



End Violence Against Women International  
(EVAWI)

# Crime Victims' Rights: Protecting Crime Victims' Rights

## Part 1

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## Authors

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Sgt. Joanne Archambault (Retired, San Diego Police Department) is the Chief Executive Officer for EVAWI. In 2003 prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for almost 23 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which had 13 detectives and was responsible for investigating approximately 1,000 felony sexual assaults each year. Sgt. Archambault has provided training for tens of thousands of practitioners, policymakers and others – both across the country and around the world. She has been instrumental in creating system-level change through individual contacts, as well as policy initiatives and recommendations for best practice.



## **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



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.<sup>1</sup>

On the federal level, the US constitution does not currently include a crime victims' rights amendment. The federal [Crime Victims' Rights Act \(CVRA\)](#)<sup>2</sup> 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.

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*.

<sup>1</sup> 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](#).

<sup>2</sup> 18 U.S.C. 3771



- The right to full and timely restitution.<sup>3</sup>
- The right to proceedings free from unreasonable delay.<sup>4</sup>
- 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.<sup>5</sup>
- 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).<sup>6</sup>

## 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:

For one example of crime victims' rights and their statutory references, please see: [The Rights of Crime Victims in New York State](#).

- The right to have one's name (or other private information) withheld from public records, or to use a pseudonym or substitute address.<sup>7</sup>
- The right to seek an emergency protection order.

<sup>3</sup> Restitution is payment of money from the offender to the victim to compensate for losses incurred from the crime.

<sup>4</sup> This right is often also phrased as the right to a speedy disposition.

<sup>5</sup> 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](#).

<sup>6</sup> 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.

<sup>7</sup> 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 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.
- 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](mailto: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

The Victim Rights Law Center (VRLC) offers a [chart summarizing the protection orders available to sexual assault victims](#) in each state.



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 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:

*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](mailto: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.<sup>8</sup>

<sup>8</sup> 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.

<sup>8</sup> 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."

<sup>8</sup> *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 [9<sup>th</sup> Circuit Court of Appeals](#).

<sup>8</sup> *State v. Barrett*, 350 Or. 390 (2011).



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.

For more information on forensic compliance, please see the section of our [website](#) dedicated to this topic, which includes background information as well as links to a number of articles, resources, FAQ's, and other tools designed to assist communities with implementation.

Another valuable resource is our [OnLine Training Institute \(OLTI\)](#) module entitled: *The Earthquake in Sexual Assault Response: Implementing VAWA Forensic Compliance*.

## 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

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.

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.

Legal Momentum offers a state-by-state guide [outlining employment rights](#) of sexual assault and domestic violence victims.

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.

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](mailto: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.<sup>9</sup> 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).*

<sup>9</sup> 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."

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.<sup>10</sup> 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.<sup>11</sup>

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., incarcerated individuals,<sup>12</sup> 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).

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<sup>10</sup> *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 [9<sup>th</sup> Circuit Court of Appeals](#).

<sup>11</sup> *State v. Barrett*, 350 Or. 390 (2011).

<sup>12</sup> 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).



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](mailto: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.





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# Crime Victims' Rights: Implementation and Enforcement

## Part 2

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- 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.<sup>1</sup>

## 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.”<sup>2</sup> 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.<sup>3</sup>

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

<sup>1</sup> Or Const Art 1 § 42 (1) (g), ORS 147.417. ORS 419C.273 (1) (b).

<sup>2</sup> 21 O.S. 142 A-2.

<sup>3</sup> 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).

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.<sup>4</sup>) In the meantime, law

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<sup>4</sup> [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 domestic violence incident reports, or both, to a victim of domestic violence, or to his or her representative as defined in subdivision (g), upon request."

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.<sup>5</sup>

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.<sup>6</sup>

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 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.*<sup>7</sup>

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:

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<sup>5</sup> For more information, the Reporters Committee for Freedom of the Press has compiled a [state-by-state summary of laws](#) governing access to police records. The sad reality is that reporters often have more success obtaining police records than victims do, because they know the relevant laws and procedures. Reporters also frequently have the assistance of an attorney, which victims do not typically have.

<sup>6</sup> For a description of this process, please see the website for the [Office for Victims of Crime](#).

<sup>7</sup> Cal. Const. art. I, § 28, cl. c1.

*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."<sup>8</sup> 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

<sup>8</sup> These programs are: The Legal Assistance for Victims (LAV) Grant Program, Rural Sexual Assault, Domestic Violence, Dating Violence and Stalking Assistance Program, STOP Violence Against Women Formula Grant Program, Justice for Families Grant Program, and the Tribal Governments Program.

remedies for any violations in court.<sup>9</sup> 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.

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<sup>9</sup> For the purpose of OVW grant programs, the definition of legal assistance is as follows:  
*The term "legal assistance" includes assistance to adult and youth victims of domestic violence, dating violence, sexual assault and stalking in—*  
(A) Family, tribal, territorial, immigration, employment, administrative agency, housing matters, campus administrative or protection or stay away order proceedings, and other similar matters; and  
(B) Criminal justice investigations, prosecutions, and post-trial matters (including sentencing, parole, and probation) that impact the victim's safety and privacy.  
*Intake or referral, by itself, does not constitute legal assistance.*

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.<sup>10</sup>*

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 installment 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 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.

<sup>10</sup> *Schilling v. Crime Victims Rights Bd.*, 692 N.W.2d 623 (Wisc. 2005).



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](mailto: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.

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End Violence Against Women International  
(EVAWI)

# Crime Victims' Rights: Examples and Innovations

## Part 3

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- 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
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- Donna Purdy, Deputy Executive Director, Colorado Organization of Victim Assistance



This is the final installment in our three-part series of training bulletins on crime victim rights, developed in honor of Crime Victim's Rights Week. In it, we offer some examples and innovations in the field, including “the Colorado example” and the Victim Legal Counsel (VLC) / Special Victims' Counsel (SVC) now available in the US military.

## The Colorado Example

Colorado may offer the most comprehensive example of how to protect and enforce crime victims' rights. In fact, one reason the program has been so widely viewed as successful is because it offers mechanisms for compliance as well as enforcement, and because both aspects have been funded on a consistent, statewide level.

## Information on the Program

In Colorado, the [Victim Rights Act \(VRA\) Compliance Program](#) is housed in the Office for Victims Programs in the Department of Public Safety, Division of Criminal Justice (DCJ). Their website offers detailed information on the rights afforded to crime victims as well as the procedures designed to protect them. This information is also included in brochures that are available in English as well as several other languages. In fact, one of the rights that crime victims in Colorado are specifically granted is the right to be informed of the process for enforcing compliance with the VRA.

## Specified Roles and Responsibilities

One aspect that makes Colorado laws on crime victims' rights particularly strong is the fact that specific responsibilities for honoring these rights are spelled out in the law for each of the following entities:

- Law Enforcement
- District Attorney
- Court
- Department of Corrections
- Division of Youth Corrections
- Juvenile Parole Board
- State hospitals
- Private and public community corrections agencies, and
- Probation

For each of the criminal justice agencies, a document is also posted on the DCJ website highlighting the agency's [roles and responsibilities](#) in protecting crime victims' rights.

## Pursuing Remedies for Violations

Even more important, Colorado's statute contains a provision that allows victims of crime to file complaints as to any alleged violation of their rights. As described on the [website](#), the process is as follows. First, victims are encouraged to "attempt to seek compliance at the local level," with the type of strategies that have already been described (e.g., contacting the person involved or a supervisor or chief administrator of the agency). Victims are further advised that:

*Contacts may be verbal or in writing. Accurate records of your efforts to seek compliance at the local level will be helpful to you and to the Coordinating Committee should you decide to file a formal request for compliance with the Victim Rights Act.*

If this attempt fails, victims may then contact a VRA Specialist at DCJ to request informal assistance with the resolution of their concern. Alternatively, victims can also file a formal complaint with the VRA subcommittee, which is part of the larger Crime Victim Services Advisory Board and makes all final determinations regarding rights violations.

The formal VRA complaint process is described in detail on the [DCJ website](#), along with a variety of helpful documents for victims, such as:

- [Crimes that fall under the VRA](#)
- [Your rights as a victim of a VRA crime](#)
- [What to expect when you file a VRA complaint](#)
- [Responsibilities of each criminal justice agency](#)
- [Limitations of Colorado's VRA](#)
- [Questions to assist you in deciding to file a formal complaint](#)

If victims do decide to proceed with a formal complaint, they can print out the posted [complaint form](#) and follow the procedures outlined to submit it. Such detailed guidance constitutes a best practice for ensuring that crime victims' rights are meaningful.

## Compliance Mechanisms

The most unique aspect of Colorado's response, however, may be the real possibility of compliance actions. This is described on their [website](#):

*If it is determined that a victim of crime has not been afforded his or her rights under the VRA, efforts are made to change the criminal justice system to prevent future failures to provide a victim with his or her rights.*

It is very rare for a state agency to have such power to compel future compliance, and in the Colorado example, it is clear that these are not just words.

As described in an early evaluation report sponsored by the Office for Victims of Crime, US Department of Justice (hereinafter referred to as the OVC Report), most complaints that are made to the VRA subcommittee are resolved informally. However, some formal complaints do result in enforcement actions. This process begins with an investigation, and if the VRA subcommittee finds that the complaint does have a basis in fact, they will respond by setting forth directives for the agencies identified to have committed the violations.

*The subcommittee then asks the identified agencies to outline the steps that will be undertaken to rectify the violation. The subcommittee may accept the proposed plan or ask for revisions (OVC Report, p. 13).*

There are a variety of procedures available for alternative scenarios. If the plan is not agreed upon by the agency, the case is referred to the full coordinating committee for review. An appeals process is also available to all parties. However, if the agency does not comply with the directives and all other attempts at resolution have failed, the case is ultimately referred to the Governor's Office and the Colorado Attorney General (OVC Report, p. 13). In other words, the enforcement process actually has "teeth."

Given the many strengths of this program, other states can follow Colorado's lead and work toward advocating such an approach in their own state.

### **Victim Legal Counsel (VLC) / Special Victims' Counsel (SVC)**

Another innovation worth highlighting are the programs in the US military offering victims their own legal counsel. These programs are described as Victim Legal Counsel (VLC) or Special Victims' Counsel (SVC), depending on the branch of service.

In January 2013, the US Air Force established an initiative called the Special Victims' Counsel (SVC) program. SVCs were originally Air Force lawyers drawn from the Judge Advocate General's (JAG) Corps who were appointed to represent sexual assault victims in the US military who want confidential legal advice and representation. Based on the initial success of the program, the Department of Defense announced in November 2013 that the program was expanded to other branches of the US military. More recently, these programs for providing victims' legal counsel are expanding to include services to child victims who are military dependents.

Victims' counsel through the VLC and SVC programs are provided to victims at the expense of the US military, and they undergo specialized training to supplement their prior litigation experience before beginning their work. All victims' counsel attorneys serve outside the chain of command for both the victim and the suspect.

One seasoned Air Force prosecutor described how his experience as an SVC provided him with a different perspective on sexual assault cases:

*Sometimes prosecutors are so intent on getting a conviction that it's possible to lose sight of the human factor ... If you're not cautious, that responsibility can make you look at a victim as just another piece of evidence. An SVC sees that human factor much more clearly than a prosecutor might (Major John Bellflower, quoted in Griggs, 2013).*

The article goes on to describe the specific role of victims' counsel:

*SVCs [and VLCs] cover the full scope of their representation at the first meeting with a client. They can provide advice to clients and advocate their interests to investigators, trial counsel, defense counsel and commanders. By phone or in person, SVCs [and VLCs] can attend interviews the victims have with investigators, trial counsel and defense counsel. They can answer questions their clients have about the investigatory and military justice processes and protect the privacy interests of victims (Griggs, 2013).*

Victims' counsel attorneys can also assist with certain civil matters, and make referrals to community resources. To access the services of an SVC or VLC, sexual assault victims do not need to file a formal, investigative report (known as an unrestricted report, in the US military). This allows them to consult with a legal representative before making decisions regarding whether to file a restricted or an unrestricted report.

Although the program has only been in operation for a few years at the time of this writing, SVCs and VLCs have already represented hundreds of sexual assault victims and the program is widely viewed as a positive model for other jurisdictions. Enacting a similar program for the civilian justice system could offer one strategy for achieving the full vision of crime victims' rights across all US states and territories.

## Conclusion

Crime victims' rights are often overlooked as a critical tool in our efforts to increase victim participation and well-being within the criminal justice system. Only when victims can engage the process – and remain engaged over time – will we be able to offer them the chance to pursue justice and to hold perpetrators accountable.

In fact, research documents that victims in states with strong protection laws are more likely to have their rights honored and they are *more likely to participate in the criminal justice process*. Equally important, victims whose rights have been honored, and who feel their participation has had an impact on their case, are also more satisfied with the process overall (Kilpatrick, Beatty, & Smith Howley, 1998).



*A process that gives crime victims a respectful and meaningful role will change how the justice system functions from first contact with victims by law enforcement, to defense attorney and prosecutor roles, to courtroom design, to considerations of victim safety (Oregon Attorney General's Sexual Assault Task Force, 2012, p. 88).*

One strategy that has already been mentioned for achieving this goal is to help ensure that victims have access to a lawyer to assert, protect, and enforce their rights, similar to the rights guaranteed every suspect and defendant arrested and charged. Another may be to advocate for incorporating crime victims' rights into state, tribal, and territorial constitutions. This can elevate both their importance and enforceability, because this places them on legal par with the rights of defendants.

The specific strategies for achieving the vision of crime victims' rights will require debate. However, the broader goals are ones we share as professionals working in this field. We hope this training bulletin can help to move us forward by generating discussion and inspiring action, both on the individual as well as the collective level. Together, we share responsibility for identifying and enacting strategies to ensure that they are as strong as they can be and that they are meaningfully enacted and protected.

## 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).

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