

# WHAT IF MY CRIME VICTIMS' RIGHTS ARE VIOLATED?

## Enforcement of Crime Victim's Rights:

If you believe that your rights as a crime victim have been violated and one or more criminal justice agencies have not fulfilled their responsibility to you, you have the right to file a written complaint.

The procedure by which you may assert your rights shall be by motion to the court of jurisdiction (where the court proceedings are held). For this complaint to be heard you (as the victim of the crime) or the following individuals may act on your behalf:

- ✦ The victim's attorney.
- ✦ The prosecutor, at the request of the victim.
- ✦ A parent, guardian, or legal custodian, if the victim is a minor or is legally incapacitated.
- ✦ A family member, if the victim is deceased.

## STEP 1: FILING A COMPLAINT WITH THE VIOLATING AGENCY

When a claim is made that a violation of your rights provided in this Article has occurred by the law enforcement agency conducting the investigation or the District Attorney's Office prosecuting the case, these first steps must occur:

- ✦ If an allegation involves a law enforcement agency who failed to comply with rights to be provided to you, then you must first file a written complaint with that agency. The agency is then given an opportunity to resolve the issue stated in the written complaint in a timely manner.
- ✦ If an allegation involves the district attorney's office who failed to comply with rights to be provided to you, then you must first file a written complaint with the district attorney's office. The district attorney's office is then given an opportunity to resolve the issue stated in the written complaint in a timely manner.

## STEP 2: IF YOU FEEL THAT THE RESPONSE BY THE GIVEN AGENCY IS NOT A REASONABLE RESOLUTION OR YOUR COMPLAINT REGARDING A VIOLATION OF YOUR RIGHTS IS BY A JUDICIAL OFFICIAL:

Please note that you have the right to consult with an attorney regarding an alleged violation of the rights provided in this Article, but you do not have the right to counsel provided by the State.

- ✦ You may file a motion within the same criminal proceeding giving rise to the rights alleged to be violated with the office of the clerk of superior court in the court where the case is pending, alleging violation of your rights.
- ✦ Upon request, the form provided by the clerk of superior court must indicate what specific right has allegedly been violated and must contain a description of the alleged violation in detail. No fees shall be assessed for the filing of this motion.
- ✦ The motion must have attached a copy of the written complaint previously filed with the law enforcement agency or district attorney's office that failed to comply with the rights of a victim provided in this Article. The motion must be filed within the same criminal case that you believe your rights are not being upheld.
- ✦ A copy of the filed motion shall be given to the agency that you allege has violated your rights.

- ✦ If it involves the District Attorney's Office, a copy of the motion shall be given to the prosecutor if other than the elected District Attorney, the elected District Attorney, and the judge involved in the criminal proceeding that gave rise to the rights in question.
- ✦ If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim, a copy of the motion shall also be provided to the head of the law enforcement agency referenced in the motion.
- ✦ A judge is notified by the clerk of court that a victim has filed a motion alleging a violation of the rights provided in this Article.
- ✦ The judge shall review the motion and dispose of it or set it for hearing in a timely manner.
- ✦ Review may include conferring with the victim, the prosecutor if other than the District Attorney, and the District Attorney in order to inquire as to compliance with this Article. If the motion involves an allegation that a law enforcement agency failed to comply with the rights of a victim provided by this Article, the judge may confer with the head of that law enforcement agency as part of the review.
- ✦ If the judge is involved in the criminal case pertaining to the rights in question, the judge may, on the judge's own motion, recuse (excuse) himself or herself if justice requires it and report the recusal to the Administrative Office of the Courts. The Administrative Office of the Courts may then appoint another judge who will conduct the judicial tasks required by this Article.
- ✦ At the conclusion of the review, the judge shall dispose of the motion or set the motion for hearing.

### **STEP 3: FAILURE OF THE JUDGE TO REVIEW/DISPOSE IN A TIMELY MANNER:**

- ✦ If the judge fails to review the motion and dispose of it or set it for hearing in a timely manner, you may petition the North Carolina Court of Appeals for a writ of mandamus.
- ✦ A writ of mandamus is a court order issued by a judge at a petitioner's request compelling someone to execute a duty that they are legally obligated to complete. The writ of mandamus can be used to order a task to be completed, or in other cases, it may require an activity to be ceased.
- ✦ The petition shall be filed without unreasonable delay. The court for good cause shown may shorten the time for filing a response.

