



Legal Assistance for Crime Victims

An OVC Capacity Building Initiative

An Introduction to Victims' Rights

Presented in collaboration with the National
Crime Victim Law Institute



Overview and Learning Objectives

- ❑ Describe the history of victims' rights in the U.S.
- ❑ Discuss the difference between “compliance with” and “enforcement of” rights.
- ❑ Identify cultural and legal hurdles to rights enforcement.
- ❑ Relate case examples of rights enforcement.
- ❑ Identify 5 legal strategies for litigating victims' rights.

Poll #1

Brief History in the United States

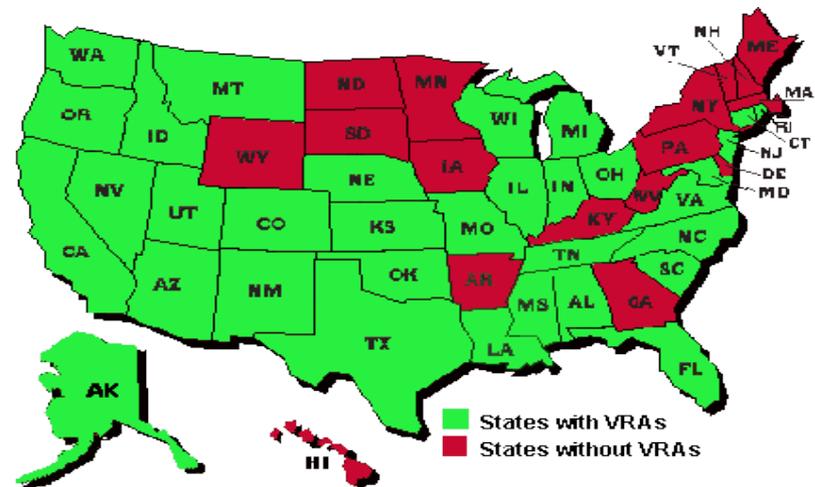
- ❑ From prosecutor
- ❑ To piece of evidence:
 - “[I]n American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (dictum).
 - Rule 615 of the Federal Rules of Evidence, as initially adopted in 1975, allowed for exclusion of crime victims from the courtroom unless their “presence is . . . essential to the presentation of a party’s cause.”
 - A majority of states then adopted rules that were similar or identical.

The 1970s to the 1980s

- ❑ States enact victim compensation programs and rape shield legislation.
- ❑ Somewhere along the way, the American criminal justice system had become “appallingly out of balance,” “serv[ing] lawyers and judges and defendants, [while] treating the victim with institutionalized disinterest.” 1982 President’s Task Force on Victims of Crime, Final Report vi (1982).
- ❑ Growing crime victims’ rights movement in the U.S.
- ❑ Changes to state constitutions, statutes, and rules, as well as federal statutes and rules, to define and afford explicit legal status to crime victims.

Today

- ❑ Several federal acts protect victims, including the Crime Victims' Rights Act, 18 U.S.C. § 3771.
- ❑ Every state (+D.C.) has statutory and/or rule-based protections for crime victims.
- ❑ More than 30 states have constitutional victims' rights provisions.



Are Laws Alone Enough?

Bottom Line of Any Right

Rights in the law books are mere words.

...

Meaning comes when people ask for their rights and
courts *enforce* them and when systems begin routinely
complying with them!

What's the Difference?

Compliance

- ❑ When government actors fulfill legal responsibilities with respect to victims, they are in *compliance* with crime victims' rights.
- ❑ Efforts to reduce the willful, negligent, or inadvertent failure to fulfill those duties by making systemic changes are properly termed *compliance* efforts.

Enforcement

- ❑ Ability of a victim (pro se, through prosecutor, or through private attorney) to seek a judicial order that governmental personnel must comply with victims' rights laws *or* that provides a remedy for a violation of those laws.

The Difference (continued)

Compliance

Improves systematic
affording of rights.

Future victims benefit.

Enforcement

This victim has redress
right now.

Future victims and
practitioners benefit
because of legal
precedent.

*We will focus on this
today.*

What Relief is Available in Enforcement?

When seeking enforcement, what should you ask for?



Limits on Relief

- ❑ May be explicit in jurisdiction's laws
 - *But read carefully; most limitations are not significant*

- ❑ Remedy cannot violate defendant's constitutional rights

Where Are the Hurdles?

The Hurdles That Stand in the Way of Rights Enforcement

Cultural Resistance

Legal Obstacles

Cultural Hurdle #1: *Misperception of History*

- ❑ Despite the fact that history reveals a victim-centric criminal justice system at the founding, people believe that a shift from the current two-interest system is a threat to the way it has “always been.”
- ❑ Recognizing the origins of our criminal justice system is useful in overcoming this first cultural resistance.

Cultural Hurdle #2: *Misperception of Scope of Rights*

- ❑ Opponents who object to enforcement believe that victims' rights:
 - Infringe on prosecutorial discretion.
 - Convert the justice system into a system of personal vengeance.
- ❑ Fundamental flaws with this objection:
 - Victims' rights are predominately due process rights.
 - Victims' rights inject just one more interest into analysis.

Cultural Hurdle #3: *Misperception That Rights are a Zero Sum Game*

- ❑ Opponents who object to enforcement believe affording a victim rights means taking a right from a defendant.
- ❑ Fundamental flaws with this objection:
 - More than one participant can have rights!
 - Judiciary is regularly tasked with affording multiple rights in same case.

Legal Obstacle #1: *Non-Party Status*

➤ *It's a red herring.*

THE REAL ISSUE IS STANDING!

“Does this victim have standing at this moment to do _____?” (Fill in the blank with the right and remedy the victim is seeking.)

Standing (continued)

Answer can be explicit:

- “The crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights.” 18 U.S.C. § 3771 (d)(1).
- “The district court shall take up and decide any motion asserting a victim’s right forthwith.” 18 U.S.C. § 3771 (d)(3).
- If denied, victim may file a writ of mandamus and “The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. . . . If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.” 18 U.S.C. § 3771 (d)(3).

Standing (continued)

Or may require analysis of 3-part test:

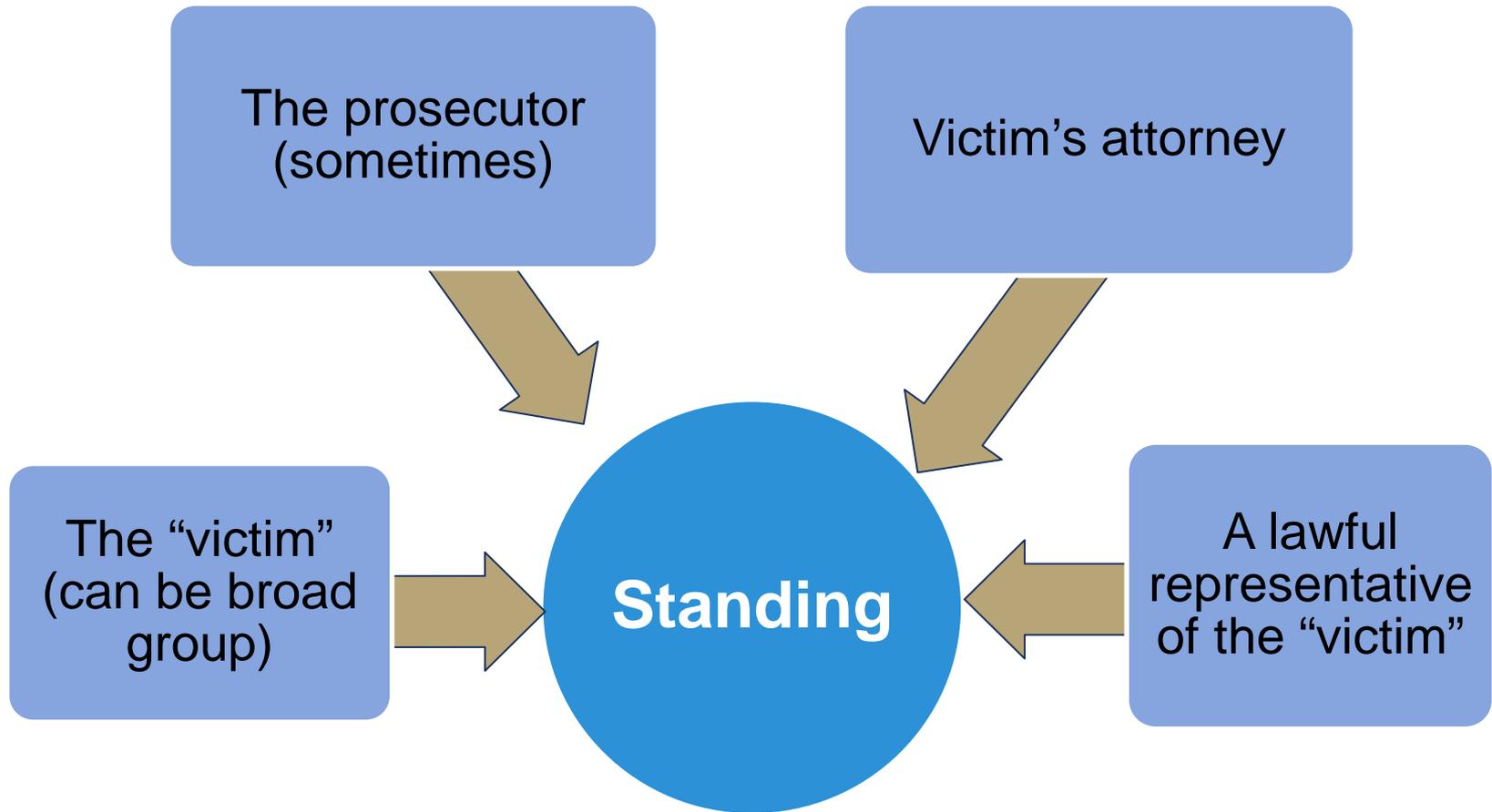
The United States Supreme Court has explained that the question of standing:

- “is whether the party seeking relief has ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.’”

Test:

1. Injury
2. Causation
3. Redressability

Who Has Standing (Generally)?



Legal Obstacle #2: *Double Jeopardy*

- “[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V

- *This is not really a bar 99% of time*

Legal Obstacle #3: *Mootness / Ripeness*

- *These just require attorneys thinking proactively – we’ll talk about this later in the presentation.*

Poll #2

Enforceable Rights in Practice: *A Few Examples*

Crime Victims' Rights Act

18 U.S.C. § 3771

Guarantees crime victims rights to—

- Be reasonably protected from the accused.
- Reasonable, accurate, and timely notice of public court proceedings.
- Not be excluded.
- Be reasonably heard at any public proceeding.
- Confer with the attorney for the government.
- Full and timely restitution.
- Proceedings free from unreasonable delay.
- Be treated with fairness and with respect for their dignity and privacy.

Right to Notice

The Gateway Right

Examples of Law

- ❑ A crime victim has “[t]he right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding involving the crime or of any release or escape of the accused.” 18 U.S.C. § 3771(a)(2)
- ❑ A crime victim, upon request, has “the right to notification of court proceedings.” Tex. Const. art. I, § 30(b)(1)

Right to Notice (continued)

The Gateway Right

Examples of Enforcement

- ❑ *United States v. Keifer*, No. 2:08-CR-162, 2009 WL 414472 (S.D. Ohio Feb. 18, 2009) (granting the victim's motion to unseal so he would have access to information to help him exercise his CVRA rights).
- ❑ *Edens v. Oregon Bd. of Parole Marion County*, Case Nos. 07C22594, 07C22595 (Or. Cir. Ct. Jan. 2008) (granting the victim's petition for writ of mandamus asking that the board be directed to vacate order reducing term after finding violations of the victim's rights).

Right not to be Excluded

Examples of Law

- ❑ A crime victim has “[t]he right to not be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.” 18 U.S.C. § 3771(a)(3)
- ❑ A crime victim, upon request, has “the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim’s testimony would be materially affected if the victim hears other testimony at the trial.” Tex. Const., art. I, § 30(b)(2)

Right not to be Excluded

Examples of Enforcement

- ❑ *U.S. v. Edwards*, 526 F.3d 747 (11th Cir. 2008) (concluding criminal defendant has no constitutional right to exclude witnesses from the courtroom).
- ❑ *State v. Williams*, 960 A.2d 805 (N.J. Super. Ct. 2008) (rejecting defendant's argument that allowing the victim to remain in courtroom after testifying and be recalled to make in-court voice identification violated rights; court noted that defendant has no constitutional right to exclude witnesses, yet victim has a state constitutional right to be present).

Right to be Heard

Examples of Law

- ❑ A crime victim has “[t]he right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.”
18 U.S.C. § 3771(a)(4)
- ❑ A crime victim has the right “[t]o be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing” and “any proceeding when any post-conviction release from confinement is being considered.” Ariz. Const. art. II, § 2.1(A)(4), (9)

Right to be Heard

Examples of Enforcement

- ❑ *Kenna v. District Court*, 435 F.3d 1011 (9th Cir. 2006) (finding victim had indefeasible right to be heard at sentencing akin to defendant's right to allocution).
- ❑ *State v. Barrett*, 255 P.3d 472 (Or. 2011) (concluding that resentencing defendant as a remedy for violation for the victim's rights to advance notice of, to be present at, and to be heard at defendant's sentencing would not invalidate the conviction and would not violate double jeopardy).

Right to Privacy

Examples of Law

- ❑ A crime victim has “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8)
- ❑ A crime victim has “the right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice process.” Tex. Const. art. I, § 30(a)(1)

Right to Privacy

Examples of Enforcement

- ❑ *United States v. Clark*, No. 08-1808, 2009 WL 1931172, *2 (3d Cir. July 7, 2009) (concluding that redaction of names of victims and their family members from victim impact statements was consistent with the provision of the CVRA guaranteeing the victim's right to be treated with respect for his or her dignity and privacy).
- ❑ *Dirden v. State*, No. 09–10–00200–CR, 2012 WL 983182, n. 2 (Tex. Ct. App. Mar. 2012) (not designated for publication) (using the pseudonym “Sandy Doe” at trial and on appeal “[t]o protect the minor's privacy in accordance with the state constitutional right to be treated with respect for the victim's dignity and privacy.”)

Some Practice Pointers

As You Enter the Case . . .

Step 1

- Identify the legal victims.

Step 2

- Identify the stage of the case.

Step 3

- Identify the rights implicated by developments before your involvement.
- Identify the rights implicated now/in future.

Step 4

- Ask the client which rights he/she wishes to assert.

Step 5

- Identify whether a violation has occurred.

Step 6

- Prepare for future assertion of the rights.

As You Enter the Case . . .

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As You Enter the Case . . .

Step 7

- Introduce yourself to defense counsel/the prosecutor.
- File a Notice of Appearance and Assertion of Rights.

Step 8

- File forms that may be required to trigger notice obligations from responsible agencies.

Step 9

- Strategy moment: Advise record holders that victim is now represented by counsel and discuss certain best practices when served with a subpoena or other request for information.

When To Take Action

**Practice
Pointer:
*Pretrial
Litigation
Strategies***

Don't wait to take action until your client's rights have been violated.

Pretrial Litigation Strategies

Anticipate issues for motion practice

Prepare the victim for participating in court

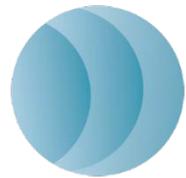
Prepare to seek victim restitution

Know your appellate review options

**Practice
Pointer:
*Don't do it
alone***

Victims need system-based advocates, community-based advocates, and attorneys to work together.

QUESTIONS?



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