

## When Victims' and Defendants' Rights Collide in Court, Who Wins?

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**Categories :** [Procedure](#)

**Tagged as :** [2019-216](#), [constitutional amendment](#), [CVRA](#), [Marsy's Law](#), [victims' rights](#)

**Date :** September 11, 2019

While I was finishing up [my post](#) last Wednesday on [Senate Bill 682](#) (the bill implementing the 2018 constitutional amendments expanding victims' rights), the Governor was signing that bill into law. In the week since [S.L. 2019-216](#) was chaptered, I've fielded a couple of questions about the responsibilities for notifying victims of court hearings and the interplay between victims' state constitutional rights and defendants' rights under the state and federal constitutions. This post sets forth my (admittedly preliminary) thoughts on those matters.

**Informing the victim.** The state constitution and the Crime Victim's Rights Act (CVRA) afford the victim of a crime or an act of delinquency that is an offense against the person or a felony property crime the right to be present and reasonably heard at proceedings before a judge in open court that involve a defendant's plea, conviction, adjudication, sentencing, or release (among other rights).

**Duties of law enforcement agencies.** Within 72 hours of identifying a victim, the investigating law enforcement agency must inform a victim of his or her rights using a form created by the Conference of District Attorneys. G.S. 15A-831(a). The victim must indicate whether he or she wishes to receive additional notice from the law enforcement agency on the status of the accused during the pretrial process. G.S. 15A-831(d). If the victim desires further notices, the victim must return the form to the investigating law enforcement agency within 10 business days of its receipt. *Id.* When the law enforcement agency receives the returned form, it must promptly share the form with the district attorney's office to facilitate compliance with the victim's preferences on notification. G.S. 15A-831(e).

**Duties of judicial officials.** Upon issuing a pleading for a misdemeanor CVRA offense based on testimony from a complaining witness rather than from a law enforcement officer, a judicial official must record the victim's contact information on form [AOC-CR-181B](#) (for offenses committed on or after August 31, 2019). G.S. 15A-832.1(a). The form must be delivered to the office of the clerk of superior court by the end of the next business day. G.S. 15A-832.1(b). The clerk must forward the victim-identifying information to the district attorney's office within 72 hours. *Id.*

**Duties of district attorneys.** Within 21 days of an accused's arrest, but not less than 24 hours before the accused's first scheduled probable cause hearing, the district attorney's office must provide the victim of a CVRA crime with written material explaining, among other matters, the victim's rights. G.S. 15A-832(a). Upon receiving that information, the victim then must indicate on a form provided by the district attorney's office whether the victim wishes to receive notice of some, all, or none of the trial and post-trial proceedings involving the accused. G.S. 15A-832(b).

The district attorney must notify the victim of the date, time and place of all court proceedings of the type for which the victim has elected to receive notice. G.S. 15A-832(c). These notices may be provided electronically or by telephone unless the victim requests otherwise. *Id.*

**Conflicting rights.** Circumstances may arise in which affording a victim his or her statutory and constitutional rights impacts a defendant's constitutional and statutory rights. Suppose, for example, that a defendant held in custody requests at a pretrial setting of the case that the presiding judge modify his or her conditions of pretrial release. Further suppose that the victim is not present at the hearing. Perhaps the hearing takes place before the victim has returned

the form provided by a law enforcement officer or before the victim has an opportunity to meet with the district attorney's office. Or perhaps the victim has not been notified for some other reason. What happens if the district attorney moves to continue the case because the victim is not present? Must the court determine whether the victim was notified? If the victim was not notified and has a right to be present, must the court grant the motion?

The court is statutorily charged with ascertaining whether the victim is present and wishes to be heard. See G.S. 15A-832.1; G.S. 7B-2504. If the victim is present and desires to be heard, the judge must afford that opportunity. The court is *not* statutorily charged (absent a motion filed by the victim) with determining whether a law enforcement agency or district attorney's office has complied with its statutory responsibilities. Nor is it charged with independently investigating whether a victim has been afforded the rights to which he or she is entitled.

Furthermore, even if the court learns that a victim has not been notified of a hearing at which he or she has a right to be present, the court may not continue a case on that basis without first considering the defendant's rights. A court's failure to timely consider a defendant's request for bond modification may violate a defendant's right to [due process](#). And continuances granted to afford victims an opportunity to be present and heard may contribute to a violation of a defendant's right to speedy trial. To be sure, continuances to allow the victim an opportunity to be present and be heard may be granted in appropriate circumstances. They should not, however, be granted pursuant to a blanket rule that fails to consider the defendant's interests.

**Whose rights prevail?** When victims' rights conflict with a defendant's constitutional rights, the defendant's rights must win out. See, e.g., *State v. Riggs*, 942 P.2d 1159, 1162–63 (Ariz. 1997) (en banc) (“[I]f, in a given case, the victim's state constitutional rights conflict with a defendant's federal constitutional rights to due process and effective cross-examination, the victim's rights must yield.”); see also *People v. Galvan*, \_\_\_ P.3d. \_\_\_, (Colo. Ct. App. 2019) (unpublished) (“Although the alleged victims in this case have certain constitutional and statutory rights . . . those rights do not rise to the same level and cannot conflict with Galvan's constitutional rights to due process and a fair trial under the United States Constitution.”). As the Supreme Court of Arizona explained in *Riggs*, “the Supremacy Clause requires that the Due Process Clause of the U.S. Constitution prevail over state constitutional provisions.” *Id.* at 1163.

**What effect does a violation of victim's rights have on the court's rulings in the underlying criminal or juvenile case?** In short, none.

As I mentioned in last week's post, a victim may allege a violation of his or her rights under the constitution and CVRA by filing a motion with the clerk of superior court, using [AOC-CR-182](#) in a criminal case and [AOC-J-380](#) in a juvenile case. The trial judge in the underlying criminal or juvenile proceeding must review and dispose of the motion. The victim may not, however, appeal any decision made in a criminal or juvenile proceeding or challenge any verdict, sentence, or adjudication on the basis that his or her rights were violated. N.C. Const. Art. I, Sec. 37(3). Cf. *State v. Skipwith*, 165 A.3d 1211, 1216 (Conn. 2017) (concluding that the victims' writ of error seeking to vacate the defendant's sentence because the victim was not afforded her constitutional right to object to the plea agreement or give a statement at defendant's sentencing must be dismissed on the merits because it sought a form of relief barred by the victim's rights amendment).

**Have additional questions or comments?** Please send them my way. I'm still digesting this legislation, and these Wednesdays roll around pretty regularly.