

IC 35-40-5

Chapter 5. Victim Rights

IC 35-40-5-1

Right to fairness, dignity, and respect; right to freedom from harassment and intimidation

Sec. 1. A victim has the right to be:

- (1) treated with fairness, dignity, and respect; and
- (2) free from intimidation, harassment, and abuse;

throughout the criminal justice process.

As added by P.L.139-1999, SEC.1. Amended by P.L.169-2009, SEC.2.

IC 35-40-5-2

Release or escape from custody of perpetrator

Sec. 2. (a) A victim has the right to be informed, upon request, when a person who is:

- (1) accused of committing; or
- (2) convicted of committing;

a crime perpetrated directly against the victim is released from custody or has escaped.

(b) Whenever a person accused or convicted of committing a crime is released or escapes from the custody of a mental health treatment agency or a hospital that is not operated by a county sheriff or the department of correction, the court committing the accused or convicted person to the mental health treatment agency or hospital shall carry out this section to inform the victim of the release or escape. The mental health treatment agency or hospital shall provide the court with sufficient information about the release or escape to allow the court to carry out this section.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-3

Right to confer with prosecuting attorney's office

Sec. 3. (a) This section applies if either of the following has occurred:

- (1) The alleged felony or delinquent act that would have been a felony if committed by an adult was directly perpetrated against the victim.
- (2) The alleged felony, misdemeanor, or delinquent act that would have been a felony or misdemeanor if committed by an adult was:

(A) a violation of IC 35-42-2 (offenses against the person), IC 35-45-2-1 (intimidation), IC 35-45-2-2 (harassment), IC 35-46-1-15.1 (invasion of privacy), or IC 35-47-4-3 (pointing a firearm); and

(B) directly perpetrated against the victim by a person who:

- (i) is or was a spouse of the victim;
- (ii) is or was living as if a spouse of the victim; or
- (iii) has a child in common with the victim.

(3) The alleged misdemeanor or delinquent act that would have been a misdemeanor if committed by an adult, other than a misdemeanor described in subdivision (2), was directly perpetrated against the victim, and the victim has complied with the notice requirements under IC 35-40-10.

(b) A victim has the right to confer with a representative of the prosecuting attorney's office:

- (1) after a crime allegedly committed against the victim has been charged;
- (2) before the trial of a crime allegedly committed against the victim; and
- (3) before any disposition of a criminal case involving the victim.

This right does not include the authority to direct the prosecution of a criminal case involving the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-4

Consideration of victim's safety

Sec. 4. A victim has the right to have the victim's safety considered in determining release from custody of a person accused of committing a crime against the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-5

Right to be heard at sentencing or release

Sec. 5. A victim has the right to be heard at any proceeding involving sentencing, a postconviction release decision, or a pre-conviction release decision under a forensic diversion program.

As added by P.L.139-1999, SEC.1. Amended by P.L.85-2004, SEC.7.

IC 35-40-5-6

Presentence reports

Sec. 6. (a) A victim has the right to make a written or oral statement for use in preparation of the presentence report.

(b) Notwithstanding IC 35-38-1-13, the victim has the right to read presentence reports relating to the crime committed against the victim, except those parts of the reports containing the following:

- (1) The source of confidential information.
- (2) Information about another victim.
- (3) Other information determined confidential or privileged by the judge in a proceeding.

The information given to the victim must afford the victim a fair opportunity to respond to the material included in the presentence report.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-7

Order of restitution

Sec. 7. A victim has the right to pursue an order of restitution and

other civil remedies against the person convicted of a crime against the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-8

Right to information about criminal case or perpetrator

Sec. 8. A victim has the right to information, upon request, about the disposition of the criminal case involving the victim or the conviction, sentence, and release of a person accused of committing a crime against the victim.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-9

Right to be informed of victim's rights

Sec. 9. A victim has the right to be informed of the victim's constitutional and statutory rights.

As added by P.L.139-1999, SEC.1.

IC 35-40-5-11

Defense interview with child victims of sex crimes

Sec. 11. (a) This section applies only to a child less than sixteen (16) years of age who is the victim or alleged victim of a sex offense (as defined in IC 11-8-8-5.2).

(b) As used in this section, "defense counsel" includes an agent of:

- (1) the defense counsel; or
- (2) the defendant.

(c) After charges are filed against a defendant, if defense counsel would like to interview a child described in subsection (a), the defendant or defense counsel must contact the prosecuting attorney. The child has the right under section 3 of this chapter to confer with the prosecuting attorney before the interview occurs. The prosecuting attorney may not instruct the child not to speak with defense counsel.

(d) If the parties are unable to agree to the terms of the interview, the parties may petition the court for a hearing on the terms of the interview prior to the interview taking place. The court shall review the terms suggested by the parties and consider the age of the child, any special considerations, and the rights of victims provided by IC 35-40-5-1 in setting reasonable terms for the interview.

As added by P.L.169-2009, SEC.3.