

## INCLUDING VICTIMS IN THE AMERICAN CRIMINAL JUSTICE PROCESS

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### I. INTRODUCTION: WHY DO WE NEED VICTIMS' RIGHTS LAWS?

*"I will never forget being raped, kidnapped, and robbed at gunpoint. However, my sense of disillusionment of the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process."*

A victim (as quoted in the President's Task Force Report at p. 5 (1982)).

*"To be a victim at the hands of the criminal is an unforgettable nightmare. But to then become a victim at the hands of the criminal justice system is an unforgivable travesty. It makes the criminal and the criminal justice system partners in crime."*

Robert Grayson (as quoted in the President's Task Force Report at p. 9 (1982)).

Dire descriptions of the American criminal justice system such as these and others were heard at public hearings conducted by the Presidential Task Force on Victims of Crime in 1982. The hearings and subsequent report issued by the Task Force motivated a dramatic change in the way the criminal justice system in the United States treats victims of crime at the Federal and local level. Although we have made some progress in the past 17 years

in making the criminal justice process more responsive to victims of crime, we in the United States still think we have some ways to go to become a system that treats all participants in the process fairly.

The United States has a very serious crime problem. Millions of citizens become victims of crime every year. We are still learning what long term impacts crime victimization has on individuals and communities. Crime victimization can negatively affect a victims' views of their government and community, their sense of safety, and mental health. Indeed, with some types of victimization, especially crimes against children, there is some link between those who have been victims and those who become victimizers. For the health and safety of our communities therefore, it is important to treat crime victims in a manner that will promote healing and recovery from the experience.

For the health and future of our criminal justice system it is also important to treat victims well. Victims who survive their experience, and are brave enough to report the crime, turn to their government expecting it to do what a good government should do, protect the innocent. The American criminal justice system is absolutely dependent on crime victims' cooperation. Without the cooperation of victims and witnesses in reporting and testifying about crime it is impossible in a free society to hold criminals accountable. When victims come forward in our country to perform this vital service, however, they often find little assistance and protection. There is a sense experienced by many

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victims that the system is out of balance, that there are many rights and protections for offenders, but none for victims. To continue to encourage victim participation in the system, and to make that participation as helpful as possible both to the victim and the system, it is vital that certain essential victims rights are incorporated into the process.

Finally, providing basic victims rights is the right thing to do. Our justice system must be fair to all involved to really dispense justice. If victims walk away from the experience feeling that they were not respected, listened to, consulted, or protected, the system really has failed them in a significant way. Regardless of what moral code we as individuals adhere to, the way our systems treat crime victims, some of the most wronged members of our societies, is a true measure of the morality of our societies.

## **II. WHAT DO VICTIMS WANT?**

Of course, as with all people, victims want to be treated with dignity and respect. This is difficult to legislate, but should be used as a guiding principle. In terms of actual, enforceable rights, victims generally report that they want to be informed and participate. Being informed usually encompasses getting notice of what is happening in the case and having some ability to observe proceedings. Participation centers around having the victims' side of the story heard and validated, especially the extent of the harm caused by the crime. Another very important need for victims, and indeed the most urgent one I encountered as a public prosecutor, is the need to feel safe as the victim participates in the criminal justice process. Victims more than anyone know how destructive the offender can be and are understandably concerned about their safety as they participate in the process.

The one thing victims want more than any other, however, we have no power to give. Ultimately, victims want the crime not to have happened. Because this is impossible for the criminal justice system to provide, many victims are going to be disappointed at the end of the process. If the process has been fair, however, most victims will eventually be satisfied with the system, even if the result is not what they wanted.

## **III. VICTIMS' RIGHTS IN THE AMERICAN SYSTEM**

As you may already know, we have two major justice systems in our country: the states and the Federal government. Each state has its own system, with its own constitution, laws, and governmental structure. States have jurisdiction over all crimes occurring in that state. The Federal system encompasses only certain limited crimes, usually those having an impact beyond a single state. In our country, the states have really been the leaders in the area of victims' rights, although those rights vary from state to state. The Federal system's first victims' rights statute was passed in 1982, in the aftermath of the President's Task Force on Victims of Crime. Since that time, several additional laws have been passed that have expanded and strengthened the Federal crime victims' rights. Even today, we have new legislation pending in our Congress to further expand the rights of Federal crime victims. In addition, for several years our Congress has been debating adding a provision for victims rights to our Federal constitution. That constitutional amendment is supported by the President and the Attorney General.

#### **IV. TYPES OF VICTIMS RIGHTS LAWS**

##### **A. Definition of Victim**

Interestingly enough, one of the most contentious issues when establishing victims' rights laws is deciding who should qualify as a victim. Some suggest that the rights, or at least stronger or more comprehensive rights, should be limited to violent crime victims. This policy excludes victims of economic and property crimes like fraud. Some of the states limit victims' rights to situations involving physical injury to the victim, however, the Federal statute includes victims of all crimes. It should be noted that some economic crimes have devastating impacts on their victims, especially if the victim is particularly vulnerable like an elderly person.

In the case of a homicide, incapacitated or child victim, most statutes allow for a family member such as a spouse or parent to be considered the victim. It is important to make sure that anyone who is culpable for the crime is not designated the victim under this provision.

This raises another difficult issue, whether someone who is culpable in some way for the crime being investigated or prosecuted, or some other crime, is entitled to receive victims' rights. Although our Federal statutory definition of victim is silent about this question, as a policy matter our Federal Justice Department has decided that those individuals who are culpable in the crime being investigated or prosecuted will not be treated as victims. This means that victims who may be culpable for some other crime are treated as victims. Examples of such persons are: illegal aliens who are involuntary servitude victims, inmates who are victimized in prison, and victims of witness intimidation. This policy prevents someone who is an injured participant in the crime from being

considered a victim for purposes of receiving victims' rights.

One final important issue that any drafter of victims' rights provisions needs to consider is the line to draw between direct and indirect victims. There must be some point at which a person's injury from a crime is too attenuated to entitle them to victims' right. Certainly, most people who are physically injured should be considered victims. In addition, some people who suffer emotional harm and trauma should be included, but it is more difficult to draw a line when you talk about emotional harm. Take the example of a bank robbery crime.

Typically, the bank, which suffers the financial harm, is considered the primary victim. The question presented is whether the tellers, bank employees, and customers present in the bank at the time of the robbery are also "direct" victims of the crime. The answer to this question will depend to a great extent on the facts of each specific case. If, for example, a robber points a gun at a teller as part of the robbery and, as a result, the teller suffers psychological trauma (and may be a trial witness), the harm is a direct result of the crime and the teller probably should be treated as a victim, even though s/he may not have suffered any physical injury (the teller is actually the direct victim of an armed assault which may not be separately charged).

In comparison, a bank employee who was in another room and only heard people talking about the robbery may also suffer some trauma, but is much more indirectly harmed and usually should not be considered a victim for purposes of victims' rights and services. In between those two examples are a variety of different factual situations requiring law enforcement personnel to use their judgement and draw lines just as they do in other contexts.

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There may be cases that involve hundreds or even thousands of direct victims. For example, in a terrorist bombing or a mass violence shooting, there may be a large number of persons who are killed, injured, or suffer extreme emotional harm such that they would be considered direct victims. Indeed, in a terrorist incident, the terrorist targets a large number of people with the intent of inducing fear and other emotional harm. Just because there is a large number of victims does not mean that victim services should not be provided. It just means that you have to be more creative about how to provide them.

**B. Right to Notice**

Perhaps the most fundamental right of a crime victim is the right to be kept informed by the criminal justice system. The other rights and services that may be available to a crime victim are meaningless unless the victim knows they exist. For example, a victim's right to attend proceedings or to be heard at proceedings can have no effect unless the victim is notified in advance of those proceedings. The right to be notified can be divided into two classifications: the right to general information which is of interest to all crime victims, and the right to be kept informed about proceedings and events relating to the offense against that particular victim.

Our state criminal justice systems often provide much general information of interest to all victims. Such general information includes: notice of the availability of crime victim compensation money; referrals to victim services such as rape crisis centers, homicide survivor groups, and general victim service agencies; information about the steps involved in a criminal prosecution; and notification about victims' rights. In the Federal system, many of our investigative agencies have brochures which they hand

out to victims containing some of the same information. Our Federal prosecutors have a book called the "Victim Witness Handbook" which contains information about the stages of the criminal justice process.

The other type of notice, notice of events and proceedings in the criminal justice process, is one of the most time consuming and expensive of the victims rights for government to provide. Keeping victims informed throughout the criminal justice process, however, is a very important right because it is a recognition that victims are more than mere pieces of evidence in the government's case; that they as individuals have a real interest in the progress of the criminal case and the current status of the offender. There are dozens of events or proceedings in the ordinary criminal justice process for which notice may be required by our state and Federal statutes. The types of proceedings and events that are most frequently included are: scheduled court proceedings and any cancelled or rescheduled dates, dismissal or dropping of case, plea bargains, appeals, release from prison (including conditional releases), and parole hearings. In the Federal system we provide victims with notice of the status of the investigation, the arrest of the offender, the filing of charges, the scheduling of public court proceedings, the release or detention status of the offender, the acceptance of a plea of guilty or the trial verdict, the sentence, any scheduled parole hearing, any release of the offender (including escape, work release, and furlough), and the death of the offender if s/he dies while in custody.

The procedures that the state and Federal governments use to notify victims vary widely. In the Federal Justice Department, we encourage personal contact with and notice to victims if possible. Many notifications are

accomplished through phone calls and letters. With some notices, such as a notification that an offender has escaped from prison, immediate notification by telephone can be a matter of life or death. Increasingly, states are using technology to assist with victim notification. With automated notification systems, victims' names and addresses are entered into a computer that can automatically issue notification letters when some particular event occurs. These systems also have the capability to call a victim in an emergency, such as when an offender escapes from prison. The Federal system is presently considering adopting such a system.

Notification presents a particular challenge in cases with large numbers of victims. Some cases may involve thousands of victims. Our Federal Justice Department's policy provides that in cases with large numbers of victims, Department employees should use the practical means best calculated to achieve actual contact with and notice to victims. A variety of techniques are available to enable law enforcement personnel to provide adequate notice and assistance to victims in larger cases. The determination of what efforts are sufficient and what types of notice and assistance are appropriate depends largely on the anticipated needs of the crime victims. In addition, law enforcement personnel need to carefully evaluate the type of information relayed and the method of communicating the information to see that notification efforts do not compromise investigations or inadvertently invade victims' privacy.

Identifying the nature of the harm suffered by crime victims is essential to determining the appropriate method of effectuating notice and providing assistance. Victims of violent crimes, for example, may have a high level of need for a wide range of victim services in almost

every instance, and so in almost every instance a substantial effort to identify and personally contact victims of violent crime will be warranted, regardless of the number of victims involved. Indeed, law enforcement field offices should consider assessing the possibility of a large scale violent crime occurring within their jurisdictions, identifying the resources currently available to provide victim assistance (government resources and private resources such as the Red Cross) and those resources needed but not available, and developing contingency plans for contacting and providing assistance to mass crime victims should the need arise.

As another example, victims of financial crimes such as telemarketing fraud often suffer significant (to them) harm and have a high degree of need for notice and referral services. Names and addresses of victims of financial crimes can often be obtained from offenders' records, and even in situations where thousands of victims exist it may be appropriate to send individual victims an initial notification letter informing them of the nature of the offense and assessing their interest in receiving future notice and consultation services. Under one Federal law, defendants who have been convicted of offenses involving fraud may be ordered by the court to spend up to \$20,000 to provide notice to victims explaining the conviction (18 U.S.C. §3555). Offices that frequently deal with cases involving large numbers of identifiable fraud victims may wish to develop the ability to conduct mass mailings in-house, while offices that do not should locate private companies who can handle sensitive government information and who can assist with the provision of such services when needed.

In other cases involving large numbers of victims, circumstances may require other

methods to provide notice and assistance to the victims. When a crime results in a large number of victims who are likely have suffered significant harm and cannot be readily identified, but who reside in a limited geographic area, a well-publicized town meeting may be an effective way to identify victims, provide victims with notice and pertinent information, and consult with victims concerning the crime and the government's investigation. Still other cases may present a situation where a very large number of victims (spread out over a large geographic area) have likely suffered only minor (to them) financial losses. Under these circumstances, the use of representative victims, victim proxies (such as organizations that represent the interests of the victim class or actual class-action representatives) or even the general media may be the most efficient method to provide victims with notice and information concerning the crime.

Other techniques, beyond those mentioned above, also exist that can, in certain situations, assist law enforcement personnel to provide large numbers of victims with information concerning the ongoing status of an investigation, prosecution, or detention. For example, toll-free telephone numbers can be established that not only permit victims to call in and get recorded information concerning the status of a matter, but that actually call the victims to alert them to a change in status. With individuals' increasing ability to access the Internet, web sites can be created that contain information concerning the progress of investigations and prosecutions (keeping in mind, of course, that any information that is not for public dissemination should not be posted on the Internet. Items that would normally be appropriate for a press release, such as dates for public court proceedings, are appropriate for the Internet.) Also, private groups that have within their

membership a significant number of victims of a particular violation may have newsletters or other methods of informing their members that can be used to provide information about the ongoing progress of a case. Some victims themselves may be willing to assist with preparing and disseminating a newsletter or participating in a phone tree.

### **C. Right to Attend the Trial**

The ability of victims to attend trial proceedings is one of the most significant in the eyes of victims, and one that is very important to ensuring victim satisfaction with the system. In the American judicial system, however, this is a very troublesome right if the victim will also be a trial witness. Under most rules of evidence, there is a rule commonly referred to as the "rule on witnesses". The rule provides that witnesses should be excluded from the courtroom during trial proceedings except when they are testifying. The rule is designed to prevent witnesses from hearing other evidence in the case and then intentionally or unintentionally changing their testimony to conform with the other evidence. Defendants are exempt from this rule.

The states and the Federal government have taken a variety of approaches to try to harmonize the rule on witnesses with the victims' right to attend trial. Some states mandate the exclusion of all witnesses from all proceedings. On the other extreme, some states specifically exempt victims from the rule on witnesses in much the same way that the defendant is exempt. Some states take a middle route, for example, allowing the victim to sit in on the trial after the victim has testified. Overall, the majority of states that give victims the right to attend the trial also give the judge discretion to exclude the victim, either as a witness or to preserve the defendant's right to a fair trial

generally. The defendant's right to a fair trial is guaranteed by the US Constitution, the highest law of the United States, while the victims' right to attend is a matter of subordinate state law. In the Federal courts, victims have a "qualified" right to attend that is, they have the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial. In 1996, new legislation gave Federal victims an additional attendance right. Federal law now provides that a Federal judge can not exclude any victim from trial if the victims' only role as a witness is testifying at the sentencing hearing. Interestingly enough, this statute was passed specifically to address the attendance issue in a high profile case, the Oklahoma City bombing trial. In that case the victims hired their own attorney and lobbied Congress for permission to attend the trial, even though some of them planned to be sentencing witnesses.

The Oklahoma City bombing trial also was the first to use a closed circuit television link to broadcast the trial to an auditorium so that any victims who wanted to could watch proceedings. That case involved over 2,000 victims and there wasn't enough room in the courtroom for all the victims to observe the trial. In addition, the trial venue was moved from Oklahoma City to Denver, Colorado, some distance away. Many of the victims could not afford, nor did they want to, travel to attend the trial in Denver. So the judge authorized a closed circuit television link between the courtroom in Denver and an auditorium in Oklahoma City. The auditorium was treated like a courtroom and was presided over by a retired magistrate. Grief counselors were available at the site. By all accounts this procedure was highly successful.

#### **D. Right to be Heard**

The primary proactive way victims can participate in the criminal justice process is by speaking or submitting a written statement to the court. The most important proceeding for this participation is at the sentencing hearing. Generally, all states recognize that victim input has a proper place in the sentencing process. Our United States Supreme Court, the highest court in the land, has stated:

*"It is an affront to the civilized members of the human race to say that at sentencing ... a parade of witnesses may praise the background, character and good deeds of the Defendant ... without limitation as to relevancy, but nothing may be said that bears upon the character of, or the harm imposed, upon the victims."*

*Payne v. Tennessee*, 111 S. Ct. 2597, 2609, quoting *Payne v. Tennessee*, 791 S. W. 2d 10, 19 (Tn. 1990)

As of 1995, every state allows victim impact evidence at sentencing, either through input into the presentence report or through presentation of a written or oral statement at the sentencing hearing in fact, most states allow both forms. The majority of those states also require the court to consider the victim's statement in making the sentencing determination. Federal statutes require probation officers to prepare presentence investigation reports which include a section on the impact of the crime on the victims.

In a few states, allowing a victim to testify at sentencing rests solely with the discretion of the trial judge, while in the vast majority of states, victim participation through oral impact statements is a matter of right. Many states specifically delineate the information to be included. Typically, states allow evidence of the physical,

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mental/emotional, social and economic harm caused to the victim and/or the victim's family. They may also allow the inclusion of the victim's or family's views concerning both the offense and/or offender, in addition to their opinions regarding the appropriate punishment.

In general, victim impact statements may be given by the victim, homicide survivors, or the parent or guardian of a minor victim. Children can submit victim impact statements in a format that is age and developmental level appropriate. Some courts have developed forms for children to fill out with places for children to draw pictures and circle smiley faces or sad faces.

Other stages where states provide for victim impact include the parole release decision, pretrial release decisions, and plea bargain acceptance proceedings. Most states allow victims to present a written or oral statement to the parole board for consideration at the parole hearing. A few states specifically authorize the use of audio or videotaped statements at the parole hearing. Victims' rights to participate at the other stages are much more limited. One of the more controversial proceedings is the plea bargain acceptance proceeding. It is important to note, moreover, that victims' rights laws only afford victims a voice at such proceedings, not a veto.

**E. Right to Confer with the Prosecutor**

In 1982, the President's Task Force on Victims of Crime recommended that prosecutors consult with the victim during the various stages of the prosecution as one of the objectives included in its proposed guidelines for fair treatment of crime victims and witnesses. Whether it involves the reduction of charges to a lesser offense, dismissal of the case, consideration of

pretrial diversion or entry into a plea agreement, giving the victim an opportunity to offer his or her views and concerns assists the prosecutor in formulating an appropriate disposition.

The definition of the term "consultation" anticipates an interactive dialogue between two parties. Its usage by the Task Force reflects an intention that victims be provided with more than just information concerning developments in their cases; it instead encourages prosecutors to actively solicit and consider victims' input before taking dispositive action. Many, but not all states, have attempted to address this issue by adopting statutory provisions mandating meaningful interaction through consultation in accordance with this broader Task Force objective. For example, several states have adopted laws requiring the prosecutor to obtain the views of the victim before a disposition is final and even go so far as to require the prosecutor to certify to the court that he or she has complied with the consultation mandate. However, almost as many states have chosen to limit the prosecutor's responsibilities to informing, notifying, or advising a victim of the action to be taken. It should be noted, however, that in no state has the right to confer been equated to the right to direct the prosecution of the case or veto prosecutorial decisions.

In the Federal system, Federal prosecutors are to use their "best efforts" to see that victims are accorded their right to confer with an attorney for the government. New Justice Department policy, which will go into effect this summer, requires Federal prosecutors to use reasonable efforts to notify victims of and consider their views about proposed plea bargains. In deciding what is reasonable, prosecutors can look at a series of factors including whether the plea bargain contains confidential provisions



such as a cooperation agreement, the number of victims, public safety, and whether the victim may be a witness in the case if the plea bargain falls through.

Hopefully, these guidelines will encourage prosecutors to consult with victims in more cases, while preserving the discretion to withhold that information for a legitimate law enforcement reason.

#### **F. Child Victims and Witnesses**

Unfortunately, children are direct victims of a variety of crimes including physical abuse, sexual abuse, exploitation and pornography. Additionally, children witness a broad range of crimes including violent crimes. Too often in the past our criminal justice system has not paid sufficient attention to the needs and welfare of child victims and witnesses, causing serious consequences. Contact with the system aggravated the trauma that the child had already experienced, making it more difficult for the child to participate in the investigation and prosecution of the case and ultimately, making it more difficult to prosecute the case. Basic victims' rights laws apply equally to child victims. In addition, many states and the Federal government have enacted laws to specifically address the issues raised by children's participation in the criminal justice process.

Children receive enhanced protection in some states and the Federal system. For example, in many jurisdictions, the name and identifying information about a child victim is confidential and is not to be disclosed, except in limited situations. All court papers identifying a child victim must be filed under seal. It is a crime of misdemeanor contempt to violate this rule. In some jurisdictions the court may appoint a guardian *ad litem* for a child victim or witness. A guardian *ad litem* may attend all the depositions, hearings, and trial

proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child.

Most states have multidisciplinary child abuse teams. These teams are professional units composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse. The purpose of multidisciplinary teams is to maintain the credibility and reliability of the child's testimony, as well as to monitor the child's safety and well-being throughout the case. The goals of the multidisciplinary team are:

- (1) to minimize the number of interviews to which the child is subjected, to reduce the risk of suggestibility in the interviewing process;
- (2) to provide needed services to the child; and
- (3) to monitor the child's safety and well-being.

In some situations, the trauma of participating in the trial process can be so great that the child is unable to testify or there is a substantial likelihood that the child would suffer emotional harm from testifying in open court. Technology can come to the rescue in such a situation. In Federal courts, there are two alternatives to live, in-court testimony that can be used when a child is unable to testify because of fear or emotional trauma. In some situations, a child can testify by 2-way closed circuit television. The attorney for the government and the attorney for the defendant are present with the child in a room outside the courtroom. The child's testimony is transmitted into the courtroom for viewing by the defendant, jury, judge and public. The defendant is provided with the means to/of communication with their attorney and the

television transmits the defendant's image into the room where the child is testifying. Another alternative to live, in-court testimony is a videotaped deposition of the child. A judge presides at the deposition and rules on all questions of law just like at trial. The defendant is permitted to be present unless the court finds that the child is unable to testify with the defendant there and orders that the defendant be excluded. The tape can then be played at trial.

### **G. Restitution**

In 1982, the President's Task Force on Victims of Crime called for mandatory restitution in all criminal cases, unless the presiding judge could offer compelling reasons to the contrary. As the Task Force noted, "*the concept of personal accountability for the consequences of one's conduct, and the allied notion that the person who causes the damage should bear the cost, is at the heart of civil law. It should be no less true in criminal law.*" Studies indicate that restitution is one of the most significant factors influencing victims' satisfaction with the criminal justice process. Although restitution has always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable degree of justice.

Restitution laws have been broadened in recent years and made more mandatory. Historically, only those persons who have suffered physical injury or financial loss as a direct result of a crime have been eligible to receive restitution from the perpetrator for their out of pocket expenses. But as restitution statutes have evolved, definitions of who qualifies and the kind of losses covered have broadened considerably. Today, not only do victims themselves qualify for restitution, but, in some states, family members, victims' estates, private entities, victim service agencies, and private organizations who

provide assistance to victims can seek restitution as well. Definitions for compensable losses under state restitution laws have also expanded to include psychological treatment, sexual assault exams, HIV testing, occupational/rehabilitative therapy, lost profits, moving and meal expenses, case-related travel expenses, and burial expenses.

Most states are making restitution mandatory as part of a criminal sentence. Aside from the direct benefits to crime victims and society that come from restoring the victims' financial losses, there is a growing recognition that holding offenders directly accountable to their victims as part of a sentence has a rehabilitative effect on the offenders themselves. In a recent revision to its restitution laws, the California Legislature noted that "*Restitution is recognized to have a rehabilitative effect on criminals ... [and] restitution is recognized as a deterrent to future criminality.*" The Federal system now has mandatory restitution for most Federal crimes.

Although the law has been in effect since 1996, it has been a challenge to get Federal prosecutors and judges to comply with it. In fact, a recent report by the US General Accounting Office found that less restitution was being ordered in Federal courts after the Mandatory Victim Restitution Act than before the Act. The reason for this situation is not clear but presents us with a challenge for the future.

### **H. Right to Protection from the Offender**

In recent years, reports from the media and law enforcement officials suggest that intimidation of victims and witnesses is on the rise. In addition, the proliferation of youth gangs appears to directly correlate to a dramatic rise in acts of intimidation, as well as acts of violence, against those victims and

witnesses who testify against fellow gang members. Prosecutors and victim advocates have recognized the relationship between measures to enhance a victims' feelings of security and greater willingness of crime victims to cooperate with criminal justice officials and criminal prosecutions. Measures to protect crime victims take varying forms. Many states grant victims a right to protection from the offender, or they provide information regarding the protective measures available. Other approaches include amendment of bail provisions, providing separate or secure waiting areas in court, and various measures to protect victims through the discovery process. Recent bail provisions now include danger to a victim or to the community as a reason to deny release pending trial. In addition, prosecutors have historically requested high bail as a means of keeping intimidators behind bars.

In addition to these legislative measures, many law enforcement and prosecution agencies have developed comprehensive witness security programs. These programs evaluate threats and take actions to improve the security of the victim or witness. It should be noted that the government can not guarantee anyone's complete safety. The government can, however, take steps designed to reduce the risk of intimidation and harassment. Some of these steps include relocating an intimidated witness, preventing intimidation in courtrooms and jails, and reducing community-wide intimidation. In addition, there are many steps that victims and witnesses can take themselves to enhance their security, such as getting an unlisted phone number. Government personnel can assist victims and witnesses with identifying actions that will help.

Relocating intimidated victims and witnesses is one of the more extreme measures that the government can take,

however, it is also considered to be one of the most effective. Relocation programs generally fall into three categories: long term, short term, and emergency. Probably the most secure program that exists is the Federal Marshal's Service's Witness Security Program. The Program has very strict entrance requirements and entails a complete change in the participant's identity. Many victims and witnesses are unwilling to enter this program because it may mean that they can never contact family members again. Other permanent measures include relocating a victim's residence. If the victim lives in public housing, the government can request that the public housing authority transfer the victim to another location far away from the victim's present home. If the victim does not then return to the original abode, some measure of safety is achieved. Short term relocation procedures include placing a victim in a hotel, motel, or with out of town family or friends for the duration of the investigation or trial (or perhaps even longer). Emergency relocation usually involves an immediate placement of a victim or witness into a safe house or hotel until more permanent location is secured. The relocation program should be tailored to the individual and the nature of the threat. It is very important that the victim understand that once relocated, he or she can not return to the area where the threat exists.

Gang members and associates of defendants often appear in court to frighten witnesses into not testifying. Because the threat may be very subtle and because judges often feel that the constitutional requirement of a public trial prevents them from removing such individuals from the courtroom, it is often difficult to stop this kind of intimidation. Nevertheless, a number of judges have taken steps to remove gang members from the courtroom, to segregate gang members and other

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intimidating spectators, or to close the courtroom entirely to spectators.

Incarcerated witnesses who are targets for intimidation in gang, drug-related cases require special protection, including separation from the defendant within the same correctional facility or transfer to a nearby correctional facility, and separate transportation to court to testify.

## V. COMPLIANCE

All of these victims' rights statutes are meaningless, however, if law enforcement personnel and the courts do not follow them. States and the Federal government have struggled with the issue of ensuring compliance with the victims' rights laws. Two unique state programs, the audit program and the ombudsman program offer some ideas about how to encourage compliance.

### A. Audit Program

The State of Arizona has a victims' rights State constitutional amendment as well as several victims' rights statutes. The State Attorney General's Office has a component called the Office of Victim Services which is responsible for distributing State victims' rights funds monies and monitoring state and local compliance with the victims' rights laws. By statute, the State Attorney General's Office must report to the Governor and the State Assembly each year on the status of the victims' rights program, the Attorney General's compliance with the program, including the level of service, and the expenditure of all monies. To satisfy this reporting requirement, the Arizona Attorney General's Office developed an audit system to gather compliance information.

The Audit is designed to examine:

- (1) the policies and procedures in place in a particular criminal justice office;

- (2) check on case file documentation;
- (3) evaluate the level of services provided;
- (4) resolve any outstanding victim complaints;
- (5) gather any available statistics from any tracking or reporting systems in place; and
- (6) review the background and training of personnel who are in direct contact with victims.

The Audit process begins with a notice letter sent to particular agency informing it of the date and expected length of the audit (usually one day). Enclosed with the notice is a "pre-audit packet" which asks detailed questions about the agency's policies and procedures, personnel, training and other matters. The agency is required to complete the packet before the day of the audit. The actual audit is conducted at a site visit to the agency. During the site visit, the auditors meet with personnel, conduct file reviews, and perform an exit interview where they discuss their findings. In conjunction with an audit, the Attorney General's Office sends a Victims' Rights Survey to selected victims who have been assisted by the agency. The Survey asks the victims, the consumers of the agency's "product", to indicate whether they received all the victims rights to which they are entitled. Any problems identified through the survey can be addressed during the audit meetings. Finally, the Attorney General's Office prepares an audit report that can be provided to the Governor to satisfy the monitoring requirement. The report also contains recommendations on improving services from that office.

### B. Compliance Committee or Ombudsman

Another interesting example are the compliance programs in Colorado, Minnesota, and Wisconsin. Each state has

a slightly different approach to accomplishing the same task; providing recourse to crime victims who feel that their rights have been violated. The differences in the three States' programs are found in their structure and powers. Colorado uses a Victims' Compensation and Assistance Coordinating Committee, which receives complaints from victims. The Committee has power to investigate violations of victims' rights under the State's constitutional amendment and to recommend action with which the agency at issue must comply to rectify victims' complaints. The Committee may also monitor the implementation of the suggestions. When agencies do not comply with the Committee's directives, the matter may be referred to the Governor and/or the State Attorney General for review.

Minnesota has placed oversight in the Office of the Crime Victims Ombudsman. The ombudsman investigates both statutory violations of victims' rights laws and alleged mistreatment by criminal justice practitioners. The ombudsman approaches the enforcement of victims' rights in a neutral and objective manner; acting not as victims' advocates but as advocates of fair government. In addition to responding to requests for investigations by citizens, the ombudsman has the discretion to inspect the actions of agencies on its own initiative and may pursue cases based on reports in the press. The ombudsman's power is limited to investigating alleged abuses and proposing remedies when appropriate. The ombudsman may make public - to both the press and the legislature - his or her findings after an investigation.

Wisconsin has a State level victims service office called the Victim Resource Center. One of the Center's charges is to act as a liaison between criminal justice agencies and victims in resolving

complaints concerning unlawful or inappropriate agency action. Center officials may not prescribe remedies for violations of victims' constitutional protections. The scope of their ability to act allows them to investigate complaints and present the victims' concerns to the official whose actions are in question.

## **VI. VICTIM ASSISTANCE PROFESSIONALS**

In addition to the statutory victims' rights that legislatures have been focusing on, the emergence of victim assistance professionals has really improved victims' treatment in the criminal justice process. Many government agencies, especially law enforcement, prosecutor's offices, and parole agencies have created victim and witness assistance units, whose mission is to assist victims through the criminal justice process. Some private agencies also perform this function, particularly in sexual offenses, domestic violence, and homicide cases. There is a real effort in this country to professionalize the victim assistance positions and make sure that the personnel have adequate training to provide needed assistance. A further improvement in child cases includes the hiring of a child interview specialist who can assist law enforcement and prosecutors in a forensic interview of a child that takes into consideration the child's developmental level and psychological state.

## **VII. THE OFFICE FOR VICTIMS OF CRIME**

In 1982, the United States Congress created the Office for Victims of Crime (OVC) to be the national advocate for crime victim's issues. Congress also created a fund, composed of fines from convicted Federal offenders, special assessments and forfeited bail bonds. This money is administered by OVC and primarily

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distributed back to the states pursuant to a Congressional formula. Part of the states' money goes to pay direct compensation to victims of violent crime for medical expenses, lost wages, and burial costs. The other part of the states' money goes to support state level victim assistance programs such as rape crisis centers, child advocacy centers, domestic violence shelters and homicide support groups. The remaining money that is not sent to the states is used by OVC to support the Federal government's victim assistance programs in Federal law enforcement agencies and for discretionary grants by the OVC Director. Recently, Congress created a special terrorism fund for use in providing emergency services for terrorism victims which also came out of the fund. These programs are vital as a supplement to the victims' rights provisions that govern the criminal justice system.

**VIII. CONCLUSION**

Although we have made great strides in the past 17 years in incorporating victims' rights into our criminal justice system, we still have far to go to make the system fair for crime victims. Some provisions work well and some need much more improvement. The task is an important one, however, and essential to maintaining a fair and just criminal justice system.