

# **Victims' Rights Education Project**

## ***Talking Points Kit***

A  
Component of the  
**Victims' Rights Education Project**

*Prepared by:*  
**National Victims' Constitutional Amendment Network**

***February 27, 2004***

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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## Acknowledgments

This Project would not have been possible without the dedication and expertise of many groups and individuals. It is with profound gratitude that the NVCAN Project Team thanks the following people:

The volunteers who served as state liaisons, coordinating all local activities and proving feedback and direction to the project team.

The many victims/survivors and victim service providers, criminal justice professionals and allied professionals for participating in the group field interviews. Their contribution formed the scope and framework of these materials.

Project Team:

Mary McGhee, Steve Siegel, and Nancy Lewis, NVCAN Grant Managers, oversight of grant and Project

Anne Seymour, Victims' Rights Consultant, Project Team member, facilitation of group field interviews and development of educational materials

David Beatty, Executive Director, Justice Solutions, Project Team member, facilitation of group field interviews and development of educational materials

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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 *Talking Points 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 *Frequently Asked Questions (FAQ) Kit* that includes a model for victim service providers, and organizations and agencies that assist victims of crime, to customize a FAQ List of commonly asked questions and issues of concern to crime victims in their state and/or jurisdictions.
- *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 *Talking Points Kit***

The goal of the *Victims' Rights Talking Points Kit* is to provide key information and resources that support the need and value of crime victims' rights, which can be utilized to enhance victim and public awareness efforts.

There are three objectives to reach this goal:

1. To describe general information about crime victims' core rights that highlights each right's purpose and value to crime victims and survivors.
2. To provide statements that strongly support the need for each specific victims' right.
3. To provide memorable quotations from victims and survivors, justice officials, victim advocates and other leaders in the victim assistance field that emphasize the importance and need for each victims' right.

### **Tailoring the Talking Points Kit for State/Jurisdictional Laws**

To make the model most useful to you and the victims you seek to educate, you will need to adapt the information to create your own tailored *Talking Points Kit*. NVCAN asks that drafters add the following attribution to NVCAN on the last page of each customized Kit, "*The prototype for the development of this Talking Points Kit was created by NVCAN, a non-profit organization comprised of leaders in the victim rights movement from across the nation.*"

## **Talking Points Kit**

### **Introduction**

This *Talking Points Kit* is one of several tools created as part of the *Victims' Rights Education Project* sponsored by the National Victims' Constitutional Amendment Network (NVCAN). This Kit was created to provide victim advocates with a rich source of victims' rights policy information that can be used for a variety of educational purposes.

Victims, victim service professionals and policy advocates, and allied justice professionals have traditionally served as the primary means by which the public has been educated about the rights and interests of crime victims. Whether in a one-on-one discussion with an elected official, speaking to a local civic group, or appearing on a television or radio talk show, they are frequently asked to explain victims' rights and why they are important. While most victims and victim service professionals may have a clear understanding of what victims' rights are and how they affect the lives of crime victims, it may not always be easy to articulate that understanding in a clear and concise manner. This *Talking Points Kit* was created to offer ideas; concepts and quotations to help you craft the most compelling case possible for victims' rights.

### **Components of the Kit**

The purpose of the various components of the *Talking Points Kit* is to provide users with a "starting point" to develop victims' right-related publications or presentations. While those developing such products can use the components individually, they have been designed and organized in a way that allows the easy integration of all three.

### **Victims' Rights General Information**

This section provides users with background information about the issue or right in a general way. It is intended to provide a descriptive foundation around which users can introduce and discuss the issue or right.

### **Rights Bites**

This section provides a list of short compelling statements related to the relevant topic or right. These "one-liners" can help drive home a point in a written passage or serve as a "sound bite" in a presentation or speech regarding victims' rights.

### **Quotable Quotes**

This section includes quotations relevant to specific victims' rights and issues. Authors range from criminal justice officials, to victims, to historical figures. Users can infuse them into their publications and presentations, and not only add gravity to the point being made, but also engender a more human and personal perspective. This is particularly true in the case of quotations directly from victims.

## **Incorporating *Talking Points* Into an Overall Public Education Strategy**

There are a variety of innovative approaches that can incorporate these talking points into effective victim and public outreach strategies, and ensure that these messages reach the widest audience possible. To facilitate this process, it is important to review the *Creating a Victims' Rights Public Education Strategy Guidebook* that offers useful tips to:

- Create a public education strategy team.
- Create strategy goals and objectives.
- Determine target audiences for the key talking points.
- Adapt the talking points to a specific jurisdiction.
- Effectively reach diverse populations.
- Utilize the talking points to enhance public policy and agency policy development.
- Incorporate the talking points into resources that can be disseminated through paper-based, electronic, and training and public education venues.
- Utilize the talking points in news media outreach and interviews.

## Victims' Rights General Information

### Descriptions of Victims' Rights

- **Legal Definition:** The dictionary definition of a right is: “the power or privilege to which one is justly entitled” (*Merriam – Webster*).
- **Practical Definition:** The more practical definition for purposes of victims’ rights is: “A power granted by law that entitles a victim to require another person (usually a criminal or juvenile justice official — police, prosecutor, judge, probation or parole officer) to perform a specific act or refrain from performing a specific act.”
- **General Victims’ Rights/Specific Rights:** There are more than 30,000 victim statutes currently on the books in all 50 states and at the Federal level. They vary greatly in their scope and subject matter. Some are very broad mandates (i.e., “victims have the right to be informed, present and heard”) while others are very specific (i.e., *victims have the right to receive notice of a pending parole hearing* by registered mail no later than three weeks prior to the scheduled hearing). Though many states have passed a victims’ bill of rights or victims’ rights amendments, the numbers of statutory provisions reach far beyond the core rights incorporated in those bills and/or amendments.

### Parallels to Defendants’ Rights

For the most part, victims’ rights are similar, in some ways, to those of defendants - in that both specifically mandate criminal and/or juvenile justice officials to either engage in certain acts or prevent them from engaging in certain acts.

- **Parallels:** In general, victims and offenders have parallel types of rights. For example, the defendant has the right to be informed of the charges against him or her, the right to be present during trial to face his or her accuser(s), and the right against self-incrimination. Victims, on the other hand, have the general right to be informed of and to be present and heard at critical proceedings, such as trials.
- **Differences:** Specific rights of victims and defendants differ dramatically. Defendants have the right to an attorney *while victims do not*. Victims have the right to restitution *while defendants do not*. Defendants have the right to be free from cruel and unusual punishment, which generally does not apply to victims.
- **Constitutional vs. Statutory Rights:** The greatest difference between victims’ rights and defendants’ rights is that the United States Constitution guarantees the rights of defendants while, for the most part, the rights of victims are guaranteed by statutes or, in some cases, by a state’s constitution. This is an important distinction because defendants’ rights are *guaranteed* by the Constitution, and since the Constitution is the “highest law of the land,” they have had a profound impact on our criminal justice system — both in how it looks and how it works.

- **Defendants' and Victims' Rights: Mutually Exclusive?** The general perception is that the rights of victims conflict with the rights of defendants — that somehow the balance of rights assumes victims' rights can only be gained at the expense of defendants' rights. A closer look reveals this is simply not the case. Victims' rights are always claimed against the *system*, not the defendant. The victim's right to be informed of proceedings is actually a demand on the criminal justice system to inform him or her of the time, date, and location of any hearing. The right to be present is a right claimed against the court to prevent it from excluding a victim from a proceeding, and the right to be heard is a right claimed against the court to prevent the court from insisting on the victim's silence. None of these basic rights negatively impacts any of the defendant's constitutional rights. It may impact his or her interests (i.e., defendants may prefer that victims not provide victim impact statements at sentencing), but an interest is not a right (i.e., the defendant does not have the right to exclude negative statements at sentencing hearings).

## Sources for Victims' Rights

Rights generally come from one of three primary sources:

1. **Legislation:** The first and most common way rights are created is by the passage of legislation by a state's legislature. Laws created this way are called statutes, and are sometimes referred to as "statutory rights." Rights that are passed together as one package, or that relate to the same subject matter, are sometimes called "Bill of Rights." The summary of core statutory rights related to crime victims is often called the "Victims' Bill of Rights."
2. **Constitutional Amendments:** The second way rights are created is by amending a 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. 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.
3. **Case Law:** A third way that victims' rights are created is by the decisions of the courts, on a case-by-case basis. Laws created in this way are often referred to as "case law." Such cases are brought when someone (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 something with respect to a specific event in the process (i.e., a hearing, the release of the defendant on bail, etc.). The decisions courts make in this regard 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.”

## Rationale for Victims’ Rights

- **Goals and Purposes:** Victims’ rights serve a wide variety of purposes. There are few interests to victims that are not affected in one way or another by victims’ rights and victim-related laws. Whether it is government support and assistance programs or establishing and protecting rights of victims within the criminal justice system, victim-related laws often define the nature and extent to which victims’ needs and interests will be addressed by the criminal justice system and society as a whole.
- **Needs of Crime Victims:** Each victim has unique needs that only they can define. Adding to this complexity is the fact that, sometimes, victims find themselves in a turbulent emotional state subject to a constantly shifting set of circumstances. What victims may define as their needs today may not be what they define as their needs tomorrow. Yet, despite this obvious diversity, most of their needs fall into one of three categories — sometimes referred to as the “Three R’s.”

The Three “R’s” — What Victims Need:

1. Rights to Secure Justice
2. Resources for Recovery
3. Respect

## *Rights Bites*

- We may not be able to completely restore victims to the life they led before their victimization, but it is our obligation to try.
- Victims without rights equates to justice gone wrong.
- Victims’ rights should be our first thought, not an afterthought.
- Why don’t victims who’ve been wronged have any rights?
- Bring criminals to justice and justice to victims.
- Give victims their due by granting them due process.
- Justice for all — even crime victims.
- Where is the outcry when victims’ rights are denied?
- Right to be informed, present, and heard — three victims’ rights to cure a wrong.
- For victims the criminal justice system is more criminal than just.
- Equal protection under the law should apply equally — not only to those accused of committing the crime, but also to those against whom the crime was committed.

- Victims' rights — every crime, every time.
- Victims' rights are the other side of the justice coin.
- If you really want to know how blind justice can be, become a crime victim.
- You have to demand the justice any citizen in this country should expect to receive automatically from our judicial system.

### **Quotable Quotes**

*"All I want is to be treated like a common criminal".* A Crime Victim

*"I always heard, 'Justice for All' — For victims, it meant 'just not us'."* A Crime Victim

*"Injustice anywhere is a threat to justice everywhere."* Martin Luther King, Jr.

*"Why are there laws if they only protect the criminal?"* A Crime Victim [ND – p. 25]

*"What really bothers me is that I'm always going to be a victim, my whole life! I didn't do anything to deserve this."* A 13-year-old Victim

*"To be a victim at the hands of the criminal is an unforgettable nightmare. But to them becoming a victim at the hands of the criminal justice system in an unforgivable travesty. It makes the criminal and the criminal justice system partners in crime."*  
Robert Grayson [President's Task Force on Victims of Crime – p. 9]

*"As we protect the rights of those accused of crimes, we must take equal care to protect the rights of victims."* President George W. Bush

*"Let us make sure that we give our victims the right to be heard — not in some dispassionate way in an impact statement, but in a courtroom if they want to be heard, so that people can know what it's like to be a victim. Let us give them an opportunity to participate, to be there, and to hold the criminal justice system at every level accountable."* U.S. Attorney General Janet Reno, New York City Candlelight Vigil April 25, 1993 [ND – p. 3]

*"Sadly, today victims' rights largely remain 'paper promises'. For too many victims and families, the criminal justice system remains more criminal than just when it comes to protecting their rights."* Roberta Roper, Founder, Stephanie Roper Foundation, Co-Chair, National Victims' Constitutional Amendment Network [ND – p.4]

*"Across the country, many citizens have lost faith in the criminal justice system. For years, victims have been treated as mere afterthoughts, expected to be there to testify when needed, but otherwise not informed, not consulted, and not made whole. Indeed, it seems that for many years the only right that a victim had was to be present at the scene of the crime. Those harmed most by crime must be afforded justice — not only*

*those accused of crime.”* Richard M. Romley, County Attorney Maricopa County, Arizona [ND – p. 89]

*“Now I understand why it’s called the “criminal justice system.” The system is all about the criminal. Where do I go to find the victim justice system?”* A Crime Victim

*“For three years I sat idle with all of this pain, wanting to know what happened to my children. I was a victim and no one was there to represent me.”* A Crime Victim

*“If we are to keep our democracy, there must be one commandment: Thou shall not ration justice.”* Learned Hand

*“It is very difficult when you don’t understand how things work. You don’t ever expect to have to know these things.”* A Crime Victim

## **Why Victims’ Rights Are Important to Crime Victims**

### **Rights Bites**

- For many victims, rights are the vehicles necessary to travel the road toward justice.
- Rights are an important acknowledgement from the system and society recognizing that victims are the ones actually hurt by the crime. The crime created their credentials — their victimization is validation to claim a place in the criminal justice system.
- Too often, crime strips victims of control in their lives. Suddenly, all the most important decisions are being made by others, many who do not have victims' interests in mind. Victims' rights give victims back a little of what they lost — some control over their own lives. It empowers them to begin taking back what was taken from them — control of their own destiny.
- Rights script the role victims are allowed to play in the criminal justice system. It shapes their experience, dictates their ability to define their own reality, and circumscribes the satisfaction they seek.
- Victim-related laws are the means by which victims can literally stand up for their rights.

### **Quotable Quotes**

*“I always thought that victims just really didn’t have any rights because the perpetrator of the crime is plastered in the spotlight. They get their 15 minutes of fame, but you never hear anything about the victims.”* A Crime Victim

*“Justice does not bring one’s son back, but it is the closest thing to what is right” -- Homicide Victim’s Father [President’s Task Force on Victims of Crime – p. 26]*

*“I will never forget being raped, kidnapped and robbed at gunpoint. However, my sense of disillusionment of the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process.” A Victim [President’s Task Force on Victims of Crime – p. 5]*

*“One of the important, if not the most important, aspects of justice is healing victims — is healing wounded people. One thinks of justice in context of deterrents, of retribution. But, too infrequently, justice is looked at as a form of healing, a form of therapy for victims who cannot really begin their healing process until there has been some public acknowledgement of what has befallen them.” Justice Richard J. Goldstone, Constitutional Court, South Africa January 27<sup>th</sup>, 1997*

*“On February 5, I changed from a law-abiding citizen with a childlike belief in the criminal justice system to a law-abiding citizen awakened to the reality of the world of crime, criminal rights, and injustice for victims.” A Victim [President’s Task Force on Victims of Crime – p. 6]*

*“When we began advocating for victims in 1972, a Common Pleas judge candidly said we were wasting our time. But, he added, if we happened to succeed, the wave would ripple across the entire pond. The wave is growing to tidal proportions.” Dr. Robert Denton, Executive Director, Victim Assistance Program Akron, Ohio*

*“Well, my vision for the future is actually quite simple. You don’t need a lot of words to describe our vision for the future. What we need are consistent, comprehensive, and compassionate services and rights, fundamental rights for every crime victim. That’s it. That’s what we need, and we’ve come a long way. We’ve come a long way, but we have a long way to go to reach that goal.” Aileen Adams, Former Director, Office for Victims of Crime, U.S. Department of Justice*

## **Why Victims Deserve Rights**

### **Rights Bites**

- Victims are 50 percent of the crime’s equation, yet often their role and rights in the system equal zero.
- Fundamental fairness dictates that the party harmed by the crime should be the first in the courthouse line. They are the ones to whom a debt is owed.
- Victims’ rights are the practical equivalent of what are already their moral rights.
- Victims’ rights statutes and amendments make what are victims’ moral rights, legal rights.

### **Quotable Quotes**

*“If we do not maintain justice, justice will not maintain us.” Francis Bacon*

*“We have a justice system because someone has been hurt by crime. We need to take into account the harm that has been done to a victim and help the hurt.”* Peter Michaud, Victim Services Coordinator, New Hampshire Department of Corrections

*“My brother was murdered. The only right he has is to remain silent.”* Surviving Family Member of a Homicide Victim

*“Why do we victims have to lower our behavior to the level of that of the offender to get attention?”* A Crime Victim

*“I was left out of the decision-making process. I was told that the final decision was the defendant’s anyway.”* A Crime Victim

## **Victims’ Rights and the Duties of Criminal Justice Officials**

### **Law Enforcement**

#### ***Rights Bites***

- For many victims, the first face of justice they see is the face of a law enforcement officer.
- In the eyes of victims, law enforcement officers make the first impression for the criminal justice system -- an impression that sets the tone for the entire criminal justice process.
- Law enforcement officers are the “long arm of the law.” They should reach them out to lend a hand to victims.

#### ***Quotable Quotes***

*“Law enforcement plays a key role as the initial agency that comes in contact with the victim immediately after the tragedy. If they’re not well-trained and informed about victims’ rights, it does make a difference when the victim is initially introduced to the whole process”*. A MADD Victim Services Coordinator

*“For too long we have viewed the victim as evidentiary baggage to be carried to court along with blood samples and latent fingerprints. It is about time we as police begin to view crime victims as our clients, as the aggrieved party in need of representation, reparation, and recognition.”* Chief Robert P. Owen [President’s Task Force on Victims of Crime – p. 59]

*“I was not even notified that my ex-husband was arrested for DUI when my son was with him. I didn’t find out until the next day when I went to pick up my son and my son told me that daddy went to jail. I had to get a copy of the police report on my own. I notified child protective services on my own because they were never notified by any law enforcement.”* A Crime Victim

*“Very often a victim’s first view of the criminal justice system is the law enforcement officer who responds to the scene of the crime. It is critical that this officer be well-trained and informed about victims’ rights and services. If the officer does not refer the victim to appropriate assistance and compensation programs, that victim may never receive the help he or she needs to heal.”* Joe Brann, Director, Community Oriented Policing Services Office U.S. Department of Justice, [ND – p. 47]

*“Victims want to be kept up to date on the case status and need explanations of each step in the process. Victims want to feel part of the team in resolving the problem.”* A Law Enforcement Officer [ND – p. 50]

*“A lot of law enforcement officers don’t give out information to victims because they assume the DA’s office will do that, or the victim will be screened out. Some officers say, ‘Well, I didn’t give them to her because I didn’t think the DA is going to charge it.’”* -A Victim Advocate, District Attorney’s Office

*“What do I want most from law enforcement officers? I just want them to live up to their own motto — ‘to protect and serve’.”* A Crime Victim

*“Police officers are gaining renewed understanding of their role as victim advocates. As victim advocates, police officers are an integral part of community efforts to prevent crime, reduce fear, and support victims.”* —Chief Drew Diamond, Senior Research Associate, Police Executive Research Forum [ND – p. 61]

*“I work with students and have gotten feedback from them that there is always the perception from law enforcement that the students are lying, that they’re trying to get somebody in trouble. This is what they perceive from the very moment they contact law enforcement and the officer responds. The few times they do participate all the way through the criminal justice system, there is a perception that they were engaging in risky behavior that led to their own victimization.”* A Victim Service Provider

*“It’s an indicator to me from the officers themselves that we’re not doing a real good job at educating law enforcement and putting a priority where it should be by properly advising the victim at the crime scene. In turn this is going to help cultivate them as an effective witness or as an effective piece of evidence. We can turn them exactly 180 degrees depending on how we respond to them at the crime scene.”* A Director Victim/Services

## **Prosecution**

## **Rights Bites**

- Prosecutors have tremendous power when it comes to the implementation of victims' rights. But with that power comes responsibility. The responsibility to live up to not only the letter of the law, but the spirit behind it.
- Contrary to myths about victim vengeance, victims more than anyone else want to see the right person prosecuted. The last thing they want is for another person to be victimized while the true offender goes free.
- Most victims are not interested in vengeance. They are only interested in the accountability that serves justice.
- Even though the prosecutor is the "state's attorney," he or she is often the only voice for victims.

## **Quotable Quotes**

*"If you are not sure about what to say to victims or what to do, all you need do is step into their shoes. Ask yourself what would I want to know? Or want done? And you will have your answer."* A Prosecutor

*"Prosecutors have an obligation to continue to improve and expand services to victims of crime, to speak on behalf of the victims, and to protect victims from injustice.*

*Prosecutors must continue to sensitize all members of the criminal justice system to treat victims like people, not pieces of evidence."* Harold O. Boscovich, Former Director, Victim/Witness Assistance Division, District Attorney's Office Alameda County, California

*"As doctors rely on nurses for the skilled continuum of care, prosecutors find that advocates provide the daily connection, knowledge, and compassion to guide victims through the justice labyrinth. The advocate's expertise is not the law, rather the resuscitation of lives devastated by those who violate the law."* Viki Sharp, Former Director, Pima County Attorney's Office, Victim Witness Program, Tucson, Arizona

*"It's amazing how many prosecutors and DA's in this country themselves are victim-insensitive. Hard to imagine, but absolute fact. Probably a huge plurality is victim-insensitive."* William Schenck, Prosecuting Attorney, Greene County, Xenia, Ohio

*"Finally, my case was assigned to another district attorney who spent a great deal of time explaining to me what was happening in the case. Just being informed of all the facts reduced my anxiety greatly."* A Victim [President's Task Force on Victims of Crime – p. 64

*"The victim is the customer."* — Office Motto (as it appears on staff shirts) Prosecutor's Office Gloucester County, New Jersey

*“As far as I knew, the prosecution was working on my behalf. Now, I say, ‘For anyone who is a victim, go get your own lawyer. You have no rights by law and the people in the criminal justice system are not looking out for you.’” A Crime Victim*

*“I never met my prosecutor until the trial. I had heard about her, but had never talked to her.” A Crime Victim*

*“I’m not saying that it was a bad prosecutor but I wasn’t able to communicate. I wasn’t able to ask questions, and it made me feel more alienated -- almost as though I wasn’t even there. It made me feel like I was watching this on television as a third person.” A Crime Victim*

*“Thank God for our crime victim advocate. She was there for us. She saw a whole lot of stuff that went on in my case dealing with the district attorney’s office. They treated us like we were the ones who committed the crime.” A Crime Victim*

*“I wanted a copy of the forensics, the police report, and copies of the pictures taken at the crime scene (and in the hospital). The DA told me I didn’t need any of this information. After repeated requests, I was told I couldn’t have it because it would ‘re-traumatize me’. This was even after my therapist wrote a letter explaining to the DA that having this information would help, not hinder, my healing. Nothing worked, so over his head I went.” An Attempted Homicide Victim*

*“If the DA had requested a permanent order of protection at sentencing like we asked him to, the inmate would have been charged with criminal contempt and harassment for writing these letters, reflecting badly on his future attempts at parole. More importantly, it would have spared the victim the grief of receiving and having to deal with the cards and letters.” A Victim Advocate in the District Attorney’s Office*

*“We had one case at a plea where the judge decided he was going to go ahead and sentence right then. Our attorney immediately called the office and asked me to come over immediately with the statute from the constitutional amendment.” A Director, Victim Impact Services, District Attorney’s Office*

## **Judiciary and the Courts**

### ***Rights Bites***

- Judges, first and foremost, are committed to impartiality. Yet this very concept implies, at the least, the willingness to hear both sides of the story — not only the alleged or convicted defendant, but the victim’s as well.
- Its really the judge that hold the scales of justice in his or her hand. It is his or her responsibility to make sure it is balanced both for offenders and the ones whom they offended.

- Judge not and thee will be judged.
- Some judges are so busy keeping their courtrooms so antiseptically free from emotion, they forget that, in the end, cases are still about people – real human beings with real emotions, passions, and desires to see justice done. Justice that denies the humanity of those seeking justice is truly inhumane.

### **Quotable Quotes**

*“The courtroom is the focal point of the entire criminal justice system.... The judge who presides over a court becomes not only the final arbiter of each evidentiary and procedural issue, but also establishes the tone, the pace, and the very nature of the proceedings. Particularly for the victim, the judge is the personification of justice.”* Hon. Lois Haight, Presiding Judge, Juvenile Court, Contra Costa County, California [ND – p. 97]

*“Judicial leadership is the single most important factor in the criminal justice system for supporting victims’ rights. Judges have a unique role in implementing existing law and creating new, innovative solutions to old problems.”* Hon. Mary C. Morgan, Municipal Court , City and County of San Francisco, California [ND – p. 100]

*“By their attitude and the attitude of their staff, judges can set examples in the treatment of witnesses and victims. We urge that our fellow judges exercise their leadership role in improving the treatment of victims and witnesses. Victims of crime should not be victims of the criminal justice system.”* Statement of Recommended Judicial Practices, National Conference of the Judiciary, National Judicial College Reno, Nevada, 1983

*“Balancing competing interests and equities in deciding a sentence can require a Solomon-like wisdom – and even Solomon heard from both sides.”* A Victim [President’s Task Force on Victims of Crime – p. 76]

*“It is time – it is past time – to balance the scales of justice; to demand fairness and judicial integrity not just for the accused, but for the aggrieved as well.”* Attorney General John Ashcroft.

*“In a civilized society, members of the judiciary serve as the collective guide of the banner representing fairness and impartiality, both for the criminally accused as well as the intended victim.”* Chief Justice Richard Barajas, Texas Court of Appeals, El Paso, Texas [ND – p. 99]

*“I just want judges to follow the same law they are sworn to uphold. If we can’t expect that from them, how can we expect it from anyone else?”* A Crime Victim

*“At the closing argument my oldest daughter was addressing the court and she said to the offender, “You’re going to rot in hell for what you did” and then he turned around and*

*told her, “you go to hell.” The judge never said a word to him. The very first time I went into the courtroom the defendant said to me, ‘Yeah, I did it, so what?’ The judge called me to the bench and told me, ‘I will not have any outbursts in my courtroom,’ like it was my fault”. A Crime Victim*

*“We were told that we could write letters to the judge for the file, and three of us gave impact statements. But we wanted to show an 11-minute video that we had made from my nephew’s memorial. By the time we finished doing our statements the judge wouldn’t allow the video to be shown, I think because of the time. The District Attorney asked for a side bar, because he really wanted this in, but the judge said, ‘No, it’s not necessary.’ He already knew he was going to give him the maximum.” A Crime Victim*

*“It made me feel like this judge is sitting there while you’re pouring your guts out about your loss, and it was almost like he knew what he was going to sentence him. It didn’t matter what we said or anything.” A Crime Victim*

*“The judge made the decision to sequester me using the wrong victims’ rights law. When the prosecutor presented the correct statute the next day, the judge became very irritated because this was the second appeal made on this issue by the prosecutor. She refused to consider the statute with the stronger language, saying, ‘We settled this matter yesterday.’ In my opinion, the judge was not aware of the rights of victims. Again, the ‘short-end of the stick’ for my daughter. We got a rookie cop, then we got a rookie judge.” (The judge was recently appointed to the bench.) A Mother of a Homicide Victim*

*“We had one family of a young woman that played a whole long tape of her singing because she was a singer and it was maybe a 20-minute tape and the judge sat there so patiently and so kindly and listened to everything and then made a very nice comment about how beautiful it was and what a loss it was to everyone, and it helped this family.” A Victim Service Provider*

*“My family and a few friends and I were present at the sentencing. We were totally ignored by the prosecutor, even though he knew I wanted to give my victim impact statement. I had to ask the court if I could speak. I told the court that I had the right as a victim to have input into the decision of any plea bargain. Upon considering this, the judge threw out the plea bargain because I had not been notified, and told me to go back and see the DA and work it out” A Crime Victim*

*“Some judges know the rights of victims; they just choose to ignore them.” -- A Victim Service Provider*

*“I don’t believe we can have justice without caring or caring without justice. These are inseparable aspects of life...” Justice Wise Polier*

## **Probation**

### **Rights Bites**

- Probation officers, more than most others, are charged with ensuring the safety of victims. This should take precedence over all other priorities, including those of the offender.
- Probation officers are the eyes, ears, and voice of the justice system once the offender is released back into society.
- Courts promulgate offender accountability in theory, but it is the probation officers who affect accountability in fact.

### **Quotable Quotes**

*“The number of probation and parole professionals that need to place crime victims on a ‘more even playing field’ with defendants is increasing — after all; it is the ‘right and just thing to do.’ Albeit, it’s not always the easiest thing to do. The victims’ right movement continues to be a powerful force, and community corrections must rise to the challenge presented or risk losing credibility with the public, as well as risk losing much needed resources.” American Probation and Parole Association (APPA), *Promising Victim-Related Practices for Probation and Parole* (1997) [ND – p. 122]*

*“It is not our job to just collect offenders. It is our job to correct offenders.” Carl Wicklund, Executive Director APPA*

*“The last time I heard from him...I got a letter from him in jail, and I called the probation officer and said, ‘how can he be writing me from jail?’ Oh, they have a right to write anyone they want.” A Domestic Violence Victim*

*“I am very threatened by this offender. Nobody in the system seemed to realize that. It was like nobody wanted to hear that my life was in danger -- that other family members were in danger. He was on bail for a year, pretty much footloose and fancy free, keeping us all in terror before I finally screamed loud enough that he was breaking one of the conditions of his bail, that he was drinking.....It took them a year to get him locked up so we all lived in fear. No one said, ‘Let me help you’.” A Surviving Family Member of a Homicide Victim*

*“The law provides for defendants to be sentenced to up to five years of probation, but the Department of Corrections does not allow us to recommend any more than three years of probation. It’s all about money -- the state’s money is more important than the victim.” A Victim Service Provider*

## **Corrections**

## **Rights Bites**

- Just because a criminal case ends, does not mean the victim's trauma does.
- In cases resulting in convictions, a victims' tenure with corrections is usually longer than with the investigation. Attention to their rights, needs and concerns must reflect this.
- When an offender is sentenced to community supervision or prison, a victim's need for information, protection and a voice is as great as it was in the previous part of the case.
- Whatever sentence an offender is serving, corrections officials need to remember that the victim is often serving life.

## **Quotable Quotes**

*"We have a tendency in corrections really not to give a priority level to victims of crime. For so long, it was secondary to other considerations. In more recent years, we have realized that victims should be at the top of our agendas and part of all the efforts we are involved in."* Morris Thigpen, Director, National Institute of Corrections [ND – p. 119]

*"We have been in denial, in essence, about the role of the victims in corrections itself. Corrections has probably been the last major entity in the criminal justice system to really get involved with victim issues. So as President, I really want the American Correctional Association to embrace the notion of victims' issues, victims' rights, and the role of victim survivors."* Reginald A. Wilkinson, President, American Correctional Association [ND – p. 120]

*"A number of years ago we decided that victims' rights and their needs would be a part of our mission."* Elaine Little, Director, North Dakota Department of Corrections and Rehabilitation ND – p. 124]

*"There was no protection from the beginning. When we went to the sheriff's department to report the crime, a trustee from jail was right there walking around freely. Everyone knew that he and the rapist knew each other, but the deputies did nothing to remove him from the area. This is a small community. Before we knew it, everyone was talking about my daughter's rape."* Mother of a Rape Victim

*"We went through the whole year and I finally went back to the sheriff's department after calling hundreds of times to see why there was not a warrant out for my daughter's rapist."* A Mother of a Rape Victim

*"Victims should be players not projects."* Larry Meachum Director Corrections Program Office, Office of Justice Programs, U.S. Department of Justice

*“The local paroling authority has resisted our legitimate attempts to voice our position at initial parole hearings involving dangerous and repeat offenders. Undoubtedly, if the paroling authority were more concerned with the plight of crime victims, the streets would be safer and the need for witness protection would be reduced.” Stanley S. Harris, United States Attorney [President’s Task Force on Victims of Crime – p. 84]*

*“[When you are talking to an offender]... remember the most important person [the victim] is not in the room.” Mike Thomas, NYS Probation and Correctional Alternatives*

## **Core Victims’ Rights**

### **Right to Notification of Proceedings**

**Definition of Notice:** “An official means of providing information, in oral or written form, to an identified party regarding his or her rights or interests.” The “right to notification of proceedings” 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 notification will take place vary dramatically from state to state or even jurisdiction to jurisdiction.

### **Notification to Which Victims Are Entitled**

Generally, victim notification statutes are intended to ensure that victims are notified of a proceeding, an outcome, or an occurrence that takes place in the course of the process. There are at least 65 proceedings, outcomes, and occurrences to which a victim may be entitled to notification by law in the 50 states. For example, a victim may be entitled to be informed of the time, date, and location a sentencing hearing will be held — since a sentencing hearing is always considered a proceeding. State law may also entitle a victim to notification of the sentence imposed at that same sentencing hearing — since it is considered an outcome. That same victim may also be entitled to notification that the offender has been released after serving the sentence — since this would be considered an occurrence or a significant event.

### **Notification of Victims’ Rights**

Many states also have notification statutes that mandate that victims be provided with information. The most important of these is the right to be notified of their rights — since victims cannot as a practical matter exercise rights they do not know they have.

### **Time Frame for Notification**

Some statutes provide specific time frames within which notification should occur (i.e., “three weeks prior to the offender’s release on parole”). Others state that notification should occur “as soon as practical.” Still others simply state that notification should occur “prior” to the proceeding for which notification is being given. It is also not unusual

for notification statutes to remain silent on the question of “when” the notification should be provided.

## **How Notification is Provided**

How, or in what form the law requires the notification to be provided varies not only among states, but it also depends upon the subject of the notification. Some state statutes specify that notification shall be provided by “U.S. Mail” or by “registered mail.” Others direct that notification be provided “by phone.” In some jurisdictions, phone notification is performed by automated systems where automated systems actually make the calls to victims. Other statutes state “notification shall be provided by the means most likely to affect actual notice.” In many cases, notification provisions do not specify the means by which notice will be delivered.

## **Notification Specific to Proceedings**

In some states, the nature of the notification depends on the subject on which the victim is being notified. For example, a state may provide for notification by mail of a pending parole hearing, but mandate that the victim be notified by phone immediately if their offender escapes from prison, for obvious safety reasons.

## **“Opt-In”/“Opt-Out” Notification**

In most states, notification statutes start from the assumption that victims want to be notified of all events and developments in his or her case. As such, most automatically provide victims with notification unless they specifically ask *not* to be notified. This is called an “opt-out” notification system. Other notification statutes require victims to affirmatively indicate that they want to receive notice. This approach is called an “opt-in” notification system. In such a system, victims may be required to register at the beginning of the process to get notification throughout. However, a few states require victims to submit written requests for *each* kind of notification they wish to receive.

## **Rights Bites**

- The right to notification is in many respects the most import of all rights because it is the fundamental right that leads to all other rights. Unless a victim is given the right to be informed of his or her rights, there is little chance he or she will exercise them. If a victim is not given notice of the time and place of a sentencing hearing, there is little chance that he or she will ever have the opportunity to exercise his or her right to attend and be heard at that hearing.
- In one study conducted by the National Institute of Justice, U.S. Department of Justice, victims indicated that “being informed of what was happening in his or her case” was the right that was most important to them personally. [National Institute of Justice, U.S. Department of Justice, *Statutory and Constitutional Protection of Crime Victims Rights: Implementation and Impact on Crime Victim Rights – Survey and Final Report, 1996* ]

- Information is not only power, but in the case of victim notification, it is empowerment.
- In case of domestic violence and stalking, notification of an offender's release is more than a matter of interest; it is sometimes a matter of life and death.
- The right to notification of proceedings should be more than an attempt to communicate with the victim. It should be "actual notice." Actual notice means not only that the message was communicated to the victim, but also that the victim understands its meaning and relevance. Unless it is fully understood, notification by itself is meaningless.

### ***Quotable Quotes***

*"For three years I was a victim of domestic violence, including being kidnapped and raped. I consider myself a "fortunate victim" as a conviction put my perpetrator in prison for many years. My concern at this point is his coming out on release. Upon his release my entire life will change. I hope and pray to remain stable...."* A Survivor of Domestic Violence [ND – p. 13]

*"I can't understand why no one will tell me what's happening in my own case. If I want to know the simplest thing about what's happening, I have to literally beg for the information even though it was my crime — my life. They make me feel like an intruder in my own life when I ask for information about the case."* An Assault Victim

*"One morning I woke up, looked out my window and saw the man who had assaulted me standing across the street staring at me. I thought he was in jail."* A Victim  
[President's Task Force on Victims of Crime – p. 4]

*"The Department of Corrections has the strategic information, as well as the statutory obligation, to meet the needs of the whole community, not just the defendants, but also the people to whom those actions have occurred."* Dora Schriro, Director, Arizona Department of Corrections [ND – p. 136]

*"Are we asking too much if we ask to be told when and where the trial will take place? Are we asking too much if we want to be notified of plea bargaining before we read it in the paper?"* A Victim [President's Task Force on Victims of Crime – p. 34]

*"...[A]dvocating rights for victims does not mean lessening rights for the offender. It is a question of balance, and it is a question of justice."* Former U.S. Senator Paul Laxalt Nevada

*"...I was even told that it was none of my business when I asked the whereabouts of the defendants and dates of the hearings. The defendants have 'rights to privacy' according to my police department."* A Victim [President's Task Force on Victims of Crime – p. 60]

*"At this point in time, there is no information and it's changed hands so many times I don't even think there's anyone assigned to it anymore. But even from the beginning if we didn't call, we wouldn't get any information. If we did call much we got an attitude, a lot of attitude." A Crime Victim*

*"I wasn't informed of any rights. You might have a law and you might have a ruling for it, but if you have detectives or a district attorney that couldn't care less, it's not going to be followed. And you're going to be sitting by yourself trying to figure things out." A Crime Victim*

*"My rapist got himself a very good attorney so he was found not guilty. I had no idea where he was during or before the trial. I knew that apparently he's still in town because his lawyer is here, that was basically the gist of what I got. I have no clue as to where he is now, no idea." A Rape Victim*

*"I did not know what my rights were. I didn't find out really until things were happening or about to happen. We really didn't know anything beforehand and a lot of it was if you ask questions you found out, if you didn't you found out later." A Crime Victim*

*"It wasn't until about five years after we had the crash that we were notified of some of our rights that had already gone by." A Victim of a DUI Crash*

*"I found out through the media when they found his body and I found out through the media that he agreed to a plea agreement or whatever that is. I helped them for three weeks. I gave them everything I knew. I gave them my journal. I talked to the prosecutors and attorneys for weeks on end and they never notified me of anything." A Family Member of a Homicide Victim*

### **Right to Attend Proceedings**

Most states have laws that allow victims to attend at least some proceedings. But states vary considerably, with regard to which proceedings 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. But 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 (i.e., evidentiary hearings) or quasi-judicial proceedings (i.e., disciplinary hearings within prisons).

## **Right to Attend Public Hearings**

Others limit covered proceedings to only those that are public, which typically exclude proceedings such as clemency hearings, but may also include probation and parole hearings that are not open to the public.

## **Designated Representatives**

Most states allow victims to designate a representative to attend on their behalf, particularly if the victim is unable to attend due to physical infirmity or is under age 18. Also, a surviving family member of a homicide victim generally has the right to represent the deceased victim by exercising his or her right to attend.

## **Limitations on the Right to Attend Trials**

A victim's right to attend trial, even if guaranteed by the state constitution, is not absolute. The defendant's Sixth Amendment right to a fair trial has generally been interpreted to allow the exclusion of all witnesses who may testify at trial, including victims/witnesses. The reasoning for this interpretation is that allowing a witness to hear the testimony of others may influence or taint his or her testimony in a way that is unfair to the defendant.

## **Sequestration**

Most state statutes mandate that if a victim is to be called as a witness, the defense has the right to sequester (i.e., remove the victim from the courtroom) during the trial except for when he or she is 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.

## **Rights Bites**

- Victims should have the right to be present when defendants are accounted for.
- Any citizen off the street has a greater right to attend the trial than the victims themselves.
- For many victims the trial is the tribulation – literally, a “trial by fire.”
- When the victim is out of sight, they are out.

## **Quotable Quotes**

*“It seems like the only right that I had was to be present at the scene of the crime.”* A Crime Victim

*“When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in.”* President Bill Clinton Rose Garden June 25, 1996 [ND – p. 6]

Revised 1/21/05

*"I also feel that I should be allowed at the parole hearing or be allowed to send a representative. I think it would be very difficult for me to attend them, but I feel that it should be my right to have the option."* A Crime Victim, President's Task Force on Victims of Crime 1982

*"Years ago when my husband was murdered, I had to sit outside of the courtroom during the trial. My husband's murderer sat inside with a lawyer paid for by my tax dollars, in a new suit with his wife, children, and minister. His wife sobbed at the drop of a hat, but when I began to cry the prosecutor asked me to leave so I wouldn't influence the jury. No one seemed concerned about his family influencing the jury. You call that justice?"* A Crime Victim

*"A plea-bargain was reached without my knowledge. I was notified just hours before a press release to the media. I was mortified and very distraught that this had happened. I thought the district attorneys were representing me. I never thought they would make this kind of decision without me."* Attempted Homicide Victim

*"I fully expected that I would be a part of the trial proceedings. I was the first witness for the prosecution so that if the defense had any questions they would get them out of the way, and I would be able to attend the rest of the trial. The day of the trial, the court granted the defense's request to sequester me, even though I had never been summoned by the defense as a witness nor had they ever interviewed me. I was not allowed to attend the trial."* A Mother of a Homicide Victim

*"I've only had one judge in my nine years of doing this work that allowed the sexual battery victim to remain in the courtroom throughout the entire trial itself. He got it. He understood victims' rights and he was brave enough to actually enforce this right."* A Domestic Violence Center Director

### **Right to Be Heard**

#### **Format for Victims' Right to Be Heard**

Victims' rights to be heard usually take one of two forms, either a written or an oral impact statement offered during specific proceedings. In many ways, the right to be heard parallels the victim's right to attend proceedings in its practical application.

#### **Proceedings in Which Victims Have the Right to Be Heard**

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. Most of those states allow a victim to submit a written impact statement, an oral impact statement, or both. Others limit victims to only written impact statements at such hearings. Some states allow victims to express his or her views on the 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 a victim can include in his or her victim impact statement. For example, some laws state that victims must limit their comments only to descriptions of how the crime impacted their lives. Others specifically preclude victims from alleging facts that were not established during the course of the trial. More progressive statutes allow victims to say anything they want and even specifically allow them to recommend an appropriate sentence during sentencing hearings.

## **Limitation by Proceeding**

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.

A “*Victim Impact Statement Brochure*,” is included in the “*Victims’ Rights Brochures Kit*.”

## **Rights Bites**

- For some victims, their only right is the right to remain silent.
- We need to speak out for those who cannot speak out for themselves.
- Victims want a voice — not a veto.

## **Quotable Quotes**

“*The ‘power of the personal story’ has been the driving force behind the victims’ rights movement since its inception.*” Sharon English, Crime Victim and Advocate, Sacramento, CA

“*Why didn’t anyone consult me? I was the one who was kidnapped, not the State of Virginia.*” A Victim [President’s Task Force on Victims of Crime – p. 9]

“*The days of disposing of criminal cases without consulting with the victim are hopefully gone. Consultation with the victim is a critical part of the case to make sure that victim justice is truly done for every victim. It is not justice unless it is justice for both the victim and the defendant.*” Arthur C. “Cappy” Eads, Former District Attorney, Bell County, Texas [ND – p. 76]

“*I personally feel that it is a miscarriage of justice to sentence a defendant who has been convicted of committing a crime against another person without hearing from the*

*victim and taking into account the effects the crime had on the victim's life.*" Judge Reggie Walton, President's Task Force on Victims of Crime 1982

*"I think that a victim impact statement balances the scales of justice. For once the victim has a victim advocate – his own words."* A Crime Victim, *Impact Statements: A Victim's Right to Speak, a Nation's Responsibility to Listen* (1994)

*"The victim impact statement allowed me to construct what had happened in my mind. I could read my thoughts...they were on paper...in black and white. It helped me to know that I could deal with this terrible thing."* A Crime Victim, *Impact Statement: A Victim's Right to Speak, a Nation's Responsibility to Listen* (1994)

*"When the victim impact statement was read, the entire courtroom was in tears. I watched the judge, and he was really paying attention. On that day, I saw that victim impact statements are a way to educate judges, juries, prosecutors, and probation officers on what it means to be a victim."* A Probation Officer, *Impact Statements: A Victim's Right to Speak, a Nation's Responsibility to Listen* (1994)

*"'Mom, what would it feel like to be in a normal family?' And she says [quoting her granddaughter], 'Ever since I've been born the justice system has been ruining the life of my grandparents and telling them when they can take vacations. We're never asked... about a parole hearing. We're never given notification out in front. We're never talked to about a trial date. They just fall when they may.'*" Collene Campbell, Crime Victim and Advocate, San Juan Capistrano, CA

*"I was basically told to 'speak, only when spoken to' in the courtroom. Last time I heard that I was five years old."* A Crime Victim

*"The district attorney kept bugging us to write what happened, 'your feelings and if you can't read it I will do it.' So when my daughter wrote hers, he crossed out a bunch of it and told her that she couldn't read it. She was really upset. She was just thirteen at the time, and she just couldn't understand. He asked her to do this and yet he crossed out stuff because it was too emotional."* A Crime Victim

### **Right to Apply for Compensation**

Victims do not, in a strict sense, have an absolute right to compensation. But, in virtually all states, they do have an absolute *right to apply* for compensation. In addition, they may have a right to be informed of their right to apply for compensation. Beyond those basic rights, the nature, limits and operation of state victim compensation programs diverge considerably.

### **Application Process**

Some state victim compensation programs have rather complicated application processes that are not always easy for victims to navigate. Your state program may

already have developed materials describing the application process in detail. Include a reference to these materials to address your state's specific application process for victims.

## **Eligibility**

Most states have some eligibility requirements that victims must meet in order to qualify for compensation, and require that the victim must:

- Be a resident of the state.
- Report the crime within a specified period of time.
- Cooperate with the authorities in the investigation and prosecution of the case.
- Not be involved in illegal activities at the time of the victimization.
- Must have been injured as a direct result of the crime.

## **Timeliness of Compensation Payments**

Given the volume of applications and the responsibility of state victim compensation programs to verify claims, actual payments to victims may take weeks or even months. While it is a difficult proposition to estimate the processing time for any particular application, it is important that victims understand that payment will not be instantaneous, although most states do have an emergency award process and eligibility requirements which would also need to be explained. Check your state's victim compensation program for an estimated turnaround time for particular types of applications.

A “*Crime Victim Compensation Fact Sheet*, ” is included in the “*Victims’ Rights Brochure Kit*.”

## **Rights Bites**

- Crime doesn't pay — victims do.
- For many victims already teetering on the edge of financial disaster, compensation can mean the difference between bankruptcy and economic survival.
- Crime costs victims financially, physically, and emotionally. Though no amount of money can ever fully compensate victims for their losses, compensation can help minimize the long-term consequences.
- For some victims, the symbolism of victim compensation is as important as its actual value. For them, it is a concrete way in which society validates his or her victimization and acknowledges the harm inflicted upon them.
- No victim would trade any amount of money in exchange for being violently victimized, but in a very real sense, compensation can equate to recovery. Medical bills, counseling costs, and lost income are often critical needs that must be addressed before victims can begin the journey back.

## **Quotable Quotes**

*“We’ve had to borrow from our life insurance just to live. We will have to heat our home this winter by burning wood from a nearby lot. We’ve sold everything we own, including some family heirlooms. My husband and I are hard-working people. We aren’t looking for a free ride. But we’re being completely devastated by this criminal who reached in and destroyed our lives.” A Victim [President’s Task Force on Victims of Crime – p. 38]*

*“I feel revictimized each time I submit a request for reimbursement because of the many questions I have to answer to justify my request. I think the compensation administrators find it hard to believe that after 5 years I still need counseling and medical care. While I appreciate the service, I feel like I have to jump through hoops to get it.” A Crime Victim*

*“When my three-year-old daughter was sexually assaulted, the victim compensation program was literally a lifesaver. It covered the costs not only for counseling for her, but for our entire family.” A Crime Victim*

*“I recently applied for an equity loan on my home and was informed by the bank official that the compensation board had attached a lien on my property, even though the Compensation Program clearly states, ‘the lien applies only to civil recovery based upon the crime for which the award was made. The lien never attaches to property, real or personal.’ However, it shows up as a lien in my property records.” A Crime Victim*

*“I was reported to a collection agency for failure to pay after my insurance did an investigation on the claims that I had submitted to them after being denied from Crime Victims Compensation Program for having health insurance. It took so long for compensation to come up with a ruling, that my credit record was ruined and I was turned over to a collection agency. This was all because I had to pay for my own rape Kit.” A Rape Victim*

*“At the time of my husband’s murder, I was seven months pregnant. When my husband died, we were totally without income to purchase the bare necessities. Eventually Social Security assisted me, but that was not for nearly five months when I had a small infant at home”. Wife of a Homicide Victim [President’s Task Force on Victims of Crime – p. 43]*

## **Right to Restitution**

Restitution is one of the few victims’ rights that existed even before the advent of the victims’ movement. This 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. Check your state’s restitution

statutes, case law, and court procedures in order to accurately address restitution in your state.

### **Restitution as an Absolute Right**

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 chose not to order restitution.

### **Victims’ Duty to Establish Losses**

Regardless of the decision of the court, the burden is on the victim to establish 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. Victims often do not realize that they have this responsibility and often miss the opportunity to request an order for restitution.

### **Orders for Restitution**

Courts have tremendous discretion in determining the appropriate order of restitution. 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 aware of such distinct possibilities, so as not to create unreasonable or false expectations of payment after an order has been issued.

### **Collection and Enforcement**

Every jurisdiction provides for some response if an offender fails to pay restitution. Under some circumstances, defendants on probation can have his or her probation revoked for non-payment of restitution. Whatever the recourse provided by statute, it can involve a restitution review hearing. In many states, victims may have rights not only to attend and participate in such hearings, but in some circumstances, victims may have the right to call for such hearings. There are also jurisdictions that allow victims to enforce restitution orders in the same way they would civil judgments.

### ***Rights Bites***

- This nation’s first criminal justice system was based on restitution — not retribution. Yet today, restoring the victim financially is an afterthought that is often forgotten all together.
- Restitution is often the only time in the entire criminal justice process that the offender is held accountable directly to the victim.
- Crime doesn’t pay — offenders should.
- Restitution is less about the money and more about accountability to the victim.

- Criminals not only owe a debt to society, but a debt to victims.
- Fundamental fairness demands defendants pay for the damage they have done — whether it's a broken window or a broken leg. No principle could be more obvious, more fair, and more just.
- Criminals shouldn't do the crime if they can't pay his or her restitution on time.

### **Quotable Quotes**

*"About 15 minutes before the sentencing trial, I was given a piece of paper by the district attorney and told to write a victim impact statement. I sat down and by memory tried to remember how much my hospital bill had been and everything."* A Crime Victim

*"I think if the criminals who do these things are caught they should have to pay for the damage they do, even if it takes them years. My family and I will be trying to recover from this for the rest of our lives."* A Victim [President's Task Force on Victims of Crime – p. 79]

*"Every time a defense attorney stands before the judge and says, 'Your honor, my client cannot afford to pay restitution,' we need the prosecutor to stand and say, 'Your honor, what makes you think the victim can afford to pay?'"* Anne Seymour, Senior Advisor, Justice Solutions

*"The DA never requested restitution even though both the victim and I had spoken to him about it. His response was that the kid had no money and it wouldn't be worth making the request. I argued that someday he might have an actual job and would have to pay restitution if it was ordered, even if he took a job in prison. The whole idea seemed a waste of time to the DA."* A Victim Advocate in the District Attorney's Office

*"The man who murdered my husband is in prison thankfully. We as taxpayers are paying for his room, board and medical and psychiatric help. My husband was my only means of support. I am now destitute, very ill, and have no financial means. Meanwhile, the murderer has 600 acres of valuable property. Why should the man who ruined my life be able to keep and return to that in a few years to that, while I have nothing?"* A Victim [President's Task Force on Victims of Crime – p. 79]

*"Restitution was not offered at the sentencing and my lawyer said it was because of the type of court case, but the judge said, 'well, this is a good person, good behavior, business man'..... and I had seen the judge looking through the pictures. Did he not see the blood, the injuries? How can somebody say 'this is a good person'? Another violent assault victim was aware of restitution but it was not ordered because the judge didn't think he could make any money....."* A Domestic Violence Victim

## **Right to Information and Referrals**

Often, victims of crime may have needs, issues and concerns about how they feel, what is going to happen, their role as a victim or witness, and what services are available to help them. There is a wide range of services to help them cope in the aftermath of a crime, and to help them make informed decisions about their life. Many services are available to *all* victims of crime, while some victims' rights and services require that they report the crime and cooperate with the investigation and prosecution of a criminal case. In addition, some specialized services are available to help victims of specific types of crime.

### **Victims' Rights to Information and Referral**

Victims have the right to request assistance with basic issues that help them in their daily life; specific assistance to help them cope with the immediate-, short- and long-term effects of the crime on them and their loved ones; and important information that can help them understand and exercise their rights as a victim of crime.

### **Why Victim Information and Referrals Are Important**

Nobody asks or wants to be a victim of crime. Sometimes, victims may experience new feelings that are difficult to understand, or may be confused about what is going to happen next and why. Many crime victim assistance services have been established in our communities and states, as well as in our criminal justice system, to provide victims with support, information, assistance, and help in understanding their rights under law as a crime victim.

Victim information and referral services can help identify and assess victims' *most important needs*, and try and meet them. They can provide victims' with important information to help them and their loved ones better understand and cope with the emotional, physical, financial and spiritual impact of crime. Perhaps most important, they can give back to victims' a sense of control that may have been shattered by the crime, and empower them to make *informed decisions* about their possible involvement in justice processes, their life and their future.

### **Information about Crime Victims' Rights**

Victims of crime have certain rights that help them become informed about and involved in criminal justice proceedings related to their case. These rights include:

- Information about their rights under law as a victim of crime.
- Information about and assistance with filing a victim compensation claim in cases involving violent crime.
- Orientation to the criminal justice process to help them understand what is happening, their basic rights, and any role they make have in justice proceedings.
- Information about their protection rights.

A “*Victim Information and Referrals Brochure*” is included in the “*Victims’ Rights Brochure Kit*.”

### ***Rights Bites***

- Millions for their defense, pennies for their victims.
- Society should do everything in their power to help those they failed to protect from violence.
- There are an estimated 10,000 victim-related programs in the United States, yet there are still hundreds of thousands of victims who remain underserved or unserved.
- We have a safety net for those who fall; shouldn’t we have one for those who are pushed?

### ***Quotable Quotes***

*“I was put in touch with a woman in the victim/witness unit who had recently lost a daughter in a brutal homicide. She talked with me, got me out of my shell, and gave me strength.” A Victim [President’s Task Force on Victims of Crime – p. 48]*

*“When the victims’ movement was launched in the early 1970s, many of us thought that establishing victim assistance programs, especially in prosecutors’ offices, was our first and final challenge. We know now that such a ‘final challenge’ was but a first step. Victim assistance must become a pervasive, immediate presence in all our communities, responsive to the special attributes of those we serve, suffused with the enforceability of rights.” Marlene Young, Executive Director, National Organization for Victim Assistance [ND – p. 49]*

*“At the preliminary hearing I finally was put in contact with the victim/witness staff and their help was tremendous. I only wish it had come sooner.” A Victim [President’s Task Force on Victims of Crime – p. 47]*

*“The greatest help communities can provide to victims... is to acknowledge crime victims in the community, and to educate the public as to victims’ needs.” Denise Giles, Victim services Coordinator, Maine Department of Corrections*

*“If I have learned anything... it is that there is a need for some kind of victim assistance programs that reach out and seek to help people who are too emotionally involved in cases to seek help themselves.” A Victim [President’s Task Force on Victims of Crime – p. 48]*

*“The philosophy of Victim Services 2000 is that there are ‘no wrong doors’ in a community when crime victims seek help and support in the aftermath of crime. Whether victims turn to their school, church, hospital, social service or criminal justice*

*agency, each entity will be prepared to provide information, services, or referrals and will treat each victim with dignity and compassion.” Steve Siegel, Director, Program Development, Denver District’s Attorney’s Office [ND – p. 155]*

## **Right to Protection**

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 extensive laws, policies, and practices to allow victims to secure a protective or stay-away order against the offender and/or his or her family and friends. Orders can be issued from criminal, juvenile 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.

### **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 these orders as a matter of course, the victim may need to request such an order, either through the prosecutor or directly to the court at the time of the bail, sentencing, or parole hearing. Exercising this right presumes the existence of the victim’s right to be present and heard at such hearings.

For protective, stay-away orders, and non-contact orders, victims should also request to be notified when the order is *actually served* to the defendant or convicted offender.

### **Security Measures at the Courthouse**

In recent years, many state legislatures have passed laws mandating a variety of safety measures to protect victims while attending proceedings at the courthouse. These measures include mandated separate waiting rooms for victims and their families, law enforcement escorts inside and outside the courthouse, and 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. Check your state law and court rules and policies that address these measures at courthouses in your jurisdiction.

The “*Victim Protection Brochure*,” included in the “*Victims’ Rights Brochure Kit*” provides more detailed information about this right and the role the victim has in exercising it.

### ***Rights Bites***

- Safety is the most basic of human needs. Try to eat, sleep, or function in any normal way when you feel your life is in jeopardy.
- Equal protection under the law should include protection by the law.
- Since society failed to protect victims before the fact, the least they owe them is protection after the fact.
- Safety first...second...and last.
- To “serve and protect”—should victims expect anything less?
- The first crime is regrettable, but a second victimization is unforgivable.

### ***Quotable Quotes***

*“We can’t make the victim whole again, but we can certainly stop pulling away bits and pieces of their life. We can stop the hemorrhaging - that’s really what we ought to be doing as professionals.”* John Gillis, Executive Director, Office for Victims of Crime, U.S. Department of Justice

*“Even in states with a victims’ rights constitutional amendment, the overall protection of victims is varied and uneven. In addition, without Federal constitutional protection, victims’ rights are always subject to being automatically trumped by defendants’ rights.”* Bob Preston, Co-Chair, National Victim Constitutional Amendment Network [ND – p. 5]

*“We had to sit outside the courtroom, where there was only one chair, sometimes in the presence of the man who was charged with doing this and his family. There was no separate place for victims and witnesses.”* A Victim [President’s Task Force on Victims of Crime – p. 75]

*“It is almost impossible to walk into a courtroom and describe in detail the thing you most want to forget. It is also devastating to have to face your assailant. Although you are surrounded by people and deputies of the court, the fear is still overwhelming.”* A Victim [President’s Task Force on Victims of Crime – p. 9]

*“We cannot behave as though we are islands unto ourselves. We exist to protect the public, and if we can isolate victims in the community and bring them in to tell us how we can better serve them, I think that is the way to go.”* Harold W. Clark, Director, Nebraska Department of Correctional Services [ND – p. 133]

*"Nobody gave me instructions about an injunction and how to protect myself, so I spent a whole two years running away because he might find out where I was. They knew that he was still trying to harm me, but they said they couldn't do anything because the jails were too full."* A Domestic Violence Victim

*"I filed a restraining order to keep my husband away from the home. I moved the family temporarily, but kept my belongings in the home. I returned several times to find the house robbed and/or ransacked. I reported these crimes, but the sheriff's department never took any action -- they wouldn't even come out because it was too far. For safety sake, I kept my family away for longer periods of time, and the property was eventually declared 'abandoned.' We lost our \$130,000 home."* A Domestic Violence Victim

### **Remedies If Rights Are Violated**

Despite making good-faith efforts to secure and exercise their rights to receive information about and participate in criminal justice processes, crime victims are frequently denied the opportunity to do so. Without timely and accurate information about what their rights are and how to exercise them, victims are not able to choose whether or not they wish to exercise their rights.

### **Why Remedies Are Important to Crime Victims**

If victims are not informed of their core rights, they lack vital information to make informed decisions about their cases, about their role in criminal justice processes, and how to access important services to assist them. If victims are not told about when and where proceedings will be held, they are denied the opportunity to attend. If they are not informed that they have the right to provide the court with a victim impact statement, they cannot offer input that is important to the sentencing process, and that validates them as somebody who has been hurt by crime.

### **How Victims Are Informed**

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 corrections officials are required to give victims information about what their rights are and how to exercise those rights.

Some states also require that crime victims be told what to do if their rights are denied or violated. In recent years, a number of states and private groups have taken steps to help crime victims exercise their statutory and constitutional rights, and to seek compliance or remedies when those rights may be violated or denied.

### **Rights Bites**

- Rights without remedies equal rhetoric.

- Everyone supports victims' rights in public — not everyone practices it in their profession. Lip service is a disservice to every victim who places faith in the system. It is a second victimization more hurtful from the first because it comes at the hands of those who claim justice as their cause.
- Rights make rhetoric real. Empty rhetoric is the cruelest un-kept promise of all, since it springs from the mouth of those with whom victims have placed their last, best trust.
- In the past, the rights and interests of victims existed only at the whim and goodwill of those in the criminal justice process. With the advent of victims' rights, those rights became real — no longer were they discretionary, they became mandatory.

### **Quotable Quotes**

*"It's about the law keeping its promise."* Sergeant Mark Wynn, Domestic Violence Division, Nashville Metropolitan Police Department [ND – p. 51]

*"People like to talk about victims and how victims should have rights, but when one looked in Michigan's law, and we've looked in a number of other states as well, you really couldn't find any position that gave a standing to victims in statute or in policy or in practice, and certainly not in the Constitution."* Hon. Bill Van Regenmorter, State Representative, Michigan

*"Laws that create rights without recourse are little more than codified lip service written in books collecting dust on some forgotten law library shelf."* David Beatty, Executive Director, Justice Solutions

*"I have had to become my own lawyer in order to fight for my rights. I had to learn the Penal Code and statutes on victim rights. And, even when I show people in the criminal justice system what I am entitled to, I have to fight with them to honor my rights."* A Crime Victim

*"The victim told the prosecutor that he had violated his rights. The prosecutor said, 'Well, the only rights you have are what I'm giving you.' That was the end of that conversation".* A Director, Victim Services Non-profit Agency

*"Our elected prosecutor suspends state's attorneys for not notifying victims, for not talking to them before trial, for not notifying them of a hearing, he has suspended them and fired them and demoted them. That's the way it is".* A Prosecutor-based Advocate, State Attorney's Office

*"My family and a few friends and I were present at the sentencing. We were totally ignored by the prosecutor, even though he knew I wanted to give my victim impact statement. I had to ask the court if I could speak. I told the court that I had right as a victim to have input into the decision of any plea bargain. Upon considering this, the*

*judge threw out the plea bargain because I had not been notified, and told him to go back and see the DA and work it out.” A Crime Victim*

*“We need to have a better system of training our prosecutors and judiciary because all the amendments and laws don’t do any good if the people who are needing to enforce them and implement them don’t even know they exist”. A Victim Service Provider*

*“They explained the defendant’s constitutional right to the nth degree. They couldn’t do this and they couldn’t do that because of his constitutional rights. And I wondered what my rights were. They told me I didn’t have any.” A Victim [President’s Task Force on Victims of Crime – p. 114]*

*“Justice will only be served when victims’ rights are not just celebrated annually, but practiced daily.” James Rowland, Former Director, California Department of Corrections, CA Youth Authority, and NAPA County, CA Probation Department.*