

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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April 16, 2018

VIA HAND DELIVERY & ELECTRONIC MAIL

Representative David Welch
Chair, House Criminal Justice & Public Safety Committee
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Concord, NH 03301
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Representative Joseph Hagan
Chair, House Judiciary Committee
33 North State Street
Concord, NH 03301
joseph.hagan@leg.state.nh.us

Re: Victims' Rights Constitutional Amendment

Dear Chairmen Welch and Hagan:

Supporting victims of crime is central to the mission of the New Hampshire Department of Justice. The Legislature created the Department's Office of Victim/Witness Assistance in 1987 and our advocates deploy around the clock to assist victims of some of the most heinous crimes in our state. We work closely with advocates in the county attorneys' and local prosecutors' offices. We sponsor and coordinate education and training programs for organizations dedicated to supporting victims of crime. The Department administers funds allocated to New Hampshire under the federal Victims of Crime Act (VOCA), which provide vital resources to advocacy and crisis centers throughout the state. All of this work has been informed by New Hampshire's Crime Victims' Rights statute, RSA 21-M:8-k, which was enacted in 1991.

As important as these efforts have been, this Office has long recognized that even more is needed to ensure crime victims have the voice they deserve in the criminal justice system. As early as 1993, the Office identified the need for a constitutional amendment to protect the rights of victims in the criminal justice process.

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A constitutional amendment uniquely ensures that the voices of crime victims will be heard, that they will be treated with the dignity and respect that they deserve, and that their rights will be guaranteed and respected throughout the entire criminal justice process. New Hampshire is one of just 15 states that does not have some form of constitutional protections for victims of crime.

A well-crafted constitutional amendment can ensure these protections without impacting the rights afforded to those accused of crimes. Because of the unique role played by the Attorney General in the criminal justice system, our Office has followed closely the Legislature's consideration of CACR 22. When the matter was pending before the Senate, I submitted for its consideration revisions that we believed improved the draft amendment. The Senate ultimately approved those recommendations and, with the addition of a further amendment, that is the proposal now pending before your Committees.

In the intervening weeks, we have continued to follow the debate closely. We have heard the questions and concerns that have been expressed about the current version of CACR 22. Based on that feedback, I respectfully submit for the Committees' consideration a further proposed revision to this amendment.

The revised language is attached. This revision would make the following changes to the version of CACR 22 approved by the Senate:

- It removes the reference to "delinquent act." With that change, the amendment would no longer impact to the juvenile justice system.
- It removes "privacy" from the list of rights to be protected.
- It removes the clause which would have provided the victim with the right "to refuse an unnecessary interview or deposition request made by the accused."
- It replaces the clause which would have provided the victim with the right "to full and timely restitution" with new language which would provide the victim with the right "to timely restitution following a conviction."
- It limits the definition of "victim" to include only "natural persons."
- It removes the reference to the "victim's attorney" in order to make clear that the amendment is not intended to provide a victim with counsel at the State's expense.
- It makes clear that the amendment is not creating any "new cause of action for compensation or damages" against the State.

We have also heard the understandable concerns about the costs of implementing CACR 22. Our Office stands ready to work with State and local officials to identify possible funding sources. As noted above, the Office administers funds received from the federal Crime Victims Fund under VOCA. That Fund is solely comprised of fines, penalty assessments and bail

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forfeitures collected from federal offenders. No federal tax dollars are involved. These funds are intended to provide direct services to crime victims including, to a limited degree, some training. We are certainly prepared to explore whether these funds may be allocated to assist with the implementation of this amendment, if adopted.

The debate over CACR 22 has drawn renewed attention to the rights of victims of crime. Many victim-survivors have courageously come forward to support enactment of this amendment. I hope this revised language will be of assistance to the Committees and we stand ready to provide any additional assistance upon your request.

Sincerely,



Gordon J. MacDonald
Attorney General

Enclosure

[Art.] 14-a [Protection for Victims.]

A victim shall have the right to be treated with fairness and respect for the victim's safety and dignity, and upon request: to reasonable and timely notice of, and to be present at all court proceedings, including post-conviction proceedings, on the same basis as the accused; to proceedings free from unreasonable delay and a prompt conclusion of the case; to reasonable protection from the accused throughout the criminal justice process; to confer with the attorney for the State about the disposition of the case; to be heard at any proceeding involving the release, plea, sentencing, or parole of the accused; to reasonable notice of the release or escape of the accused; to timely restitution following a conviction; and to be informed of all rights under this article. A victim of crime is any natural person against whom a criminal offense is committed or who is directly or proximately harmed by the commission of the offense or act. 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. The victim or their lawful representative, or the attorney for the government upon request of the victim, may assert in any trial or appellate court, or before any other authority with jurisdiction over the case, and have enforced, the rights enumerated in this article and any other right afforded to the victim by law. This article does not create any new cause of action for compensation or 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.