In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus.--The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error.--In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief.--In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if--

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action.--Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions.--For the purposes of this chapter, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(f) Procedures to promote compliance.--

(1) Regulations.--Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents.--The regulations promulgated under paragraph (1) shall--

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

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(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

CREDIT(S)

(Added Pub.L. 108-405, Title I, § 102(a), Oct. 30, 2004, 118 Stat. 2261.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Report No. 108-711, see 2004 U.S. Code Cong. and Adm. News, p. 2284.

Prior Provisions

Section, Acts June 25, 1948, c. 645, 62 Stat. 846; May 24, 1949, c. 139, § 59, 63 Stat. 98; May 10, 1950, c. 174, § 1, 64 Stat. 158; July 7, 1958, Pub.L. 85-508, § 12(k), 72 Stat. 348; Mar. 18, 1959, Pub.L. 86-3, § 14(g), 73 Stat. 11; Oct. 17, 1968, Pub.L. 90-578, Title III, § 301(a)(2), 82 Stat. 1115, relating to criminal procedure, including verdicts, was repealed by Pub.L. 100-702, Title IV, § 404(a)(1), Nov. 19, 1988, 102 Stat. 4651 eff. Dec. 1, 1988, see Pub.L. 100-702, § 407, set out as a note under 28 U.S.C.A. § 2071.

Short Title

2004 Acts. Pub.L. 108-405, Title I, § 101, Oct. 30, 2004, 118 Stat. 2261, provided that: "This title [enacting this section and 42 U.S.C.A. § § 10603d and 10603e, repealing 42 U.S.C.A. § 10606, and enacting provisions set out as a note under this section] may be cited as the 'Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act'."

Reports to Congress

Pub.L. 108-405, Title I, § 104(a), Oct. 30, 2004, 118 Stat. 2265, provided that: Not later than 1 year after the date of enactment of this Act [Oct. 30, 2004] and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code [18 U.S.C.A. § 3771 et seq.], is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached.

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Current through P.L. 108-457 (excluding P.L. 108-357, 108-375, 108-429, 108-446, 108-447, 108-452, 108-454) approved 12-17-04.

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