Initiated Constitutional Measure No. 3

PETITION TITLE

This initiated measure would add a new section to Article I of the North Dakota Constitution to provide a number of rights for victims of crimes in this state in a manner no less vigorous than protections afforded to criminal defendants, including the rights of crime victims to be treated with respect, to be free from harassment, and to be protected from the accused. The measure would provide for the safety of crime victims in bail and release decisions and in protecting information that might be used to harass or locate crime victims. Crime victims would have the right to be present at certain court and related proceedings and to be heard concerning such matters as release, plea or sentencing of the accused, and parole and pardon matters and to be notified of any release or escape of the accused. Crime victims would have the right to provide information about the impact of the offender's conduct and to receive relevant reports or records including pre-sentence reports. The measure would also require prompt return of victims' property when no longer needed and to timely restitution.

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new Section to Article I of the North Dakota Constitution is created and enacted as follows:

To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization:

The right to be treated with fairness and respect for the victim's dignity.

The right to be free from intimidation, harassment and abuse.

The right to be reasonably protected from the accused and any person acting on behalf of the accused.

The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.

The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.

The right to privacy, which includes the right to refuse an interview, deposition or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents. Nothing in this section shall abrogate a defendant's Sixth Amendment rights under the United States Constitution nor diminish the State's disclosure obligations to a defendant.

The right to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication and disposition, and any proceeding during which a right of the victim is implicated.

The right to be promptly notified of any release or escape of the accused.

The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated.

The right, upon request, to confer with the attorney for the government.

The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence or disposition investigation or compiling any pre-sentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.

The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any pre-sentence report or plan of disposition when available to defendant or delinquent child.

The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.

The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.

The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.

The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.

The right, upon request, to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole authority shall extend the right to be heard to any person harmed by the offender.

The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve or expungement procedures, to provide information to the Governor, the court, any pardon board and other authority in these procedures, and to have that information considered before a decision is made, and to be notified of such decision in advance of any release of the offender.

The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in what is referred to as a Marsy's Card.

The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, ensuring that no right is deprived without due process of law, and affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right shall be clearly stated on the record.

The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes and are self-enabling. This section does not create any cause of action for damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. If a 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 that is substantially similar to a listed relationship, may also exercise these rights. 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.