Crime Victims’ Rights: Implementation and Enforcement

Part 2

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April 2015

End Violence Against Women International (EVAWI)
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Acknowledgements

We are extremely grateful to the following individuals (listed in alphabetical order), for their valuable contributions to this Training Bulletin:

Meg Garvin, MA, JD, Executive Director and Clinical Professor of Law, National Crime Victim Law Institute

Christine Herrman, Esq., Project Director, Vera Institute of Justice

Jessica Mindlin, Esq., National Director of Training & Technical Assistance, Victim Rights Law Center

Donna Purdy, Deputy Executive Director, Colorado Organization of Victim Assistance
This is the second in our three-part series of training bulletins on crime victim rights, developed in honor of Crime Victim’s Rights Week. In this installment, we explore the issues of implementation and enforcement.

“Automatic” Rights

Once crime victims’ rights are enacted into law, the question remains whether the appropriate mechanisms are in place to translate these rights into practice. The answer to this question varies not only by jurisdiction, but also by the particular right in question.

For example, certain crime victims’ rights are “automatically” granted in many states, so victims do not have to do anything to request that they be implemented. To illustrate, in Oregon, these “automatic” rights include the right to attend any open court hearing, the right to speak at a sentencing or release hearing, the right to prompt restitution, and the right to a copy of a transcript of a hearing (if one is created).

However, a problem arises when the victim has a specific right that should be “automatic,” but the relevant law does not specify how it will be implemented or who will have responsibility for doing so. This is often seen when crime victims have a stated right to be notified of court proceedings, but no one is specifically tasked with the responsibility of providing this notification. In these situations, it is obviously difficult for victims to know how to assert their rights or to seek remedies if they have been violated (Oregon Attorney General’s Sexual Assault Task Force, 2012).

Rights That Are Not “Automatic”

Other rights are not “automatic,” so crime victims must take some action for them to go into effect. Again returning to Oregon, examples include the right to obtain information about the conviction, sentence, imprisonment, criminal history, and release of the defendant from custody. Such rights require some action on the part of the victim, but the specific action that is required can vary:

This action can include making a request for the right, applying for crime victims’ compensation, initiating a court action, consenting to or asserting something in a case, choosing to waive a right, or making a recommendation (Oregon Attorney General’s Sexual Assault Task Force, 2012, p. 64).

Some rights require court action, which means either that they will need to be pursued by the prosecutor in a criminal case or a civil attorney acting on behalf of the victim. This also means that the outcome cannot be guaranteed. Examples include the right to have certain types of evidence excluded at trial (e.g., rape shield laws), the right to request no public access coverage of sex offense proceedings, and the right to a court order prohibiting distribution of sexually explicit information. Such rights can also be pursued...
by petitioning the court, and they therefore remain at the judge’s discretion. It is critical that this is made clear to victims, so they are not given false assurances. Just because something is described as a “right” does not mean that it constitutes an enforceable promise.

For victims in Oregon, this process is facilitated by the Crime Victims’ Services Division of the Department of Justice, which has developed a Victim Rights Request Form. The form is completed by victims, to request specific rights they would like honored, and it is then given to the local district attorney’s office. The form also provides victims with information about any time limits for requesting particular rights, as required by law.¹

Right to Information

Clearly, crime victims’ rights have little meaning for victims if they do not know what their rights are and/or if they have no clear way to assert their rights or seek remedies for violations. In recognition of this fact, most jurisdictions provide crime victims with an explicitly stated right to be informed of their rights. In some states, they even have a right to be informed of their rights in writing. For example, victims in Oklahoma have the right “to receive written notification of how to access victim rights information from the interviewing officer or investigating detective.”² This right should therefore be “automatic,” but this will only be a reality for victims if the statute is clear or if a community protocol clearly designates which agency professionals will provide this information.

Some states specify by statute exactly who is supposed to provide information for victims on their legal rights (e.g., police officers, prosecutors). In California, for example, the Attorney General’s Office is specifically charged with creating a document to provide victims with information about their rights and making it available for law enforcement agencies throughout the state. This victim rights card is posted on the Attorney General’s Office website and is available in several languages. The California Attorney General’s Office also provides additional information for crime victims on their website and offers a toll-free number they can use to contact a local victim’s assistance office.

Some states also specify the point at which victims must be informed of their rights, and some describe the type of information that must be included in the informational materials (e.g., the police report number, the reporting officer’s name and badge number, agency contact information, information about crime victim compensation, victim advocacy services, or other resources that are available). As one illustration, Oregon law generally states that victims will be informed of their rights “as soon as practicable.” They must also be provided with information about any time limits that are required for victims to make a particular rights request.³

¹ Or Const Art 1 § 42 (1) (g), ORS 147.417. ORS 419C.273 (1) (b).
² 21 O.S. 142 A-2.
³ Or Const Art 1 § 42 (1) (g), ORS 147.417. ORS 419C.273 (1) (b), as cited in the Advocacy Manual published by the Oregon Attorney General’s Sexual Assault Task Force (2012).
To comply with this requirement, Oregon has developed a number of informational materials, including a Crime Victims' Rights Guide that is posted online and available in six languages. There is even a version available for adult victims as well as juveniles. The website also offers crime victims a wide range of detailed information, including specific guidance on how to request rights to be enacted in both a criminal adult proceeding as well as a juvenile delinquency proceeding.

Individual agencies can also provide information for survivors of SA or DV about their rights. One example can be found on the website for the San Diego Police Department, on the page entitled Your Rights as a Survivor of Sexual Assault. This agency also developed an informational form called Privileges and Relief Advisal that officers are required to provide for victims of SA and DV. It includes information about their rights as well as contact information for victim advocacy agencies and other resources within the community. The form is in multi-copy format, so victims are asked to sign to indicate that they received a copy – and a second copy is attached to the investigative file.

Unfortunately, we know that the practices used to inform victims of their rights are not consistently implemented across jurisdictions. Even within jurisdictions, practices frequently vary across different organizations despite the fact that the same law applies. Work thus remains to ensure that all victims of crime are properly informed of their rights as well as any appropriate services that can help assert and protect them.

**Copy of Police Report**

Information is not typically provided to victims about whether they have the right to obtain a copy of their police report. This is a right that is rarely described in explicit terms, yet it is something that many victims want or need and often have difficulty achieving on their own. For example, they may need a copy of the report to pursue their rights in terms of housing or employment (e.g., breaking a lease, or requesting time off work). Many victims also simply want to know if their statement to law enforcement was recorded accurately. With the assistance of an attorney, many victims have successfully argued for their right to obtain a copy of their police report, based on more general principles of due process. In fact, this can be seen as a basic requirement that is needed in order to ensure that other rights are meaningful. Further, even when this right is granted victims may be (and often are) required to pay for the police report. This fee may be waived for low-income victims, but it will likely require making a specific request.

We would like to see more states take steps to provide all SA and DV victims with the right to have a free copy of their police report. This would apply to the initial police report and the follow-up investigation, unless there is an open investigation being conducted and the release of these materials would jeopardize the investigation and prosecution. (California currently offers this right to victims of DV but not SA.) In the meantime, law

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4 California Family Code § 6228 (a) states that: “State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all
enforcement agencies should consider offering this service to victims as a matter of policy or practice, even if it is not specifically established as a right by law.\(^5\)

Informational materials can also be created to offer guidance for victims through the process of obtaining a copy of their report. One example is the brochure developed by the Minnesota Department of Public Safety: *How Do I Get a Copy of My Police Report?*

### Enforcement and Remedies

While we have made many important advances, the reality is that crime victims’ rights will remain illusory if there is no clear mechanism for asserting them or enforcing violations. As we have already noted, many crime victims’ rights are simply stated in broad or philosophical terms without any entity tasked with the responsibility for implementation. While such rights certainly remain legally enforceable – at least in theory – the task is challenging because the only recourse available for most victims is to pursue them in court (specifically through motion practice before the court). This is a difficult process that typically requires both legal representation and a significant investment of resources (including time, money, dedication, energy, and perseverance).

On the federal level, for example, the *Crime Victims’ Rights Act* states that victims can assert their rights in federal district court (or the victim’s representative, or the attorney for the Government may assert on the victim’s behalf). If these parties are not satisfied with the response, they can file a petition with the court of appeals which must issue a decision within 72 hours of filing, and if the appellate court denies the relief sought, it must state in a written opinion the reasons for the denial.\(^6\)

On a state level, victims may be able to seek remedies for violations of their rights through court. Here is an example of language in the state constitution for California:

\[A \text{ victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.}^{7}\]
While this explicit language exists in a number of states, in others a simple standing analysis reveals the same approach may be taken. In addition, some states have timelines for filling such a request with the court. In Oregon, for example:

*A victim must file a claim within 30 days of when the victim knew or should have known of a possible violation of a right* (Oregon Attorney General’s Sexual Assault Task Force, 2012).

Clearly, most victims will require the assistance of an attorney to pursue such remedies.

The National Crime Victim Law Institute (NCVLI) offers a Rights Enforcement Toolkit for attorneys representing crime victims who are seeking enforcement of their rights.

Because victims’ rights can arise at various stages in the legal process, the Toolkit has three parts: Pretrial, Trial, Post-Trial. Tools come in the form of video tutorials of rights, flowcharts that guide practitioners through the *how* and *when* of asserting rights, checklists to ensure they are making all of the best arguments, and sample pleadings. The Toolkit is meant as an overview, because every case is complex and every survivor unique. NCVLI’s legal team can provide in-depth technical assistance by contacting them through their website.

**Legal Assistance**

Depending on the jurisdiction, legal assistance may be available for victims through local legal aid offices, from members of the National Alliance of Victims’ Rights Attorneys (NAVRA) or programs funded by the Legal Services Corporation (LSC), which are “the primary source of legal assistance for women who are victims of domestic violence” (Jenkins, 2011, p. 16).

Yet the question remains whether this theory translates into practice, so crime victims can actually find a lawyer to help them assert their rights or represent them when their rights are violated. At least one study has documented that legal aid programs turn away half of those seeking help because they lack the resources to assist them:

*Despite the remarkable increase in support from non-federal sources, the national average shows that for every client served in 2009 by an LSC-funded program, at least one person who sought help was turned down because of insufficient resources* (State Bar of Michigan, 2014, p. 4).

Legal aid may also be provided to victims by attorneys funded through VAWA’s Legal Assistance to Victims (LAV) grant program. VAWA permits certain programs within the Office on Violence Against Women (OVW) to fund attorneys to work on “criminal matters relating to or arising out of domestic violence, sexual assault, dating, violence,
and stalking." This means there are lawyers across the country whose grants may allow them to provide legal assistance to victims seeking to assert their rights or pursue remedies for any violations in court. However, the legal work would need to be included within the scope of their OVW grant. This is therefore an activity that can be specifically described among the objectives for an OVW grant proposal.

To find out more about OVW’s Legal Assistance to Victims (LAV) program, the Institute for Law and Justice conducted an evaluation of grantees who served victims of domestic violence. (The LAV program was later expanded to cover victims of sexual assault and stalking as well.) One question was what type of programs were funded. Of the 156 grantees surveyed, most (63%) were legal services agencies serving either a single county or multi-county region. About 20% were “other types of agencies (e.g., victim services organizations, volunteer lawyer programs) that had a staff attorney, while 10 percent were other agencies without a staff attorney (e.g., coalitions) and 7 percent were law school clinics” (Institute for Law and Justice, 2005, p. 4).

The second question was how many victims were served. On average, each grantee agency provided legal representation in court for 120 domestic violence victims, while a much larger number of victims received legal advice and counseling. Even so, most programs had to turn away a considerable percentage of potential clients. Just over a third of the programs (36.5%) were able to provide legal services to most of the victims requesting them (between 80-100%), whereas another third (35.2%) could only handle 50-80% of the requests they received. Over one quarter (28.4%) provided services to fewer than half of the eligible victims who requested them. The authors of the report thus concluded that a significant unmet need remained:

> There is still a chronic unmet need for attorneys and other personnel to assist and represent domestic violence victims who cannot pay legal fees, either because of their poverty or because their access to financial resources is controlled by the batterer (Institute for Law and Justice, 2005, p. 1).

Even with the expansion of LAV funding to include victims of sexual assault and stalking, there remains a critical shortage in the number of attorneys who are able to serve the often desperate needs of crime victims. In addition to the lack of attorneys,
many jurisdictions explicitly state that crime victims lack legal standing to pursue any remedy on their own (or with their own legal representation). In these jurisdictions, only the prosecutor has standing to enforce a violation of a crime victim’s rights.

The **National Crime Victim Law Institute (NCVLI)** offers support in this area, by helping individual victims locate an attorney, providing training and technical assistance for attorneys, and filing amicus briefs to impact case law in this area. NCVLI generally does not provide direct legal advice to victims, so once NCVLI staff pair a victim with an attorney they will work with that attorney rather than directly with the victim.

The **Victim Rights Law Center (VRLC)** provides free legal services for victims of sexual assault in Oregon and Massachusetts, with state-specific grant funding. With OVW grant funding, they can also provide training, referrals, and legal technical assistance for attorneys and advocates on a national level for cases involving sexual assault.

### Individual Strategies

For most crime victims, the only realistic strategy to assert their rights or remedy any violation is to deal directly with the individual professional or agency involved. Advocates can often be helpful to victims as they attempt to achieve such resolution, as can other professionals in the criminal justice or community response system:

> Victim advocates are well positioned to help victims request their rights and to help them navigate the criminal and juvenile justice systems. They are a logical choice as the communication center for the information that needs to go to and from a victim and other responders. As this communication and broader advocacy hub, advocates need to be familiar with the language of victims’ rights, the specific rights that inform their advocacy and the possible ways to have rights enforced or otherwise honored (Oregon Attorney General’s Sexual Assault Task Force, 2012, p. 88).

Sometimes support people, such as family and friends, can also be helpful in this role. If the initial attempt to address such an issue fails, the next step may be to raise it with the supervisor or chief administrator of the agency involved. A formal grievance may also be filed. If this strategy also fails, victims can contact a statewide agency involved in crime victims’ rights issues (e.g., Attorney General’s Office, Department of Public Safety, or other similar entity). However, the agency with responsibility for addressing crime victims’ rights will vary by state, and the chances of achieving a successful resolution will similarly vary.

Some states are leading the way to implement a process for victims to pursue remedies for violations outside court. In Oregon, for example, laws enacted in 2009 allow for a
non-judicial process for victims through the Crime Victims’ Services Division of the state Attorney General’s Office. There are no required timelines for initiating this process (Oregon Attorney General’s Sexual Assault Task Force, 2012).

Remaining Challenges

Clearly, existing resources are insufficient to meet the many legal needs of crime victims who need help asserting their rights or seeking to remedy any violation. Moreover, some court decisions have served to undermine the efficacy of crime victims’ rights legislation. For example, the Wisconsin Supreme Court ruled in 2005 that some of the “rights” afforded to crime victims in the opening paragraph of the state constitution’s victims’ rights amendment represented a statement of purpose rather than actual rights:

*We conclude that this constitutional provision is a statement of purpose that describes the policies to be promoted by the State and does not provide an enforceable, self-executing right.*

This is therefore an area where dedicated resources are needed to expand the availability of legal resources, both to advocate for the rights of individual victims but also to push for changes that will benefit all victims of crime within the court system. If the current state of the law fails to meet the critical needs of crime victims, then the professionals who work with victims may need to collectively pursue legislative changes. To guide this effort, it is helpful to look at a few jurisdictions that have taken proactive measures to translate the theory of crime victims’ rights into practice. We turn our attention to such examples and innovations in the final installation in this series.

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

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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.

References


