End Violence Against Women International (EVAWI)

Crime Victims’ Rights: Protecting Crime Victims’ Rights

Part 1

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In honor of Crime Victim's Rights Week, we have developed a 3-part series of training bulletins designed to provide you with a basic understanding of what these rights are, as well as outlining the requirements for informing victims about their rights, explaining the process for asserting those rights, and exploring the procedures to follow when victims feel their rights have been violated during a criminal or civil proceeding. A number of resources will also be provided to assist with practical application. However, this general information must be supplemented with information that is specific to your own jurisdiction.

Introduction

As we so often highlight in our training materials, there are many barriers that prevent the vast majority of sexual assault, domestic violence, and stalking victims from reporting the crime and participating in the process of a criminal prosecution. Not only does this deny victims their right to pursue justice, but it creates a situation where most offenders are given a “free pass” to continue re-perpetrating in our communities. Any steps we can take to reduce these barriers can therefore help victims to engage in the process – and remain engaged – so we can hold more offenders accountable. One strategy for achieving this goal is ensuring that crime victims’ rights are protected.

Federal and state legislation affords victims of crime certain legal protections through a variety of laws commonly referred to, collectively, as “crime victims’ rights.” Most of these rights pertain to the process of investigating and prosecuting a criminal case, including the sentencing phase (post-conviction). Within the criminal justice system, all professionals responding to crime victims should be familiar with these rights.

Responsibility for protecting these rights is shared by police, prosecutors, judges, victims’ rights lawyers, and even defense attorneys. The role of victim advocates is also critical, because they provide victims with information, accompaniment, and other forms of assistance throughout the criminal process. This is because crime victims’ rights do not help anyone if they simply remain theoretical or philosophical. These rights must be translated into actual policies and practices for victims within our communities. Only then will victims be able to participate in the entire criminal justice process in a way that honors their commitment, respects their dignity, and strives to protect their well-being.

Translating Theory to Practice

We want to help meet this goal of translating theory to practice, by asking the “bottom line” question, which is this: Are crime victims’ rights real in your community? Are there protocols in place that translate victims’ rights from theory to practice? Are there procedures to ensure that victims are informed of their rights? Are there policies and protocols designating how a victim’s rights will be protected? Is there a process to follow when victims believe their rights have been violated? We hope this training bulletin
provides you with the inspiration for collective action, as well as the information and resources needed to help your community answer “yes” to all of these questions.

**Crime Victims’ Rights**

Every single US state, the District of Columbia, and several US territories have passed laws to establish a set of basic rights for crime victims. Some of these laws are established by statute, but nearly two-thirds of states have adopted constitutional amendments as well.¹

On the federal level, the US constitution does not currently include a crime victims’ rights amendment. The federal Crime Victims’ Rights Act (CVRA)² does, however, establish the rights of crime victims in federal criminal justice proceedings and provides mechanisms for victims to assert those rights, such as giving victims and prosecutors legal standing to seek remedies for any violations.

**Common Rights**

Crime victims’ rights vary from jurisdiction to jurisdiction, but they often include a basic set of rights common to most jurisdictions. These rights typically include some or all of the following:

- The right to reasonable protection from the accused and those acting on behalf of the accused.
- The right to reasonable, accurate and timely notice of public court proceedings.
- The right to be present at any public court proceeding that the defendant has the right to attend.
- The right to be heard at any public proceeding, usually involving the defendant’s release, pleas, sentencing or parole.
- The right to confer with the prosecution.
- The right to full and timely restitution.³

To find out what rights are provided by statute in your jurisdiction, please see the state-by-state listing of crime victims’ rights posted by the National Crime Victim Law Institute (NCVLI).

For more comprehensive information from caselaw as well as state statutes, please see the VictimLaw.org website hosted by the Office of Justice Programs, US Department of Justice. Information can be searched by Topic, Term, Contents, or Citation.

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¹ For a history of these rights and their evolution within the US justice system, please see the document published by the National Crime Victim Law Institute (NCVLI), entitled: Fundamentals of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States.

² 18 U.S.C. 3771

³ Restitution is payment of money from the offender to the victim to compensate for losses incurred from the crime.
• The right to proceedings free from unreasonable delay.  
• The right to be treated with fairness and with dignity and respect for the victim's privacy.
• The right to a copy of the presentence report or transcripts.
• The right to information about the criminal justice process and victims’ rights, and the right to referrals for appropriate services.
• The right to apply for victim compensation.
• The right to standing (which is the right to independently stand up in court and assert one's rights) and remedies (which is the ability to have redress when one's rights are not afforded).

Rights in Certain Jurisdictions

Some of the laws articulating crime victims' rights include only a few generally articulated rights, while others provide a longer list of rights with more specific provisions. These rights tend to vary across jurisdictions. As an illustration, some states offer crime victims the following specific rights:

• The right to have one's name (or other private information) withheld from public records, or to use a pseudonym or substitute address.
• The right to seek an emergency protection order.
• The right to have one's schedule considered when trial dates are set.
• The right to request assistance from a law enforcement agency or prosecutor’s office to inform the victim’s employer, creditors, or others that the victim’s cooperation with the prosecution may mean that the victim will miss work or be unable to meet other obligations.

For one example of crime victims’ rights and their statutory references, please see: The Rights of Crime Victims in New York State.

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4 This right is often also phrased as the right to a speedy disposition.
5 Crime victim compensation is money paid from the government to a victim, usually to cover certain out-of-pocket costs incurred as a result of the crime. For more information on crime victim compensation, please visit the website for the National Association of Crime Victim Compensation Boards.
6 This summary of core victims’ rights is adapted from the Frequently Asked Questions section of the NCVLI website. It is worth noting, however, that people are only eligible for these rights if they meet the legal definition of a “victim” in their jurisdiction. Information on these definitions can be found in the same resources cited for more information on crime victims’ rights.
7 According to the National Coalition Against Domestic Violence, address confidentiality programs “allow individuals who have experienced domestic violence, sexual assault, stalking or other types of crime to receive mail at a confidential address, while keeping their actual address undisclosed. Rules and eligibility vary from state to state.” On their website, the NCADV provides a list of address confidentiality programs in states across the country.
• The right to have the court consider the victim’s views on discretionary decisions in the case, such as plea agreements and sentencing.

• The right to a copy of a court transcript, audiotape, or videotape of any proceeding in open court (if one is already being prepared).

Other specific rights pertain to the information that must be provided to victims, the notifications that must be provided at various points in the criminal justice process, and various safety measures that can be taken to protect the victim from the defendant.

These enumerated rights are often more specific applications of a broader right. For example, withholding the victim’s name or other private information is one strategy for protecting the victim’s more general right to privacy. Similarly, the right to seek an emergency protection order is one way of enacting the victim’s general right to safety.

Thus even when a specific right is not explicitly stated in the law, victims and their attorneys can often successfully argue that it is a specific implementation of a more general right. Too often, people have a limited view on crime victims’ rights because they are not stated in explicit terms in the relevant laws. With the assistance of an attorney, victims can often assert their rights in terms of specific practices, even when the language of victims’ rights is more general or philosophical in tone.

The Victim Rights Law Center (VRLC) has developed a guide and tip sheet for adult victims of non-intimate partner sexual assault. The guide is available online, among the Resources for Legal Advocates / Lawyers. A tip sheet and other safety planning materials can also be obtained upon request by contacting VRLC at TA@victimrights.org. This includes materials that are specific to unique victim populations, such as farmworkers or those experiencing homelessness.

Sexual Assault / Domestic Violence

Some rights apply to all victims of crime, whereas others specifically pertain to victims of sexual assault (SA), domestic violence (DV), stalking, and/or dating violence. For example, every state and territory issues protection orders for victims of DV. An increasing number provide civil protection orders for sexual assault survivors. Some jurisdictions provide SA and/or DV victims the right to have an advocate or other support person present during their medical forensic exam and/or any interviews with criminal justice officials. Other examples (from a variety of jurisdictions) include:

• The right to be informed of the availability of victim advocacy services.

The Victim Rights Law Center (VRLC) offers a chart summarizing the protection orders available to sexual assault victims in each state.
• The right to be interviewed in a private setting.
• The right to withhold information about one’s private insurance during a medical forensic examination.
• The right to be provided with emergency contraception and/or offered information about its use and efficacy.
• The right to counseling, if requested, for information related to HIV/AIDS infection and testing.
• The right to refuse an interview, deposition, or discovery request by the defendant (e.g., for medical records, phone records, or other communications), the defendant’s attorney, or any other person acting on behalf of the defendant.
• The right to a secure and/or private waiting area during court proceedings.
• The right to be consulted by the prosecutor to obtain the views of the victim regarding disposition of the criminal case by dismissal, plea of guilty, or trial.
• The right to have a convicted defendant tested for HIV and be notified of the results.
• The right to obtain a copy of the police report, without charge.

A compilation is available for statutes providing sexual assault victims with the right to have an advocate or other support person present during a medical forensic exam and/or interviews with criminal justice officials. Please contact AEquitas: The Prosecutors Resource on Violence Against Women.

To assist in determining what rights might be most critical for a particular victim, the Victim Rights Law Center (VRLC) highlights the importance of conducting a holistic legal intake with a sexual assault victim. For guidance in this area, see the document entitled:


It is available by contacting VRLC at TA@victimrights.org.

VRLC also offers a number of Tips for Conducting a Victim-Centered Intake among their Resources for Legal Advocates / Lawyers.

VAWA Forensic Compliance

Some specific rights have also been granted to victims of sexual assault within the Violence Against Women Act (VAWA), although their basis is somewhat different than many of the other rights that are outlined in federal or state law. VAWA is a federal law, but rights extended to victims through this legislation actually constitute conditions for
states, territories, and tribes to remain eligible for grant funding through the STOP grant program (which stands for Services, Training, Officers, and Prosecutors). STOP grants provide millions of dollars of critical funding for states, territories, and tribes, but to remain eligible for this funding, recipients must certify that victims of sexual assault:

- Have access to a medical forensic examination without any out-of-pocket costs and without requiring their participation in the criminal justice process, and
- Are not asked or required to take a polygraph test or other similar test designed to detect untruthfulness, as a condition for investigation or prosecution.  

Because the legal mechanism for VAWA forensic compliance is somewhat different from most other crime victims’ rights included in state and federal laws, they are not typically thought of as “crime victims’ rights.” However, the goal is the same as it is for other crime victims’ rights, which is to increase access for victims within the criminal justice and community response system by reducing or eliminating barriers. To that extent, it makes sense to discuss forensic compliance within the context of crime victims’ rights. Victims may be more likely to engage the criminal justice process if they believe their basic rights will be protected. Moreover, if they initially engage with the process (for example, by obtaining a medical forensic examination without contacting law enforcement), they may be more likely to convert to a standard report and participate in an investigation if they believe they will have a number of essential rights respected throughout the process.

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8 This prohibition was enacted in the 2005 reauthorization of the Violence Against Women Act (VAWA); it remains in effect in the most recent 2013 reauthorization. Specifically, states and territories must certify that law enforcement agencies within their jurisdiction do not have a policy or practice of asking or requiring adult, youth or child victims of sexual assault to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the offense. In addition, a victim’s refusal to submit to such an examination must not prevent the investigation, charging, or prosecution of the offense. VAWA 2013 specifically expanded this prohibition to cover the trial and sentencing phases, as well as the investigation of sex offenses.

8 As one illustration, Arizona state law 13-4420 states: “The victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present.”

8 Kenna v. US District Count for the Central District of California (January 20, 2006), No. 05-73467, DC No. CR-03-00568-JFW. The text of the opinion is available at the website for the 9th Circuit Court of Appeals.

Civil Legal Remedies

In addition to crime victims’ rights, there are also a whole host of legal rights that victims may want to pursue outside the criminal justice system (e.g., employment, housing, immigration, education, and financial). These civil legal remedies are available to victims regardless of whether they engage the criminal justice process. However, none of these remedies are “automatic;” they require victims to affirmatively invoke them by pursuing some sort of action (e.g., petitioning for a restraining order, pursuing civil litigation).

We must always keep in mind that most crime victims’ rights pertain to court proceedings, but the vast majority of sexual assault, domestic violence, and stalking victims never make it to this stage. In fact, most victims of these crimes do not report to law enforcement, and many of these reports do not result in an investigation and referral for prosecution, let alone charges being filed or pursued to conviction and incarceration.

These wider-ranging civil legal issues are not covered in this training bulletin, but we mention them here to serve as a reminder that victims’ legal needs typically extend far beyond the criminal justice process. To illustrate, victims in some jurisdictions have the right to terminate a rental agreement (with a specified time for notice), or to have locks changed by the owner of a rental property. These are only two of the many issues that may arise with respect to housing for victims of crime.

Another example comes from the employment arena, with innovative laws enacted in Oregon and Washington. These laws require employers to allow victims of DV, SA, or stalking to take a reasonable amount of leave from work, for the purpose of participating in the investigation and prosecution of their case or to pursue medical treatment or counseling. This law covers all employers, but the leave may be paid or unpaid, and it may be accessed by employees through sick leave or other compensatory time. As with housing issues, victims typically need the assistance of a lawyer to pursue litigation or other remedies if a right is violated.

A civil attorney may also be needed to help recover crime victim compensation if all or some of the benefits that are due to the victim are denied. In New Jersey, for example, victims who are successful in recovering benefits will also receive compensation for a portion of their legal expenses.

Both the National Housing Law Project and Legal Momentum offer a summary of state laws providing housing protections for victims of sexual assault and domestic violence. The Victim Rights Law Center (VRLC) also offers a Tip Sheet for victims seeking to get their landlord to change the locks on their residence.

Legal Momentum offers a state-by-state guide outlining employment rights of sexual assault and domestic violence victims.
These are simply a few examples illustrating the many, wide-ranging needs victims may have for legal representation following a sexual assault, domestic violence, or stalking crime. Professionals who work with crime victims should obtain training to help identify victims’ needs and make appropriate referrals, including to victims’ rights lawyers.

For an overview of a sexual assault survivor’s legal rights and the civil laws that can be used to enforce them, see Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims. A Practical Guide for Attorneys and Advocates. It is available by contacting VRLC at TA@victimrights.org.

Constant Evolution

As the example of VAWA forensic compliance illustrates, crime victims’ rights are not static; they continue to evolve as a result of new laws, legislative reforms, and court decisions. For example, many states now offer victims the right to attend any part of a criminal trial where the defendant is present. This is often referred to as the “right to be present.” However, some laws provide further articulation of what this right means for victims. To illustrate, The Rights of Crime Victims in New York State explains that:

A prosecutor may not want the victim and/or family to attend proceedings for strategic reasons related to the prosecution, but court proceedings are, as a rule, public and a victim or his/her family always have the right to attend court proceedings that are open to the public (p. 5).

Court decisions also continue to interpret victims’ rights. In 2006, for example, a decision by the Ninth Circuit Court of Appeals determined that crime victims have a right to speak at a defendant’s sentencing hearing – not just to submit a written victim impact statement. The court also ruled that a sentence imposed without affording this right could be voided. In another example, the Oregon Supreme Court decided a case in 2011 where a defendant was sentenced at a hearing that the victim had not been notified about. They held that the hearing was legally void since it had been held in violation of the victim’s rights, and the defendant had to be resentenced.

With such constant change, criminal justice professionals, advocates, and other service providers must work to remain current – not only on the present status of crime victims’ rights on a jurisdiction-wide level but also how they are translated to action locally.

Evolution also continues to expand the domain of crime victims’ rights to include individuals who have not historically been viewed as “legitimate crime victims” (e.g.,

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10 Kenna v. US District Court for the Central District of California (January 20, 2006), No. 05-73467, DC No. CR-03-00568-JFW. The text of the opinion is available at the website for the 9th Circuit Court of Appeals.
incarcerated individuals,\textsuperscript{12} undocumented citizens, and victims of commercial sexual exploitation. Work also continues to incorporate crime victims’ rights into all aspects of the criminal justice system. For example, the National Institute of Corrections is engaged in efforts to integrate crime victims’ rights into the process of offender re-entry. Moving forward, we hope to see crime victims’ rights woven into the entire fabric of the criminal justice system, enlivening every aspect of the process.

**For More Information**

To find out what rights are afforded to crime victims by statute in your jurisdiction, please see the state-by-state listing of crime victims’ rights posted by the National Crime Victim Law Institute (NCVLI).

For more comprehensive information from caselaw as well as state statutes, please see the VictimLaw.org website hosted by the Office of Justice Programs, US Department of Justice. Information can be searched by Topic, Term, Contents, or Citation.

For more information on the rights of sexual assault victims at every stage of the criminal justice system, please see: *A Criminal Justice Guide: Legal Remedies for Adult Victims of Sexual Violence*, written by Doug Beloof, Jessica Mindlin and Liani Jean Heh Reeves and published by the National Crime Victim Law Institute (2006).

For an overview of a sexual assault survivor’s legal rights and the civil laws that can be used to enforce them – as well as a comprehensive discussion of how to conduct a holistic legal intake with a sexual assault victim – please see the document entitled, *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims. A Practical Guide for Attorneys and Advocates*, written by Jessica E. Mindlin and Susan H. Vickers and published by the National Crime Victim Law Institute (2008). It is available by contacting VRLC at TA@victimrights.org.

In addition, the Office for Victims of Crime publishes Legal Series Bulletins addressing specific crime victims’ rights, such as the enforcement of protection orders, the crime victim’s right to be present, victim input into plea agreements, and restitution.

\textsuperscript{12} For more information, please see the National PREA Resource Center, which is working to address sexual safety in confinement, and assisting state and local jurisdictions with implementation of the Department of Justice National PREA Standards (for the Prison Rape Elimination Act of 2003).