

SENATE JOINT RESOLUTION NO. 17—SENATORS ROBERSON,
HARRIS, FARLEY; HARDY AND SETTELMAYER

MARCH 16, 2015

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to
expand the rights guaranteed to victims of crime.
(BDR C-952)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada
Constitution to expand the rights guaranteed to victims of
crime by adopting a victims’ bill of rights.

Legislative Counsel’s Digest:

Under the Nevada Constitution, the Legislature is required to provide by law
for certain rights of the victims of crimes, in particular, the right to be informed of
the status of criminal proceedings concerning those crimes, the right to be present
at public hearings concerning those crimes and the right to be heard at all
proceedings for the sentencing or release of persons convicted of those crimes.
(Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the
existing provisions of Article 1, section 8, concerning victims’ rights and to add a
new section that sets forth an expanded list of such rights in the form of a victims’
bill of rights. The new section is modeled after the victims’ bill of rights set forth in
the California Constitution as it was amended in 2008 by what is commonly
referred to as Marsy’s Law. (Cal. Const. Art. 1, § 28)

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
NEVADA, JOINTLY, That a new section, designated Section 23, be
added to Article 1 of the Nevada Constitution to read as follows:

***Sec. 23. 1. Each person who is the victim of a crime
is entitled to the following rights:***

***(a) To be treated with fairness and respect for his or her
privacy and dignity, and to be free from intimidation,***



1 *harassment and abuse, throughout the criminal or juvenile*
2 *justice process.*

3 *(b) To be reasonably protected from the defendant and*
4 *persons acting on behalf of the defendant.*

5 *(c) To have the safety of the victim and the victim's*
6 *family considered in fixing the amount of bail and release*
7 *conditions for the defendant.*

8 *(d) To prevent the disclosure of confidential information*
9 *or records to the defendant, the defendant's attorney, or any*
10 *other person acting on behalf of the defendant, which could*
11 *be used to locate or harass the victim or the victim's family*
12 *or which disclose confidential communications made in the*
13 *course of medical or counseling treatment, or which are*
14 *otherwise privileged or confidential by law.*

15 *(e) To refuse an interview, deposition or discovery*
16 *request by the defendant, the defendant's attorney or any*
17 *other person acting on behalf of the defendant, and to set*
18 *reasonable conditions on the conduct of any such interview*
19 *to which the victim consents.*

20 *(f) To reasonable notice of and to reasonably confer*
21 *with the prosecuting agency, upon request, regarding the*
22 *arrest of the defendant if known by the prosecutor,*
23 *the charges filed, the determination whether to extradite the*
24 *defendant and, upon request, to be notified of and informed*
25 *before any pretrial disposition of the case.*

26 *(g) To reasonable notice of all public proceedings,*
27 *including delinquency proceedings, upon request, at which*
28 *the defendant and the prosecutor are entitled to be present*
29 *and of all parole or other postconviction release*
30 *proceedings, and to be present at all such proceedings.*

31 *(h) To be heard, upon request, at any proceeding,*
32 *including any delinquency proceeding, involving a*
33 *postarrest release decision, plea, sentencing, postconviction*
34 *release decision or any proceeding in which a right of the*
35 *victim is at issue.*

36 *(i) To a speedy trial and a prompt and final conclusion*
37 *of the case and any related postjudgment proceedings.*

38 *(j) To provide information to any public officer or*
39 *employee conducting a presentence investigation*
40 *concerning the impact of the offense on the victim and the*
41 *victim's family and any sentencing recommendations before*
42 *the sentencing of the defendant.*

43 *(k) To receive, upon request, the report of any*
44 *presentence investigation when available to the defendant,*
45 *except for those portions made confidential by law.*



(l) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(m) To restitution as provided by law.

(n) To the prompt return of property when no longer needed as evidence.

(o) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(p) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(q) To be informed of the rights enumerated in paragraphs (a) to (p), inclusive.

2. A victim, the retained attorney of a victim, a lawful representative of the victim or the prosecuting attorney upon request of the victim may enforce the rights enumerated in subsection 1 in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.



6. *At the regular session of the Legislature immediately following the approval and ratification of this section by the people, the Legislature shall provide by law that:*

(a) *All persons who suffer losses as a result of criminal activity have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.*

(b) *Restitution must be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a victim suffers a loss.*

(c) *All monetary payments, money and property collected from any person who has been ordered to make restitution must be first applied to pay the amounts ordered as restitution to the victim.*

7. *The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.*

8. *As used in this section, "victim" means 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. The term also includes, without limitation, the person's spouse, parents, children, siblings or guardian, and includes a lawful representative of a victim who is deceased, a minor or physically or psychologically incapacitated. The term does not include a person in custody for an offense, the accused or a person whom the court finds would not act in the best interests of a minor victim.*

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.



2. ~~{The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~—(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~—(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~—(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~—3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~—4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~—5.} No person shall be deprived of life, liberty, or property, without due process of law.~~

~~{6.}~~ 3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

