

## **Victims and the Public Prosecutor: A Victim's Journey through the Criminal Court System**

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These materials were developed under a cooperative agreement with the U.S. Department of Justice, Office for Victims of Crime (OVC). OVC funded The University of Massachusetts Lowell, Department of Criminal Justice and Criminology, along with partners from the University of Massachusetts Boston, University of Massachusetts Dartmouth, and University of Massachusetts Medical School to develop innovative, multidisciplinary education models that address victimization issues and responses to crime victims.

### **Purpose**

The purpose of this curriculum kit is to provide college students with an overview of the official relationship between the public prosecutor and a victim and the victim's role in the processing of a case through the criminal court system. It is critical that students understand that the public prosecutor does not simply represent a victim's interests. The public prosecutor is not like a private attorney in a civil case. It is also important that they know what the victim's role is, and what support the victim may have access to, as the case goes through different stages of the court process.

### **Learning Objectives**

After completing this curriculum kit, students should be able to:

- Describe the role of the prosecutor.
- Describe the role of a crime victim in the court process.
- List the different stages of the court process for both misdemeanors and felonies.
- Describe what a victim may expect at each stage of the court process.
- Describe the assistance the victim may expect to receive as the case is processed through the court system.

### **Time Required**

Completion of the curriculum kit materials and assignments will require 50 – 75 minutes of class time.

The curriculum kit may be expanded to include additional readings and discussion related to the nature, extent, and impact of victimization. Suggestions for doing so are included.

## **Required Materials**

- Equipment needed to use PowerPoint as an instructional tool.

## **Suggested Courses**

This curriculum kit can be modified for use in courses of different disciplines, including but not limited to criminal justice, psychology, sociology, nursing, social work, business and history.

## **Directory of Materials**

1. Faculty Materials
  - a. *Victims and the Public Prosecutor: A Victim's Journey through the Criminal Court System* Faculty Guide
  - b. *Victims and Public Prosecutor PowerPoint* presentation
  - c. Recommended Outside Readings for Faculty
  - d. Additional Related Activities or Assignments
2. Student Materials
  - a. Student Reading, *Dealing With the Prosecutor and the Court System*
  - b. National Resources for Victims of Crime Handout

This curriculum kit was created as a part of the National-Scope Demonstration Project to Integrate Crime Victims' Issues into University and College Curricula. The project is funded by a grant from the Office for Victims of Crime (OVC, a component of the Office of Justice Programs within the U.S. Department of Justice) to achieve the project goals of increasing the numbers of students exposed to information about crime victims and interested in working with crime victims, and thereby improve the future provision of services to crime victims.

## Introduction and a Note to Faculty

This Faculty Guide includes guidance on implementing the curriculum kit, including recommended talking points for the PowerPoint presentation and related in-class discussion and assignments. The larger curriculum kit includes supplementary materials to provide faculty with additional background knowledge, if desired, and guidance on teaching about victimization.

Please review all materials thoroughly prior to use.

## PowerPoint Presentation/Class Lecture

*Note to Faculty:*

In preparation for this lecture, instructors need to research state law to determine what rights crime victims have in their state with regard to (a) notification of what is occurring in a criminal case and (b) the input victims have in the decision making process. Information about victims' rights can be found at [www.victimlaw.org](http://www.victimlaw.org)



### **Slide 1.**

*Suggested Talking Points:*

While the first slide is on display, instructors should introduce the purpose of this curriculum kit to the students (a brief summary of the first paragraph of this Faculty Guide should suffice).

Faculty should be prepared to respond to disclosures from students regarding their own experience of victimization and the criminal court process (either personally or knowledge of a friend or family member's experience). While this curriculum kit does not specifically request the sharing of personal experiences, students may choose to share this information.

During this first slide, faculty should remind students to respect the opinions and experiences of others if shared during this lecture and remind them not to share this information outside of the classroom. Faculty should consult the *Teaching About Criminal Victimization: Guidelines for Faculty*, located in the Faculty Involvement section, for additional information and guidance.



### **Slide 2.**

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The project is designed to:

- Broaden college and university students' awareness of crime victims' issues and knowledge of appropriate responses;
- Increase the number and diversity of students exposed to and educated in crime victims' issues;
- Give victim issues a new level of prominence in university and college curricula.

*Note to Faculty:*

Faculty should be aware of the appropriate professional resources for students who are victims of crime. In preparation for this lecture, faculty may find it helpful to develop a short list of campus and local community resources that can be used to refer students to, as well as including some national resources.

Modify the resources on the next two slides and provide appropriate contact information for your campus. It is helpful to have these resources available to share with students who come to the office, as well as available for students to access without talking to faculty, such as including them in the syllabus and online via course and faculty Web pages. National resources are included on the National Resources for Crime Victims. Have enough copies to hand out to each student.



**Slide 3.**

**Student Resources**

Campus resources to list typically include:

- Counseling.
- Health services
- College chaplain/faith community.
- Dean of students.
- Women's center.
- Campus police.



**Slide 4.**

Local community resources to list typically include:

- Rape crisis center.

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- Domestic violence shelter agency.
- Local or county victim-witness office (often a part of the prosecutor's office).



**Slide 5.**

**National Resources Information**

A list of national resources for victims of crime appears at the end of this curriculum kit.



**Slide 6.**

*Suggested Talking Points:*

Review the topics that are covered in this curriculum kit.



**Slide 7.**

*Suggested Talking Points:*

Crime victims often encounter difficulties negotiating the court system and need to be given information about the court system and the role of the public prosecutor.



**Slide 8.**

*Suggested Talking Points:*

Note that a public prosecutor is also known as the District Attorney, County Attorney, or State's Attorney.



**Slide 9.**

*Suggested Talking Points:*

For the most part, the public prosecutor is dealing with suspects who have been arrested by the police. In this situation, the public prosecutor has two decisions to make:

- Whether or not to prosecute the suspect.
- If the suspect is to be prosecuted, with what offense or offenses the suspect is to be charged.

Occasionally the public prosecutor may initiate investigations into alleged criminal conduct.



**Slide 10.**

*Suggested Talking Points:*

There are many factors that can influence the prosecution of a case. While most of the factors relate to whether the public prosecutor can win the case in court, it must be recognized that public sentiment about the case and the fact that the public prosecutor is an elected official may result in the public prosecutor pursuing or dropping the case due to political pressure.

Case factors include:

- Seriousness of alleged offense.
- Strength of evidence available against suspect.
- Background characteristics of suspect.
- The characteristics and attitudes of the complainant or victim.



**Slide 11.**

Political factors include:

- The prosecutor's own needs of seeing cases move through the office.
- Possible public reaction to the decision.
- The prosecutor's ongoing relationship with other criminal justice personnel.



**Slide 12.**

*Suggested Talking Points:*

The way in which the court case appears in the docket highlights the fact that it is the state, not the victim, as the official complainant in the case.

- The case will appear as: **State vs. Offender** (e.g. *Commonwealth of Massachusetts v Jones*)...
- Rather than a civil case when parties will appear as: **Complainant vs. Defendant** (e.g. *Smith v Jones*).

The prosecutor (DA) is not the victim's personal attorney representing only the victim's interest as would occur in a civil case.

*Note to Faculty:*

It is important to include this technical legal point because it is a point of considerable confusion for victims of crime and others when they encounter the criminal justice system. Although they were the direct victims of the crime, they are not in fact in control of case decisionmaking, which is highlighted by the case appearing as the state versus the offender.



**Slide 13.**

*Suggested Talking Points:*

The victim and the public prosecutor may not see eye-to-eye with regard to whether the offender should be prosecuted, what the charges should be, or how the case should be resolved.

The public prosecutor's job is to decide what is in the best interests of the people, which may not be what the victim wants. Victims do not have decisionmaking abilities in the prosecution of a case. Therefore, if the prosecution decides not to charge an offender, victims generally have no formal avenue of appeal.

No public prosecutor's office has sufficient staff to prosecute the offender to the full extent in every case, so priorities must be set.



**Slide 14.**

*Suggested Talking Points:*

The victim's official role is that of a witness.

In the criminal court system, the victim may be called as a witness. While this slide focuses on the official relationship between the public prosecutor and the victim, it should be noted that the public prosecutor, or the Public Prosecutor's Office, in particular through victim advocates who may be assigned to the office, can fulfill some functions outside this official narrowly defined scope of duties, such as referring the victim to counseling.



**Slide 15.**

*Suggested Talking Points:*

A victim's desire not to testify and the public prosecutor deciding not to have the victim testify constitute two separate, but interrelated, issues. A victim may not want to testify for a variety of reasons. These include:

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- Being threatened and fearing retaliation.
- Being in the country illegally and fearing deportation.
- Being engaged in activities he/she does not want to talk about publicly.

The public prosecutor may elect not to have a victim testify for many reasons, including sparing the victim the additional trauma that may come with testifying or because the prosecutor believes that having the victim testify may lessen the chances of a conviction. Ultimately, it is up to the public prosecutor whether or not a victim will testify for the prosecution.

Although infrequently used, the prosecutor can subpoena a victim to testify (have a court order issued ordering the victim to appear in court). A victim who refuses to appear in court can be held in contempt of court, although again, that is infrequently done.

The impact of these decisions can make victims feel that they are being blamed for their own victimizations, particularly if they feel they are not being called to testify because of their past behavior, such as being intoxicated during the victimization or having a criminal record.

It must be stressed that a prosecutor's judgment call not to have a victim give evidence does not mean the prosecutor thinks it is the victim's fault or does not want to hold the offender accountable. The prosecutor is using her/his judgment about what she/he believes will secure a conviction.



**Slide 16.**

*Note to Instructor:*

Emphasize to students that there are 50 jurisdictions and they all have their own procedures and language/laws. It is critical that students must research the laws and procedures in their own jurisdictions.

For the steps that are generally followed in the criminal justice process, go to: [www.bjs.gov/content/largechart.cfm](http://www.bjs.gov/content/largechart.cfm) This Web address is included in the Student Reading assignment of this curriculum kit.



**Slide 17.**

*Suggested Talking Points:*

Although laws and procedures vary among jurisdictions, these are the common steps:

- Step 1: Arrest Suspect
- Step 2: Book Suspect

### Step 3: Suspect is Held or Released

The criminal court process may begin either before or after a suspect is arrested.

- In some cases, a warrant will be issued for the arrest of a suspect.
- Most commonly, the police will arrest a suspect without a warrant
- After arrest, the suspect will be taken to the police station and booked.
- If the suspect has committed a minor offense instead of being taken to the police station, he/she may be issued a summons.
- The suspect may either be released or held in a cell pending court if taken to the police station.



#### **Slide 18.**

*Suggested Talking Points:*

### Step 4: Initial Court Appearance

Purpose:

- To notify the accused of the charges.
- To advise the accused of his or her right to be represented by a lawyer.
- To consider pretrial release of the accused.
- To inform the accused of his/her right to a preliminary hearing (if the offense charged is a felony).

In compliance with U.S. Supreme Court mandates, state laws require that the initial court appearance be held a short time after the arrest has taken place (24-48 hours). It is usually held in one of the lower trial courts.



#### **Slide 19.**

*Suggested Talking Points:*

For misdemeanor cases:

### Step 5: Trial

- Must prove guilt beyond reasonable doubt.

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- Alternative to trial: Plea agreement.
- Step 6: Sentencing
- Possible sanctions: fine, imprisonment, probation.

Step 7: Appeal

- Defendant can appeal case to higher court.

Prior to trial, motions may be brought by a defendant. For example, he/she may submit a motion to suppress evidence that he/she alleged was illegally seized.

A plea agreement is an agreement made between the prosecutor and the defendant whereby the defendant agrees to plead guilty to a lesser charge, to one of a number of charges, or to the offense charged in return for the public prosecutor's recommendation to the judge that the defendant receive a lighter sentence than might otherwise be imposed.

In a misdemeanor trial, the judge will almost always be the one to determine innocence or guilty. If the defendant is found guilty, the judge will move to sentencing.



**Slide 20.**

*Suggested Talking Points:*

For felony cases:

Step 5: Preliminary Hearing

The preliminary hearing is the formal court proceeding at which the prosecution must show that there is sufficient evidence to hold the defendant for trial in superior court. This decision is made by the judge after hearing evidence and witnesses.

In the preliminary hearing:

- Victim faces defendant and can be cross-examined by the defense.
- The defendant can see and challenge the prosecutor's case.
- The evidentiary standard of "probable cause" is less than the standard of proof for conviction "beyond a reasonable doubt" required at trial.
- The defendant does not have a federal constitutional right to a preliminary hearing

The preliminary hearing can be an uncomfortable experience for the victim (this point will be elaborated on in the next slide, Victim Experience.)

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Step 6: Grand Jury

- Defense not present.
- Purpose of Grand Jury: same as preliminary hearing: to test the sufficiency of the prosecutor's case.
- The grand jury hearing is conducted in secret and is non-adversarial in nature
- The prosecutor presents the jury with a Bill of Indictment which states the formal charges.
- The grand jury nearly always returns a "True Bill"

Step 7: Superior Court Arraignment

- Enters plea of Guilty or Not Guilty.
- At arraignment, if the accused enters a plea of guilty the court proceeds to sentencing.

Step 8: Trial by Jury

Step 9: Sentencing

Step 10: Appeal



**Slide 21.**

*Suggested Talking Points:*

Remember that each jurisdiction is unique, so whether a person is entitled to a right depends on both the rights as defined by the jurisdiction and the definition of "victim."

In most jurisdictions, the legal definition of victim is broad and includes persons beyond those who are the "direct" victim of the crime. For example, surviving family members of homicide victims, guardians of minors, and other selected representatives are included in many jurisdictions' definition of crime victim.



**Slide 22.**

*Suggested Talking Points:*

Until recently, victims were rarely informed about the court process or the progress of their case and had little input into the prosecutorial decisions. Nor were they told what to expect in court.

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Victims' rights legislation such as the Justice for All Act of 2004 strengthened the victim's position. The Justice for All Act was enacted to protect crime victims' rights, eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, and improve and expand the DNA testing capacity of federal, state, and local crime laboratories.



**Slides 23 and 24.**

*Suggested Talking Points:*

The first section of the Act establishes the rights of crime victims in federal criminal proceedings and provides mechanisms for enforcing these rights. It was an important first step toward achieving true justice for victims of crime.

The Justice for All Act of 2004 grants the following eight rights to victims of federal crime:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime, or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the Government in the case.
- The right to full and timely restitution as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

The full contents of the Justice for All Act of 2004 is available at [www.justice.gov/olp/pdf/jfaa2004.pdf](http://www.justice.gov/olp/pdf/jfaa2004.pdf)



**Slide 25.**

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*Suggested Talking Points:*

The victims' rights movement is moving from a process that is adversarial in nature to one that highlights the harm suffered by both victims and their communities and seeks to restore their well-being.

Restorative justice is an approach to justice that emphasizes repairing the harm caused or revealed by criminal behavior and holding the offender accountable through a reparative process (e.g., apologizing, returning stolen goods, performing community service). Victims take an active role in the process. It is best accomplished through cooperation of all involved, including the government, victim services agencies, the criminal justice system, and law enforcement.



**Slide 26.**

*Suggested Talking Points:*

Financial support given to victim assistance programs is provided by the federal government through the Victims of Crime Act (VOCA).

Victim assistance is allocated based on the size of the population of states and territories.

States must give 10 percent of funding to victims who were not given assistance in the past, including family members of homicide victims, adults molested as children, victims of robbery and sexual assault, and victims of drunk driving and elder abuse.



**Slide 27.**

*Suggested Talking Points:*

By providing victims with the desired information and assistance, victim advocates fulfill the important function of seeing that victim needs and desires are addressed.

Victim advocates:

- Explain the legal processes.
- Provide updates on cases.
- Accompany victims.
- Assist with legal processes (e.g., filing restraining order).
- Link to services for various needs (e.g., emotional and physical safety).



**Slide 28.**

Summarize that the criminal court process can be confusing to a victim and that the prosecutor's responsibility is to the "people" and not necessarily the needs or desires of the victim. Fortunately, victims' rights legislation has helped provide victims with education and support through the process.

**Recommended Outside Readings for Faculty**

The following are suggested reading materials and resources for faculty. Faculty may also require students to review one or more of the following prior to the class lecture, if desired.

- For general information about the court process, see: Neubauer, D.W., & Fradella, H.F. (2011). *America's courts and the criminal justice system*. Belmont, Ca: Wadsworth; Siegel, L.S., Schmalleger, F., & Worrall, J. L. (2011). *Courts and criminal justice in America*. Saddle River, N.J: Prentice Hall.
- For general information on the Justice for All Act of 2004, see: OVC. *Fact sheet: What is the Justice for All Act?* Available at:  
<http://www.ojp.usdoj.gov/ovc/publications/factshts/justforall/content.html>
- For more information about pretrial release and considerations of victim safety see: 18 USCS Sec. 3142; Neubauer et al. (2011), ch. 11; and, Siegel et al, (2011), ch. 11,
- For more information about victim impact statements see OVC. (1999). *Promising victim-related practices and strategies in probation and parole*, Ch. 2. Washington, D.C.: U.S. Department of Justice. Available at:  
<http://www.ovc.gov/publications/infores/probparole/probparole.pdf>.
- For more information about rape shield laws see: Call, J.E., Nice, D., & Talarico, S. M. (1991). An analysis of state rape shield laws. *Social Science Quarterly*, 72, 774-788.
- For more information about restorative justice see: OVC. (1999). *Promising victim-related practices and strategies in probation and parole*, Ch. 4. Washington, D.C.: U.S. Department of Justice. Available at:  
<http://ojp.usdoj.gov/ovc/publications/infores/probparole/probparole.pdf>.
- For more information about victim input into plea agreements see: OVC. (2002). *Victim Input Into Plea Agreements, Legal Series Bulletin#7*. Washington, D.C.: U.S. Department of Justice. Available at:  
[https://www.ncjrs.gov/ovc\\_archives/bulletins/legalseries/bulletin7/welcome.html](https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin7/welcome.html)

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- For additional information about restitution, see also: OVC. (2002). *Ordering restitution to crime victims, Legal Series Bulletin#6*. Washington, D.C.: U.S. Department of Justice. Available at:  
[http://www.ncjrs.gov/ovc\\_archives/bulletins/legalseries/bulletin6/ncj189189.pdf](http://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin6/ncj189189.pdf)
- Brady v. Maryland 373 U.S. 83, 87 (1963).
- Baldwin v. N.Y. 399 U.S. 117 (1970).
- OVC. (2005). Attorney General guidelines for victim and witness assistance. Washington, D.C.: U.S. Department of Justice. Available at:  
[http://www.justice.gov/olp/pdf/ag\\_guidelines.pdf](http://www.justice.gov/olp/pdf/ag_guidelines.pdf)
- OVC. (2006). Introductory Workshop Participant Manual: A component of the project “Victims of Crime: A Social Work Response Building Skills to Strengthen Survivors.” Available at:  
[www.ojp.usdoj.gov/ovc/assist/NASW\\_Kit/pdf/02\\_participant\\_manual.pdf](http://www.ojp.usdoj.gov/ovc/assist/NASW_Kit/pdf/02_participant_manual.pdf)
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<http://ojp.usdoj.gov/ovc/publications/infores/probparole/probparole.pdf>
- <http://ojp.usdoj.gov/ovc/welcovc/reporttonation2009/ReporttoNation09Part2.pdf>
- OVC. (2009). Report to the nation for fiscal years 2007-2008, Washington, D.C.: U.S. Department of Justice. 18 U.S.C. 3771(a).
- OVC (2013). VictimLaw. Available at: [www.victimlaw.org/](http://www.victimlaw.org/)

### **Additional Related Activities or Assignments**

If instructors would like to expand upon the lecture, the following are suggestions of student assignments and in-class discussions that can augment the primarily didactic PowerPoint.

1. To what extent do you believe the public prosecutor should represent the victim’s interests in deciding how to proceed with a criminal case? What factors should determine the decision?

*Note to Faculty:*

Faculty can pose these questions to the class and facilitate a full-class or small group (with report back to the larger class) discussion.

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2. What rights does your state law provide victims with regard to (a) notification of what is occurring in a criminal case and (b) the input they have into the decision making process? What rights do you believe they should have?

*Note to Faculty:*

Faculty should research these questions prior to the lecture. Faculty may present the state law information to the class and then facilitate a large group discussion regarding victims' rights. Alternatively, the students can research these questions as a take-home assignment and either submit a written response or verbal summary in class.

3. Have students find out whether their local public prosecutor's office has a victim witness advocate and if it does what the duties of the victim witness advocate are.

*Note to Faculty:*

Faculty may choose to break the class into groups and have each group contact a different prosecutor's office in the state. Each group can then share its findings with the class while faculty highlights the similarities and differences among the offices. Faculty can then engage the students in a discussion about why these similarities and differences occur and whether they are helpful or detrimental.

Faculty may also choose to make this a written assignment that each student completes individually.

4. Have students find out whether there is a domestic violence, rape crisis or child advocacy organization in their community that provides victims with assistance as they negotiate the court system. If there is such an organization, have them describe the assistance the organization provides victims of crime as they deal with the prosecutor and the court system.

*Note to Faculty:*

Faculty may choose to have students work individually or in pairs for this assignment. This activity may be a written assignment or an in-class oral presentation.

## **References**

Hirschel, D. (2013). "Victims and the public prosecutor: A victim's journey through the criminal court system." Lowell, MA: University of Massachusetts Lowell.

## **National Resources for Crime Victims**

Crime victims and those who know them or work with them can face a number of issues for which support can be helpful. Listed below are a number of national resources. Other places to look for support can be Employee Assistance Programs (EAPs) at work, campus resources for college students, and state victim assistance programs.

### **Victims of Crime**

The National Center for Victims of Crime

[www.victimsofcrime.org/help-for-crime-victims](http://www.victimsofcrime.org/help-for-crime-victims)

### **National Organization for Victim Assistance**

800-TRY-NOVA

[www.trynova.org/](http://www.trynova.org/)

Office for Victims of Crime Directory of Crime Victims Services

<http://ovc.ncjrs.gov/findvictimservices/>

### **Child Abuse**

Stop It Now! (sexual abuse)

888-PREVENT

[www.stopitnow.org/](http://www.stopitnow.org/)

### **Clery Center for Security on Campus**

Office: (484) 580-8754

[www.clerycenter.org/](http://www.clerycenter.org/)

### **Drunk Driving**

MADD Victim/Survivor Helpline

877-MADD-HELP (623-3435)

[www.madd.org/victim-services/](http://www.madd.org/victim-services/)

**Elder Abuse**

National Center on Elder Abuse  
800-677-1116 (M-F, 9 a.m. – 8 p.m.)  
[www.ncea.aoa.gov](http://www.ncea.aoa.gov)

**Homicide**

National Organization of Parents Of Murdered Children  
888-818-POMC  
[www.pomc.com/](http://www.pomc.com/)

**Identity Theft**

Federal Trade Commission's Identity Theft Hotline  
877-ID-THEFT (438-4338)  
[www.consumer.ftc.gov/features/feature-0014-identity-theft](http://www.consumer.ftc.gov/features/feature-0014-identity-theft)

Identity Theft Resource Center Victim Assistance Center  
888-400-5530  
[www.idtheftcenter.org/v\\_resources/v\\_intro.shtml](http://www.idtheftcenter.org/v_resources/v_intro.shtml)

**Intimate Partner Violence & Family Violence**

National Domestic Violence Hotline  
800-799-SAFE (7233)  
[www.ndvh.org/](http://www.ndvh.org/)

**Sexual Violence**

RAINN National Sexual Assault Hotline  
800-656-HOPE (4673)  
[.http://online.rainn.org/](http://online.rainn.org/) (online hotline)