



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

By the end of this Webinar you will be able to:

- ❑ Tell the history of victims' rights in the United States
- ❑ Discuss the difference between “compliance with” and “enforcement of” rights
- ❑ Discuss the respective expertise and limitations of attorneys and advocates
- ❑ Identify ways advocates can advance compliance with victims' rights

Poll #1

Brief History in the United States

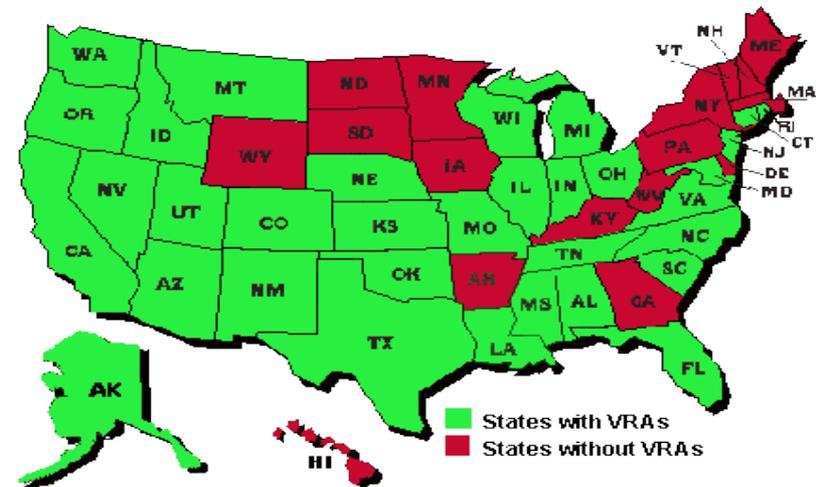
- ❑ From prosecutor
- ❑ To piece of evidence:
 - “[I]n American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (dictum).
 - Rule 615 of the Federal Rules of Evidence, as 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!

Respective Expertise

Expertise and Limitations

Advocates

- Know victims.
- Know victims' rights.
- Know common sense.
- Know resources.
- Know how to explain system to victims.
- Sometimes unaware of system barriers.

Attorneys

- Know the law.
- Know their case.
- Know criminal procedure.
- Have "status."
- Sometimes unfamiliar with victims' rights.

Poll #2

**ONLY WORKING TOGETHER DO WE
GET BOTH COMPLIANCE WITH AND
ENFORCEMENT OF VICTIMS'
RIGHTS!**

So What's the Difference?

Compliance

When governments 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 victims (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 for rest of time.

What Relief is Available in Enforcement?

When seeking enforcement, what should you ask for?



Advocates Advancing Rights



System-Based Advocates

- ❑ Have ready access to case status/information.
- ❑ Have increased ability to influence a case.
- ❑ Have the ability to train prosecutors.
- ❑ Can serve as victims' rights experts for DA.
- ❑ Are in the best position to prevent or quickly address victims' rights violations.
- ❑ Have the ability to make local system change.
- ❑ Can facilitate victim issues between law enforcement / prosecution.
- ❑ Have no confidentiality / privilege with the victim.
- ❑ Are subject to *Brady* obligations.

Community-Based Advocates

- ❑ Generally have more time with victim.
- ❑ Are available to assist *before, during, and after* criminal case – regardless of whether the crime is reported.
- ❑ Have increased ability to provide / facilitate resources.
- ❑ Provide additional support in criminal or civil hearings.
- ❑ Facilitate communication between prosecutor and victim.
- ❑ Have confidentiality and may have privilege with the victim.
- ❑ Not subject to *Brady* obligations.

Attorneys

- ❑ Prosecutors
- ❑ Victims' Rights Attorneys
- ❑ Civil Attorney

Enforceable Rights in Practice . . . A Few Examples and the Hurdles We Face



The CVRA – Model Legislation

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

“The 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).

Examples:

- ❑ *United States v. Keifer*, No. 2:08-CR-162, 2009 WL 414472 (S.D. Ohio Feb. 18, 2009 (victim sought to unseal the case or be put under the seal because no one would talk with him about rights).
- ❑ *Edens v. Oregon Bd. of Parole Marion County*, Case Nos. 07C22594, 07C22595 (granting V’s petition for writ of mandamus asking that board be directed to vacate order reducing term after finding violations of victim’s rights, including of the 30-day notice requirement which resulted in failure to afford the victim “adequate opportunity to prepare for the hearing and to obtain counsel,” and by limiting time to be heard, which “has a chilling effect on the full exercise of the victim’s rights”).

Right Not To Be Excluded

“The 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).

Examples:

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

Right To Be Heard

“The 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).

Examples:

- ❑ *Kenna v. District Court*, 435 F.3d 1011 (9th Cir. 2006) (finding victim had indefeasible right to be heard akin to defendant’s right to allocution).
- ❑ *United States v. Wood*, CR. No. 05-00072DAE (D. Haw. July 17, 2006) (recognizing right of a victim to be heard at sentencing impacted scheduling).

The Hurdles: Cultural Resistance and Legal Obstacles

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.

Misperception of Scope of Rights

Opponents believe victims' rights:

- ❑ Infringe on prosecutorial discretion.
- ❑ Convert the justice system into a system of personal vengeance.

Fundamental flaws in objection:

- ❑ Victims' rights are predominately due process rights.
- ❑ Victims' rights inject just one more interest into analysis.

Misperception That Rights are a Zero Sum Game

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

“Legal” Obstacles

We won't really cover, but in brief:

- ❑ Non-party Status

- *It's a red herring*

- ❑ Double Jeopardy

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

- ❑ Mootness / Ripeness

- *This is about thinking ahead*

So How Can We Work Together?

Poll #3

Poll #4

“In the Moment”

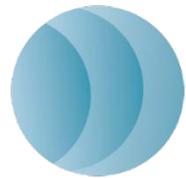
Tips for when you see a rights violation:

- Be present.
- Be knowledgeable.
- Have established process.
- Call for backup.
- Go up the chain of command.
- Always ask: what action will have the best (or least bad) result for the victim?
- Contact NCVLI. Get representation for the victim.

A Last Thought

We need to be careful of the unlawful practice of law since it is a real issue that advocates confront, but it is best saved for another Webinar so stay tuned . . .

QUESTIONS?



National Crime Victim Law Institute

www.ncvli.org