

Victims' Rights Education Project
Frequently Asked Questions Kit

A
Component of the
Victims' Rights Education Project

Prepared by:
National Victims' Constitutional Amendment Network

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The National Victim Constitutional Amendment Network (NVCAN) is a non-profit organization comprised of leaders in the victim rights movement from across the nation. NVCAN is dedicated to advancing and supporting the rights of crime victims at all levels.

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Introduction

The Victims' Rights Education Project

Since the inception of the victim assistance field in 1972, over 32,000 statutes have been passed in states that define and protect the rights of crime victims. For many victims, these victims' rights laws become their "guide" to understand and navigate the criminal justice system, and give them a sense of control over their destiny after they have been harmed by crime. Victims' rights statutes are essential to our nation's ultimate goal of "justice for all."

This Project was designed with input from professionals and volunteers who include victims/survivors, victim assistance professionals, criminal justice professionals, and legal counsel. The Project conducted a series of group field interviews with crime victims/survivors, service providers, justice and other allied professionals in 12 states. The data resulting from this vital input from the field were collected and analyzed. In addition, a wide range of existing resources about victims' rights – including laws, brochures, handbooks, and web sites – were reviewed to contribute to the development of the Victims' Rights Education Project's Toolkit. The Tools include this *FAQ Kit* and:

- The *Creating a Victims' Rights Public Education Strategy Guidebook* that helps victim service providers, and organizations and agencies that assist victims of crime, develop a strategy to educate crime victims and survivors, criminal justice officials and the rest of society about victims' rights, what they mean, and why they are important.
- An *Introduction and Overview* that provides a complete description of the Project and its products and deliverables. It describes the target audiences; addresses the potential for "mixing and matching Tools"; and suggests considerations for funding and marketing the products customized by victim service providers, and organizations and agencies that assist victims of crime.
- A *Crime Victims' Rights Miranda Card* includes the core rights of victims in a brief format that can be contained on a pocketsize "Miranda style" card to be handed to crime victims at the first point of contact with law enforcement.
- The *Victims' Rights Handbook* for use by victims of crime and the general public to increase awareness of victims' rights and how to exercise them, and their understanding of the criminal justice system.
- A *Victims' Rights Brochure Kit* that provides eight brochure prototypes for victim service providers, and organizations and agencies that assist victims of crime to customize for their jurisdictions.
- A *Talking Points Kit* for victim service providers, and organizations and agencies that assist victims of crime, to enhance training, educational

materials and presentations that address the need for and value of victims' rights.

- *Promising Practices in the Compliance and Enforcement of Victims' Rights Kit*, which provides guidance for victims to exert their rights.

Goals and Objectives of the FAQs Kit

The goal of the "Victims' Rights FAQs" Kit is to help states and jurisdictions identify the questions that are most commonly asked by crime victims and survivors about their rights, roles and services available to assist them, and provide answers that can be customized to specific states and jurisdictions based upon their own states' laws.

There are four objectives to reach this goal:

1. To provide detailed information about the purpose and scope of FAQs lists as a tool that can help crime victims understand and exercise their rights.
2. To provide detailed guidance about how to create the first and final drafts of a FAQ list that is specific to a state and/or jurisdiction.
3. To identify the various approaches to disseminate FAQ lists to crime victims.
4. To identify the questions that are most frequently asked by crime victims, and provide answers that can be customized to a state or jurisdiction based upon its laws.

Frequently Asked Question's (FAQs) Guidelines

How to Build Your Own FAQs List for Victims of Crime

Educating Victims About Their Rights

One of the primary goals of victim advocates, service providers and justice professionals is to help victims cope with the consequences of their victimization and to empower them to seek and secure justice.

As a practical matter, crime victims cannot exercise rights that they don't know they have or that they don't understand. Thus, the challenge for victim assistance and criminal justice professionals is to not only inform victims of their rights, but also to provide them with an understanding of what having these rights mean, and why these rights might be important to them. It is not surprising that crime victims — once informed that they have rights — often have questions about exactly what their rights are and how they can most effectively exercise them. While the range of questions victims ask is limitless, most victim service providers and justice professionals find that *victims often ask the same questions*.

The Advent of FAQs Lists

While some jurisdictions and justice agencies have developed written FAQs lists as a component of their victim education efforts, the FAQs list has become a standard component of many victim assistance and criminal justice-related websites. Web masters who manage sites quickly discovered that many of the questions they received via e-mail from web visitors were the same. Rather than constantly respond to each visitor to answer the same questions, they compiled a list of the most commonly asked questions, provided written answers to those questions, and then published the list of questions and answers on their websites.

While this tool is specifically designed to help you build your own FAQs list, the content of such a list could easily be incorporated into other educational materials, or comprehensively re-packaged as a stand-alone educational document. The real advantage of developing educational materials that incorporate the "question/answer" format is that as an experienced professional, you very likely already know not only the questions, but the answers as well.

Advantages of a FAQs List

In addition to the more generalized benefits of victim education, the FAQs approach has some distinct advantages — both for crime victims and the victim assistance and criminal justice professionals who serve them, including to:

- Allow victims to educate themselves about their rights without the direct intervention and facilitation of a victim assistance professional. This is an

important option in situations where such a professional is not immediately available to answer a question, or no victim services are readily available in a jurisdiction.

- Save victim assistance and criminal justice professionals a tremendous amount of time in an average day — time that would normally be spent answering victims' basic questions about their rights.
- Help victims focus their interactions with service providers and justice professionals at a more knowledgeable and productive level. Once victims have read the basic questions and answers, they will be better able to formulate an idea of what their true interests and concerns are regarding their rights, and how exercising their rights will affect their case and their lives.

Uses For FAQs Lists

On a Web Site

The use of FAQs lists on web sites has the unique advantage of flexibility. As laws change and evolve through modification and judicial interpretation, the answers and even the questions related to victims' rights can easily be altered.

In a Brochure

A FAQs list can be printed in a wide variety of formats that need not rely on the victim's ability to access the Internet, including the publication of informational brochures. The model provided in this Kit offers a rather extensive list that is intended to allow brochure developers the option of creating a comprehensive FAQs list, but even that list can be reduced to a handful of the most critical questions and answers that fit within the space limitations of a typical two-fold, double-sided 8 ½" x 11" brochure.

In a Handbook

If you decide that you want to provide victims with a more comprehensive source of information regarding their rights, you can easily turn the model FAQs list into a freestanding handbook that can be printed and distributed by system- and community-based victim assistance programs, criminal and juvenile justice agencies, multi-faith institutions, educators, and other private or governmental agencies.

In Related Educational Materials

FAQs lists can also be incorporated, in whole or in part, as a component of other educational materials, such as training curricula, court orientation guides, and educational posters. Some jurisdictions use the same "question/answer" format to develop victim educational videos and interactive CDs.

Learning About Victims' Rights Laws

Determining Your Jurisdiction's Victims' Rights Laws

If you are an experienced victim advocate, service provider or justice professional, you are likely very familiar with the laws that establish victims' rights in your jurisdiction or state. If so, you may be able to adapt the model FAQs list or even draft your own with little additional assistance. However, like most areas of criminal law, the implementation of victims' rights is an area requiring specialized expertise obtained through knowledge and understanding of statutory and constitutional interpretation, case law, administrative law and policy.

Although you need not be an attorney, prosecutor, judge or law professor to draft a customized FAQs list, it is critically important that you involve legal experts with specialized knowledge of victim-related laws in your jurisdiction in the development and/or review of your FAQs list so that the information you provide is accurate.

Before you begin drafting your FAQs list, you will need to make a few decisions about the design, scope and structure of your list before considering its content.

There are several helpful sources to learn about victims' rights laws in your state or jurisdiction.

Existing Victims' Rights Educational Materials

The simplest way to begin your search is to review other victims' rights-related documents designed to educate and inform crime victims. Determine if some organization or entity has created victim informational resources about core rights or a FAQs list. Assuming it was created by a competent legal expert and is reasonably current (*both assumptions you will want to confirm*), you will have a good starting point for your customization process. With such a document, you need only compare the description of rights in that document to relevant questions and answers in this Kit's model. You can either edit the model accordingly, or re-draft it based on the information in the document to which it is being compared. Be sure materials comport with current law, as victim-related statutes and amendments to states are passed by legislatures every year.

Victim Statutes and Cases

An alternative means of learning about the law is to go directly to the source — looking at the statutes and cases themselves. The traditional way to “look up the law” has been to visit a law library. Most county courthouses maintain such libraries that are open to the public. Area law schools and most attorneys' offices have a complete set of state statutory codes and case law books that you may be able to access.

You can also readily access victims' rights statutes and case law on-line at legal websites. Virtually all states now maintain websites that feature their entire state

codes, including all victim-related statutes. Many include “annotated” versions of their codes, which means they also list all the court decisions that have been rendered interpreting each statute. The Cornell School of Law web site, Legal Information Institute at: www.lawschool.cornell.edu lists the codes of all states and the Federal Code.

The review and interpretation of statutes (and related case law) in the development of your FAQs list should not be attempted without the involvement of or review by a legal expert. Words written in statutes that appear to have ordinary meanings in every day usage may have completely different meanings in a legal context. While you should not hesitate to use the knowledge you can gain from directly reading victim-related laws yourself, you should have an expert with specialized knowledge of victims’ rights laws review your FAQs list for accuracy before it is made available to victims and the general public.

Finding Legal Expertise

There are several good resources to find the legal expertise you need to develop your FAQs list.

You can begin within the victim assistance field itself. The best possible source of legal guidance is an attorney who works closely with community-based victim assistance organizations. Another source of private legal counsel, though somewhat rare is the victim bar. Attorneys who represent clients in civil and criminal matters usually have experience in victims’ rights enforcement.

A third source is the authors of the statutes themselves – the legislators who sponsored the original law. If you are unsure of whom the original legislative sponsors are for a particular statute, you can look up the legislative history of any statute or amendment (annotated codes found in law libraries on-line often include the laws’ legislative history). Mostly likely either the legislator or other contributing authors (i.e., victim policy advocates, committee staff, legislative counsel, etc.) can share their insider expertise.

Law schools are another potential source of legal expertise. Criminal justice, criminology, and law professors often have a specialized knowledge of statutory and case law, as well as legal analysis of such laws. The best choice is a criminal law professor who either advocates for victims directly (i.e., through victim assistance legal clinics, such as the National Crime Victim Law Institute at the Lewis and Clark College at www.lclark.edu/LAW), or through experience in drafting and passing victims’ rights laws).

Finally, you can turn to legal experts within your own criminal justice system. Most prosecutors and judges have an excellent understanding not only of the letter of victim-related laws, but also how they are applied in practice – knowledge that is invaluable if incorporated into your FAQs list.

One final source of victim-related information is your state's Governor, Attorney General's offices, State Attorney's offices, and/or Chief Prosecutors. They may have legal experts on staff with specialized knowledge of victims' rights statutes. Some Attorneys General may even offer official opinions or interpretations of victim-related provisions of your state code or constitution.

You should seriously consider the idea of having two or more legal experts review your FAQs draft, or form a "legal experts drafting and review committee" to get the benefit of both enhanced expertise and a diversity of perspectives.

Building Your Own FAQs List

Target Audience

Your first step is to identify your target audience. Begin by developing a profile of the victims who will most likely need answers to the questions in your FAQs list. If the list is intended for use by *all* crime victims, you should consider the broadest possible range of questions. If you are creating the list for a specific victim constituency (such as domestic violence, sexual assault, or homicide victims, etc.), the questions may differ based on the unique circumstances of the type of victimization or particular interest of the victims.

You may also want to consider the demographics of your intended audience(s). For example, if your jurisdiction includes large non-English speaking populations, you should consider developing lists that take into consideration the cultural mores of those populations, and publish your FAQs list in languages other than English.

Educational Objective

You will need to next decide what you want to accomplish with your educational outreach. For example, if you intend for your target audience to use the FAQs list as a guidebook, then you should consider a more extensive, comprehensive FAQs list. Conversely, if you want to use the FAQs list to introduce crime victims to their statutory and/or constitutional rights, with the expectation that they will turn to you as their primary source of education, then your FAQs list can be written in a format that is short and simple.

The Scope of FAQ Questions

It is important to determine the degree of detail you want your questions to address. In theory, a FAQs list could range from a few questions to literally hundreds of questions, given the range of rights and the intense interest of many victims. While you will want to try to answer as many questions as possible, at some point the sheer volume may overwhelm victims to the point that they avoid reading or referencing the list altogether. Many victims are not able to absorb a great deal of detailed information in the immediate aftermath of the crime, or when they are experiencing symptoms of trauma.

Other factors that may enter into your “scope” decision may be very practical in nature. For example, the larger the list, the more expensive it is to print and distribute in paper-based formats. If you plan to disseminate your list “on line,” the cost of adding additional questions and answers is negligible.

You will need to expand or contract the scope of the model based upon your target audience(s) and dissemination plan. This model includes “drafter notes” that accompany each question, which often suggest additional questions that relate to the same right or issue that you may want to consider adding. This should make the task of expanding the list much easier if it is appropriate for your purpose and consistent with your overall objectives.

The model questions included in this Kit focus exclusively on eight core rights that are common to virtually every state, which include the rights to:

1. Notice of proceedings.
2. Attend proceedings.
3. Be heard at proceedings.
4. Restitution.
5. Protection.
6. Apply for crime victim's compensation.
7. Information about and referrals to available victim assistance and service organizations and/or agencies.
8. Information about how to exercise your rights as a crime victim.

There may be other rights beyond this list that you may want to include in your FAQs list.

Customization of FAQs Lists for State-specific Laws

Victims' rights are largely dictated by law. While state statutes most often prescribe laws, state constitutions, judicial branch rules and regulations, court decisions, matrimonial laws, family courts practices, civil courts, and even court rules can also establish them. Currently there are more than 30,000 victim-related laws on the books in all 50 states and at the Federal level. Given such diversity, it is impossible to develop a model educational tool that can accurately reflect *all* victims' rights. As such, the model FAQs list was written generically to reflect the most common rights, as they exist in a majority of the states.

To make the model most useful to you and the victims you seek to educate, you will need to adapt the model to reflect the actual laws in your jurisdiction and create your own customized FAQs list. NVCAN asks that FAQ drafters add the following attribution to NVCAN on the last page of their adapted FAQs List: “*The prototype for the development of this “Frequently Asked Questions” List was*

created by NVCAN, a non-profit organization comprised of leaders of the victim rights movement from across the nation.

The Order of Questions In Your FAQs List

The model in this Kit is specifically written to parallel the linear progress of a typical case as it works its way through the criminal justice system.

The purpose behind this design was intended to allow the FAQs list to be used as a reference document. It is organized by progressive phases (i.e., arrest, investigation, pre-trial, trial, sentencing, etc.), *so crime victims can reference only those questions that are most pressing at any given time during their case.* Such an approach not only helps victims focus on the rights that are most timely, but also reduces the likelihood of “information overload” they might risk while trying to absorb *all the questions related to all phases of the process at one time.*

An alternative approach is to group together all questions related to a specific right. For example, you could follow the same order of rights as they appear in your state’s Victims’ Bill of Rights. The advantage of this approach is that it allows victims a very clear idea of what each right is and what it means for them in a very practical sense across the entire criminal justice continuum. They could appreciate, for example, how their right to attend proceedings shifts depending on the nature of the proceeding (i.e., they have an absolute right to attend a sentencing hearing, but only a limited right to attend the trial). The disadvantage is that it is much more difficult for a victim to determine which rights are most critical to their interest at a given point during the course of their case.

Determining Which Questions Are Most Frequently Asked

There are a variety of ways to determine what questions victims most frequently ask about their rights in your particular jurisdiction.

The most obvious way is through the experience of veteran service providers and victim advocates. An invitation to victim service providers to join a group discussion, or to document victims’ most FAQs lists through e-mail or other response formats, is a good starting point. In addition, it is helpful to involve victims/survivors in this process as well, *as they know first hand what victims’ questions, needs and concerns are.*

Drafting From the Model

The model FAQs included in this Kit offer the best starting point. Begin by reading the model question, and determine whether it is one your target audience might ask. If so, determine whether the terminology used is appropriate for your state or jurisdiction (for example, some states use the term “charging” when describing the process prosecutors use to begin the trial process, while others call this process “filing an information”). Please note that when there are such differences in language, they may appear as alternatives contained in brackets

“[]”. Once you have settled on an appropriate question, you need to consider the answer that, in the model, is generic.

Legal Review of Your Draft

Once you have completed a first draft, your legal expert(s) should review it. Ask your legal experts to verify the accuracy of your answers to make sure they comply with statutory, constitutional and case law in your jurisdiction. Also invite them to point out any gaps or issues they think are important that were not addressed by the questions and answers in your initial draft.

Field Testing Your Draft

Once you have modified your draft based on the advice of your legal experts, you should test the draft FAQs with the end users. By using this market testing approach, you will be able to get a good sense if your FAQs list is serving the purpose you originally intended.

Try to recruit reviewers that represent a cross-section of your intended audience. Pay particular attention to end users with unique needs; or whose primary language is not English; and to cultural competence in your scope and language. (Cultural competence is acceptance and respect for difference, continuing self-assessment regarding culture, attention to the dynamics of difference, ongoing development of cultural knowledge and resources, and flexibility within service models to work toward better meeting the needs of minority populations [Cross, T.L., Barzon, B.J., Dennis, K.W., Isaacs, M.R. (1989) *Towards a culturally competent system of care*].)

There are several ways to field-test your draft FAQs list. You can conduct a “comment review”, which entails sending the draft to crime victims and asking them to respond with their comments. If you choose this approach, be sure to include an evaluation that asks their views about specific aspects of your list, such as:

- Was it easy to read?
- Was it easy to understand?
- Was it culturally competent?
- Was the format suitable (i.e., brochure, handbook, web site, etc).
- Could you follow the chronological progression?
- Were there additional questions you wish it had answered?
- Would this list have been helpful if you had read it during the course of your case?
- Do you think other victims would benefit from reading it?

- Do you feel like you better understand what your rights are and how to exercise them?
- How could the list be improved?

You can also conduct one-on-one interviews with victims who have reviewed your list to elicit personal opinions, while allowing you to ask follow-up questions, or clarify questions and answers based on their responses. Another alternative is to conduct a focus group of crime victims, victim service providers, justice professionals, or a combination of these key stakeholders. Invite a representative group to review (in advance of the focus group) your FAQs list, and then convene a meeting to allow each to express his or her views. A focus group provides detailed feedback that can help you improve and finalize your FAQs list.

Evaluation

The input you have received from crime victims and those who serve them in finalizing your FAQs list can provide important evaluative data. Through the use of web site response mechanisms, ongoing measures to facilitate crime victims' responses, and continuing review by criminal justice and victim assistance professionals that consider changes in laws, you can ensure that your FAQs list is relevant, up-to-date and significant to crime victims.

It is critical to periodically review your FAQs list with the help of a legal expert. Given the speed with which victim-related laws evolve, answers to questions that are accurate today may not necessarily be correct tomorrow. If your FAQs list is web-based, its maintenance and update are fairly simple and inexpensive propositions. This is not the case with written documents. At the very least, you will want to carefully review your FAQs list every time you reprint and distribute it.

Use of This Model

Introduction

This model is intended as a tool to help you build your own “Frequently Asked Questions” List concerning crime victims’ rights. It is to be used in conjunction with the preceding sections of this Kit. It is strongly recommended that you review the entire Kit before developing your own “Frequently Asked Questions” (FAQs) List.

Use of Editor’s Notes

To aid drafters in this undertaking, extensive editor’s notes have been provided to aid the customization process. The notes serve several purposes.

First, the editor’s notes mention alternative legislative approaches utilized in some states. These may help you identify the approach in your jurisdiction, if it is different from that stated in the model. For example, some states provide notice to victims by mail, others by telephone, still others by computer automation. The editor’s note in that case mentions all three to help you identify the method used in your jurisdiction.

Second, editor’s notes include additional statutory, constitutional and/or case law that expands upon the right that is the subject of the question. For example, in some states, victims have the right to express their opinion as to what they feel is an appropriate sentence as part of his or her victim impact statement. The editor’s note in that case will prompt you to determine if such a right exists under your particular state law.

Finally, in some cases, the editor’s notes suggest additional questions to help you expand the scope of your list while providing more useful details to the list’s ultimate target audience, the victims.

Many of the questions and answers include numbers in parentheses that correspond to numbered subsections in the editor’s notes that appear below. This footnote numbering system allows for comments regarding specific sentences or even words within both the questions and answers.

The Eight Core Rights of Crime Victims

While every state has dozens, if not hundreds, of victim-related statutes on its books – all of which establish and protect victims’ rights in one form or another – virtually all include some version of the following eight basic “core” rights:

1. The right to be notified of proceedings.
2. The right to attend and/or participate in proceedings.
3. The right to be heard at proceedings.

4. The right to restitution.
5. The right to reasonable protection from the accused.
6. The right to apply for crime victim's compensation.
7. The right to information about and referrals to available assistance and service organizations and/or agencies.
8. The right to information about how to exercise your rights as a crime victim.

Despite the commonalities of these core rights, the specific way they are defined and implemented varies dramatically among jurisdictions. In order to address some of the major differences as they apply across the entire criminal justice process, several "global considerations" that relate to each of the eight rights are provided. These "global considerations" operate in concert with the editor's notes that appear with each question.

It is critically important to your drafting process that you carefully review these global considerations since they will likely have a profound impact on the way in which you identify and describe each victims' right as it is referenced throughout your list.

Global Considerations Related to the Eight Core Rights

The Right to Notification of Proceedings

Definition of Notification

The "right to be notified" generally means that victims are entitled to receive information from the criminal justice system. This right exists in some form in every state. However, the questions of who, what, when, and how related to notice varies dramatically from state-to-state or even jurisdiction-to-jurisdiction.

To What Notice Are Victims Entitled?

Generally, victim notification statutes are intended to ensure that victims are notified of their rights and a proceeding, an outcome, or an occurrence that takes place in the course of the process. This may include notification of their rights as a victim; the time; date and location of a hearing; the outcome of a hearing; the status and location of an alleged or convicted offender; and information about services available to assist them.

There are at least 65 proceedings, outcomes, and occurrences for which a victim may be entitled to notice by law in the 50 states. While the model attempts to note many of these, you will need to closely review your state's statutes to determine at what points victims are entitled to be notified.

When Are Victims Entitled to Notice?

Some statutes provide specific time frames within which notice is supposed to occur (i.e., “three weeks prior to the offender’s release on parole”). Others state that notice should occur “as soon as practicable.” Still others simply state that notice should occur “prior” to the proceeding for which notice is being given. It is also not unusual for notice statutes to remain silent on the question of “when” the notice should be provided. You will need to examine each of your state’s notice statutes, and jurisdictional policies to determine what, if any, time frame is provided.

How is Notice to Be Provided?

Again, the question of how, or in what form, the law requires the notice to be provided varies not only among states, but it also depends upon the subject of the notice.

Some state statutes specify that notice shall be provided by “U.S. Mail,” or by “registered mail.” Others direct that notice be provided “by telephone.” In some jurisdictions telephone notification is performed by automated systems where computers actually make the calls to victims. Other statutes simply mandate “notice shall be provided by the means most likely to affect actual notice.” In many cases notice provisions do not specify the means by which notice will be delivered.

Who Will Notify the Victim?

The answer varies depending on the statutes. Some specifically state who has the duty to provide the notice in question (i.e., the paroling authority shall provide notice to the victim of any release of any inmate on parole). However, many notice statutes mandate the notice without specifying who has the duty to actually provide the notice.

Who has the duty to notify may be very important to victims, particularly in situations where victims are forced to take the initiative to learn about proceedings, dispositions, and outcomes. Extra effort should be made to identify the criminal justice official who has the designated responsibility for the specific duty, if one is so designated by law or policy.

Opt In and Opt Out Notification Requirements

The notification statutes in most states start from the assumption that a victim wants to be notified of all events and developments in his or her case. As such, many automatically provide victims with all notices unless they specifically ask *not* to be notified. This is called an “opt out” notification system.

Other notification statutes require victims to “opt in” and affirmatively indicate that they want to receive notice in person, by telephone or email, or by completing a form.

The Right to Attend Proceedings

The vast majority of states have laws that allow victims to attend at least some proceedings; however states vary considerably with regard to which proceeding victims can or cannot attend.

Proceedings Included in Right to Attend

Many state victims’ rights amendments grant victims the broad right to attend all proceedings related to their cases. However, for most, this right is limited in a variety of ways. For example, some limit attendance to only those proceedings that defendants have the right to attend, which as a practical matter eliminates only administrative (e.g., evidentiary hearings) or quasi-judicial proceedings (i.e., disciplinary hearings within prisons).

Other states limit attendance only to those proceedings that are “public.” This means that hearings that are not generally public, such as; grand jury hearings, clemency hearings etc. may not be open to the victim either.

Designated Representatives

Virtually all states’ “right to attend” law allows family members or other designees to attend proceedings on behalf of victims. Beyond homicide cases, where the victim cannot exercise his or her right to attend, some states allow victims to designate a representative to attend on his or her behalf, particularly if the victim is unable to attend due to physical or mental infirmity or is under age 18.

Limitations of the Right to Attend Trial

A victim’s right to attend trial, even if guaranteed by the state constitution, is not absolute. The defendant’s seventh amendment right to a fair trial has generally been interpreted to allow the exclusion of all witnesses who may testify at trial, including victim/witnesses.

Most state statutes mandate that if a victim is to be called as a witness, the defense has the right to sequester the victim during the trial except for when they are specifically called to testify. Some statutes or rules of court procedure provide the presiding judge the discretion to allow the victim to remain in court, or to allow the victim to testify first, so there is no risk that his or her testimony will be influenced by the testimony of others.

The Right to Be Heard at Proceedings

Format for Victims' Right to Be Heard

Victims' right to be heard usually takes one of two forms, either a written or an oral impact statement offered during specific proceedings.

Proceedings in Which Victims Have the Right to Be Heard

As with the right to attend, the victim's right to make a statement may be limited to only those proceedings designated by law. In most states, victims are allowed to be heard at sentencing and parole hearings.

Some states allow victims to express his or her views about an appropriate sentence, while others specifically disallow such recommendations.

Limitations On the Victim Impact Statement

Depending on the nature of the proceeding in question, state statutes may limit what victims can include in their victim impact statement. For example, some laws state that a victim must confine his or her comments to descriptions of how the crime impacted their life. Others specifically preclude victims from alleging facts that were not established during the course of the trial. More permissive statutes allow victims to say anything they want and even specifically allow them to recommend an appropriate sentence during sentencing hearings.

Many states limit victim comments depending upon the nature of the proceeding. For example, victims may be allowed to address the court during a bail hearing, but his or her comments may be limited only to those matters that involve a risk to his or her personal safety.

On the other hand, statutes in some states allow victims limited "standing" to actually object to proposals before the court, as is the case when plea agreements are offered for the court's approval.

Given the sheer number and complexity of the exceptions and conditions placed on the right to be heard, it is important to ascertain what limitations, if any, are placed on the content of the statements in the context of each proceeding, and communicate those realities through the questions and answers in your FAQs list.

The Right to Restitution

Restitution is one of the few victims' rights that existed even before the advent of the victims' movement. This fact is one of the reasons statutes governing restitution are so diverse among states. Adding to this diversity and complexity is the considerable amount of case law that often accompanies such laws. Because of these factors, drafting a generic set of questions and answers regarding restitution is particularly challenging.

Restitution as an Absolute Right

The right to restitution is not absolute in the sense there is no guarantee that a victim will actually be paid restitution for the full amount of his or her economic loss. Even in states with “mandatory restitution,” the courts may only be compelled to “state on the record” the reason they did not order restitution.

Victims’ Duty to Establish Losses

Regardless of the decision a court makes regarding a restitution order, the burden is on the victim to document and verify his or her losses. In most cases, this means the victim has to document expenses that are a direct consequence of the crime.

Orders for Restitution

Courts have tremendous discretion in determining the appropriate order of restitution. For example, in some states judges are required to issue restitution orders for the full amount of the victim’s loss; however, judges generally have complete authority to accept or reject a victim’s claim for his or her losses. Even in cases where the order is for the full amount requested by the victim, judges retain complete discretion in determining the offender’s payment schedule, up to and including the decision that the offender make no payments. Victims need to be made aware of such distinct possibilities, so as not to create unreasonable or false expectations of payment even after an order has been issued.

Collection and Enforcement

Every jurisdiction provides for some response if an offender fails to pay restitution, and many require a restitution hearing. There are also jurisdictions that allow victims to enforce restitution orders in the same way they would civil judgments. If such a right is allowed in your state, address it in your FAQs list. Describe the particular mechanism for converting a restitution order to a civil judgment and for collecting.

The Right to Reasonable Protection from the Accused

Protection is a right that has traditionally been used to encompass a broad range of specific victim and non-victim-related rights. Most are specifically designed to protect the victim from threats, intimidation, or even repeated violence. In many jurisdictions, victims have the right to be informed of protective measures that are available to them.

Protective/Stay-Away Orders

Every jurisdiction has an extensive set of laws, policies and practices to allow victims to secure a protective or stay-away order against his or her offender and/or the offender’s family and friends. Orders can be issued from both criminal and civil courts. Most jurisdictions offer an array of protective orders, often varying in length. The process for obtaining these orders often varies with the

type of order. Given the complexity of such procedures and the gravity inherent in safety-related matters, addressing the issue of protective orders may fall beyond the scope of all but the most exhaustive FAQs list. You should refer victims to other more comprehensive materials, or simply suggest they consult a victim service professional.

No-Contact Orders

The court may grant victims the legal equivalent of a protective order by issuing a no-contact order, either as a condition of bail or probation. While some courts issue such orders as a matter of course, it may be incumbent on the victim to specifically request such an order, either through the prosecutor or directly to the court at the time of the bail, sentencing, or parole hearing.

Security Measures at the Courthouse

In recent years many state legislatures have passed laws mandating a variety of safety measures to protect victims when attending proceedings at the courthouse. Some of these measures include separate waiting rooms for victims and their families, law enforcement escorts inside and outside the courthouse, and even metal detector screening and body searches upon entry to the courthouse or courtroom. Some courts have even adopted measures that separate the victim and his or her family from the offender and his or her family within the courtroom itself.

The Right to Apply for Crime Victim's Compensation

Victims *do not* have an *absolute* right to compensation. However, in virtually all states, they do have an absolute right to apply for compensation. Beyond those basic rights, the nature, limits and operation of state Crime Victim Compensation programs diverge considerably.

Application Process

Some state Crime Victim Compensation programs have a complex application processes that are not always easy for victims to navigate. You may want to consider providing greater detail in the information offered through the questions and answers addressing compensation. Your state Crime Victim Compensation program may already have developed materials describing the application process in detail that can easily be adapted to your FAQs List format.

The Right to Information About and Referrals to Available Assistance and Service Organizations and/or Agencies.

As a general matter state victim statutes do not grant victims a right to services *per se*. Many do grant victims the right to information and referrals to programs that offer assistance and services to victims. The most common of the programs include system-based victim assistance programs in prosecutor's offices or in law enforcement, probation or corrections agencies. Virtually all make referrals to

the state Crime Victim Compensation program, either directly or indirectly. Most also make referrals to community-based non-profit organizations, many of which specialize in particular victim constituencies, such as; sexual assault, domestic violence, homicide, impaired (drunk) driving, child victims, etc.

Some jurisdictions have expanded their referrals to include social service that do not necessarily focus their services exclusively for crime victims, such as; medical clinic, public housing, mental health counseling, workman's compensation, job training, etc.

Model “Frequently Asked Questions” (FAQs) List

General Information About Victims’ Rights

1. What are “rights”?

The term “rights” has many different definitions. The Webster’s Dictionary definition is that a right is “the power or privilege to which one is justly entitled.” The more practical definition of a right, when being used to describe a “victim’s right,” is that a right is “the power granted by law that entitles a victim to require another person, usually a criminal justice official (i.e., police, prosecutor, judge, probation or parole officer, or corrections official), to perform a specific act or refrain from performing a specific act.”

For example, a victim’s right to notification of a parole hearing entitles the victim to require the paroling authority to inform him or her of the time, date, and location of such a hearing. Similarly, the victim’s right to attend that same parole hearing entitles the victim to prevent the paroling authority from excluding them from the hearing. [1]

[1] This definition and the examples offered are fairly universal, but you may want to modify it to fit your jurisdiction.

2. From where do my rights come?

Rights generally come from one of three primary sources:

The *first* and most common way rights are created is by the passage of legislation by your state’s legislature. Laws created this way are generally called statutes. Rights created by statute are often referred to as “statutory rights.” Rights that are passed together as one package, or that relate to the same subject matter, are sometimes called “Victims’ Bills of Rights.” [1]

The *second* way rights are created is by amending the state’s constitution. The process for amending the constitution is similar to passing statutes in that amendments usually begin as legislation passed by the state legislature. However, passing amendments is a much more difficult legislative process. Unlike statutes, constitutional amendments must be approved by a majority of voters in a statewide election in a process known as voter ratification. [2] In some states, gathering a certain number of signatures of registered voters, and having those signatures validated by the Secretary of State, will place an amendment on the ballot.

A *third* way that victims’ rights are created or expanded is by the decisions of the courts – in other words, on a case-by-case basis. Laws created in this way are often referred to as “case law.” Such cases are brought when someone (usually either a defendant, a prosecutor, or a victim) files a request

asking the court to determine whether or not a victim has a right to do or not do something with respect to a specific event in the process (i.e., a hearing, the release of the offender on bail, etc.). The decisions courts make in this regard through the judicial branch and regulations become law that is just as binding as laws passed by the state legislature.

Sometimes courts will be asked to clarify the meaning of rights that were created through statutes or amendments to the constitution. This process is referred to as “judicial interpretation.” [3]

[1] Almost all states have passed a “Victims’ Bill of Rights,” either as a single package or in stages. Check to see if this is the case in your state.

[2] Each state has a slightly different constitutional amendment process. Compare your state’s process with the one described here. If your state has passed a constitutional amendment for victims’ rights, mention it here.

[3] Check your state law for accuracy, and give a simple example of how this process works in your state.

3. How do statutory rights differ from constitutional rights?

Statutory rights and constitutional rights, particularly as they relate to victims, are usually very similar. However, victim-related provisions of state constitutions are usually broader since they are intended to lay out broad principles and goals. Statutory rights tend to be far more specific, often defining in detail the ways that constitutional rights will be implemented in practice. [1] For example, the constitution may grant victims the “right to be heard at critical proceedings.” A statute might specify that the “right to be heard” means that the victim can provide a victim impact statement in person in court at the time of sentencing. [2]

The other important difference between statutes and constitutional amendments relates to differences in the way these are regarded by professionals in the criminal justice system. Since state constitutions are generally viewed as being the “highest law of the state,” those in the criminal justice system and beyond generally view them with greater respect. They may be more likely to pay greater attention to victims’ rights established by the constitution than those established by statute. [3]

[1] If your state has a constitutional amendment for victims’ rights, check to see if this description accurately reflects your statutory and constitutional rights.

[2] Consider whether this example fits the common experience of crime victims under your jurisdiction’s laws.

[3] Another potential advantage of constitutional rights over statutory rights may be enforceability. You may decide you want to introduce concepts of “standing” and what options victims have to seek remedies when their rights are violated. This model addresses that topic on a case-by-case basis throughout the list and in the final section on enforcement of rights.

4. What are my rights as a victim of crime?

Victims in [your state] now have literally [dozens/hundreds] of rights established by state law. While they are too numerous to list here, most are identified and addressed in detail throughout this model FAQs List.

Many of them, however, are listed as part of [your state]’s Crime Victims’ Bill of Rights [and/or victim specific provisions in your state’s constitution]. [1]

The victim amendment to [your state]’s constitution states that:

[State your states Victim Constitutional Amendment here] [1]

The [your state]’s Crime Victims’ Bill of Rights states:

[State your states Victims’ Bill Of Rights here or a summary of existing statutory rights (not always called Bill of Rights)] [2]

State Victims’ Bills of Rights address many core rights; however most of them could be categorized as falling under one of the following eight fundamental rights, or core rights: [3]

1. The right to be notified of proceedings.
2. The right to attend and/or participate in proceedings.
3. The right to be heard at proceedings.
4. The right to restitution.
5. The right to reasonable protection from the accused.
6. The right to apply for crime victim’s compensation.
7. The right to information about and referrals to available assistance and service organizations and/or agencies.
8. The right to information about how to exercise your rights as a crime victim.

The questions and answers in this model FAQs list are organized in a way that parallel the progress of the typical case though the criminal justice process. Your various rights, as a victim, surface repeatedly in every phase of the process. To help you identify the right that is the subject of questions discussed in each phase, we have specifically listed them for reference purposes. [3]

[1] Delete the reference to an “amendment” if your state does not have one.

[2] Depending on the length and complexity of your state’s Crime Victims’ Bill of Rights, you may state it here.

[3] This list of “core rights” is the basis for a kind of classification system that is utilized throughout the list. Since the list is organized in chronological order rather than by right, the same right may resurface in each stage throughout the process. To help victims know which of their rights is the subject of the questions raised in each stage, the right has been inserted as a kind of “signpost” in each section. This will alert victims that the questions that come immediately after the mentioned core right related to that specific right.

5. How do I know if I am a victim entitled to these rights?

Generally, a crime victim is defined as someone who has been harmed as the direct or indirect result of another person’s criminal acts. [1] In a more practical sense that means that if someone commits a crime against you, then you are automatically entitled to most of the rights as a crime victim under the laws of [*your state*]. [2] Depending on the nature of the crime committed against you, you may be entitled to certain additional rights. For example, if you are a domestic violence victim you may have a right to apply for a special domestic violence protective order. [3]

Also, if you are a surviving family member of a murder victim, or the parent of an underage victim, you may have the right to represent the deceased victim or child victim and exercise all the same rights he or she would have had the opportunity to exercise. [4]

[1] Check the laws in your state, and provide your specific definition of a “victim.” Restate it here, if it is easily understood, or revise this definition.

[2] Note that this sentence uses the word “most” rather than “all” rights. With the exception of special rights for specific victimization (i.e., domestic violence as the paragraph goes on to discuss), some rights relevant to the process only apply to those victims who are actually named in the charges made against the defendant. Thus, in the case of a serial rapist, only one or two of the dozen of actual rape victims will be named in the charging document. If your jurisdiction is one that makes this distinction, you should note and explain that here.

[3] Check your state laws to determine if this example applies in your jurisdiction. If not, offer a different one (i.e., the right of child victims to testify by closed circuit television, etc.).

[4] Check the legal definition of “victim” in your state. Specifically, define to what extent family members of homicide victims are considered “victims” for the purpose of exercising victims’ rights.

6. How will I know when to exercise my rights?

By their nature, certain rights have to be exercised – or used – by victims at certain times during the criminal justice process. For each stage of the process (i.e. arrest, pre-trial, trial, sentencing, post-trial, imprisonment, release, etc.), the rights and the questions that might come up during that time have been listed. This will help you know when you will have the opportunity to exercise one or more of your rights. [1]

[1] The “*Promising Practices in the Compliance and Enforcement of Victims’ Rights Kit*,” a Tool in the “*Victims’ Rights Education Project Toolkit*,” provides guidelines to ensure that victims of crime are aware of their rights; who can help them understand their rights; who is responsible for implementation; and any possible limitations to the implementation of these rights. They are designed to help them understand and actively exercise their rights, and to respectfully inform or remind justice officials of any obligations they may have under law to enforce their rights as a victim of crime.

7. Who in the criminal justice system has the duty to inform me of my rights?

Many states have specific requirements about who should inform victims about their rights, when and how that information should be given to victims, and what victims need to do to exercise those rights. For example, in many states, law enforcement officers, prosecutors, and some correctional officials are required to give victims information about what their rights are and how to exercise those rights. In some cases, a state’s law will clearly identify the justice agency or official who is responsible for the implementation of a specific victims’ right. However, there are other times in which a victim’s right becomes law without *clearly stating* who is responsible. [1]

[1] The “*Promising Practices in the Compliance and Enforcement of Victims’ Rights Kit*,” a Tool in the “*Victims’ Rights Education Project Toolkit*,” provides guidelines to ensure that victims of crime are aware of their rights; who can help them understand their rights; who is responsible for implementation; and any possible limitations to the implementation of these rights. They are designed to help them understand and actively exercise their rights, and to respectfully inform or remind justice officials of any obligations they may have under law to enforce their rights as a victim of crime.

8. Does the prosecutor represent me and my interests?

No. The prosecutor is required by law to represent the interests of “the state” first and foremost. While many victims’ rights statutes specifically require prosecutors to implement victims’ rights relevant to the prosecution of a case, they are generally not required to ensure that your rights are observed throughout the criminal justice process. However, prosecutors may choose, at their discretion, to raise the issue of your rights or even advocate for them with the court or with other criminal justice professionals. It is for this reason that it is always worthwhile to ask for their support and assistance.

9. What can I do if my rights are not being observed?

The first step may be to find out who had the responsibility to implement the right. If it is not obvious, you can usually find out by asking a victim assistance professional who either works with a non-profit organization or a government agency, such as the prosecutor’s office, court, or correctional agency. You can identify your system- and community-based victim assistance programs through the Office for Victims of Crime *On-line Directory of Victim Services* at: <http://ovc.ncjrs.org/findvictimservices/> or your state-specific information and referral resource.

Victim assistance professionals in your community may also be able to advise you about what right you were entitled to in your specific circumstances and what should have happened if your right had been appropriately implemented. You might also ask them about the best way to approach the criminal justice official who failed to carry out his or her duty regarding your right. They may advise you to consult with the official to determine the reason for his or her non-compliance. In some cases, such a discussion may resolve the problem; some victim service providers may even offer to discuss the issue with the official on your behalf. [1]

[1]The advice you give victims whose rights have been violated may vary from this suggested course of action. This approach is merely a starting point. Depending upon the nature of the right and the circumstance(s) surrounding the non-compliance, the best course of action may require a degree of knowledge and sophistication beyond that possessed by most crime victims. Expand this section and add questions and answers about specific situations of non-compliance (i.e. what to do if law enforcement has not advised you of your rights, or if the paroling authority is failing to provide timely notice, or if the court refuses to take your written victim impact statement, etc.). Many of these issues will be raised again at the appropriate phases of the process throughout this model FAQs list. See “*Promising Practices in the Compliance and Enforcement of Victims’ Rights Kit*,” a Tool in the “*Victims’ Rights Education Project Toolkit*,” provides guidelines to ensure that victims of crime are aware of their rights; who can help them understand their rights; who is responsible for implementation; and any possible limitations to the

implementation of these rights. They are designed to help them understand and actively exercise their rights, and to respectfully inform or remind justice officials of any obligations they may have under law to enforce their rights as a victim of crime.

10. What is the best way to learn about my rights?

One of the best ways to learn about your rights as a victim is to carefully review this entire FAQs list. It may not answer all the questions you have about your rights, but it will provide you with a good starting point from which you can continue your education process.

By reading each of the questions and answers, you will have a general sense of what your rights are and how they are supposed to be implemented from the time the crime occurs to the conclusion of your case in the criminal justice process. It should also give you a good idea of not only what additional questions you may want to ask, but also whom you should ask.

Seek out information and other publications that address victims' rights in your state.

[1] Community- and government-based victim service professionals can provide you with written information about your rights that you can maintain for reference purposes. These professionals are a great source of information and will likely be able to advise you in great detail about your rights. [2]

Educating crime victims about his or her rights and services available to assist them is one of the primary job responsibilities of many of these professionals.

[1] Reference specific materials in your state and where victims can obtain copies or, in the case of on-line resources, list the URL/Web addresses.

[2] This is a good place to mention the victim assistance services available from your organization/agency or those generally available to victims in your area.

11. Where else I can turn for help asserting my rights?

The "*Promising Practices in the Compliance and Enforcement of Victims' Rights Kit*," a Tool in the "*Victims' Rights Education Project Toolkit*," provides guidelines that can help ensure that you are aware of your rights as a crime victim; who can help you understand your rights; who is responsible for implementation; and any possible limitations to the implementation of these rights. They are designed to help you understand and actively exercise your rights, and to respectfully inform or remind justice officials of any obligations they may have under law to enforce your rights as a victim of crime.

Victims' Rights In The Criminal Justice Process

Phase I. Victims' Rights at the Scene of the Crime, During Investigation, and at the Time of the Arrest

12. Will I be told what my rights are at the time the crime occurred?

Yes. [*Your state's Victims' Bill of Rights*] mandates that you be informed of your basic rights as a victim as soon as possible after the commission of the crime. [1]

[1] Check your state statutes and agency policy to confirm this mandate, and to determine if there is a specified time frame stated.

13. Who will provide me with this notification?

Generally, the law enforcement officer [*or victim service provider*] who responds to the scene of the crime will discuss with you your basic rights as a crime victim. He or she will also provide you with written materials that describe your basic rights and what they mean to you. Later, you will be contacted by (or you can contact) a [*victim advocate or victim service provider*] from [*organization, agency, and/or criminal justice agency*] who will provide you with additional information and answer any questions you have about your rights. [1]

[1] Describe how and by whom this notification is most likely to occur. If it varies from case-to-case, mention the alternative ways victims "may" receive this notification. Some states specify who is required to provide this notification (most often law enforcement).

14. What form will this notification take?

At the scene of the crime, or shortly thereafter, a law enforcement officer [*or victim service provider*] will speak directly to you (or you can contact them) about the rights to which you are entitled under the laws of [*your state*]. They will also provide you with written materials [1] that describe your rights in greater detail. At a later date, you will be contacted by [*a victim advocate or victim service provider*] from [*organization, and/or criminal justice agency*] who will provide you with additional information and answer any questions you may have about your rights.

[1] Some states specifically mandate that this notification be provided in writing or even in a specific written format (i.e., a "victim informational brochure developed by the Attorney General's Office"). Some may require that this same written information be provided at multiple intervals. A few jurisdictions even require written acknowledgements from victims (i.e., usually a receipt with the victim's signature) that the victim actually received the

notification to which they were entitled. Check your state statutes and agency policy to determine the specific requirements of your state.

15. Do I have the right to services?

You do not have the *right* to receive services, but you do have the right to receive information about and referrals to available services. [1]

[1] Check your state statutes to determine if this applies.

16. In what format will I receive these referrals?

Within [*number of hours/days*] of the crime, you will receive a list of victim assistance services and organizations that provide a wide range of victim assistance services, along with contact information for each program. [1]

[1] Describe the process in which referrals are provided in your jurisdiction.

17. To what type of crime victim assistance and services will I be referred?

[1]

[1] List the various public and private programs that are available to victims in your jurisdiction, with brief descriptions of what each provides. If you have a victim and information referral system, list it here. If your victim information and referral roster is online, provide the URL/Web Address or simply insert a hyperlink directly into your FAQs list.

18. Do I have a right to be protected from the alleged or convicted offender?

As a victim of crime, you have the right to “reasonable protection” from the accused or convicted offender. You also have the right to be informed about the options available to you to address any safety concerns you may have about the offender. Law enforcement officials may provide you with suggestions about how you can improve your safety and the security of your family by enhancing your personal security or the security of your home (i.e., improved lighting, locks, home alarms, etc.) or by providing a free home check by an officer from the Crime Prevention Unit of the law enforcement agency. [1]

[1] If your local law enforcement agency or some other entity has not already compiled a list of safety options for victims, doing so for this project would be a tremendous service for victims.

19. What can I do if the offender or his or her colleagues is intimidating, harassing, or threatening me?

Direct threats that the offender or his or her colleagues makes to your safety, or any attempts to intimidate or harass you or your family, *are crimes*. If this

occurs, you should immediately report such actions to your local law enforcement agency. [1]

[1] Check to make sure your state laws regarding intimidation, threats and/or harassment apply to this description. You may describe the definition of both crimes in more detail, with examples, so that crime victims better understand what specific types of offender behavior constitute a violation of the law.

20. Is there any legal action I can take to *prevent* the offender from contacting, intimidating, threatening and harassing me or my family?

Yes. You can obtain what is called a “protective order” [*restraining order/stay-away/no contact order*] from the court against your offender that would make it a crime for that offender to have any direct or indirect contact with you and your family. To obtain this order, you may have to show that the offender represents a particular risk to you. Such proof might include the fact that your offender has made previous threats or has a history of intimidating, threatening, or harming others. Generally, the process for obtaining a protective order begins by filing a request with the [*criminal/civil*] court in your jurisdiction. [1]

[1] The definition, criteria, and process related to protective orders are very jurisdiction-specific and often complex. Check the laws in your jurisdiction to determine what types of protective orders are available, what the qualifications are to obtain them, and the processes that are involved. Be sure to explain the limitations of such protective orders and what to do if the offender violates them.

If it is too lengthy to attempt an explanation, given the space limitations of your FAQs list, consider referring readers to other materials or sources for more detailed information, such as the “*Victim Protection Brochure* at [*give the URL/Web Address of the brochure customized for your state*] or the “*Victims’ Rights Brochure Kit*,” a Tool in the “*Victims’ Rights Education Project Toolkit*”.

21. Do I have the right to financial assistance to help cover my losses resulting from the crime?

You have the right to *apply* for financial assistance through [*your state*]’s [*Victim Compensation Program*]. You also have the right to seek payment for your economic losses directly from the offender through restitution [*refer to the restitution section of this model FAQs list*] ordered by the court at the time of sentencing or by filing a civil action – in other words, suing the offender in civil court. A “*Crime Victim Compensation Fact Sheet*” included in the “*Victims’ Rights Brochure Kit*,” a Tool in the “*Victims’ Rights Education Project Toolkit*,” contains contact information for all compensation programs in the United States. [1]

[1] Some states use the term “reparations” rather than “compensation.” If this is true in your state, change the term for all compensation questions.

22. What is Crime Victim Compensation, and what kind of economic losses does it cover?

Each state, including [your state], has a compensation program to help pay for some of the expenses resulting from crimes involving violence or abuse. Generally, victim compensation programs provide financial assistance to victims of nearly every type of violent crime including rape, robbery, assault, sexual abuse, drunk driving, domestic violence, and survivors of homicide. The programs pay for expenses such as medical care, mental health counseling, lost wages and, in cases of homicide, funerals and loss of support. These expenses or costs cannot be covered by insurance or some other readily available “collateral source.”

With a few exceptions, however, programs do not cover lost, stolen, or damaged property. Most programs cover a basic core of offenses, although eligibility requirements and specific benefits of compensation programs vary somewhat from state to state. [1] A “*Crime Victim Compensation Fact Sheet*” included in the “Victims’ Rights Brochure Kit,” a Tool in the “*Victims’ Rights Education Project Toolkit*,” contains contact information for all compensation programs in the United States.

[1] Check your state Crime Victim Compensation program to determine what specific provisions are mandated and covered by your state’s victim compensation program.

23. Is there a limit to the total amount of expenses compensation will pay?

Yes. The total amount for all expenses is limited to [amount of money]. [1]

[1] Check your state Crime Victim Compensation program to determine the maximum compensation award for your state.

24. I am a surviving family member of a homicide victim. Can I apply for Crime Victim Compensation?

Yes. You are eligible to receive payment for all eligible expenses incurred by the victim as a result of the crime, prior to his or her death and for related funeral and burial expenses, up to [specify the amount of the limit].

25. Are there eligibility requirements to qualify for Crime Victim Compensation?

Yes. To be eligible for Crime Victim’s Compensation, victims must meet several eligibility requirements:”

- Report the crime promptly to law enforcement (usually within 72 hours). [1]
- Cooperate with the investigation and prosecution of the crime.
- Be innocent of any criminal activity or misconduct leading to the victim's injury or death. [2]
- File a timely application with the state Crime Victim Compensation program and provide any information requested. [3]

[1] Seventy-two hours is typical, but check your state's actual requirements.

[2] Some states have expanded this requirement to exclude anyone who has been convicted of a felony, particularly if they are currently incarcerated.

[3] In most states, the word "timely" is defined as requiring the victim to file within one year. Check to see what limit applies in your state, and what special provisions may affect this.

26. When should I apply for Crime Victim Compensation?

You should apply as soon as you feel you have incurred any significant expenses so that your application can be processed and your check issued as soon as possible. If you suffer additional expenses after you apply, you are generally allowed to amend your request to include the additional costs. [1]

[1] Check the specific allowances in your state. They may have limitations regarding amended applications.

27. Can I apply for Crime Victim Compensation even if I do not have any financial losses at the time?

Yes. If you do not have current costs that resulted from the crime, but anticipate that you may in the future, you may want to submit an application to "open a file," and provide information about financial losses as it becomes available. A victim advocate can help you open your claim. [1]

[1] Check your State Crime Victim Compensation Program to determine the specific provisions of your program.

28. What will I need to do to apply for Crime Victim Compensation?

First, you will need to obtain an application form. Such forms are generally available from law enforcement officials, the prosecutor's office, the court, corrections agencies, or directly from your State Crime Victim Compensation Authority. [1]

You will need to provide information about the crime and documentation of your losses, which might include:

- Law enforcements reports (documenting the facts of the crime).
- Medical or funeral bills (to document expenses).
- Employer's report or pay stubs (to document lost wages).
- Tax returns (to document lost income).
- Prosecutor's report (to document cooperation).
- Insurance information (to determine payment from other sources). [2]

[1] Add any additional distribution resources that offer information about and assistance with compensation applications (all programs that receive VOCA finding are *required* to provide this assistance.) If your state Crime Victim Compensation program offers its application in down-loadable form on the Internet, include the URL/Web Address.

[2] Your state Crime Victim Compensation program may require a different list of information and documentation requirements.

29. Who can help me complete an application for Crime Victim Compensation?

A victim advocate or victim service provider from [*organization, agency, and/or criminal justice agency*] can help you complete the form and answer your questions. [1] You can identify your system- and community-based victim assistance programs through the Office for Victims of Crime *On-line Directory of Victim Services* at: <http://ovc.ncjrs.org/findvictimservices/> or other state-specific information and referral resources.

[1] Provide contact information for each of these agencies. The States' Compensation Web Site has direct links to state Crime Victim Compensation program web sites, all of which include information about victims' rights to compensation, eligibility requirements, how to apply, and who can help victims with the application process; and some of which include on-line applications (www.nacvcb.org/statelinks.html).

30. How soon after I apply will I actually receive the money?

Because all applications must be processed and, in some cases, verified, it can take weeks or even months before your claim is approved and a check issued. [1] Compensation can be made available on an emergency basis if a victim's circumstances are such that a delay in payment would pose a serious financial hardship. For more information about emergency awards, contact the prosecutor's office or your state's Crime Victim Compensation program. [2]

[1] It may be impossible to tell victims exactly when they might receive a check, however, it is important for them to know that it may be some time

before they will receive any money. Offer them an estimated range if possible (i.e., from four to six weeks or four to six months).

[2] Your state compensation program may not provide for emergency awards. However, if emergency awards are available, provide information about the terms and limitations of such awards.

31. If the Crime Victim Compensation Authority denies my request for compensation, or awards an amount less than what I requested, is there any way I can appeal his or her decision?

Yes. If you are dissatisfied with the state Crime Victim Compensation program's decision regarding your compensation request, you are entitled to request a review and reconsideration of your application. In most cases, you can request that the entire Board reconsider your application. If you are still dissatisfied, you have the right to appeal the decision to a court. [1] .

[1] The appeals process is unique to each state. You may want to recount all or part of it within the context of your FAQs list, or simply refer crime victims to other compensation-specific materials, or to the state Crime Victim Compensation program.

32. Do I have the right to be informed of the progress of the investigation in my case?

No. As a general matter, investigating officers are under no obligation to share any information they have about the ongoing investigation in your case. However, they may choose to share information with you, particularly if asked, or if you are a witness in the case who can help facilitate an arrest. Also, you are entitled to any information about the case that is otherwise available to the general public. [1]

[1] Your state may provide other exceptions to this general rule. Public records laws may provide for victim access to other matters related to the crime. If so, mention them here.

33. Do I have the right to be informed of the names and contact information for the investigating officers or detectives assigned to my case?

Yes. State statutes [*jurisdictional policy*] require that the relevant law enforcement agency notify you of the names and contact information for the primary investigating officers assigned to your case. [1]

[1] Check your state statutes and jurisdictional policy to determine if this applies to your jurisdiction. Some statutes or policies also specify a time frame within which notification is to occur (i.e., within 24 hours of assignment).

34. Do I have the right to be notified of an arrest made in my case?

Yes. Even though arrests are generally a matter of public record, state statutes grant you the right to be notified of all arrests in your case. When an arrest is made, you will receive a telephone call [*letter, fax, e-mail or other form of notification*] from the law enforcement agency that made the arrest stating the identity of the suspect(s) arrested and the date and time of the arrest. [1]

[1] Check your state statutes and jurisdictional policy to determine if this notification applies to your jurisdiction, and to determine if the law or policy establishing this right provides details about the timing and nature of such notification.

Phase II. Victims' Rights at Pre-trial

35. Do I have the right to be notified of what charges have been brought against defendants in my case?

Yes. The prosecutor's office will notify you of what specific charges have been brought against any defendant(s) arrested in your case. [1]

[1] Check your state statutes and policy to see if this right exists in your state.

Charging Decisions

36. Who decides what crimes will be charged against the defendant?

In virtually every case the prosecutor decides what charges will be brought. This decision is usually based on the criminal complaint filed by the arresting officer. You may be asked to sign the complaint before it is forwarded to the prosecutor. [1]

[1] Requesting victims to sign complaints is a practice that is no longer required in many jurisdictions and certainly not for all crimes. In cases of domestic violence, this practice may prove inflammatory to the accused and thus dangerous to the victim.

37. Is there anything I can do if I disagree with the prosecutor's charging decisions?

No. Courts have consistently ruled that charging decisions are completely at the discretion of the prosecutor. However, this does not preclude you from approaching the prosecutor to discuss the decision and express your views, even though the prosecutor is not *required* to reverse the decision.

Pre-Trial Bail [Bond] Hearings

38. What is a bail [bond] hearing?

A bail [bond] hearing is a court proceeding held to determine if a defendant will be released from jail before trial. Usually defendants charged with violent crimes are required to post a bond prior to release on bail in order to guarantee his or her appearance at the trial.

39. Do I have the right to be notified of the bail [bond] hearing before it takes place?

Yes. Usually, state statutes require the court to make every effort to notify you of the time, date and location of the scheduled hearing. However, bail [bond] hearings are often scheduled with so little advance notice that victims are not notified. [1]

[1] Check your state statutes for the exact language and circumstances by which victims will be notified in advance of bail [bond] hearings. Many state statutes include language that allows for exceptions to the court's duty to notify victims of bail [bond] hearings if insufficient time makes such notice "impractical."

40. Am I automatically entitled to receive notification of proceedings, such as bail [bond] hearings?

Yes. As long as you provide contact information at the time the crime was reported to the authorities, and keep them updated of any changes in your contact information, you will automatically receive all notices that you are entitled to by law, unless you choose not to be notified. [1]

[1] If your state requires victims to register or make a specific request in order to receive notice, describe that process (See "Global Considerations Related to the Right to Notification of Proceedings.").

41. Do I have the right to attend bail [bond] hearings?

Yes. State law grants you the right to attend bail [bond] hearings. The opportunity to exercise this right assumes that you received notice about the hearing in advance – an assumption that may not necessarily be true, given the speed with which they are often held after arrest.

42. If I cannot attend, can I send someone in my place?

Yes. As long as you can provide the court with a good reason why you cannot attend in person (i.e., you are hospitalized, or you would be too traumatized to appear in the defendant's presence, etc.). [1]

[1] Check your state statutes to determine if a victim has the right to send a representative to bail [bond] hearings on his or her behalf and what, if any,

reason they must give to the court to gain its permission to allow a representative to attend.

43. Do I have the right to be heard at bail [bond] hearings?

Yes. Even though bail [*bond*] hearings are held primarily to determine the likelihood that a defendant will appear for trial if released on bail [*bond*], courts also allow victims to provide information regarding the safety risks the defendant will pose to them or their family if released prior to trial. The judge can deny the defendant bail on the basis of the safety risks they pose to you or to the general public. [1]

[1] Some state's statutes or case law do not allow the court to consider any evidence that does not relate directly to the question of whether or not the defendant will appear at trial. Even those that are allowed to consider evidence of safety risks may not allow victims to directly offer such information. Check your state's laws to determine if these circumstances exist in your jurisdiction.

44. Do I have the right to speak directly to the court during the bail [bond] hearing?

Yes. In fact, you will be allowed to address the court in person and submit a written statement. However, your comments must be confined to the issue of the safety risks the defendant poses to you or your family. [1]

[1] Check the specific provision of your state law to determine by what means victims are allowed to communicate with the court during bail [*bond*] hearings.

45. Can I request that the court order the defendant to stay away from my family and me if he or she is released on bail [bond]?

Yes. You can request that the court make "no contact" with you and your family a condition of the defendant's bail [*bond*]. If the defendant violates that order by contacting you in any way, directly or indirectly, the court has the authority to revoke bail [*bond*] and return the defendant to jail.

46. Do I have the right to be notified prior to the defendant's release on bail [bond]?

Yes. You have the right to be notified prior to the defendant's release on bail [*bond*]. However, just as is the case with bail [*bond*] hearings, the time between when the decision is made to release a defendant and the time when he or she is actually released may be extremely short. In such cases, officials may not have sufficient time to notify victims before the defendant's actual release. [1]

[1] Apart from accurately describing the legal requirements of such notice, describe what happens in practice in your jurisdiction to the extent that it differs from this description. Given the potential risks to victim safety, particularly in domestic violence and stalking cases, information about the defendant's release and related victims' rights should be given particular attention in any FAQs list.

47. Do I have the right to be informed of the location to where the defendant will be released?

Maybe. Generally the right to be notified of the location to which the offender will be released (i.e., the address of their residence) is limited to only those offenders being released after serving all or part of a sentence. Authorities are not generally required to give notice when the defendant is being released on bail. [1]

[1] Check with your local jail or pre-trial detention center to determine if they have a policy of giving defendants' residency information to victims in conjunction with notice of release to victims.

48. Do I have the right to attend other pretrial hearings such as arraignments, grand jury hearings, or evidentiary hearings? [1]

[1] The nature and terminology associated with the numerous pre-trial proceedings that take place in your jurisdiction are too numerous to try to recount here. Review these, and decide first if victims have the right to notification, to attend, and to be heard in principle (see "Global Considerations Related to These Specific Rights"). If so, you can replicate many of the same questions related to bail [*bond*] hearings for those additional pre-trial proceedings that seem to merit such treatment.

Phase III. Victims' Rights at Trial

Plea Agreements

49. What is a plea agreement?

A plea agreement (sometimes referred to as a "plea bargain") is a contract between the prosecutor and the defendant whereby the defendant agrees to plead guilty, usually to a lesser charge and/or a reduced sentence to avoid a criminal trial. [1]

[1] Check your state and jurisdictional statutes to determine if this definition applies.

50. Who has the power to negotiate plea agreements with the defendant?

For the most part, the prosecutor for the jurisdiction has the exclusive power to negotiate pleas, either directly or through his or her deputies.

51. Do I have the right to consult with the prosecutor regarding the plea agreement before it is submitted to the court for approval?

Yes. The state's [*Victims' Bill of Rights/Constitution*] specifically grants victims the right to consult with prosecutors regarding plea agreements. This right assumes that you also have the right to be informed of the terms of the plea agreement. However, since the word "consult" is not defined by law, the prosecutor generally has the power to define both the nature and scope of the consultation. As a result, your consultation could mean anything from a brief discussion with a member of the prosecutor's staff up to, and including, an extensive briefing and conversation with chief prosecutors themselves. [1]

[1] The prescribing law and its application in practice may vary considerably as to what appears here. However, since many victims have high expectations regarding his or her right to consult with the prosecutor, it is important to describe what happens in practice, as realistically as possible, to allow victims to adjust their expectations accordingly.

52. Is the prosecutor required to consider my views when negotiating a plea agreement?

While most prosecutors will consider your views about the plea agreement, they do not have to allow your views to determine, or even influence, their decisions regarding plea agreements. The prosecutor has complete discretion to negotiate plea agreements independent of the views of anyone else. However, the prosecutor must submit the plea agreement to the court for approval, and the victim's support of any agreement is very helpful.

53. Do I have the right to be notified of the hearing at which a plea agreement will be presented to the court for approval?

Yes. You have the right to be given notice of the date, time and location of the hearing at which the plea agreement will be offered.

54. Do I have the right to attend the hearing at which the plea agreement is offered?

Yes. Unlike an actual trial, you cannot be excluded from attending such a hearing in its entirety.

55. Do I have the right to be heard at the hearing at which the plea agreement is offered?

Yes. It is your right to address the court during the hearing at which the plea agreement is offered. [1]

[1] Even if your state law does not establish this as a victim's right, you may want to advise victims of the fact that they can always request permission

from the court to speak at any hearing, including a plea agreement hearing. Also, in some states, statutes or policies dictate the means by which a victim may communicate with the court. Some allow victims to submit written documents that reflect their views; others allow oral or statements in other formats (such as audio taped or videotaped statements) at the actual hearing, and others allow both.

56. What subjects am I permitted to address in my statements to the court?

Generally, as a matter of law, you are allowed to address any issue you wish related to the impact of the crime on you and as the victim or as a family member of the victim. However, some courts may require you to confine your comments to matters related to the plea agreement. Typically, victims are allowed to raise issues related to victim restitution (See Restitution and Safety sections elsewhere in the FAQs list.) [1] If the plea agreement does not include a request for restitution, the court will often allow the victim to request such an order requiring the defendant to pay the victim for his or her losses as part of the plea agreement. A *“Victim Impact Statement Brochure”* included in the *“Victims’ Rights Brochure Kit,”* a Tool in the *“Victims’ Rights Education Project Toolkit,”* offers additional information.

Victims can ask the court to include conditions in the agreement that address the victim’s safety concerns. Most often these conditions require the defendant to have no contact with the victim or his or her family.

[1] Court rules and practices differ considerably among states and jurisdictions. Check in your jurisdiction for rules and practices that may differ.

57. Am I allowed to object to the plea agreement being offered to the court?

Yes. As a general matter, you are allowed to object on the record to any aspect of the plea agreement, including the entire agreement. [1]

[1] If the victim is granted the right to comment at all, they are generally also allowed to object to the plea agreement in part or in whole.

58. Can the court reject a plea agreement based on my objections?

Yes. The courts have considerable power to reject the plea agreement based on any number of grounds, including ones raised by a victim’s objection. Judges also may request that agreements be modified to address the concerns and interests of crime victims, such as including provisions for restitution payments and safety-related measures (i.e., no-contact orders). Courts are generally far less willing to reject or modify plea agreements simply because victims prefer that the defendant be prosecuted in a trial for the crimes initially charged. [1]

[1] Court rules of procedure, practice and policies may differ among states and jurisdictions.

59. Do I have the right to request a prompt disposition of my case?

Yes. The statutes [*state constitution*] grant victims the right to a prompt disposition of the case. However, this right is limited to the due process rights of the defendant to have sufficient time to prepare his or her defense. Since the defendant's due process right is guaranteed by the U.S. Constitution, the court will generally defer to his or her request for continuances or delay if the requests are reasonable and based on sufficient necessity. However, if the court determines the delay is not reasonable or sufficiently necessary, the judge may take into consideration the victim's right to prompt disposition when considering defense requests for delay. [1]

[1] Not all state statutes or constitutional amendments grant victims the right to prompt disposition, or "speedy trial." However, if your state does include this right, be sure to check to see if there is case law related to the right (check an "Annotated Code" version of your state code) to determine if the courts have defined and interpreted the scope of its application in actual practice.

Trial

60. Do I have the right to be notified of the time, date and location of the trial?

Yes. Even if you will not be called as a witness, you have the right to be notified of the actual trial.

61. Do I have the right to be notified if the time, date or location of the trial changes?

Yes. As a general matter you are entitled to be informed if the trial is rescheduled or moved to another location. [1]

[1] Some state statutes specifically mandate that victims be notified of changes in the trial schedule, while others do this as a matter of court rule or policy.

62. Do I have the right to attend the trial of the defendant in my case?

Yes. You have the right to attend the trial; however that right is limited under certain circumstances. The defendant has a constitutional right to exclude anyone who may be called as a witness for fear that allowing one witness to hear the testimony of other witnesses may improperly influence his or her testimony. [1] In some cases, victims are allowed to remain in the courtroom after they have testified. [2]

[1] Explain the rule of sequestration in greater detail if appropriate. Carefully review the “Global Considerations Related to Victims’ Right to Attend.”

[2] If your jurisdiction allows for exceptions to the sequestration rule, describe them here. Refer to the “Global Considerations Related to Victims’ Right to Attend” for discussion of exceptions.

63. If I am not allowed to attend the trial in person, are my family members allowed to attend?

Yes. As long as they are not listed as potential witnesses, they will generally be allowed to attend the trial.

64. Do I have the right to be heard at trial?

No. Unlike other proceedings where you have the right to address the court or offer your opinions, you do not have the right to testify during the guilt phase of the trial. You may be called as a witness and may be asked by the prosecutor or defense attorney to respond to questions in court, but you will not have the opportunity to make a separate and independent statement.

65. Can I refuse to testify at the trial?

No. Either the defense or the prosecutor may compel you to testify in court during the trial by requesting the court to issue a subpoena. A subpoena is a court order requiring a person to appear in court on a specified day and time to give testimony. It may also include an order to produce documents or records. Failure to appear in court once a subpoena has been issued may result in a contempt of court order. Courts have the power to enforce contempt orders by imprisoning subpoenaed victims/witness who fail to appear.

66. Will I be protected from the defendant, his or her colleagues, or family members if I attend or am called as a witness at the trial?

The courthouse has been furnished with a separate waiting area for victims and their family members in order to provide some measure of protection by isolating victims from the defendant and his or her family and friends. In most cases the separate waiting area has a bailiff posted who also serves as an escort for the victim between the waiting area and the courtroom. [1] Also you can request the judge to design an in-court seating plan that physically separates you and your family from the defendant’s family members. [2]

[1] Check to see if the courthouse in your jurisdiction provides a separate waiting area for victims/witnesses and, if so, whether a security guard or bailiff is posted for purposes of protection and to serve as an escort.

[2] Often the practice of separating victims and defendant family members in the actual court is a matter of court rule, policy or custom. Check to see what the practice is in your jurisdiction's courts.

67. Do I have the right to be notified of the outcome of the trial?

Yes. You have the right to be notified of the outcome of the trial, and if the defendant was found guilty or not guilty. You may also have the right to be informed that no verdict was reached (i.e., trial resulted in a “hung jury”), or that the court declared the trial a “mistrial.” [1] A mistrial is a trial which is invalid because of some material error in law or procedure, or an extraordinary event (e.g., death of an attorney).

[1] There also may be other possible outcomes of which victims have a right to be notified.

Sentencing

68. What is a pre-sentence investigation (PSI) and PSI report, and how does it differ from a victim impact statement?

When an offender is found guilty through a plea agreement or trial, a probation official conducts a “pre-sentence investigation” (PSI) to help the sentencing court and judge assess and classify the offender. [1]

A PSI report is prepared for the court and, if approved, becomes the basis for supervising that offender. The person who writes the PSI report is usually not the same person who will supervise the offender if probation is ordered.

If a defendant is sentenced to probation, a victim can request a copy of the sentencing order and, in particular, any special conditions of supervision to which the offender is subject.

The victim impact statement is your opportunity to describe to the court how the crime affected you and your loved ones – emotionally, physically, financially and spiritually. The “voice of the victim” is clearly heard through the victim impact statement process, and provides valuable information to the court to determine a just and effective sentence. For many victims, it is also a useful process to personally reflect on how the crime has affected them, and their family and friends.

When a criminal defendant is convicted of a crime by a judge or jury, or agrees to a plea agreement, the victim impact statement is provided to the court at the time of sentencing by the [2].

[1] Check your state statutes and jurisdictional policy to determine what information is typically contained in a typical PSI and VIS, and list it here.

[2] District attorney/probation agency/court/victim services agency.

69. Is the sentencing hearing part of the trial?

While sentencing is generally considered to be part of the trial, it is also considered to be a separate “phase” of the trial. The first phase of the trial that concludes with the verdict is usually called the “guilt phase.” The proceeding where the sentence is determined is usually called the “sentencing phase,” which is often a separate hearing set for a later date after the offender has been found guilty. The difference is important to you as a victim because your rights to be present and to be heard differ depending upon the phase of the trial. [1]

[1] Provide a detailed explanation of the specific differences relative to each phase based on the laws in your jurisdiction.

70. Do I have the right to be informed of the date, time and location of the sentencing hearing?

Yes. You have the right to be notified of the date, time and location of the sentencing hearing. [1] Generally, notice of the hearing is provided at least seven days in advance of the sentencing hearing. In some cases, sentencing hearings will take place immediately after a guilty verdict has been rendered in the “guilt phase” of the trial. [2] In such cases, there may be insufficient time to provide you with advance notice if you are not present at the hearing where a guilty plea is appealed.

[1] If your state’s statutes specify the means by which notice is provided (telephone, fax, letter, or email), mention it here.

[2] If a time frame is indicated for the delivery of the notice (i.e., seven days prior to the hearing), mention it here.

71. Do I have the right to be notified if the sentencing hearing is rescheduled or moved to another location?

Yes. If the time, date or location of the sentencing hearing changes, you are entitled to be notified. [1]

[1] If your state statute specifies the timing of the notice, mention it here.

72. Do I have the right to attend the sentencing hearing?

Yes. Unlike the guilt phase of the trial where you can be excluded if you are to be called as a witness, you generally have the right to attend the sentencing hearing.

73. If I cannot attend, can a family member or a representative attend in my place?

Yes. Sentencing hearings are generally open to the public. As such, any number of your family and friends may have the opportunity to attend, and you can designate a representative to attend on your behalf.

74. Do I have the right to be heard at the sentencing hearing?

Yes. You are permitted to make what is usually called a Victim Impact Statement, which allows you to tell the court how the crime affected you and your family emotionally, physically, financially and spiritually. [1]

[1] Your jurisdiction may use a different term to describe the victim impact statement.

75. Am I required to make a victim impact statement?

No. The decision whether or not to provide a victim impact statement is completely up to you.

76. In what form am I allowed to make this statement?

Your statement may be made in writing or in person (orally) to the court during the sentencing hearing. In some cases, you may be allowed to give both a written and oral statement. [1]

A victim impact statement designed specifically for children is available from [the district attorney or probation agency].

[1] Some states allow a range of ways for victim impact statements to be given i.e., in writing in a letter, in writing using the victim impact statement form available from (the district attorney/probation agency), in an oral presentation to the court (this is also called “allocution”), on an audiotape that will be played in court, on a videotape that will be played in court, and/or via closed-circuit television that will be viewed by the court (this is sometimes utilized in cases involving sensitive victims, such as child victims, elderly victims, and victims with cognitive or developmental disabilities). Check your state’s statutes to determine the ways in which victim impact statements are allowed.

77. What can I include in my victim impact statement?

The impact crime has on each victim is often very personal and, therefore, statements describing that impact are often very unique. However, most jurisdictions allow victims to describe how the crime against them has impacted them physically, emotionally, financially, and spiritually. [1]

[1] Additional information could be offered here to give victims a clearer idea of what they might want to say and even how to say it. You may decide to include additional details or you may decide that such details are better addressed through other educational approaches. A “*Victim Impact Statement*

Brochure” included in the “*Victims’ Rights Brochure Kit*,” a Tool in the “*Victims’ Rights Education Project Toolkit*,” offers additional information.

78. Is there anything I’m not allowed to say?

Yes. The court may specifically preclude you from raising certain subjects or referencing certain facts about the case. For example, you may not be allowed to mention facts that are detrimental to the defendant, unless those facts were raised during the guilt phase of the trial. [1]

[1] One of the most common limitations courts place on victim impact statements is the exclusion of detrimental facts not offered at the trial. If the courts in your jurisdiction have additional standard limitations, add them here.

79. Am I allowed to state my opinion as to what sentence I feel is appropriate for the offender?

Yes. You are allowed to express your opinion as to what sentence would be appropriate for the judge or jury to issue to the defendant in your case. However, some courts will only allow you to suggest a sentence that is allowed, given the offense in question (i.e., you cannot ask for the death penalty if the crime is vandalism). [1]

[1] Generally, statutes governing victim impact statements are very specific as to whether or not victims are allowed to make sentencing recommendations. Check to see if sentencing opinions are even allowed under your state law. Often, when they are allowed, they may place restrictions on such recommendations, such as limiting them to only the range of possible sentences available for the crime for which the offender was convicted.

80. Is there a limit to the length of the impact statement I am allowed to give?

The judge has the power to limit the length of a victim impact statement. Judges rarely limit the length of written impact statements. Courts are more likely to limit the length of oral impact statements (i.e., those given in person during the sentencing hearing), particularly if there are numerous victims who also wish to offer oral statements. In such cases, victims are usually allowed to submit more extensive written statements to supplement their oral statements. [1]

[1] Practices may differ either by jurisdiction or even by judge, and may differ on a case-by-case basis. If this is true in your jurisdiction, note that here.

81. When should I submit my written victim impact statement?

The deadline for submitting a written impact statement varies. Since the statement is often made as part of the pre-sentence investigation (PSI) report

[1] submitted to the court by the probation department [2] prior to sentencing, the deadline for that report may also determine the deadline for submission of victim impact statements. Consult with the court clerk or the victim/witness coordinator in the prosecutor's office to find out the deadline for submitting your victim impact statement. [3]

[1] The victim impact statement may be included as a component of the pre-sentence investigation report or independently submitted to the court.

[2] Pre-sentence investigation reports are sometimes prepared by court or other criminal justice personnel other than the probation department. Check with your court administrator or clerk of court for the appropriate court official to identify here.

[3] The appropriate referral may differ depending upon available victim assistance services.

82. Is there somewhere I can turn for help with writing my victim impact statement? [1]

[1] Provide the appropriate contact information here. A "*Victim Impact Statement Brochure*" included in the "*Victims' Rights Brochure Kit*," a Tool in the "*Victims' Rights Education Project Toolkit*," offers additional information.

83. If I provide an oral impact statement during sentencing, does the defendant's attorney have the right to cross-examine me?

Possibly. The judge presiding at the sentencing hearing may allow the defendant's attorney to ask you questions, i.e., cross-examine you about matters you address in your impact statement. The judge may limit the defense attorney's questions to certain matters or specific factual questions.

[1]

[1] Cross-examination of witnesses related to victim impact statements may not be allowed in your jurisdiction. If allowed, courts may impose different limitations on such cross-examinations. Check statutes and court rules regarding such limitations in your jurisdiction and state them here.

Also, some jurisdictions allow others to present the victim's impact statement (e.g., prosecutor or a family member). If this is true in your jurisdiction, you should mention this option.

84. I am a surviving family member of a homicide victim. Am I allowed to give a victim impact statement?

Yes. Surviving family members of homicide victims have the same right as any other victim to provide a statement of how the crime affected his or her life. [1]

[1] Surviving family members of homicide victims are usually afforded the opportunity to speak not only about the impact of the crime, but also about the family member who was murdered. You may want to discuss what latitude victims have in this regard based on local policy and practice.

85. Is the judge or jury required to consider my impact statement in his or her sentencing decision?

Yes. But, while judges and juries are required to consider your victim impact statement, they are not required to let it influence their sentencing decision. Similarly, they do not have to accept your recommendation regarding the appropriate sentence. However, your statement and recommendation may well influence his or her decision. [1]

[1] Check the language of the relevant statute in your state to determine the exact wording used to describe what is required of judges and juries.

86. What is restitution?

Restitution is an order issued by a criminal court at the time of sentencing that requires the convicted offender to pay the victim's out-of-pocket expenses that directly resulted from the crime. [1]

[1] Some states use the term "reparations" rather than "restitution." If this is true in your state, change the term for all questions regarding restitution.

87. Who is eligible to receive restitution?

Generally, anyone who suffers a direct economic loss as the result of the offender's criminal acts is eligible to receive restitution. This includes not only those who were directly harmed, but also those who were indirectly harmed, such as family members.

88. How is restitution different from victim compensation?

The primary difference is that restitution requires the offender to pay the victim's out-of-pocket losses resulting from the crime. Victim compensation is paid to victims out of a special state fund designed specifically to help victims of crimes. Also, as a general matter, the state compensation program will not cover the same range of expenses that an offender may be ordered to pay in restitution (i.e., destroyed or damaged property).

89. What kind of out-of-pocket losses are covered by restitution?

Any out-of-pocket loss that is a direct result of the crime can be included in a restitution order. Some of the expenses offenders may be ordered to pay include: [1]

- Medical expenses.

- Cost of mental health counseling.
- Physical therapy and rehabilitation.
- Value of damaged or destroyed property.
- Funeral expenses for homicide victims.
- Lost wages and/or lost profits.
- Costs associated with the victim's participation in the criminal justice system, such as childcare, transportation to and from court, etc.

[1] Your state's restitution statute may provide a similar list of economic losses that can be included in restitution orders, or provide broad guidance. For example, restitution can be ordered for all damages and losses that could ordinarily be recovered by a crime victim in a civil action (e.g., see North Carolina N.C. Gen. STAT. §15A-1343(b)(6),(d) (Supp. 1981).

90. Is there a limit to the amount of restitution the court can order the offender to pay?

No. The court can order the offender to pay the total cost or partial costs of the damages and financial losses that were the direct result of his or her criminal acts. [1]

[1] Some states impose actual limits to the amount the court can order in restitution.

91. If I am eligible, is the judge required to issue a restitution order in my case?

Yes. The statutes of the state make restitution mandatory. [1] This means that the judge is required to order restitution in every case where there is an identifiable victim who has suffered an economic loss, or state on the record the reasons for failing to do so. [2]

[1] Your state may not have mandatory restitution. Check to determine any specific provisions related to mandatory restitution.

[2] Your state's mandatory restitution statute may include the exception similar to the one stated here. Check to see what specific provisions dictate with regard to this mandate.

92. Do I have the right to have the judge order restitution for the full amount of my loss?

Generally, judges have considerable discretion in deciding the amount of restitution that is owed to the victim. Some judges will reduce the amount owed based on the offender's perceived limited ability to pay. Others will order restitution for the full amount of the restitution you request. [1]

However, regardless of what the judge determines is owed you as a victim, the judge may establish a schedule of restitution payments that is greatly reduced based on the offender's inability to pay or other circumstances.

[1] Some jurisdictions require the judge to order restitution in the full amount of the loss regardless of the offender's ability to pay. However, judges can establish a payment schedule that allows the offender to make small payments or no payments at all. Other judges take into account the offender's inability to pay by reducing the amount owed to the victim rather than adjusting the pay schedule. Check the statutory mandates, court rules and practices regarding the restitution determination process in your jurisdiction.

93. What do I have to do to prove my financial losses?

You are generally required to document your financial losses by providing copies of paid bills, receipts, pay check stubs, or other independent confirmation of out-of-pocket expenses directly resulting from the crime. [1]

[1] Your jurisdiction may have forms or brochures specifically designed for restitution documentation and processing.

94. When is the offender required to pay restitution?

If the offender has the immediate ability to pay the restitution order, he or she will generally be expected to pay in full at the time of sentencing or shortly thereafter. However, if an offender does not have the immediate ability to pay in full, the judge will establish a payment schedule, which requires the offender to pay what is owed in installments at times established by the court or agency that supervises or incarcerates the offender.

95. What is a payment schedule?

Regardless of what the judge determines the offender owes you in restitution, the judge still has the power to decide how much the offender will pay you and how often. For this purpose, judges establish a "payment schedule" which requires the offender to pay what is owed in installments on a timetable established by the court.

96. How is the payment schedule determined?

In determining the appropriate payment schedule, the court can consider a variety of factors, including: [1]

- Physical and mental health of the offender.
- Age and education of the offender.
- Offender employment status, job prospects, or opportunity for vocational training.
- The needs and circumstances of the offender's family.

- Offender's assets.
- Offender's other financial circumstances.
- What implications the restitution schedule may have on the offender's rehabilitation.

[1] There may be other factors the court may consider that are mandated by law, court rule or policy. Check your jurisdiction's statutes on restitution to determine what factors can be considered by courts in your state.

97. Will I receive notice of the restitution order and schedule?

Yes. You should be notified of the full amount the court ordered in restitution, in addition to the amount and schedule of the offender's payments. [1]

[1] Since only some states specifically grant victims the right to formal notice of restitution orders, check to make sure victims actually have this right in your jurisdiction.

98. What if I have additional expenses after the court issues a restitution order?

Judges generally have the power to amend restitution orders to include additional expenses of the victim after the initial order is issued. You can submit your additional documented expenses to the court with a request to amend the order. [1]

[1] Generally, judges retain authority to modify orders as long as the offender remains under the supervision of the criminal justice system.

99. Who is in charge of tracking restitution payments and then forwarding such payments to me?

Generally, once the restitution order and payment schedule are issued by the court, it is the responsibility of the court (usually the clerk of court or probation department) [1] to enter that information into its restitution tracking system. When the offender makes a payment, the clerk or probation official credits the amount to the total amount owed, and then issues a check to the victim for the same amount. [2]

[1] In many jurisdictions, it is the probation department that administers restitution collections and payment; in others, it's corrections or paroling authorities. If the offender has been sentenced to prison, the correctional agency will manage restitution collection and payments. Check which agency has what responsibility with regard to administration of restitution.

[2] The process for collecting and distributing restitution usually varies from state-to-state. Check which of these options apply to your state.

100. What happens if the offender fails to pay restitution or fails to pay on time?

If the offender fails to make a restitution payment on time, the clerk of court will usually notify the court of the offender's failure. The court can then decide to schedule a restitution hearing to determine the reason for the offender's non-payment. If the court determines that the offender has good reason for his or her failure to pay (i.e., has no assets or income), it can modify or even suspend the payment schedule. If the offender has no good reason for non-payment (i.e., has the ability to pay, but refuses to do so), the court can take actions to compel the offender to pay. Such actions may include automatically deducting restitution payments from the offender's paycheck; extending the term of community supervision; or possibly sending the offender to jail or prison. [1]

[1] The process for determining delinquency in restitution payments and the court's options in response are often spelled out in great detail by state statute. Adjust your description of this process accordingly.

101. Do I have the right to be informed, present and heard at such restitution hearings?

Generally, you will be notified of any hearing held to reconsider the restitution order and payment schedule or to determine reasons for non-payment. You will have the right to attend and will likely have the right to share your views concerning issues raised at the hearing. [1]

[1] In some jurisdictions these rights may not exist. In others, restitution review proceedings do not qualify as public hearings for the purpose of general victims' rights provisions requiring that they be informed, present and heard. Check the statutes and practices in your jurisdiction.

102. How long does the restitution order last?

The order generally lasts for as long as the criminal justice system retains supervision of the offender. Supervision normally ends when the offender has fully served the sentence or his or her probation or parole period. [1] In some cases, judges can extend the offender's probation until his or her restitution order is paid. [2]

[1] Local laws and agency policies may differ.

[2] This may be an option for some judges.

103. Is there anything I can do to extend the restitution order beyond the end of the offenders' supervisory period?

Yes. The state restitution statute allows you to transfer or "convert" your restitution order into what is called a "civil judgment." Increasingly, states'

laws automatically convert restitution orders to civil judgments. [1] A civil judgment is an order issued by the court (usually against the losing party in a civil lawsuit), stating that the defendant owes a specific amount of money to another party in payment for damages. The advantage of such civil judgments over restitution orders is that victims can pursue his or her own collection of the debt owed them by the offender, which may include: seizing the offender's property to sell at auction, seizing the offender's financial assets, or even seizing a portion of the offender's pay check (a process called "garnishment of wages"). [2] Each of these collection approaches is generally accomplished through, and with the assistance of, law enforcement officers (i.e., state marshal or county sheriff).

[1] This option is available in the majority of states. Check your state for details. If possible, consider specifying how victims go about transferring orders to judgments, unless that process occurs automatically at the end of the system's supervision of the offender.

[2] Options available for collection of civil judgments and the process by which it is accomplished are unique to each state. Check your state's options and modify this description accordingly.

Phase IV. Victims' Rights at Post Trial

104. What are "post trial" proceedings?

The most common post trial proceeding is an appeal. A case is "appealed" when either the defendant or, in some special cases, the prosecutor requests a higher court to review and overturn or modify a decision made during the initial criminal trial. Most often the decision being appealed is the verdict, or a specific action that is being questioned that contributed to the verdict. Unlike the initial trial, the appellate proceedings focus almost exclusively on review of the trial court record in order to determine if any "reversible errors" were made. Witnesses are rarely, if ever, called. While you as a victim may have the right to attend appeal hearings, you will probably not be called as a witness or have the opportunity to directly address the court. [1]

The defendant may also request a release on bail [*bond*] while the appeal is pending. [2] The defendant, at any point after the conviction, may request that the Governor of the state exercise his or her powers to either reduce the sentence (a process called commutation) or pardon him/her altogether (a process also called clemency). Generally, you will have the right to be notified of a request for bail [*bond*], or a request for a sentence reduction.

[1] Check your jurisdiction's appeal process to determine if this description applies. Some states do not allow a convicted defendant's release on bail [*bond*] when an appeal is pending for certain crimes. List these crimes here.

[2] The Governor of your state may not have these powers, or they may be limited. Check to determine if this description applies.

105. What are my rights with respect to post trial bail [*bond*] hearings?

In some cases, the defendant may ask to be released on bail pending the appeal. If so, the court may hold a bail [*bond*] hearing similar to the one held before the trial. (See the Bail section) If such a hearing is held, you as the victim generally have the right to be informed of the time, date and location of the hearing and to appear in person at the hearing. As is the case with pre-trial hearings, you may also have the right to address the court to express any safety concerns you may have, and to request special conditions of bail that address those concerns (i.e., requesting a no-contact order).

106. What are my rights regarding commutation and clemency?

Since the Governor's decision to grant commutations of clemency is generally *not* done in the context of a public hearing, your rights to be informed, present and heard at public proceedings may not apply. However, you always have the option of directly contacting the Governor to make your views known regarding such decisions. If the Governor grants either commutation or clemency to an offender in your case, you have the right to be notified of that decision prior to the offender's release and, in some states, the right to attend and provide input at any hearings related to commutation and clemency. [1]

[1] Assuming that the Governor has this power, you may want to provide more detail about the process. You may also want to consider providing victims with a clearer idea of how rare such decisions usually are and what role, if any, victims officially or un-officially have in this process.

Phase V. Victims' Rights At Corrections and Parole

107. How can I make sure I'm eligible to receive notification regarding the offender's imprisonment and parole status?

Make sure your current contact information [*address and/or telephone number*] is on file with the [*notifying authority, usually the state department of corrections*]. [1]

[1] It is particularly important for victims to understand their responsibility to keep their contact information current, even if that information was forwarded to the state Department of Corrections from the prosecutor's office, court or probation department.

108. Do I have the right to be notified of where the offender will be incarcerated?

Yes. Once the offender has been classified and assigned to a specific correctional facility, you will be notified by the [*court/prosecutor/Department of Corrections/paroling authority*]. [1]

[1] The notifying entity could be any of these four or another agency. The nature and timing of the notice may be specified by statute, policy or practice.

109. Do I have the right to be notified if the offender is transferred from one prison facility to another?

Yes. The state Department of Corrections will notify you of the date of the transfer and the location to which the inmate has been transferred. [1]

[1] Check your state statutes to determine if this right is available in your state.

110. Do I have the right to be notified if the offender escapes, and if and when he or she is recaptured?

Yes. Because of the potential safety risks, the Department of Corrections will attempt to notify you by telephone as soon as possible. You will also be notified if and when the escaped offender has been recaptured. [1]

[1] This practice is fairly universal in both statute and correctional agency policy, but it may not be mandated by your state's statute.

111. Will I be informed of the earliest possible date the offender may be considered for release on parole?

Yes. The [*Department of Corrections/paroling authority/sentencing court/prosecutor*] is required to calculate the earliest possible date that the inmate is eligible to be released, either on parole or upon the completion of the sentence. [1]

[1] In some cases, it is the court /prosecutor/paroling authority/probation department that makes the calculation and provides the notice. If the statute or policy includes a time frame (i.e., the department will make a calculation and provide notice to the victim within 14 days of the date of the inmates initial incarceration), you may want to specifically state it here.

112. Will I be notified of the date, time and location of any parole hearings scheduled for the offender?

Yes. The [*Department of Corrections/paroling authority*] will provide you with written notice by [*telephone/mail/automated telephone notification*] of the time, date and location of the parole hearing. [1]

[1] Time frames and means of the actual notification may vary depending on the jurisdiction.

113. Do I have the right to attend the parole release hearing?

Yes. You have the right to appear in person at the parole release hearing.
[1]

[1] Check your state's statutes and procedures to see if this applies to all types of crimes and offenders.

114. Do I have the right to be heard at the parole hearing?

Yes. You have the right to provide a written or oral victim impact statement in person before the paroling authority. [1]

[1] Restate the particulars related to victim impact statements in the same detail offered for victim impact statements at sentencing, or simply refer to that section. Mention that victims have the right to update their original impact statement for the parole hearing presentation.

115. Do I have the right to make a recommendation regarding the decision to release the offender on parole?

Yes. You have the right to offer your opinion as to whether or not you feel the paroling authority should release the inmate back to the community. [1]

[1] Check your state statutes and controlling policies to determine if this applies.

116. Can I request that a "no contact order" be made a condition of the offender's release?

Yes. If you have concerns for your safety or that of your family, you may ask the paroling authority to include a "no contact order" as a special condition of parole. If, subsequently, the offender intentionally makes such contact, the paroling authority has the authority to revoke his or her parole and return him or her to prison. You will be notified if the offender's parole is revoked.

117. Do I have the right to be notified of the outcome of the parole hearing?

Yes. Regardless of whether or not you decide to attend the hearing, you will be informed by telephone/mail/e-mail) within 14 days of the paroling authority's decision.

[1] Check your state statutes and parole procedures for details (the specific number of days may differ).

118. Do I have the right to be notified when the offender is released from prison?

Yes. Whether your offender is being released on parole or has completed his or her sentence, you are entitled to notice at least 30 days prior to the actual release. [1]

[1] Your state statute's specific notice provisions may vary, particularly with regard to the time frame required for pre-release notice. Check your state's statutes and Department of Corrections and paroling authority procedure.