

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap, and the bottom bulb has a light blue cap.

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Report 97-735

*VICTIMS' RIGHTS AMENDMENT: BACKGROUND &  
ISSUES ASSOCIATED WITH PROPOSALS TO AMEND  
THE UNITED STATES CONSTITUTION*

Charles Doyle, American Law Division

Updated April 13, 2000

**Abstract.** Twenty-nine states have added a victims' rights amendment to their state constitutions. Similar proposals have been made to amend the United States Constitution.

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## Victims' Rights Amendment: Background & Issues Associated With Proposals to Amend the United States Constitution

Updated April 13, 2000

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<http://wikileaks.org/wiki/CRS-97-735>

## ABSTRACT

This is an examination of historical proposals to add a victims' rights amendment to the United States Constitution in the context of debate over issues associated with such amendments and in light of existing state and federal victims rights laws. It is companion to *Victims' Rights Amendment Proposals to Amend the United States Constitution in the 106<sup>th</sup> Congress*, CRS Report RL30525 (April 14, 2000).

# Victims' Rights Amendment: Background & Issues Associated With Proposals to Amend the United States Constitution

## Summary

Thirty-three states have added a victims' rights amendment to their state constitutions. Similar proposals have been made to amend the United States Constitution, including S.J. Res. 3 and H.J. Res. 64 in this Congress.

Proponents claim an amendment is necessary to balance the rights of victims with those afforded the accused in the criminal justice system, to make protection of victims' rights and remedies uniformly available, and to replace inadequate enforcement mechanisms. Opponents claim an amendment would flood the courts with litigation, would undermine the rights of the accused (perhaps discriminatorily), and would jeopardize effective prosecution.

S.J.Res. 3 and H.J.Res. 64, like many of the statutory and state constitutional provisions, focus on enduring the rights of victims to be notified of, to attend, and to be heard at judicial proceedings. Like several of those provisions, they leave to another day the definition of "victim" for purposes of the amendment. They do address, however, victim participation in bail proceedings, plea bargaining, trial, sentencing hearings among others—each of which are already subject to a wide variety of legislative regulation.

It is as yet unclear whether S.J.Res. 3 or H.J.Res. 64 will wipe the slate clean or simply supplement existing law and whether it will trump conflicting defendant constitutional rights or if the need to accommodate both will in rare instances preclude prosecution in order to avoid conflict.

Appendices include references to state and federal legislation in several of the areas touched upon by the amendment proposals.

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# Victims' Rights Amendment: Background & Issues Associated With Proposals to Amend the United States Constitution

## Introduction

Victims' rights amendments to the United States Constitution have commanded Congressional attention at least since the 104th Congress.<sup>1</sup> The concept has received Presidential,<sup>2</sup> and Justice Department support.<sup>3</sup> This is an examination of the

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<sup>1</sup> Senator Kyl introduced S.J.Res. 52 for himself and Senators Feinstein, Hatch and Craig on April 22, 1996. Congressman Hyde introduced H.J.Res. 173 and H.J.Res. 174 on the same day. The Senate Judiciary Committee held hearings shortly thereafter at which Congressman Hyde testified, *A Proposed Constitutional Amendment to Establish a Bill of Rights for Crime Victims: Hearing Before the Senate Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996)(*Senate Hearing I*). Towards the close of the session, Senator Kyl introduced S.J.Res. 65 for himself and Senators Feinstein and Exon.

Several resolutions were introduced during the 105th, H.J.Res. 71 (Rep. Hyde et al.), H.J.Res. 129 (Rep. Paul), S.J.Res. 6 (Sens. Kyl & Feinstein), S.J.Res. 44 (Sen.Kyl et al.); both Houses held hearings, *Proposals to Provide Rights to Victims of Crime: Hearing Before the House Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997)(*House Hearing*); *A Proposed Constitutional Amendment to Protect Victims of Crime: Hearing Before the Senate Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997)(*Senate Hearing II*); and the Senate Judiciary Committee reported out a resolution, S.Rept. 105-409 (1998).

In the 106th Congress, both House held hearings, *A Proposed Constitutional Amendment to Protect Crime Victims: Hearing Before the Senate Comm. on the Judiciary (Senate Hearing III)*, 106th Cong., 1st Sess. (1999). The hearings held before the Subcommittee on the Constitution of the House Judiciary Committee on March 23, 2000 have yet to be printed, but the prepared statements of the witness at the hearing are available on the Committee's webpage ([www.house.gov/judiciary](http://www.house.gov/judiciary)).

The text of proposals from the 104th and 105th Congresses appears in Appendix I, *infra*. A discussion of more recent legislative developments appears in Doyle, *Victims Rights Amendment: Proposals to Amend the United States Constitution in the 106th Congress*, CRS Report RL30525 (April 13, 2000), which appears in abbreviated form as *Victims Rights Amendment: Overview of Suggestions to Amend the Constitution*, CRS Report 97-736 (April 13, 2000); see also, Morgan, S.J.RES. 3, 106TH CONGRESS, A PROPOSAL TO AMEND THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS, CRS Rept. RS20404 (Nov. 22, 1999).

<sup>2</sup> 32 *Weekly Compilation of Presidential Documents* 1134 (June 25, 1996).

<sup>3</sup> *House Hearing* at 22-39; *Senate Hearing II* at 40-54.

background and some of the legal issues associated with these and other proposed victims' rights amendments to the United States Constitution.

## Background

The victims' rights amendments are the culmination of efforts on several fronts. They have their origins in the confluence of drives by several groups each of whom began with a more narrowly defined focus including:

- those seeking to reform
  - drunk driving laws
  - domestic violence laws
  - laws covering the treatment afforded rape victims, and
  - child abuse and elderly abuse laws;<sup>4</sup>
- those reacting to the Supreme Court's extensive reidentification of the constitutional guarantees and protection afforded the accused in both the state and federal criminal justice systems;<sup>5</sup>
- those dedicated to greater crime prevention, law enforcement, and witness protection;<sup>6</sup> and
- academics.<sup>7</sup>

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<sup>4</sup> Gittler, *Expanding the Role of the Victim in a Criminal Action: An Overview of Issues and Problems*, 11 PEPPERDINE LAW REVIEW 117, 118-20 (1984) ("Much of the initial impetus for this [victim's rights] movement stems from concern about rape victims generated by feminists and women's organizations in the 1960's. The problems of other types of victims – those plagued by family violence, the elderly victim, the victim of drunk driving – subsequently received similar attention"); Aynes, *Constitutional Considerations: Government Responsibility and the Right Not to Be a Victim*, 11 PEPPERDINE LAW REVIEW 63, 64-5 (1984); see generally, *Senate Hearing* at 38-43 (prepared statement of Robert E. Preston, Co-Chairman of the National Victims' Constitutional Amendment Network).

<sup>5</sup> Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 UTAH LAW REVIEW 1375, 1381 (1994) ("In the 1960s, defendants' rights developed considerably as the Warren Court extensively interpreted federal constitutional protection for criminal defendants. When the United States Supreme Court slowed its expansion of defendants' protection, some state courts began to interpret state constitutions broadly to protect defendants' rights. . . . This expanded protection of defendants' rights – with no apparent consideration of victims' interests – came under increasing criticism").

<sup>6</sup> Abrahamson, *Redefining Roles: The Victims' Rights Movement*, 1985 UTAH LAW REVIEW 517, 528; President's Commission on Law Enforcement and the Administration of Justice, TASK FORCE ON ASSESSMENT 80 (1967); McDonald, *Toward's a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 AMERICAN CRIMINAL LAW REVIEW 649, 669-73 (1976).

<sup>7</sup> *The Victim's Veto: A Way to Increase Victim Impact on Criminal Case Dispositions*, 77 CALIFORNIA LAW REVIEW 417, 423 (1989) ("The origins of the Victims' Rights Movement can be traced to the emergence of the science of victimology in the late 1940s and 1950s. By

State and federal legislative bodies have not been unresponsive to their concerns. Congress and each of the states have passed victims' rights amendments to their state constitutions or general victims' bill of rights statutes or both.<sup>8</sup> Virtually every jurisdiction has enlarged victim restitution provisions<sup>9</sup> and established victim compensation and assistance programs.<sup>10</sup>

Congress has enacted the Victim's Rights and Restitution Act of 1990, which includes the federal statutory victims' rights act,<sup>11</sup> the Privacy Protection for Rape Victims Act of 1978,<sup>12</sup> the Victim and Witness Protection Act of 1982,<sup>13</sup> the Victims

1957, proposals for victim compensation were engendering international public debate. New Zealand enacted the first victim compensation program in 1963, and two years later California became the first American state to provide compensation for crime victims").

<sup>8</sup> See Appendices II and III for a sampling of and citations to state constitutional and statutory provisions.

<sup>9</sup> See Appendix IV for citations to the federal and state restitution provisions. Restitution is the only victim specific provision found in recently adopted amendment to the Montana Constitution, MONT.CONST. Art.2, §28(1) ("Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims").

<sup>10</sup> Victim compensation and victim assistance programs are eligible for federal assistance, 42 U.S.C. 10601 to 10607; see Appendix V for a sample state statute and the citations to pertinent state statutes.

<sup>11</sup> 42 U.S.C. 10606 Rights of Crime Victims

(a) Best efforts to accord rights

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) of this section.

(b) Rights of crime victims

A crime victim has the following rights:

(1) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) 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.

(5) The right to confer with [the] attorney for the Government in the case.

(6) The right to restitution.

(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

(c) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section.

<sup>12</sup> 92 Stat. 2046, F.R.Evid. 412.

<sup>13</sup> 96 Stat. 1248 (1982). The Act (1) amended the Federal Rules of Criminal Procedure to include victim impact and restitution information as part of federal presentence reports, F.R.Crim.P. 32(c); (2) recast the witness protection and retaliation sections of the federal



of Crime Act of 1984,<sup>14</sup> the Mandatory Victims Restitution Act of 1996, the Justice for Victims of Terrorism Act of 1996,<sup>15</sup> the Victims Rights Clarification Act,<sup>16</sup> the Torture Victims Relief Act of 1998,<sup>17</sup> and dozens of other more anonymous provisions.<sup>18</sup>

Victims' rights legislation has occasionally come under constitutional attack. For example, the Supreme Court found contrary to the First Amendment the so-called "Son of Sam" laws enacted so that victims might receive the proceeds of a serial killer's literary exploitation of his crimes.<sup>19</sup> Although it later overturned the decision,<sup>20</sup> the Court initially held that victim impact statements during the sentencing stage of a death penalty case violated the Eight Amendment.<sup>21</sup> At first, some of the lower federal courts have been troubled by ex post facto problems raised by the federal restitution

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obstruction of justice law; (3) established explicit restitution provisions applicable in air piracy cases; (4) directed the Attorney General to establish guidelines for notification and fair treatment of victims and witnesses in the federal criminal justice system; and (5) enacted a federal "Son of Sam" law.

<sup>14</sup> Enacted as chapter XIV of the Comprehensive Crime Control Act of 1984, 98 Stat. 2170, the Act established the federal victim compensation and assistance programs.

<sup>15</sup> Enacted as subtitles IIA and IIC of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1227, 1243.

<sup>16</sup> 111 Stat. 12 (1997).

<sup>17</sup> 112 Stat. 3016 (1998).

<sup>18</sup> For example, Congress established a death benefits program for police officers killed in the line of duty in 1968, 82 Stat. 98; the Omnibus Crime Control and Safe Streets Act of 1968 created a cause of action for the victims of illegal wiretapping and electronic eavesdropping, 18 U.S.C. 2520; the Organized Crime Control Act of 1970 included a treble damage provision for the victims of RICO violations (racketeer influenced and corrupt organizations), 18 U.S.C. 1964, and also established the federal witness protection program, 84 Stat. 933; the Comprehensive Crime Control Act of 1984 authorized the preventive detention of suspects who pose a danger to the safety of victims, witnesses or the community, 18 U.S.C. 3142, and includes the Missing Children's Assistance Act, 98 Stat. 2125; the Violent Crime Control and Law Enforcement Act of 1994 created a cause of action for gender-motivated violence, amended the federal rules of criminal procedure establishing a victim's right of allocution at sentencing, and included the Morgan P. Hardiman Task Force for Missing and Exploited Children and Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Acts, 108 Stat. 1941, 2077, 2038, 2043.

<sup>19</sup> *Simon & Schuster, Inc. v. New York*, 502 U.S. 105 (1991).

<sup>20</sup> *Payne v. Tennessee*, 501 U.S. 808 (1991).

<sup>21</sup> *Booth v. Maryland*, 482 U.S. 496 (1987); *South Carolina v. Gathers*, 490 U.S. 805 (1989).

provisions<sup>22</sup> and by community notification provisions of various state “Megan’s Laws.”<sup>23</sup>

The history of a victims’ rights amendment to the United States Constitution begins with the 1982 President’s Task Force on Victims of Crime recommendation which would have simply appended the following sentence to the Sixth Amendment, “Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.”<sup>24</sup> Proponents subsequently floated free-standing variants.<sup>25</sup> Questions over the impact of the

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<sup>22</sup> *United States v. Edwards*, 162 F.3d 87, 89-92 (3d Cir. 1998)(retroactive application of the Mandatory Victims Restitution Act violates the ex post facto clause), citing in accord, *United States v. Siegel*, 153 F.3d 1256, 1259-261 (11th Cir. 1998); *United States v. Bapack*, 129 F.3d 1320, 1327 n.13 (D.C. Cir. 1997); *United States v. Williams*, 128 F.3d 1239, 1241 (8th Cir. 1997); *United States v. Baggett*, 125 F.3d 1319, 1322 (9th Cir. 1997); and *United States v. Thompson*, 113 F.3d 13, 14 n.1 (2d Cir. 1997); *contra*, *United States v. Bach*, 172 F.3d 520, 522-23 (7th Cir. 1999) and *United States v. Nichols*, 169 F.3d 1255, 1279 (10th Cir. 1999).

<sup>23</sup> Often with an eye to *Kansas v. Hendricks*, 521 U.S. 346 (1997)(uphold the civil commitment procedures in the Kansas sexually violent predator law), the more recent appellate decisions have generally rejected early district court decisions raising ex post facto and other constitutional concerns in the registration area, *compare*, *Rowe v. Burton*, 884 F.Supp. 1372 (D.Alaska 1994); *Doe v. Pataki*, 919 F.Supp. 691 (S.D.N.Y. 1996); *E.B. v. Portiz*, 914 F.Supp. 85 (D.N.J. 1996); *Artway v. Attorney General*, 876 F.Supp 666 (D.N.J. 1995), *with*, *Paul P. v. Verniero*, 170 F.3d 396 (3d Cir. 1999); *Roe v. Office of Adult Probation*, 125 F.3d 47 (2d Cir. 1997); *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997); *but see*, *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997)(due process precludes officials, without a hearing, from classifying as a sexual offender with attending adverse consequences a prisoner against whom sex offense charges had been dropped).

The reaction in state courts has been much the same. Registration and notification statutes have generally survived constitutional attacks, but have occasionally encountered due process or similar constitutional obstacles, *e.g.*, *Commonwealth v. Williams*, 557 Pa. 437, 733 A.2d 593 (1999)(state procedure for classifying an individual a sexually violent predator violated due process); *Doe v. Attorney General*, 426 Mass. 136, 686 N.E.2d 1007 (1997)(same); *State v. Scott*, 24 Kan.App.2d 480, 947 P.2d 466 (1997)(classification of the defendant under the state sexual offender registration law constituted grossly disproportionate punishment in violation of the state constitutional proscription against cruel and unusual punishments).

<sup>24</sup> President’s Task Force on Victims of Crime, *Final Report* 114 (1982). Had the amendment been added to the Constitution, the Sixth Amendment of the Bill of Rights would have read as follows: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.”

<sup>25</sup> In 1985, the National Organization of Victim Assistance Task Force offered this language as a proposed amendment to the United States Constitution, “Victims of crime are entitled to certain basic rights, including but not limited to the right to be informed, to be

amendment proposals upon defendants' rights threatened to splinter the movement and the effort was redirected towards the states.<sup>26</sup> More than half of the states have now amended their state constitutions to include victims' rights amendments.<sup>27</sup>

## Issues

Proposals to add a victims' rights amendment to the United States Constitution raise two basic issues: why and what — why should the Constitution be amended and what should be included in any such amendment.

## Purpose

Why a victims' rights amendment to the United States Constitution? Proponents have historically offered several reasons:

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present, and to be heard at all critical stages of federal and state criminal justice processes to the extent that these rights do not interfere with existing constitutional rights," reprinted in *The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime?*, 16 NEW ENGLAND JOURNAL ON CRIMINAL & CIVIL CONFINEMENT 241, 266 (1990). Two years later the Victim's Constitutional Amendment Network suggested another version, "The victim of crime or his or her representative shall have the right to be informed of, to be present at, and to be heard at all criminal justice proceedings at which the defendant has such rights, subject to the same rules of evidence which govern the defendants rights," reprinted ID. at 267.

<sup>26</sup> Karmen, *Who's Against Victims' Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 ST. JOHN'S JOURNAL OF LEGAL COMMENTARY 157, 170 (1992) ("When the victims' movement launched a campaign in the 1980's to reform the Sixth Amendment to the Constitution, some were alarmed that basic civil liberties enshrined in the Bill of Rights could come under attack. Part of the movement sought to add language to the Sixth Amendment to the effect that victims were entitled to certain basic rights. Among these rights were the right to be informed, and the right to be present and heard at all critical stages of the criminal justice process. These rights were to be tailored so as to not conflict with existing constitutional guarantees extended to accused persons. However, others in the movement formulated the proposed constitutional amendment in a more contentious way. They sought to match defendants' rights with victims rights. Currently [in 1992] the drive for an amendment to the United States Constitution is being redirected in favor of efforts to codify victims rights into state constitutions. Some of the sharpest battle have broken out over proposals to strengthen the hand of the state in the name of the victim. Some proposals include legislation to make it easier for the police to effect an arrest, for a defendant to be kept in jail rather than released on bail, to change the rules of evidence or limit the cross-examination of complainants, or lastly, for the government to keep convicts behind bars by shutting off avenues of appeal and review").

<sup>27</sup> Although the state constitutional amendments tend to be individualistic, they share common themes. One of the first, the California constitutional amendment, for example, contains specific provisions for safe schools, exclusionary rule limitations, bail restrictions, and recidivist sentencing, features rarely replicated in other states. On the other hand, it also calls for victim restitution, a component common to those of several states, CAL.CONST. Art.1, §28.

- the criminal justice system is badly tilted in favor of criminal defendants and against victims' interests and a more appropriate balance should be restored;
- the shabby treatment afforded victims has chilled their participation in the criminal justice system to the detriment of all;
- society has an obligation to compensate victims;
- existing statutory and state constitutional provisions are wildly disparate in their coverage, resulting in uneven treatment and harmful confusion throughout the criminal justice system; and
- existing state and federal law is inadequate and likely to remain inadequate.<sup>28</sup>

## The Need for Greater Balance

The due process clauses and other defendants' rights components of the Constitution supplied the foundation for the defendant-focused jurisprudence of the '50's and '60's. It has also served as one of the catalysts for the early victims' rights movement. A call for greater constitutional protection of victims' rights seems a predictable feature of the belief that the criminal justice system must involve a greater balance between the rights of victim and those of the defendant.<sup>29</sup>

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<sup>28</sup> These contentions can be variously parsed and arranged, see e.g., Hudson, *The Crime Victim and the Criminal Justice System: Time for a Change*, 11 PEPPERDINE LAW REVIEW 23, 29-33 (1984) (“1. There are serious injustices in the present system, because it ignores victim interests and often treats victims unfairly. . . .2. The present system harbors the inequity of elaborate procedural rights for the accused, but denies the victim standing in the criminal justice process and grants him very few procedural rights. . . .3. Enhancement of the rights and privileges of crime victims will encourage victim cooperation within the criminal justice system. . . .4. If legislators are to find more funds for law enforcement, corrections, and other criminal justice system programs, it is politically important for the public to feel that the system is working for them, not just for the rights of the accused, convicted, or institutional interests. . . .5. What can be collectively termed humanitarian and social welfare rationales are often cited for the establishment of state-funded victim compensation, victim/witness assistance, and counseling programs. Such rationales generally describe the government service as a benefit bestowed as a matter of legislative or executive grace, rather than a right or entitlement. . . .6. . . . [T]he government’s monopoly on the use of force carries with it the duty to protect its citizens from attack and theft. . . .7. Victim rights reforms are largely non-punitive, non-repressive, constitutional, politically popular, and fiscally inexpensive. . . .8. The ‘we-have-tried-everything-else’ argument. . . .9. Some victim reforms have correctional value in themselves and are more cost-effective than the alternative of longer incarceration. . . .10. The time has come after twenty years of judicial decisions and statutory enactments fully implementing the constitutional rights of criminal defendants for the theoretical remedies of crime victims to receive practical implementation.”).

<sup>29</sup> 145 *Cong.Rec.* S707 (daily ed. Jan. 19, 1999)(remarks of Sen. Kyl) (“statutory and State constitutional provisions are always subservient to the Federal Constitution; so, in cases of conflict, the defendants’ rights – which are already in the U.S. Constitution — will always prevail. Our amendment will correct this imbalance”); 145 *Cong.Rec.* S709 (daily ed. Jan.

The balance argument is hardly new. Close to three quarters of a century ago, the Supreme Court observed that “[t]he law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. . . . But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true,” *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934).

Critics might suggest that victims already enjoy equal constitutional rights with the accused. The victim who repels an unlawful assault with excessive force may find himself criminally charged. In that case, he is entitled to exactly the same constitutional rights as his attacker.<sup>30</sup>

Moreover, many of the constitutional rights afforded the accused benefit the victim as well. They are designed to ensure that the guilty are convicted and that the innocent are not. The accused benefits when the innocent are not convicted; the victim benefits when the guilty are.<sup>31</sup>

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19, 1999)(remarks of Sen. Feinstein (“nowhere in the text of the U.S. Constitution does there appear any guarantee of rights for crime victims. To rectify this disparity, Senator Kyl and I are putting forth is Crime Victims’ Rights Amendment”).

*The Victims’ Bill of Rights: Are Victims All Dressed Up With No Place to Go?* 8 ST. JOHN’S JOURNAL OF LEGAL COMMENTARY 251, 276 (1992)(“It is necessary to provide constitutional protection to the crime victim in order to correct the imbalance in the criminal justice system. . . . The defendant is afforded many rights in the Constitution, but the victim is not. . . . [F]ederal legislation, while a step in the right direction, does not transcend state legislation and fails to adequately meet the need for enforceable victims rights. A constitutional victims’ rights provision will equalize the grossly unbalanced treatment of the victims and the defendants in the criminal justice system”). Young, *A Constitutional Amendment for Victims of Crime: A Victim’s Perspective*, 34 WAYNE LAW REVIEW 51, 64-65 (1987)(“From a victim’s perspective, mere privileges are not sufficient. Because victims endure extensive pain and suffering in the wake of victimization, victims want and deserve the criminal justice system to afford them equal access, equal treatment, and equal justice as provided for the accused. . . . [A]s a result of both the lack of remedies and the vulnerability of existing legislation to constitutional challenges, the victims contend that it is necessary to pass an amendment that ensures them a place ‘equal’ to the accused’s in the criminal justice system”).

Eikenberry, *Victims of Crime/Victims of Justice*, 34 WAYNE LAW REVIEW 29, 48 (1987)(“The . . . victims’ rights amendment is not merely one group’s view of social policy. It is instead a way of balancing the grossly unbalanced criminal justice system; it is a way of returning victims to their rightful position in the criminal justice system; and it is consistent with the purpose and effect of other amendments to the Constitution”).

<sup>30</sup> Cf., Carter, *When Victims Happen to Be Black*, 97 YALE LAW JOURNAL 420 (1988)(discussing the case of Bernhart Goetz charged with attempted murder and assault and ultimately convicted for possession of an unlicensed handgun following a subway confrontation with muggers).

<sup>31</sup> Logic might suggest that the victim also suffers when the guilty escape unpunished because an innocent individual has been accused instead, but this view is rarely heard.

More often, however, the response has been that the balance argument “represents a fundamental misunderstanding of the nature and purpose of individual constitutional rights,”<sup>32</sup> and of the nature and purpose of a criminal prosecution.<sup>33</sup> The law provides a field which it tries to keep level and upon which a victim may seek vindication of his or her rights at the expense of an accused. In most instances, the victim of a crime enjoys the right of a civil cause of action against the perpetrator for damages, injunctions and other forms of equitable relief, as well as punitive damages in some cases. It is here, not on the criminal side, opponents contend, that the victim’s interests are relevant.<sup>34</sup>

In the same vein, one of the motives critics attribute to victims’ rights advocates is a rejection of the basic premise under the American criminal justice system. They suggest victims believe the criminal justice process constitutes an unjustifiable waste of time in a procedure that should be reduced to identifying and then punishing suspects; they consider “suspect”, “accused”, “defendant”, and “guilty” synonymous terms. No process is too quick; no punishment sufficiently severe; acquittals are an injustice.<sup>35</sup> Critics say that no investment of rights short of allowing the victim to

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<sup>32</sup> Dolliver, *Victims’ Rights Constitutional Amendment: A Bad Idea Whose Time Should Not Come*, 34 WAYNE LAW REVIEW 87, 91 (1987)(“The Bill of Rights was designed to protect personal liberties from governmental infringement, not to protect private individuals from each other. No personal liberty of a victim is infringed upon by the government at any time during the criminal prosecution. The victim has not been arrested, is not being tried, is not in danger of being fined or imprisoned — as is the defendant — and is not being deprived of any alternative legal remedies against a defendant. Any rights the victim seeks to secure are not of a constitutional character; thus, a victims’ rights amendment is an inappropriate means of securing victims’ rights”).

<sup>33</sup> Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 357, 381 (1986)(“The prosecution of one charged with a criminal offense is an adversary proceeding. The prosecuting attorney . . . represents the State. It is not only his right, but his duty, to present the State’s case and to argue for and to seek to obtain the State’s objective in the proceeding. That objective is not conviction of the defendant regardless of guilt, nor punishment disproportionate to the offense or contrary to the State’s policy. It is the conviction of the guilty, the acquittal of the innocent and punishment of the guilty, appropriate to the circumstances, in the interest of the future protection of society. In the discharge of his duties the prosecuting attorney is to required to be, and should not be, neutral. He is not the judge but the advocate of the State’s interest in the matter”(quoting, *State v. Westbrook*, 279 N.C. 18, 36-7, 181 S.E.2d 572, 583 (1972)).

<sup>34</sup> On the other hand, time, costs and the prospect of a judgment-proof defendant may render civil justice less than fully satisfactory in many instances.

<sup>35</sup> E.g., *House Hearing*, 86-7 (prepared statement of Elisabeth A. Semel, on Behalf of the National Association of Criminal Defense Lawyers)(“[T]he father . . . whose daughter’s killing provided the necessary political impetus for the rapid-fire enactment of ‘three strikes’ has become an omnipresent commentator on a gamut of criminal justice issues. The jury in the trial of Richard Allen Davis, the man charged with [the little girl’s] murder, had the initial task of deciding whether Davis was actually guilty of the offense, and, if so, whether the prosecution had proved four special circumstances, each of which, if found true, could lead to a death sentence for Davis. The jury took but a few days to discharge its sworn responsibility to consider the evidence with due deliberation, but that was not fast enough for [the victim’s father]. Soon after they had retired to deliberate, [the father] went on national

personally inflict punishment upon those he or she considers guilty is ever likely to balance the scales for these victims — if in fact such victims exist.

Finally, the debate over an amendment to the United States Constitution introduces an issue that need not have previously been considered. No state victims' rights constitutional amendment or state or federal statute may intrude upon the rights the United States Constitution affords the criminally accused. No federal statute or state constitutional provision can roll back the demands of due process or any of the other rights granted by the Bill of Rights. An amendment to the United States Constitution can. A federal victims' rights amendment, if so intended, by definition amends any prior inconsistent provision in the Constitution.<sup>36</sup> Unless the proposed rights are made sub-ordinate to defendant rights in case of conflict, either defendant rights must be subordinate or a prosecution in which they are in conflict must be avoided, abandoned, or repudiated.<sup>37</sup>

## Obligations & the Need for Victim Participation

There seems to be little dispute that shabby treatment of victims makes them less inclined to report crimes, to step forward as witnesses, or to otherwise participate in

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television to chastise these twelve citizens for `failing' to instantly bring in the verdict he demanded”).

Abrahamson, *Redefining Roles: The Victims' Rights Movement*, 1985 UTAH LAW REVIEW 517 (“Jim Brandt reported that his store had been held up three times in the last four years. Brandt was quoted as saying, `The last time, the police caught the guy but the court let him go”).

<sup>36</sup> See e.g., Lamborn, *Victim Participation in the Criminal Justice Process: The Proposals for a Constitutional Amendment*, 34 WAYNE LAW REVIEW 125, 182, 185 (1987) (“[A] right established by the United States Constitution is the supreme law of the land, paramount to conflicting federal and state statutes, judicial opinions, and administrative regulations. Thus, the victim’s constitutional right under the proposal to be present and to be heard would supersede the defendant’s common law or statute right to the exclusion of witnesses. Of course, if two provisions of the Constitution conflict with each other resolution of the issue is not so simple. For example, the defendant’s right to the exclusion of witnesses may have a basis in the confrontation clause of the sixth amendment and the due process clauses of the fifth and the fourteenth amendments, which would conflict with the victim’s right to be present under the proposed amendment. . . . In such cases of conflict, generally the newer provision prevails over the older, and the specific provision prevails over the general. Thus, the victim’s rights to be present and to be heard — being both new and specific — would supersede the defendant’s rights to the exclusion of . . . witnesses”).

<sup>37</sup> In the Lamborn example just cited where the victim’s right to be present conflicts with the defendant’s constitutional right to have witnesses sequestered (barred from hearing the testimony of other witnesses), if the victim’s right is subordinate, the victim/witness may be sequestered; if the defendant’s right is subordinate, the victim/witness may be allowed to be present throughout the trial; if neither is subordinate and the conflict cannot be avoided (e.g., by having the victim not testify or by calling the victim as the first witness), there can be no trial.

the process.<sup>38</sup> But here and with respect to the third justification of an amendment — society’s obligation to compensate for its failure to protect its citizenry — the quarrel is not as much with the identification of the problem as with the selection of a solution.

## Inadequacy of Alternatives

The adequacy of alternatives, now and in the future, lies at the heart of the dispute. Proponents find present law wanting.<sup>39</sup> Opponents find present law workable

<sup>38</sup> *The Victim’s Veto: A Way to Increase Victim Impact on Criminal Case Dispositions*, 77 CALIFORNIA LAW REVIEW 417 (1989)(“Despite the importance of victim participation to the operation of the criminal justice system, commentators have observed that crime victims are largely excluded from the system and that those victims who do participate suffer a ‘second victimization’ at the hands of that system. The victims themselves have become increasingly dissatisfied with a process that denies them a prominent role in bringing an accused offender to justice. They show their dissatisfaction by removing themselves from the system: They fail to report crimes; they fail to appear in court; and at times they resort to vigilantism. Victim withdrawal from the criminal justice process creates a public impression that the system is inefficient and unresponsive, and thus exponentially increases the likelihood that more victims will be deterred from reporting crimes and testifying in court”).

Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 MISSISSIPPI LAW JOURNAL 515, 518 (1982)(“A key assumption underlying the victims’ movement is that the failure of victims to cooperate with the criminal justice system has reached epidemic proportions. Recent statistical studies of victimization confirm what we have known for some time. Victims often do not report to the police the crimes that have been committed against them. And the more crime we have, the larger this ‘dark figure’ of unreported crime becomes. Even when they report crimes, a remarkably large proportion of victims later refuse to testify, which leads prosecutors to dismiss or reduce charges. conversely, victims often find police unwilling to investigate and prosecutors unwilling to charge. In short, each — authorities and victims — finds the other uncooperative, resulting in a reciprocal cycle of decline. Confidence in justice is eroded, enforcement efforts are impeded, and conviction rates, when measured against crimes actually committed, tumble downward”).

<sup>39</sup> Young, *A Constitutional Amendment for Victims of Crime: The Victims’ Perspective*, 34 WAYNE LAW REVIEW 51, 52 (1987)(“Since. . . 1975, Congress and the various state legislatures have enacted some 1500 statutes and programs designed to address the full range of concerns raised by victims. . . . However, the current reports indicate that in state after state the duty to give victims’ interests decent consideration is a rhetorical facade behind which it is bureaucratic business as usual”).

*The Victims’ Bill of Rights: Are Victims All Dressed Up With No Place to Go?* 8 ST. JOHN’S JOURNAL OF LEGAL COMMENTARY 251, 273-74 (1992)(“A constitutional amendment appears to be desirable. It would be a more forceful way of ensuring that victims, in fact, do have rights, since it would be part of our Constitution. It would present a minimum standard to the states, and would guarantee effects victims at least that degree of protection. Victims would be shielded from the negative effects of legislative whim, and could benefit if a state legislature set out to provide victim with greater rights than the Constitution would require. A victims’ rights amendment, if drafted properly, would also create a liberty interest in victims’ rights. As a result, victims would be able to enforce those rights against, and obtain relief from, state prosecutors and judges pursuant to Section 1983 of the Civil Rights Act. Victims might also be able to similarly redress these wrongs against federal officials. By providing such a remedy to aggrieved victims, a victims’ rights amendment would serve



and fear an amendment would make matters worse.<sup>40</sup> The specifics of the proposal

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to close a significant gap which currently plagues the area of victims' rights").

Eikenberry, *Victims of Crime/Victims of Justice*, 34 WAYNE LAW REVIEW 29, 48-49 ("Even though some statutes . . . grant victims substantial rights, the rights are still subordinate to those of the defendant. . . . [T]he rights of victims should be protected from the shifts in political priorities. From year to year different issues emerge that are popular with elected officials and the public. But elected officials change, new constituencies arise, and new issues replace the old. Crime victims should not have to hope for a favorable political climate for their rights to be recognized. This is the very reason that the framers of the Constitution thought it proper to include in [the very first amendments to the Constitution,] the Bill of Rights, protection for those accused of crimes. As the Supreme Court stated: 'The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts.' Board of Educ. v. Barnette, 319 U.S. 624, 638 (1943)").

Kyl & Feinstein, *Victims' Rights: Do We Need a Constitutional Amendment to Ensure Fair Treatment — Yes: Victims Deserve Justice No Less Than Defendants*, 82 AMERICAN BAR ASSOCIATION JOURNAL 82 (Oct. 1996)("The federal government has well-written statutes intended to establish victims' rights; [more than half of the] states have amended their constitutions to protect victims. But, as case after case, shows, a state law or amendment — or even a federal statute — does not equal the weight of the Bill of Rights").

*Senate Hearing II* at 12 (prepared statement of Prof. Laurence H. Tribe, Harvard University Law School)("The problem, rather, is that such [victims right] rules [apart from an amendment to the United States Constitution] are likely, as experience to date sadly shows, to provide too little real protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or any mention of an accused's rights regardless of whether those rights are genuinely threatened").

<sup>40</sup> *House Hearing* at 143-45 (prepared statement of Ellen Greenless, President National Legal Aid and Defender Association)("Prosecutors' offices will be tied in knots. . . . the judicial system will be particularly crippled. . . . Indigent defense systems will also find workloads massively increased by the reductions in pleas and the increase in trials. . . . By consuming the time and resources of society's crime-fighting institutions, including prosecutors, police, courts and probation officers, the public is made less safe. . . . Victims themselves may wonder whether all these costs bring much benefit to them. In fact, the changes will damage the best assistance program victims currently have: the compensation funds around the country that provide quick monetary help, counseling and support services to victims in the traumatic aftermath of a violent crime. . . . In fact, the only clear winners . . . would be the trial lawyers").

*Senate Hearing II* at 99 (prepared statement of Robert J. Humphreys, President of the Virginia Association of Commonwealth's Attorneys)("So I would respectfully suggest that the adoption of this amendment would result in the Nation's prosecutors facing the Hobson's choice of either violating the constitutional rights of victims and exposing them to potential prosecution under 18 U.S.C. 242 [relating to the deprivation of civil rights under color law], or the more likely event would be that they would divert staff and resources from the prosecution of cases to the provision of these mandated victim services").

*Senate Hearing II* at 162-63 (prepared statement of the National Clearinghouse for the Defense of Battered Women)("The proposed amendment's real benefit to crime victims is speculative at best and, in fact, may end up hindering, rather than helping, victims. . . . By forcing restitution to a constitutional level, restitution payments will be given priority over the payment of federal fines. This will certainly end up seriously undercutting payments to the Victims of Crime Act Fund (VOCA) in cases where defendants lack the resources to fully

provide the specifics for much of the debate. The more robust the amendment, the more civil libertarians and the states are likely to object; the more restrained the amendment, the more victims' rights advocates are likely to question its sufficiency.

## The Need for Uniformity

Victims' rights are different in every jurisdiction in the United States. Some find this diversity a reason for an amendment to the United States Constitution.<sup>41</sup> There is the implication that the presence of many individual standards contributes to the failure of existing provisions. Diversity breeds uncertainty that leads to a failure to comply and a failure to claim. More recently, advocates have spoken of the need for a "floor" or baseline; sometimes with and sometimes without an indication that diversity above the line is to be encouraged.<sup>42</sup>

Critics argue that this would essentially federalize the state criminal justice process, denying the people of a particular state and their elected officials the right to decide the range of victim rights and services that should be a part of their state criminal justice systems.<sup>43</sup>

Uniformity obviously requires compliance to a single standard imposed by the amendment to the United States Constitution. Some victims' advocates may join the

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satisfy both. VOCA currently provides funds to more than 3,000 local victims' services organizations, including many domestic violence and sexual assault programs. If the Amendment passes there will ironically be less money available for victims' services").

<sup>41</sup> *House Hearing* at 15 (prepared statement of Senator Feinstein)("Some people question why this needs to be a constitutional amendment. The reasons for this are: . . . to establish consistent, uniform rights for the millions of crime victims in our country").

<sup>42</sup> *Senate Hearing II* at 64 (prepared statement of Attorney General Reno) ("significant state efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights. Rather than form a minimum baseline of protections, the state provisions have produced a hodgepodge of rights that vary from jurisdiction to jurisdiction. . . . Rights that are guaranteed by the federal Constitution receive greater recognition and respect. If a victims' rights amendment is adopted, a permanent, uniform baseline of rights for crime victims will be in force in each and every state"); *House Hearing* at 61 (prepared statement of Jeffrey B. Pine, Attorney General of Rhode Island)("A carefully designed amendment would complement successful amendments and statutes already in place in many states and which are under consideration in many others").

<sup>43</sup> S.Rept. 105-409 at 48 (minority views of Sen. Thompson)("There is no general Federal police power. Accordingly, it seems incongruous to have a Federal constitutional amendment addressing victims' rights when the Constitution itself left only a relatively small role for the Federal Government to address the issue of crime. It is all the more troubling that this proposal co-opts the States by directing them how to run their criminal justice systems").

On the other hand, some consider a constitutional amendment that requires the approval of three quarters of the states less offensive to the principles of federalism than a federal statute of equal breath, cf., *Senate Hearing II* at 87 (testimony of James E. Doyle, Wisconsin Attorney General).

ranks of critics if the price of a constitutionally enthroned victims' rights amendment is the loss of more generous treatment under the law of a particular state.

## Who Is a Victim?

What would a proposed victims' right amendment to the United States Constitution do? A large part of the answer depends upon how "victims" are defined for purposes of the amendment. The breadth of a proposal may vary according to the class of individuals and entities whose rights it seeks to protect. In common parlance, a victim of crime is one who is adversely affected by crime. The concept is fairly broad. It encompasses the appealing and not so appealing victim — the rape victim and the "ripped off" drug dealer; the casualties of gang warfare, both participant and bystander; the middleman in a pyramid scheme,<sup>44</sup> the defendant who is acquitted or whose conviction is overturned,<sup>45</sup> and the elderly person defrauded the savings of a lifetime.

The term often contemplates parents and other members of the family of a deceased, incapacitated, or juvenile victim. In the case of property crimes, it may include anyone with an interest in the property, e.g., an owner, a tenant, a mortgage holder, insurer. In a commercial setting, it embodies those who are economically disadvantaged by a crime even if they suffered no direct injury to an identifiable property interest. In the case of civil rights violations, hate crimes, and terrorism, any member of the group targeted for intimidation may correctly be counted a victim. In the case of public solicitation for prostitution, public drug trafficking, and other crimes with elements of environmental nuisance, anyone who lives in, does business in, or has occasion to visit any affected geographical area might be listed among the victims.<sup>46</sup> The various "Megan's Law" efforts seem to suggest that at least in the public mind, the concept of victim also may encompass potential victims under some circumstances.<sup>47</sup> Finally, the concept of criminal law is based upon the premise that a

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<sup>44</sup> A scheme involving an enterprise whose only income generating activity is the solicitation of successive layers of investors, each layer paid out of the investments of their successors.

<sup>45</sup> E.g., Dr. Sam Shepard's conviction for the murder of his wife was only overturned after he had served nine years in prison, *Shepard v. Maxwell*, 384 U.S. 333 (1966); DNA and other evidence, corroborating his innocence, was only fully developed after his death, *Pittsburgh Post-Gazette*, A8 (March 30, 1997).

*House Hearing* at 90 (prepared statement of Elisabeth A. Semel on behalf of the National Association of Criminal Defense Lawyers)("Just last week, three men were released from Illinois' death row, having spent 18 years in prison for a double murder they did not commit. As one of the men, Kenneth Adams, rightly said: `We are victims of this crime too . . . I want people to know that this could happen to anybody and that's a crime'").

<sup>46</sup> *Community Input at Sentencing: Victim's Right or Victim's Revenge?* 75 BOSTON UNIVERSITY LAW REVIEW 187 (1995).

<sup>47</sup> See also, Abrahamson, *Redefining Roles: The Victims Rights Movement*, 1985 UTAH LAW REVIEW 517, 526 ("The victim has become middle class America. We are all potential victims. Beginning in the 1960s, there has been an increase of crime — or at least a perception of an increase of crime. More and more people began to see themselves and their family members as victims of crime or as potential victims").

criminal act is a transgression against the social order, against the commonweal, the body politic; a crime is a wrong committed against all the rest of us. In this logic, we are all victims of any crime committed.

Almost no one advocates a victims' rights constitutional amendment or implementing legislation quite this all-inclusive, but the exact reach of an amendment and the legislation bringing it into effect appear to still be a matter of debate. At the state level, the term has been fairly narrowly drawn, imposing limitations based upon the nature of the crime, the victim characteristics, offender characteristics, and/or locality of the offense.<sup>48</sup>

## Nature of the Crime

The concept of "victim" can be limited by the seriousness of the crime. Some state victims' rights provisions exclude victims of crimes other than felonies, and some are limited primarily to the victims of crimes of violence.<sup>49</sup> States that limit notification and other victims' rights to victims of felonies or violent crimes, nevertheless, often permit restitution for the victims of property crimes.<sup>50</sup>

The proposals offered in the 104th Congress to amend the United States Constitution spoke in terms of "crimes of violence" or "crimes of violence and felonies," but essentially left the task of defining "victims" to implementing legislation.<sup>51</sup> S.J.Res. 6 of the 105th Congress protected victims "of a crime of

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<sup>48</sup> The definitions of various state victims' rights statutes and constitutional provisions appear in Appendix IV. Note that most of the state constitutional amendments leave the definition of "victim" either expressly to the legislature or implicitly to the legislature and the courts.

In several instances, the definition of "victim" may be different for purposes of different rights; so that, for example, a corporate entity might be considered a victim for purposes of restitution within a particular jurisdiction but not for purposes of victim compensation.

<sup>49</sup> E.g., W.VA. CODE §61-11A-2 ("victim' means a person who is a victim of a felony, the fiduciary of a deceased victim's estate or a member of a deceased victim's immediate family"); CONN.GEN.STAT.ANN. §54-201 ("victim' means a person injured or killed as a result of [criminal conduct]"); FLA. STAT.ANN. §960.03 ("victim' means a person who suffers personal physical injury or death as a direct result of a crime [commission by any person, including a juvenile offender, of a felony or misdemeanor offense punishable under the laws of this state, which results in physical injury or death]").

<sup>50</sup> E.g., FLA.STAT.ANN. §775.089 ("the term `victim' as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense"); IDAHO CODE §19-5304 ("victim" shall mean a person or entity . . . who suffers economic loss or injury as the result of the defendant's criminal conduct. . .").

<sup>51</sup> H.J.Res. 174/S.J.Res. 52 ("crime of violence and other crimes as may be defined by law"); H.J.Res. 173 ("a crime either involving violence or for which the defendant can be imprisoned for a period longer than one year").

violence, and other crimes that Congress may define by law,” a definition that seemed to provide a threshold but one that permitted Congress to adjust the amendment’s reach beyond that point. Congress, or in the absence of implementing legislation the courts, would be called upon to define the threshold as well.<sup>52</sup> Existing law suggested several options for the definition of a crime of violence.

A “crime of violence” might include only those crimes during which a victim sustained physical injury — murder, manslaughter, rape, assault and battery.<sup>53</sup> A more expansive definition would encompass crimes which include within their elements the use of physical force or the threat of physical force against the person of another — bringing in robbery and, under some statutes, kidnapping, arson, burglary, extortion, conspiracy, attempt, solicitation, and facilitation.<sup>54</sup> A more expansive version yet would embrace crimes which include within their elements the use of physical force or the threat of physical force against the person *or property* of another, adding malicious mischief and other property crimes to the list.<sup>55</sup> Finally, a “crime of violence” might

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<sup>52</sup> The Committee Report on S.J.Res. 44 indicates a somewhat different reading of implementing authority. Although the Committee deleted a provision that would have given the federal and state governments parallel implementing authority (“The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation . . .”), it declared, “The Committee anticipates that Congress will quickly pass an implementing statute defining ‘victim’ for *Federal* proceedings. Moreover, nothing removes from the States their plenary authority to enact definitional laws for purposes of their own criminal system. . . . Since the legislatures define what is criminal conduct, it makes equal sense for them to also have the ability to further refine the definition of ‘victim,’” S.Rep.No. 105-409 at 23 (emphasis added). This might be seen to permit a state to negate the amendment by limiting the definition of “victims of violent crime” to coincide with pre-existing state victims right coverage and no more. The Report’s subsequent description of Congress’s implementing authority argues for a slightly less sweeping construction: “. . . the Federal Government and the States will retain their power to implement the amendment. For example, the States will, subject to the Supremacy Clause, flesh out the contours of the amendment by providing definitions of ‘victims’ of crime and ‘crimes of violence,’” S.Rept. 105-409 at 35.

<sup>53</sup> E.g., FBI, UNIFORM CRIME REPORTS: 1995, 5 (1996) that classifies murder, nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as violent crimes.

<sup>54</sup> E.g., 28 U.S.C. 2901(c)(“Crime of violence’ includes voluntary manslaughter, murder, rape, mayhem, kidnaping, robbery, burglary or housebreaking in the nighttime, extortion accompanied by threats of violence, assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable as a felony, or an attempt or conspiracy to commit any of the foregoing offenses”).

<sup>55</sup> E.g., 18 U.S.C. 16 (“‘crime of violence’ means — (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense”); 18 U.S.C. 924(c)(3)(“‘crime of violence’ means an offense that is a felony and — (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense”).

The Senate Report in the 105th Congress thought burglary and sexual offenses against

be described to include those crimes that do not themselves necessarily involve the use or threat of physical force but with which violence is often associated, e.g., drug trafficking, gambling, gun running, or usury.<sup>56</sup>

## Victim Characteristics

Victim characteristics may be used to either expand or contract the reach of a victims' rights proposal. Where the victim is killed, incapacitated, incompetent, or a child, it is common to enlarge the concept of victim to include his or her spouse, parent or other family member.<sup>57</sup>

On the other hand, the states also limit their victims' rights provisions according to the characteristics of the victim. Thus in several jurisdictions, only the innocent may claim victims' rights,<sup>58</sup> participants in a brawl or in a "victimless" crime do not qualify, nor do prisoners under some provisions.<sup>59</sup> A final victim characteristic of limitation is

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children might reasonable be considered crimes of violence, S.Rep.No. 105-409, at 24.

<sup>56</sup> E.g., 18 U.S.C. 3156(4) ("crime of violence" means — (A) an offense that has an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; (B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; or (C) any felony under chapter 109A [relating to sexual abuse] or chapter 110 [relating to relating to sexual exploitation of children]); 42 U.S.C 3796ii-2 ("violent offender" means a person who — (1) is charged with or convicted of an offense, during the course of which offense or conduct — (A) the person carried, possessed, or used a firearm or dangerous weapon; (B) there occurred the death of or serious bodily injury to any person; or (C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A), (B), or (C) is an element of the offense or conduct of which or for which the person is charged or convicted; or (2) has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm").

<sup>57</sup> E.g., IOWA CODE ANN. §910A.1 ("victim" . . . also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense"); MINN.STAT.ANN. §611A.01 ("if the victim is a natural person and is deceased, 'victim' means the deceased's surviving spouse or next of kin").

In some states, victims who are children are afforded additional rights. E.g., N.D.CENT.CODE §§12.1-35-01 to 12.1-35-06 (child victim and witness fair treatment standards); WASH.REV.CODE ANN. §§7.69A.010 to 7.69A.040 (child victims and witnesses); WIS.STAT.ANN. §950.055 (child victims and witnesses: rights and services).

<sup>58</sup> E.g., UTAH CODE ANN. §77-38-2 ("victim of crime" means any natural person . . . unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan"); COLO.REV.STAT. §24-4.1-302 (same).

<sup>59</sup> E.g., ARIZ.CONST. art.2, §2.1 ("victim" means a person . . . except if the person is in custody for an offense or is the accused); ALA.CODE §15-23-60 ("[A] victim is a person against whom an offense has been committed . . . except if the person is in custody for an

humanity. Under many provisions victims must be human beings; corporations, unions, governments, and other legal entities cannot be considered victims for their purposes,<sup>60</sup> again often with an exception for restitution.<sup>61</sup>

## Once a Victim — Always a Victim

One of the principal sponsors of the amendment throughout the years, Senator Kyl, during testimony before the House Judiciary Committee, highlighted one of the difficulties associated with this task. Once rights have been triggered with respect to a particular victim do they continue through all subsequent proceedings involving the same offender including those otherwise unrelated to the victim?<sup>62</sup>

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offense or is the accused”).

<sup>60</sup> Some statutes specifically limit victims to “natural persons” or “individual.” Others accomplish the same result by limiting their application to crimes that require a human victim (homicide, rape, assault, etc.), e.g., ALA.CODE §15-23-60 (“a person against whom the criminal offense [i.e., “a felony involving physical injury, the threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence] has been committed”); KY.REV. STAT. §421.500 (“individual”); MASS. GEN.LAWS ANN. ch.258B §1(“natural person”); MINN.STAT.ANN. §661A.01 (“natural person”); MO.ANN.STAT. §595.200(“natural person”); N.D.CENT.CODE §12.1-34-01 (“natural persons”); N.M.STAT.ANN. §31-26-3(“individual”); TEX.CODE OF CRIM.PRO. art.56.01 (“‘victim’ means a person who is the victim of sexual assault, kidnapping, or aggravated robbery or who has suffered bodily injury or death as a result of the criminal conduct of another”); UTAH CODE ANN. §77-38-2(“natural person”); WYO.STAT. §1-40-202(“individual”).

<sup>61</sup> ME.REV.STAT.ANN. tit.17-A §1322 (“‘Victim’ means a government that suffers economic loss or a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime”), *State v. Hudson*, 470 A.2d 786, 788 (Me. 1984)(society for the protection of animals recognized as a “person” for purposes of the Maine restitution statute); MICH.COMP.LAWS ANN. §780.765 (“For purposes of this section only, ‘victim’ means an individual who suffers direct or threatened physical, or emotional harm as a result of the commission of a crime. For purpose of [various restitution subsections] victim includes a sole proprietorship, partnership, corporation, association, governmental entitle, or any other legal entity that suffers direct physical or financial harm as a result of a crime”).

<sup>62</sup> *House Hearing*, 8 (testimony of Senator Kyl)(emphasis added)(“Patricia Pollard was brutally attacked, left by the side of the road to die. Her attacker was found, was convicted. But 10 years short of fulfilling his minimum sentence, he was paroled. His victim, Patricia Pollard, was given no notice. . . . But because he was a bad actor, not long after he was paroled, he was back under arrest again, this time for narcotics violations. But again, he was to be released. The parole board had considered a release again, prior to the time he served his minimum sentence, and *again without notice to her*. This time, however, the Arizona Constitution had provided, in the interim, an opportunity for victims to be heard at such proceedings. Someone found out about it, even though no notice was given to Patricia Pollard. She was ultimately given the opportunity to persuade the parole board not to parole her assailant. As a result, he remained in jail. I asked her about this. I said, ‘Did you fear for your life?’ She said, ‘More importantly, I feared what he would do to others. I would not have been able to live with myself if I had not gone down to the parole board, and told them what he did to me and what he might do to others’”). It seems likely that the offender in this

## Offender & Locus Characteristics

### *Juveniles*

The category of “victims” for purposes of victims’ rights can be narrowed simply by failing to explicitly include victims of misconduct committed by juveniles which would be crimes if committed by adult. Affording victim participation rights in juvenile proceedings runs contrary to the tradition of nonadversarial inquiry and confidentiality that attends juvenile proceedings. In recent years, however, that tradition has yielded in the interest of protecting victims’ rights in some states.<sup>63</sup>

Historically, some proposals like S.J.Res.6 in the 105th Congress have provided that “the rights established by this article shall apply in all Federal and State proceedings, including . . . juvenile justice proceedings,” but have also empowered the states “to enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” This language clearly anticipates that the victims’ rights amendment will apply in federal and state juvenile proceedings. It would appear to preempt the field except for subsequently enacted provisions based on public safety or judicial efficiency. More difficult to predict is the resolution of any conflicts between the rights contemplated by the amendment and constitutionally based rights of a juvenile. A clear statement in the amendment would be dispositive.<sup>64</sup> In the absence of a clear statement, the courts would endeavor to construe the two rights to avoid conflict. In the course of doing so, it is uncertain whether statements in the legislative history disavowing any intent to reduce defendant rights<sup>65</sup> would be given

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example had his original parole revoked on the basis of the second crime (rather than that he was convicted of the second offense). Some might conclude the distinction makes no difference.

<sup>63</sup> E.g., ARIZ.REV.STAT.ANN. §§8-281 to 8-290.27 (victims’ rights for juvenile offenses); MO.ANN.STAT. §595.200 (victim [is] a natural person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime. The term ‘victim’ also includes the family members of a minor, incompetent or homicide victim.” “Crime’ [is] an act which would constitute a violation of any criminal statute *including any act which may result in an adjudication of delinquency*”(emphasis added)); VT.STAT.ANN. tit.13 § 5301 (“Victim’ means a person who sustains physical, emotional or financial injury or death as a direct result of the commission or attempted commission of a crime *or act of delinquency* and shall also include family members of a minor, incompetent or a homicide victim” (emphasis added)).

In many other jurisdictions, however, the rights of victims of juvenile misconduct are more limited than would be the case had the misconduct been committed by an adult, see e.g., Appendix XIV (victim attendance at juvenile proceedings).

<sup>64</sup> The Committee defeated an amendment offering such language during the course of its consideration of S.J.Res. 44 in the 105th Congress, S.Rept. 105-409 at 38 (“Nothing in this article shall be construed to deny or diminish the rights of an accused as guaranteed by this Constitution”).

<sup>65</sup> 143 *Cong.Rec.* S560 (daily ed. Jan.21, 1997)(“Our proposal will not deny or infringe any constitutional right of any person accused or convicted of a crime”).



greater weight than statements that defendant's constitutional rights should not trump victims' interests.<sup>66</sup>

### ***Military Personnel***

The proposed amendments commonly apply to "military proceedings to the extent that Congress may provide by law," S.J.Res. 6 (105th Cong). Military tribunals already have a victims' rights regulatory requirement in place,<sup>67</sup> but not all victims' rights advocates are impressed with its effectiveness.<sup>68</sup> The Committee Report has explained that the extent of the application has been left to Congress because "of the complicated nature of military justice proceedings, including proceedings held in times of war," S.Rep.No. 105-409, at 37.

### ***Tribal and Territorial Courts***

If an amendment explicitly defined victims of crime in terms which encompassed those victimized by misconduct subject to adjudication in juvenile or military tribunals, would any implications be drawn with respect to misconduct subject to adjudication in tribal courts, or territorial courts, or the courts of the District of Columbia? Would application turn upon the similarity of those courts to state courts or federal courts?

Past proposals called for application in "proceedings in any district or territory of the United States not within a state," e.g., S.J.Res. 6 (105th Cong.). This appears to extend the amendment to the District of Columbia and the territories, but not to tribal courts.

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<sup>66</sup> 143 *Cong.Rec.* S561 (daily ed. Jan.21, 1997)("victims of crime will never be treated fairly by a system that permits the defendant's constitutional rights always to trump the protection given to victims. Such a system forever would make victims second-class citizens. It is precisely because the Constitution is hard to change that basic rights for victims need to be protected in it").

<sup>67</sup> Pischnotte & Quinn, *The Victim and Witness Assistance Program*, 39 AIR FORCE LAW REVIEW 57 (1996).

<sup>68</sup> *Senate Hearing II* at 38 (prepared statement of Marlene A. Young, Executive Director, National Organization for Victim Assistance)("It is time now to address the frustration of victims in the military justice system who still are unable to receive restitution for crimes committed against them").

*Senate Hearing II* at 56 (prepared statement of Beverly Harris Elliot, President, National Coalition Against Sexual Assault)("The military criminal system is especially in need of radical reform. In this system, victims/survivors may never find out what happens to their case because, unlike civilian procedures, all records in military courts are closed, thus, the victim/survivor has no way to obtain information. Perhaps most disturbing is the fact that if the offender is military personnel, the case may be directed to a commanding officer as a matter of individual discipline rather than criminal prosecution. With the constitutional amendment, a victim/survivor who files a criminal report on a military base would have the right to be informed of decisions relating to the crime. These rights would greatly shift the balance from secrecy to open information and accountability").

## *Unavailability*

Cases, where an accused is processed out of the criminal justice system due to physical or mental incapacity or to some other circumstance that renders the accused unavailable, supply another limitation by omission of the definition of “victim.” Thus, for example, “victims” may feel their rights frustrated by policies, practices or programs that prevent entry, result in removal, or otherwise divert suspects from the criminal justice process such as those involving prosecutorial discretion, a grand jury’s refusal to indict, a refusal to seek or grant extradition, civil commitment, incapacity to stand trial, and programs of diversion.

In 105th Congress, S.J.Res. 6 extended to “all public proceedings relating to the crime . . . including . . . collateral proceedings such as habeas corpus.” Since grand jury proceedings are not public, it would not extend to them. The status of victims’ rights with respect to civil commitment proceedings was less certain, particularly of an accused found not guilty by of reason of insanity of committing a crime violence against the victim.<sup>69</sup> On the other hand, it probably reached extradition hearings, since they are public, relating to the crime, and collateral to its prosecution.<sup>70</sup>

## **Crimes Committed Overseas**

A surprising number of federal criminal laws apply overseas.<sup>71</sup> Thus, for example, acts of terrorism committed against Americans outside of the United States may nevertheless be subject to prosecution under our laws, 18 U.S.C. 2332. For practical reasons, Congress might decide to limit the definition of victims to exclude the victims of crimes committed overseas, to include only the victims of those crimes prosecuted

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<sup>69</sup> The Committee Report on S.J.Res. 44 relies on the fact its version of S.J.Res. 44 extends rights to proceedings involving *conditional* release to answer the question. In discussing the right to notice, attend and be heard, the Report notes that the “amendment extends the right to be heard to proceedings determining a ‘conditional release’ from custody. . . . It would . . . include a release from a secure mental facility for a criminal defendant or one acquitted on the grounds of insanity. . . .” and that in the case of the notice due upon a release or escape from custody related to the crime that the phrase “related to the crime” would include “not only a release after a criminal conviction but also, for example, a release of a defendant found not guilty of a crime by reason of insanity and then hospitalized in custody for further treatment. . . .” S.Rept. 105-409 at 27, 30.

<sup>70</sup> S.J.Res. 44, as reported, dropped the reference to “collateral proceedings” and limited victims’ rights in custodial proceedings to those involving “conditional” custody, S.J.Res. 44, §§5, 1. As a consequence, the result here too is the opposite under its provisions, S.Rept. 105-409 at 27 (“A victim would have a right to speak, by virtue of this amendment, at a hearing to determine ‘unconditional’ release. For example, a victim could not claim a right to be heard at a hearing to determine the jurisdiction of the court or compliance with the governing statute of limitations, even though a finding in favor of the defendant on these points might indirectly and ultimately lead to the ‘release’ of the defendant”).

<sup>71</sup> Doyle, *Extraterritorial Application of American Criminal Law*, CRS Report 94-166S (Mar. 13, 1999).

in the United States, or to limit the definition to Americans. The options follow the pattern the states have followed with respect to victim compensation for crimes committed outside of the state. Some permit compensation for violations of their laws even in those instances where the violations occur out-of-state;<sup>72</sup> some allow compensation for their citizens even under some circumstances when they are victimized outstate;<sup>73</sup> and some limit compensation to the victim of crimes committed within their borders.<sup>74</sup>

## Treatment of Victims

More than a few victims' rights schemes contain a pledge that crime victims shall be treated with dignity and respect by members of the criminal justice system.<sup>75</sup> It is, presumably, merely a restatement of the obligation that all public servants owe every member of the public. But such a clause can be a source of consternation when it also promises that victims will be given "fair" treatment, since there has been considerable disagreement as to minimum requirements and the outer limits of "fair" both in this context and in the context of the meaning the Constitution's due process clauses. The clause could lead to unintended results when future courts happen upon it in an

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<sup>72</sup> UTAH CODE ANN. §63-25a-402 ("Victim' means a person who suffers personal physical or psychological injury or death as a direct result of criminally injurious conduct. . ."; "criminally injurious conduct' . . . means conduct that: (a) is or would be subject to prosecution in this state under Section 76-1-201 [relating to criminal liability for conduct committed outside the State, inter alia] or (f) is an act of terrorism, as defined in 18 U.S.C. 2331 committed outside of the United States against a resident of this state. . .").

<sup>73</sup> OKLA.STAT.ANN. tit.21 §142.3 ("Victim' means a person who suffers personal injury or death as a result of criminally injurious conduct," "Criminally injurious conduct' means an act which occurs or is attempted in this state, or against a resident of this state in a state that does not have an eligible crime victims compensation program. . ."); TENN.CODE ANN. §29-13-104 ("Payment of compensation shall be made to the claimant . . . for personal injury to death of the victim which resulted from . . . (5) . . . acts committed or taken in another state if the victim was a resident of this state at the time the crime or act occurred and the claimant's request for compensation from the state in which the crime or act occurred is not honored").

<sup>74</sup> MINN.STAT.ANN. §611A.52 ("Victim' means a person who suffers personal injury or death as a direct result of: (1) a crime. . ."; "Crime' means conduct that (1) occurs or is attempted anywhere within the geographical boundaries of this state, include Indian reservations and other trust lands. . ."); R.I.GEN.LAWS §12-25-2 ("victim' means a person who is injured or killed by any act of a person or persons which is with the description of any of the offenses specified in §12-25-4 and which act occurs in the state of Rhode Island").

<sup>75</sup> CONN.CONST. Art.1, §8[b]: "In all criminal prosecutions, a victim, as the General Assembly may define by law, shall have the following rights: (1) the right to be treated with fairness and respect throughout the criminal justice process. . ."

S.C.CODE §16-3-1530(A): "Victims and witnesses have a right to be treated with dignity and compassion. . . (2) A victim or witness has a right to be treated with dignity by human service professionals who provide basic assistance. (3) A victim or witness has a right to receive courteous assistance as they cooperate with criminal justice personnel.

For citation to other state provisions see Appendix V.

interpretative search for legislative intent. On the other hand, it is very difficult to refuse to promise to be fair.

Federal law now assures the victims of federal crimes, the right “to be treated with fairness and with respect for the victim’s dignity and privacy,” 42 U.S.C. 10606(b)(1).

## **Notice, Attendance & Participation**

The right of victims to be notified of, to attend, and to be heard at criminal proceedings lies at the heart of most state and federal victims’ rights provisions — constitutional and statutory. They are, however, enormously diverse.

## **Decision to Investigate, Arrest or Charge**

The decisions to investigate, arrest and charge are ordinarily made by public officials based on their assessment of the seriousness of the case, the strength of the evidence suggesting that a crime has occurred and that a particular individual committed it, the alternatives available, and the relative allocation of resources required to investigate, arrest and/or prosecute.

Other than as complainants and witnesses, victims are not ordinarily involved in these decisions. The decisions are thought of as being made in the public interest rather than in the private interest of a victim. Preservation of private interests are considered the domain of the civil side. For virtually every act of misconduct prosecutable as a crime in the name of the public, there exists a cause of action for the vindication of individual victims. But a private cause of action is expensive, carries no threat of capital punishment or imprisonment under ordinary circumstances, and is of little avail against a judgment-proof defendant.

If the police will not investigate, if they will not make an arrest following an investigation, or if the public prosecutor will not agree to go forward with a prosecution, as the law stands now no one may compel them to so.<sup>76</sup> Even in the

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<sup>76</sup> Lamborn, *Victim Participation in the Criminal Justice Process: The Proposals for a Constitutional Amendment*, 34 WAYNE LAW REVIEW 125, 137-39 (1987) (speaking of victims’ rights prior to the enactment of victims’ rights legislation in several states) (“The victim of crime does not, by virtue of his victimization, automatically lose his rights as a member of the general public. A member of the general public, however, does not have extensive right of participation in the criminal justice process. . . . [H]is report of a crime to the police may determine whether any official action is taken. However, after making a report, his role in the criminal justice process as a matter of right is for the most part limited to that of mere observer. Although the police may be influenced by his wishes, he has no right to participate in their decision to investigate his report or to make an arrest. He may present a complaint to a magistrate as the basis for issuance of an arrest warrant. Yet, although the prosecutor too may be influenced by his wishes, he has no right to participate in that official’s decision to bring charges, reduce or dismiss them, or enter into a plea agreement. Unless he is called as a witness by the prosecutor or the accused, he has no right to be heard by either

federal system and those few states in which prosecution of serious crimes still requires community approval in the form of a grand jury indictment, victims have no right to make a presentation directly to the grand jury and, unless the grand jury chooses to call them as witnesses, are permitted to do so only under extraordinary circumstances.<sup>77</sup>

This is not to say that victim participation is unknown. Victims can and do assist. The laws of most states permit individual citizens to make arrests for crimes committed in their presence, that constitute felonies, and/or for which they have probable cause;<sup>78</sup>

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the jury or the judge at the criminal trial. Although the judge may be influenced by his wishes, he has no right to be heard regarding the acceptance of the plea of the accused pursuant to a plea agreement or regarding the sentence to be imposed. Moreover, he has no right to be informed regarding the criminal justice process”).

There are a limited number of circumstances under which private efforts re-enforce those of public authorities. Merchants, insurance companies and others hire investigators and security personnel to protect their property and assist in the investigation of crimes against their interests.

<sup>77</sup> *In re Wood*, 833 F.2d 113, 116 (8th Cir. 1987); *Simpson v. Reno*, 902 F.Supp. 254, 257 (D.D.C. 1995); 1 BEALE & BRYSON, GRAND JURY LAW AND PRACTICE §6.05 (1986 & 1995 Supp.); *Individual's Right to Present Complaint or Evidence of Criminal Offense to Grand Jury*, 24 ALR 4TH 316.

Some states provide the target of a grand jury investigation the right to appear, 1 BEALE & BRYSON, GRAND JURY LAW AND PRACTICE §6.05 (1986 & 1995 Supp.). If the United States Constitution were amended to give victims the same rights afforded suspects, the amendment might be construed as creating a right of victims to appear before the grand jury in those jurisdictions which afforded the right to grand jury targets. S.J.Res.6 does not appear to present this difficulty.

<sup>78</sup> ALA.CODE §15-10-7; ALASKA STAT. §12.25.030; ARIZ.REV.STAT.ANN. §13-3884; ARK.CODE ANN. §16-81-106; CAL. PENAL CODE §837; COLO.REV.STAT.ANN. §16-3-201; CONN.GEN.STAT.ANN. \*§53a-22(f); *State v. Hodgson*, 57 Dela. 383, 386, 200 A.2d 567, 569 (1964); *State v. Furr*, 723 So.2d 842, 844 (Fla.App. 1999); GA.CODE ANN. §17-4-60; HAW. REV.STAT. §803-3; IDAHO CODE §19-604; ILL. COMP.LAWS ANN. ch.725 §5/107-3; IND.CODE ANN. §35-33-1-4; IOWA CODE ANN. §804.9; KAN.STAT.ANN. §22-2403; KY.REV.STAT. ANN. §431.005; LA.CRIM.PRO. CODE ANN. art.214; ME.REV.STAT.ANN. tit.17-A §16; MD.CODE ANN. art.27 §594C; *Commonwealth v. Claborne*, 423 Mass. 275, 667 N.E.2d 873 (1996); MICH. COMP.LAWS ANN. §764.16; MINN.STAT.ANN. §629.37; MISS.CODE ANN. §99-3-7; MO.ANN.STAT. \*§563.051, *Ash Grove v. Christian*, 949 S.W.2d 259, 261 n.4 (Mo.App. 1997); MONT.CODE ANN. §46-6-502; NEB.REV.STAT. §29-402; NEV.REV.STAT. §171.126; N.H.REV.STAT.ANN. \*§627:5; N.J.STAT.ANN. §2A:169-3; *State v. Johnson*, 122 N.Mex. 696, 699, 930 P.2d 1148, 1150 (1996); N.Y.CRIM.PRO. LAW §140.30; N.C.GEN.STAT. §15A-404; N.D.CENT.CODE §29-06-20; OHIO REV. CODE ANN. §2935.04; OKLA.STAT. ANN. tit.22 §202; ORE.REV.STAT. §133.225; *Commonwealth v. Corley*, 507 Pa. 540, 491 A.2d 829 (1985); *Monteiro v. Howard*, 334 F.Supp. 411 (D.R.I. 1971); S.C.CODE ANN. §17-13-10; S.D.COD.LAWS ANN. §23A-3-3; TENN.CODE ANN. §40-7-109; TEX.CRIM.PRO.CODE ANN. art. 14.01; UTAH CODE ANN. §77-7-3; *State v. Barber*, 157 Vt. 228, 596 A.2d 337 (1990); *Byrd v. Commonwealth*, 158 Va. 897, 164 S.E. 400 (1932); *State v. Bonds*, 98 Wash.2d 1, 12-3, 653 P.2d 1024, 1031 (1982); *State v. Gustke*, 516 S.E.2d 283, 289-91 (W.Va.1999); *Radloff v. National Food Stores, Inc.*, 20 Wis.2d 224, 237, 123 N.W.2d 570, 571 (1963); WYO.STAT. §7-8-101. (\*Creates defense for a private citizen's use of force to make an arrest; does not explicitly authorize arrest).

and many permit private sources to supplement the efforts of public prosecutors.<sup>79</sup> There are campus police,<sup>80</sup> insurance investigators,<sup>81</sup> and private security guards,<sup>82</sup> to name a few. A number of federal and state laws encourage crime victims to bring civil actions for treble damages as “private attorneys general.” The antitrust and racketeering (RICO) statutes are perhaps the best known of these.<sup>83</sup> Private law enforcement efforts can be a mixed blessing; they are sometimes beneficial<sup>84</sup> and sometimes obstructive.<sup>85</sup>

But the fact remains, official investigations and prosecutions are ultimately subject to the control of public officials.<sup>86</sup> They may have political force on their side, but as

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<sup>79</sup> E.g., Tenn.Code Ann. §8-7-401: “(a) A victim of crime or the family members of a victim of crime may employ private legal counsel to act as co-counsel with the district attorney general or the district attorney general’s deputies in trying cases, with the extent of participation of such privately employed counsel being at the discretion of the district attorney general. The district attorney general or a deputy shall make the final and concluding argument. The privately retained counsel shall immediately inform the district attorney general of such counsel’s employment.” See generally, Bessler, *The Public Interest and the Unconstitutionality of Private Prosecutors*, 47 ARKANSAS LAW REVIEW 511 (1994); Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 HARVARD JOURNAL OF LAW & PUBLIC POLICY 357 (1986).

<sup>80</sup> See e.g., *The Model Campus Police Jurisdiction Act: Toward Broader Jurisdiction for University Police*, 29 COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 39 (1995).

<sup>81</sup> See e.g., *Skinner v. Railway Labor Executives Ass’n*, 489 U.S. 602 (1989).

<sup>82</sup> See, Inbau, Farber, Arnold, PROTECTIVE SECURITY LAW (2d ed. 1996).

<sup>83</sup> 15 U.S.C. 15 (antitrust); 18 U.S.C. 1964 (RICO); state RICO statutes with civil cause of action components include: ARIZ.REV.STAT.ANN. §§13-2312 to 13-2317; COLO.REV.STAT. §§18-17-101 to 18-17-109; DEL.CODE tit.11 §§1501 to 1511; FLA.STAT.ANN. §§895.01 to 895.09; GA.CODE ANN. §§16-14-1 to 16-14-15; HAWAII REV.STAT. §§842-1 to 842-12; IDAHO CODE §§18-7801 to 18-7805; IOWA CODE ANN. §§706A.1 to 706A.5; MISS.CODE §§97-43-1 to 97-43-11; NEV.REV.STAT. §§207.350 to 207.520; N.J.STAT.ANN. §§2C:41-1 to 2C:41-6.2; N.M.STAT.ANN. §§30-42-1 to 30-42-6; N.Y.PENAL LAW §§460.00 to 460.80; N.C.GEN. STAT. §§75D-1 to 75D-14; N.D.CENT.CODE §§12.1-06.1-01 to 12.1-06.1-08; OHIO REV.CODE §§2923.31 to 2923.36; ORE.REV.STAT. §§166.715 to 166.735; R.I.GEN.LAWS §§7-15-1 to 7-15-11; UTAH CODE ANN. §§76-10-1601 to 76-10-1610; WASH.REV.CODE ANN. §§9A.82.010 to 9A.82.170; WIS.STAT.ANN. §§946.80 to 946.88.

<sup>84</sup> Evidence developed through private investigations may not be subject to the same level of Fourth Amendment scrutiny, for instance, see 1 LAFAVE, SEARCH AND SEIZURE §1.8 (2d ed. 1987 & 1994 Supp.).

<sup>85</sup> See e.g., *State v. von Bulow*, 475 A.2d 995 (R.I. 1984) holding that the conduct of an attorney-investigator employed by the children of the victim — selectively disclosing incriminating evidence and withholding exculpatory evidence — denied Claus von Bulow a fair trial on charges he had attempted to murder his wife. A subsequent trial ended in his acquittal.

<sup>86</sup> In the federal system, counsel for victims may not assume or be afforded control of a prosecution, *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987)(holding that while federal courts may under some circumstances appoint a prosecutor

far as the law is concerned, victims have no legal authority to overthrow impartial prosecutorial discretion.<sup>87</sup>

Consequently, most state and federal laws do not anticipate an active role for the victim until a suspect has been formally accused.<sup>88</sup> Concern for the victim between the time of the commission of a crime and the time when a suspect is charged is limited to making sure that any emergency medical needs are addressed and to advising victims of the rights and services available to them.<sup>89</sup>

Occasionally, a commentator will suggest that police or prosecutorial discretion might be adjusted;<sup>90</sup> that, for example, victims might be empowered to compel a judicially reviewable justification for a failure to investigate or prosecute,<sup>91</sup> that private

to try cases of contempt for failure to comply with its orders, counsel for the beneficiary of an order may not be appointed to prosecute failure to comply); cf., *Morrison v. Olson*, 487 U.S. 654 (1988)(upholding judicial appointment of Independent Counsel in light of the fact that the Attorney General must request the appointment, that the powers of Counsel are limited, and that Counsel is subject to removal by the Attorney General).

In states, even where private assistance is permitted due process requires that the public prosecutor remain in control of a state prosecution once it reaches the trial stage, *East v. Scott*, 55 F.3d 996, 999-1002 (5th Cir. 1995); *Person v. Miller*, 854 F.2d 656, 664 (4th Cir. 1988).

<sup>87</sup> *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)(“[I]n American jurisprudence, at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another”).

<sup>88</sup> But see, N.J.STAT.ANN. §52:4B-44(15)(permitting victims to submit impact statements to the prosecutor’s office before any final decision on the charges to be filed).

<sup>89</sup> E.g., N.MEX.STAT.ANN. §31-26-8 (“the law enforcement agency that investigates a criminal offense shall: A. inform the victim of medical services and crisis intervention services available to victims; B. provide the victim with the police report number for the criminal offense and a copy of the following statement: ‘If within thirty days you are not notified of an arrest in your case, you may call (telephone number for the law enforcement agency) to obtain information on the status of your case’; and C. provide the victim with the name of the district attorney for the judicial district in which the criminal offense was committed and the address and telephone number for that district attorney’s office).

Some states postpone notification until after a suspect has been charged; others have adopted a scheme that calls for notification of some rights and services by the police after the commission of the crime and notification of other rights and services after a suspect has been charged. See Appendix VIII.

<sup>90</sup> *Senate Hearing* at 43 (prepared statement of Robert E. Preston, Co-Chairman of the National Victims’ Constitutional Amendment Network) (“Perhaps the most important reason for a federal amendment protecting crime victims is the fact that victims are the injured parties of crime, and thus should have a voice (not a veto) in the management of the investigation and prosecution of the accused, and in the sanctioning of the convicted offender”)(emphasis added).

<sup>91</sup> Aynes, *Constitutional Considerations: Government Responsibility and the Right Not to Be a Victim*, 11 PEPPERDINE LAW REVIEW 63 (1984)( also raising the prospect, inter alia, of suit and/or prosecution of the prosecutor and an action against the government for failure to prosecute). Note that separation of powers, due process and other constitutional

prosecutors might be expressly authorized and afforded greater latitude,<sup>92</sup> or that the cultures of the police and prosecutor might be recast so they understand themselves to be the agents of the victim.<sup>93</sup>

In response, critics recall the unattractive features that characterized private prosecutors in the past.<sup>94</sup> The proposals might, however, have the unintended although not necessarily unfortunate result of bolstering the protection of the less popular segments of society. Police and prosecutors are publicly accountable; they are popularly elected or directed and paid by those who are popularly elected. The last decade stands as living proof that public officials will respond to those who speak for the battered spouse, the raped woman, or the abused child. Who would want it otherwise? Public officials, however, may be far less likely to take up the cudgel for the member of an unpopular minority group — the prostitute, the drug dealer, or the prison inmate — who fall victim to crime. Such victims might be among the true

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concerns that might confine such proposals in the legislative or state constitutional arena are of little consequence when the proposals take the form of an amendment to the U.S. Constitution.

<sup>92</sup> Gittler, *Expanding the Role of the Victim in Criminal Action: An Overview of Issues and Problems*, 11 PEPPERDINE LAW REVIEW 117 (1984)(raising the possibility of a modified private prosecutor system).

<sup>93</sup> Hudson, *The Crime Victim and the Criminal Justice System: Time for a Change*, 11 PEPPERDINE LAW REVIEW 23, 34 (1984)(“Some observers have suggested that police and prosecutors should think of victims as their ‘clients’ or ‘customers.’ Another possibility is to view the crime victim as a ‘consumer’ (along with the criminal perpetrator) of criminal justice services provided by the government. These analogies, while not perfectly fitted to the criminal justice process, are useful in defining an appropriate new role for the crime victim in the criminal justice system. Another traditional idea that must be discarded in order to make the criminal justice system work for the victim is the legal fiction that the state, rather than the victim, is the injured party in a criminal case. As stated by victims themselves: ‘The State of New York was not kidnapped, beaten, and raped. I was.’”).

<sup>94</sup> Dolliver, *Victims’ Rights Constitutional Amendment: A Bad Idea Whose Time Should Not Come*, 34 WAYNE LAW REVIEW 87, 90 (1987)(“By constitutionally emphasizing the conflict between the victim and the accused and placing the victim in the role of a quasi-prosecutor or co-counsel, the victims’ rights amendment represents a dangerous return to the private blood feud mentality. The original purpose of establishing the public prosecutor’s office was to insulate the victim from the accused and to relieve the victim of the burdens of private prosecution – the time, money, and risk of life inherent in the private blood feud. Any attempt to use the Constitution to enhance a victim’s rights by placing the victim in direct conflict with the accused in court reverts to a process that history has shown to be less than fully civilized”).

Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 357, 384 (1986)(“Assigning the prosecutorial function entirely to the district attorney is done for indisputably good reasons. The power to prosecute is an enormous power, which, if abused, can subject innocent citizens to great harms and costs. Entrusting this power to a trained public official sworn to do impartial justice is arguably the best means to ensure liberty of the innocent and punishment of the guilty. Additionally, by centralizing prosecutorial power in the public prosecutor, norms of public policy are more likely to be established, thereby breeding uniformity in the law and its process”).



beneficiaries of a return to private prosecutors, particularly if they are publicly funded.

In any event, the proposals have not been favorably received, as least thus far. In fact, under the amendments to the United States Constitution proposed to date, rights would not attach until after a formal accusation. The decisions not to investigate or not to initiate a prosecution would seem to rest beyond their reach.<sup>95</sup>

## Bail

Bail decisions stand on a different footing. Victims' rights to have their interests considered, to be notified, to attend, and in some instances to make presentations at bail proceedings now appear more frequently in state statutes and courts rules.<sup>96</sup> This is a relatively recent development. At one time, the victim was not only not considered a legitimate participant in the bail hearing, but neither the safety nor any other interest

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<sup>95</sup> The Sixth Amendment grants various rights "in all criminal prosecutions," a phrase construed to mean only those conducted after the adversarial process against a particular individual has begun "whether by way of formal charge, preliminary hearing, indictment, information or arraignment," *Kirby v. Illinois*, 406 U.S. 682, 689 (1972). Consequently, it does not apply where there has been no such formal charge in some form. Similarly, a victim rights amendment establishing rights "in all criminal prosecutions" would seem to embrace the same construction and could not be construed to apply in cases where authorities had refused to investigate, arrest or prosecute. Among the amendments presented during the 104th Congress, the proposal circulated at the American Bar Association convention in fact used the phrase "in all criminal prosecutions." H.J.Res. 173 used comparable language: "in each prosecution . . . any victim of the crime shall have the rights to. . ." The references in H.J.Res. 174/S.J.Res.52 to the criminal, military, and juvenile justice processes" seem to yield the same result — the amendment does not attach until after the process has begun. S.J.Res.6 and S.J.Res. 44 of the 105th Congress employed different terminology with the same apparent result. They afforded participation rights for public proceedings relating to the crime; there are no such proceedings prior to formal accusation of a defendant.

Even after charges are brought against a particular defendant, much the same can be said of charges that are subsequently dropped or of charges that might have been brought but are not. Senator Hatch addressed this point in his remarks on the Senate Report: "It is important to note that the proposed amendment does not specify at what point the rights attach, or in other words, at what point a person becomes a `victim' . . . . This is particularly important to the issue of dropped or uncharged counts against a defendant who has committed multiple wrongs. Frequently, criminal defendants are suspected to have committed crimes for which they are never charged or for which charges are dropped . . . . Do the victims of these crimes have rights under the proposed amendment? If so, are they the same as the rights of the victims of charged counts or of the defendant? Such victims, of course, would have the same rights of notice and allocution relating to conditional release, the acceptance of negotiated pleas (perhaps substantially complicating plea bargains), and sentencing. While the exercise of these rights is unlikely to collide with any defendant rights, the exercise of the right to an order of restitution for the victim of an uncharged count may indeed collide with the rights of the defendant," S.Rept. 105-409 at 42-43 (additional views of Senate Hatch).

<sup>96</sup> See Appendix IX for a summary of state laws calling for victim notification, attendance, and allocution at bail hearings.

of the victim were thought to be relevant considerations. Bail was a guarantee against suspect flight. That was all. The amount of security required and the conditions imposed for pre-trial release were calculated solely to insure the courtroom presence of the accused at the appointed hour.<sup>97</sup> Most states had, and still have, right to bail clauses for noncapital offenses in their state constitutions.<sup>98</sup> Those jurisdictions that did not have a right to bail clause had and have a prohibition against excessive bail,<sup>99</sup> like that found in the United States Constitution, that some read to include or herald a constitutional right to bail even where none was explicitly granted.<sup>100</sup>

In many jurisdictions, this view slowly gave way to a recognition that public and individual safety were legitimate concerns for a judicial officer to consider when deciding whether an accused should be released on bail, or more often, the conditions placed upon the release of the accused. In some instances, the right to bail clause was amended;<sup>101</sup> in some, the state courts interpreted the right to bail to include a witness

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<sup>97</sup> At both state and federal law, the presumption of bail was so strong that even after conviction when the defendant sought bail pending appeal most shared the opinion of Justice Jackson, who sitting on the circuit with a court of appeals panel, declared, “Imprisonment to protect society from predicted but unconsummated offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loathe to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted,” *Williamson v. United States*, 184 F.2d 280, 282-83 (2d Cir. 1950), quoted in National Conference on Bail and Criminal Justice, *BAIL IN THE UNITED STATES*: 1964, 5 (1964).

<sup>98</sup> ALA.CONST. art.I, §16; ALASKA CONST. art.I, §11; ARIZ.CONST. art.2, §22; ARK.CONST. art.2, §8; CAL.CONST. art.1, §12; COLO.CONST. art.II, §19; CONN.CONST. art.I, §8; DEL.CONST. art.I, §12; FLA.CONST. art.1, §14; IDAHO CONST. art.I, §6; ILL.CONST. art.1, §9; IND.CONST. art.1, §17; IOWA CONST. art.1, §12; KAN.BILL OF RTS. §9; KY.BILL OF RTS. §16; LA.CONST. art.1, §18; ME.CONST. art.I, §10; MICH.CONST. art.1, §15; MINN.CONST. art.1, §7; MISS.CONST. art.3, §29; MO.CONST. art.1, §20; MONT.CONST. art.II, §21; NEB.CONST. art.1, §9; NEV.CONST. art.1, §7; N.J.CONST. art.I, ¶11; N.MEX.CONST. art.II, §13; N.D.CONST. art.I, §11; OHIO CONST. art.I, §9; OKLA.CONST. art.2, §8; ORE.CONST. art.I, §14; PA.CONST. art.1, §14; R.I.CONST. art.1, §9; S.C.CONST. art.I, §15; S.D.CONST. art.VI, §8; TENN.CONST. art.1, §15; TEX. CONST. art.1, §§11, 11a; UTAH CONST. art.I, §8; VT.CONST. ch.II, art.40; WASH.CONST. art.1, §20; WIS.CONST. art.1, §8; WYO.CONST. art.1, §14.

<sup>99</sup> GA.CONST. art.I, §1 ¶17; HAW. CONST. art.I, §12; MD.DECL.OF RTS. art.25; MASS.CONST. pt.1, art.26; N.H.CONST. Pt.I, art. 33; N.Y.CONST. art.I §5; N.C.CONST. art.I, §27; VA.CONST. Art.I, §9; W.VA.CONST. art.III, §5.

<sup>100</sup> *Huihui v. Shimoda*, 64 Haw. 527, 530-39, 644 P.2d 968, 971-76 (1982).

<sup>101</sup> ARIZ.CONST. art.2, §22: “All persons charged with crime shall be bailable by sufficient sureties, except for . . . 3. felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.”

CAL.CONST. Art.1, §12: “A person shall be released on bail by sufficient sureties, except for: . . . (b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to others; or (c) Felony offenses when

protection and judicial integrity exception;<sup>102</sup> courts in still other states held that the right to bail clauses permitted imposing victim or public safety conditions<sup>103</sup> and allowed revocation of bail if the conditions were broken.<sup>104</sup>

Finally, the United States Supreme Court removed the cloud formed by the contention that a refusal to grant pretrial bail, because of the threat to public or individual safety posed by the accused, might violate either the United States

the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released”).

COLO.CONST. art.II, §19(1)(b): “All persons shall be bailable by sufficient sureties pending disposition of charges except: . . . (b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that proof is evident or presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases: [a crime of violence alleged to have been committed while the accused was on bail, probation or parole in connection with the prior crime of violence, or when the accused has two prior felony convictions at least one of which is for a crime of violence].”

FLA.CONST. Art.1, §14: “Unless charged with a capital offense or an offense punishable life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.”

ILL.CONST. Art.1, §9: “All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person.”

MICH.CONST. Art.1, §15: “. . . All persons shall, before conviction, be bailable by sufficient sureties, except that bail may be denied for the following persons when the proof is evident or the presumption great: . . . (c) A person who is indicted for, or arraigned on a warrant charging, criminal sexual conduct in the first degree, armed robbery, or kidnapping with the intent to extort money or other valuable thing thereby, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person. . . .”

See also, LA.CONST. Art.1, §18; MISS.CONST. Art.3, §29; N.MEX.CONST. art.2, §13; OKLA.CONST. Art.2, §8; TEX.CONST. art.1, §11a; UTAH.CONST. Art.I, §8; VT.CONST. ch.II, art.40; WIS.CONST. Art.1, §8(2).

<sup>102</sup> *People ex rel. Hemingway v. Elrod*, 60 Ill.2d 74, 79-80, 322 N.E.2d 837, 840-41 (1985); *State v. Mecier*, 136 Vt. 336, 339, 388 A.2d 435, 438 (1978); *In re Humphrey*, 601 P.2d 103, 106 (Okla. Crim.App. 1979).

<sup>103</sup> *Henley v. Taylor*, 324 Ark. 114, 115-16, 918 S.W.2d 713, 714 (1996).

<sup>104</sup> *State v. Dodson*, 556 S.W.2d 938, 945 (Mo.App. 1977); *Mello v. Superior Court*, 117 R.I. 578, 583-85, 370 A.2d 1262, 1264-265 (1977).

Constitution's excessive bail clause or its due process clauses or both.<sup>105</sup> The Court declared that neither clause bars legislative creation of a system that conditions pretrial release upon public safety as well as preventing flight.<sup>106</sup>

When victim safety had become a more clearly permissible consideration, the justification for victim participation in bail proceedings became more obvious.<sup>107</sup>

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<sup>105</sup> “Excessive bail shall not be required . . .” U.S.CONST. Amend.VIII; “. . . [N]or shall any person . . . be deprived of life, liberty, or property, without due process of law. . . U.S.CONST. Amend.V; “. . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . . U.S.CONST. Amend.XIV, §1. For many years, resolution of the question of whether a right to bail had been guaranteed by the United States Constitution was confounded by seemingly conflicting dicta in two Supreme Court decisions announced within months of each other, compare *Carlson v. Landon*, 342 U.S. 524, 545 (1951)(“The [excessive] bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept”), with, *Stack v. Boyle* 343 U.S. 1, 5 (1951)(“Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the Eighth Amendment), and 342 U.S. at 7-8 (Jackson & Frankfurter, JJ.)(“The practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense”).

<sup>106</sup> *United States v. Salerno*, 481 U.S. 739, 755 (1988)(“The Act [being challenged on excessive bail and due process grounds] authorizes the detention prior to trial of arrestees charged with serious felonies who are found, after an adversary hearing, to pose a threat to the safety of individuals or to the community which no condition of release can dispel. The numerous procedural safeguards detailed above must attend this adversary hearing. We are unwilling to say that this congressional determination, based as it is upon that primary concern of every government — a concern for the safety and indeed the lives of its citizens — on its face violates either the Due Process Clause of the Fifth Amendment or the Excessive Bail Clause of the Eighth Amendment”).

<sup>107</sup> Eikenberry, *Victims of Crime/Victims of Justice*, 34 WAYNE LAW REVIEW 29, 39-40 (1987)(“Initially, the defendant is brought into court, informed of his rights and the charges against him, and allowed to enter a plea. . . . If he pleads not guilty, the case is set for trial. The judge then sets bail and other conditions for the defendant’s release. The victim has a vital interest in participating in this phase of the proceedings, particularly with respect to setting bail and the conditions of the defendant’s release. The victim has a vital interest in participating in this phase of the proceedings, particularly with respect to setting bail and the conditions for the defendant’s release. The victim may have real concerns about his own or his family’s safety if the defendant is released. . . . Because the defendant is more likely to be dangerous to his victim than to other members of the community, . . . consideration of the victim’s concerns is appropriate”); see also, *The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime?* 16 NEW ENGLAND JOURNAL OF

Opponents of victim participation in bail determinations, by and large, do not object to the victims appearing as witnesses who have been threatened by the accused. They tend to object to punishing an accused immediately or to preventive detention based on a presumption of future lawlessness of an unconvicted individual.<sup>108</sup>

Only a few states expressly grant the victim the right to be heard at the defendant's bail hearing either specifically or under a general right to be heard at all proceedings.<sup>109</sup> A few more permit consultation with the prosecutor prior to the bail

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CRIMINAL AND CIVIL CONFINEMENT 241, 247 (1990).

<sup>108</sup> Henderson, *The Wrongs of Victim's Rights* 37 STANFORD LAW REVIEW 937, 973 (1985) ("Preventive detention denies free will or choice and rests on a deterministic, wicked person theory of crime. The accused become 'criminals,' and as such, they may be removed from society for society's protection. The transformation of human beings into criminals justifies incarcerating them whether or not they have formally been found guilty of an offense. Moreover, if arrest is taken as sufficient evidence of guilt, the question of punishing the innocent never arises under this rationale"); *United States v. Salerno*, 481 U.S. at 764 (Marshall, J., dissenting) ("[O]ur fundamental principles of justice declare that the defendant is as innocent on the day before his trial as he is on the morning after his acquittal. Under this statute an untried indictment somehow acts to permit a detention, based on other charges, which after an acquittal would be unconstitutional. The conclusion is inescapable that the indictment has been turned into evidence, if not that the defendant is guilty of the crime charged, then that left to his own devices he will soon be guilty of something else. 'If it suffices to accuse, what will become of the innocent?'").

<sup>109</sup> S.D.COD.LAWS ANN. §23A-28C-1 ("Consistent with §23A-28C-4 [defining victims], victims of the crime, including victims of driving under the influence vehicle accidents, have the following rights: . . . (3) to testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released").

IDAHO CODE §19-5306(1) ("Each victim of a crime or juvenile offense shall be: . . . (e) Heard, upon request, at all criminal justice proceedings considering . . . incarceration or release of the defendant unless manifest injustice would result").

See also, ALA.CONST. Amend. 557; ALASKA CONST. Art.I, §24; ARIZ. CONST. Art.2, §2.1, ARIZ.REV.STAT. ANN. §13-4421; COLO.CONST. Art.II, §16a, COLO.REV.STAT.ANN. §§24-4.1-302, 24-4.1-302.5 (victims have a right to be heard on questions of bail modification or reduction); MO.CONST. art.1, §32; S.C.CONST. Art.I, §24, S.C.CODE ANN. §16-3-1520; UTAH CONST. art.I, §38, UTAH CODE ANN. §77-38-4; VA.CODE ANN. §19.2-11.01; WASH.CONST. Art.1, §35.

hearing.<sup>110</sup> Most allow victims to attend.<sup>111</sup> And virtually all provide either that victims should be notified of bail hearings or that victims should be notified of the defendant's release on bail or both.<sup>112</sup>

Under federal law, victims of alleged acts of interstate domestic violence or interstate violations of a protective order have a right to be heard at federal bail proceedings concerning any danger posed by the defendant.<sup>113</sup> In other federal cases, victims' prerogatives seem to be limited to the right to confer with the prosecutor, notification of, and attendance at, all public court proceedings.<sup>114</sup>

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<sup>110</sup> GA.CODE ANN. §17-17-7(d) (“Whenever possible, the prosecuting attorney shall offer the victim the opportunity to express the victim’s opinion on the release of the accused pending judicial proceedings”).

VT.STAT.ANN. tit.13 §5308 (“If practicable the victim of a listed crime shall be given notice of the defendant’s arraignment by the law enforcement agency that issued the citation or made the arrest. The victim of a listed crime shall have the right to be present at the defendant’s arraignment. The prosecutor’s office shall inform the victim about the issues concerning bail and the prosecutor shall advise the court of the victim’s position regarding bail”).

See also, FLA.STAT.ANN. §960.001(g); KY.REV.STAT.ANN. §421.500; MONT. CODE ANN. §46-24-104; W.VA. CODE §61-11A-6.

<sup>111</sup> OHIO REV.CODE ANN. §2930.09 (“A victim in a case may be present whenever the defendant in the case is present during any stage of the case against the defendant that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant’s right to a fair trial. At any stage of the case at which the victim is present, the court, at the victim’s request, shall permit the victim to be accompanied by an individual to provide support to the victim unless the court determines that exclusion of the individual is necessary to protect the defendant’s right to a fair trial”). See Appendix IX for citation to further examples.

<sup>112</sup> NEB.REV.STAT. §81-1848 (“Victims as defined in section 29-119 shall have the following rights: . . . (b) to receive from the county attorney advance reasonable notice of any scheduled court proceedings and notice of any changes in that schedule”).

S.D.COD.LAWS §23A-28C-1 (“ . . . [V]ictims of the crime, including victims of driving under the influence vehicle accidents, have the following rights: (1) Notification of scheduled bail hearings and release from custody . . . “). See appendix IX for the citation to further examples.

<sup>113</sup> 18 U.S.C. 2236 (“In any proceeding pursuant to section 3142 [relating to the release or detention of a defendant pending trial] for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant”).

<sup>114</sup> 42 U.S.C. 10606(b) (“A crime victim has the following rights: . . . (3) the right to be notified of court proceedings, (4) the right to be present at all public court proceedings related to the offense, unless the court determines the testimony by the victim would be materially affected if the victim heard other testimony at trial, (5) the right to confer with [the] attorney for the Government in the case. . .”).

S.J.Res. 6 (105th Cong.) gave victims the right “to be heard and to submit a written statement at a public pretrial . . . proceeding to determine a release from custody.”<sup>115</sup>

## Privacy

The concern for victims’ safety and protection from harassment evidenced in the evolution of state bail laws in some jurisdictions surfaces in victim protection and victim privacy sections in the victims’ rights provisions as well.<sup>116</sup> None of the early proposals to amend the United States Constitution included such a provision.

## Plea Bargains

Negotiated guilty pleas account for over ninety percent of the criminal convictions obtained.<sup>117</sup> Plea bargaining offers the government convictions without the time, cost or risk of a trial, and in some cases a defendant turned cooperative witness; it offers a defendant conviction but on less serious charges, and/or with the expectation of a less severe sentence than if he or she were convicted following a criminal trial,<sup>118</sup> and/or the prospect of other advantages controlled, at least initially by the prosecutor — agreements not to prosecute family members or friends, or to prosecute them on

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<sup>115</sup> The Committee amended version of S.J.Res. 44 contained a like provision (“A victim of a crime of violence . . . shall have the rights: . . . to be heard, if present, and to submit a statement at all proceedings to determine a conditional release from custody. . .”).

<sup>116</sup> ILL.CONST. Art.1, §8.1 (“(a) Crime victims, as defined by law, shall have the following rights as provided by law: . . . (7) the right to be reasonably protected from the accused throughout the criminal justice process”).

IDAHO CONST. Art.I, §22 (“a crime victim, as defined by statute, has the following rights: . . . (8) to refuse an interview, ex parte contact, or other request by the defendant, or any other person acting on behalf of the defendant, unless such request is authorized by law”). See Appendix VIII for other examples.

<sup>117</sup> Karmen, CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY 189 (3d ed. 1996)(out of every 100 felony arrests, 54 result in convictions, 52 of those 54 by guilty plea, citing a 1992 Department of Justice study of 30 jurisdictions); Administrative Office of the United States Courts, *Judicial Business of the United States Courts*, 228 (1999)(only 3,629 of 59,885 of the defendants convicted of federal crimes in the fiscal year ending in September, 1998 were found guilty by a judge or jury following a criminal trial; the rest pled guilty or nolo contendere).

<sup>118</sup> In addition to extraordinarily broad discretion to initiate or abandon a prosecution, *Wayte v. United States*, 470 U.S. 598 (1985); *Town of Newton v. Rumery*, 480 U.S. 386 (1987), prosecutors play an important role in sentencing, see e.g., 18 U.S.C. 3553(b)(federal court may depart from the federal sentencing guidelines upon the motion of the prosecutor); 18 U.S.C. 3553(e)(federal court may sentence a defendant below an otherwise mandatory minimum term of imprisonment upon the motion of the prosecutor).

less serious charges than might be otherwise be filed;<sup>119</sup> forfeiture concessions;<sup>120</sup> testimonial immunity;<sup>121</sup> entry into a witness protection program;<sup>122</sup> and informant's rewards,<sup>123</sup> to mention a few.

For the victim, a plea bargain may come as an unpleasant surprise, one that may jeopardize the victim's prospects for restitution, one that may result in a sentence the victim finds insufficient,<sup>124</sup> and/or one that changes the legal playing field so that the victim has become the principal target of prosecution.<sup>125</sup>

As in the case of bail, victims entering the debate over whether practices involving plea bargaining should be changed to more effectively accommodate their interests may initially find allies in those already critical of the process.<sup>126</sup> So, for example, the victim who feels the accused should be brought to trial and suffer the full punishment of the

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<sup>119</sup> E.g., *Miles v. Dorsey*, 61 F.3d 1459 (10th Cir. 1995); *United States v. Pollard*, 959 F.2d 1011 (D.C.Cir. 1992).

<sup>120</sup> Cf., *Libretti v. United States*, 116 S.Ct. 356 (1995)(government agreed to limit charges and make a favorable sentencing recommendation in exchange for the defendant's guilty plea and his agreement to transfer all property that would have been subject to criminal forfeiture upon his conviction).

<sup>121</sup> See e.g., 18 U.S.C. 6001-6005 (witness immunity).

<sup>122</sup> E.g., 18 U.S.C. 3521 (witness relocation and protection).

<sup>123</sup> E.g., 18 U.S.C. 3059 (rewards); 18 U.S.C. 3059A (rewards for crimes against financial institutions); 18 U.S.C. 3071-3077 (rewards for information relating to terrorism).

<sup>124</sup> "The victim has two interests in the plea bargain decision. One interest is financial: the victim is interested in restitution being imposed as part of the sentence. Thus in a charge bargaining, the victim wants to insure that the defendant pleads to a charge sufficiently serious to allow restitution; and in a sentence bargain, the victim wants to advocate an award of restitution. The victim's second interest is retribution, or revenge: the victim feels he or she has been violated and that the criminal's punishment should be severe. Therefore, in a charge bargain, the victim would want the defendant to plead guilty to a serious charge, and in a sentence bargain, the victim would want a significant sentence imposed," Walling, *Victim Participation in Plea Bargains*, 65 WASHINGTON UNIVERSITY LAW QUARTERLY 301, 307-8 (1987).

<sup>125</sup> E.g., *The Proper Standard for Self-Defense in New York: Should People v. Goetz Be Viewed as Judicial Legislation or Judicial Restraint*, 39 SYRACUSE LAW REVIEW 874 (1988)(discussing prosecution of subway rider who shot the four young men he claims attempted to rob him; Goetz was subsequently prosecuted and convicted for unlawful possession of a handgun).

<sup>126</sup> Misner, *Recasting Prosecutorial Discretion*, 86 JOURNAL CRIMINAL LAW & CRIMINOLOGY 717, 751 (1996)("Until recent times, opponents of plea bargaining tended to view it as unnecessarily compromising rights of the defendant. Recently, however, plea bargaining has come under attack from those who believe it has resulted in insufficient punishment for offenders. Critics now include members of the victims' rights movement who have seen plea bargaining as failing to extract justice from defendants, i.e., the victim's preferences are not always followed by the prosecutor. Critics of plea bargaining spearheaded the Proposition 8 reform in California and successfully campaign for the 'Victims' Bill of Rights'").



law would find himself in full accord with those who urge that plea bargaining be abolished or drastically curtailed.<sup>127</sup>

Victims' advocates and the traditional critics of plea bargaining, however, rarely agree on solutions. Only a few proponents of more extensive victims' rights have argued that victims should have a right to participate in plea negotiations; they would prefer that the court give serious consideration to rejecting the bargains to which they object.<sup>128</sup>

Opponents argue that increased victim involvement in the plea negotiation process will reduce the number of plea bargains and thus result in increased costs and delays in criminal proceedings.<sup>129</sup>

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<sup>127</sup> See, *Is a Ban on Plea Bargaining an Ethical Abuse of Discretion? A Bronx County, New York Case Study*, 64 *FORDHAM LAW REVIEW* 987 (1995) (discussing and citing commentary that discusses plea bargain abolition in Alaska, El Paso, Texas and Bronx County, New York).

<sup>128</sup> Welling, *Victim Participation in Plea Bargaining*, 65 *WASHINGTON UNIVERSITY LAW QUARTERLY* 302 (1987) ("Presented with the alternative of implementing victim participation in plea bargains through the prosecutor or through the court, participation through the court is preferable for three reasons. First, the prosecutor's role, in the plea bargain as well as throughout the prosecution, is to represent society. In contrast, the victim represents only himself. The interests of society and of the victim are not always identical, and it is unwise to confuse the prosecutor's function by obliging him or her to consider the victim's interests. Unlike the prosecutor, the court has already assumed the role of adjudicating competing interests to achieve justice, and simply injecting one additional interest for consideration would not conflict with the court's previously defined role. Second, victim participation through the court is preferable to participation through the prosecutor because recent empirical evidence indicates that institutional disincentives exist for prosecutors to consider victim's interests. One disincentive is that victim participation diminishes the prosecutor's power. Thus, consultation through the prosecutor may be ineffective as a practical matter. Third, victim participation through the court is better than through the prosecutor because one of the interests that participation protects is the victim's feeling of importance. This feeling is more effectively fostered when the victim addresses the court directly rather than merely addressing one of the litigants").

<sup>129</sup> *House Hearing* at 144-45 (prepared statement of Ellen Greenlee, President, National Legal Aid and Defender Association) ("Prosecutors' offices will be tied in knots. They currently resolve nine out of ten criminal cases by plea agreement. It is an indispensable way of managing the overwhelming crush of cases, and of inducing cooperation by low-level offenders against their higher-ups. Letting a victim block a plea agreement turns a case that would take a few days into a trial that could take a few months. Yet a victim's understandable focus on just their own case could confound prosecutors' ability to simultaneously juggle the thousands of other cases that they are expected to bring to satisfactory disposition. . . . the judicial system will be particularly crippled. Blocked plea agreements will mean a massive increase in the current 10 percent of criminal cases which require a full-blown and time consuming trial. . . . Indigent defense systems will also find their workloads massively increased by the reductions in pleas and the increase in trials. . . . Exacerbating this will be demands under the new amendment for lawyers to represent indigent victims to vindicate their new rights in the criminal system").

Some states victims' rights provisions are limited to notification of the court's acceptance of a plea bargain.<sup>130</sup> More often, however, the states permit the victim to address the court prior to the acceptance of a negotiated guilty plea<sup>131</sup> or to confer with the prosecutor concerning a plea bargain.<sup>132</sup>

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<sup>130</sup> CAL.PENAL CODE §679.02 (“(a) The following are hereby established as the statutory rights of victims and witnesses of crimes: . . . (12) To be notified by the district attorney’s office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim’s next of kin, of a pending pretrial disposition before a change of plea is entered before a judge. (A) A victim of any felony may request to be notified, by the district attorney’s office, of a pretrial disposition. (B) If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the district attorney’s office or the county probation department shall notify the victim as soon as possible. (C) The victim may be notified by any reasonable means available”).

See also, IOWA CODE ANN. §915.13; MD.CODE ANN. Art.27, §770; MINN.STAT.ANN. §§611A.03; NEB.CONST. Art.1, §28; NEV.CONST. Art.1, §8; N.D.CENT.CODE §12.1-34-02; ORE.CONST. Art.1, §42; OKLA.STAT.ANN. tit.19 §215.33; WYO.STAT. §1-40-204.

<sup>131</sup> R.I.GEN.LAWS §12-28-4.1(a) (“Prior to acceptance by the court of a plea negotiation and imposition of sentence upon a defendant who has pleaded nolo contendere or guilty to a crime, the victim of the criminal offense shall, upon request, be afforded the opportunity to address the court regarding the impact which the defendant’s criminal conduct has had upon the victim. The victim shall be permitted to speak prior to counsel for the state and the defendant making their sentencing recommendations to the court and prior to the defendant’s exercise of his or her right to address the court”).

See also, ARIZ.CONST. Art.2, §2.1, ARIZ.REV.STAT.ANN. §§13-4419, 13-4423; COLO. CONST. Art.II, §16a, COLO.REV.STAT.ANN. §24-4.1-302.5; CONN.CONST. art.I, §8[b.]; FLA.CONST., Art.I, §16(b), FLA.STAT.ANN. §960.001; IDAHO CONST. Art.1, §22, IDAHO CODE §19-5306; ME.REV.STAT.ANN. tit.17-A §1173; MISS.CODE §§99-43-33, 99-43-27; MO.CONST. Art.1, §32; S.D.COD. LAWS ANN. §§23A-28C-1; UTAH CONST. Art.I, §28; WASH.REV.CODE ANN. §§9.94A.080, 9.94A.090.

<sup>132</sup> DEL.CODE ANN. tit.11 §9405 (“Consistent with the duty to represent the interests of the public as a whole, the prosecutor shall confer with a victim before amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion. Failure of the Attorney General to confer with the victim does not affect the validity of an agreement between the state and the defendant or of an amendment, dismissal, plea, pretrial diversion or other disposition of the case”).

See also, ALA.CODE §§15-23-64, 15-23-71; ALASKA CONST. Art.I, §24; FLA.STAT.ANN. §960.001; GA.CODE ANN. §17-17-11; HAW. REV.STAT. §801D-4; IDAHO CONST. Art.1, §22, IDAHO CODE §19-5306; ILL.CONST. Art.1, §8.1, ILL.COMP.LAWS ANN. ch.725 §120/4.5; IND.CONST. Art.1, §13(b), IND. CODE ANN. §35-40-5-3; KAN.STAT.ANN. §§22-3436, 74-7333; KY.REV.STAT.ANN. §421.500; LA.REV.STAT.ANN. §46:1844; MASS. GEN.LAWS ANN. ch.258B §3; MICH.CONST. Art.1, §24, MICH.COMP.LAWS ANN. §780.756; MO.ANN.STAT. §595.209; MONT.CODE ANN. §46-24-104; N.H.REV. STAT.ANN. §21-M:8-k; N.J.STAT.ANN. §52:4B-44; N.MEX. CONST. Art.II, §24, N.MEX.STAT.ANN. §31-24-5; N.Y. EXEC.LAW §§642, 647; OHIO REV.CODE ANN. §2930.06; PA. STAT.ANN. tit.18 §11.201; S.C.CONST. Art.I, §24, S.C.CODE ANN. §16-3-1545; TENN.CONST. Art.I, §35; TEX.CONST. Art.I, §30; VA.CONST. Art.I, §8-A; W.VA.CODE §61-11A-6(5); WIS.CONST. Art.1, §9m.

S.J.Res.6 (105th Cong.) required that victims be allowed to address the court before a plea bargain was accepted in any state or federal criminal or juvenile proceeding.<sup>133</sup>

## Speedy Trial

The United States Constitution guarantees those accused of a federal crime a speedy trial;<sup>134</sup> the due process clause of the Fourteenth Amendment makes the right binding upon the states,<sup>135</sup> whose constitutions often have a companion provision.<sup>136</sup> The constitutional right is reenforced by statute and rule in the form of speedy trial laws in both the state and federal realms.<sup>137</sup>

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<sup>133</sup> “Each victim of a crime of violence, and other crimes that Congress may define by law, shall have the right . . . to be heard, if present, and to submit a written statement at a public pretrial or trial proceeding to determine . . . an acceptance of a negotiated plea. . . .” See also, S.J.Res. 44 (105th Cong.) §1. The Committee Report emphasized that the right did not embody the right to participate in plea negotiations, S.Rept. 105-409 at 27-8 (“As the language makes clear, the right involves being heard when the court holds its hearing on whether to accept a plea. Thus, victims do not have the right to be heard by prosecutors and defense attorneys negotiating a deal”).

<sup>134</sup> “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . . U.S.Const. Amend. VI.

<sup>135</sup> *Klopfer v. North Carolina*, 386 U.S. 213 (1967).

<sup>136</sup> ALA.CONST. art.I, §6; ALASKA CONST. art.I, §11; ARIZ.CONST. art.2, §24; ARK.CONST. art.2, §10; CAL.CONST. art.1, §15; COLO.CONST. art.II, §16; CONN. CONST. art.I, §8; DEL.CONST. art.I, §7; FLA.CONST. art.1, §16(a); GA.CONST. art.I, §1 ¶11(a); HAW.CONST. art.I, §14; IDAHO CONST. art.I, §13; ILL.CONST. art.1, §8; IND.CONST. art.1, §12; IOWA CONST. art.1, §10; KAN.BILL OF RTS. §10; KY. BILL OF RTS. §11; LA.CONST. art.1, §16; ME.CONST. art.I, §6; MD. DECLARATION OF RTS. art.21; MASS.CONST. pt.1, art.XI; MICH.CONST. art.1, §20; MINN.CONST. art.1, §6; MISS.CONST. art.3, §26; MO.CONST. art.1, §18(a); MONT. CONST. art.II, §24; NEB.CONST. art.1, §11; N.J.CONST. art.I, ¶10; N.MEX.CONST. art.II, §14; N.D.CONST. art.I, §12; OHIO CONST. art.I, §10; OKLA.CONST. art.2, §20; PA.CONST. art.1, §9; R.I.CONST. art.1, §10; S.C.CONST. art.I, §14; S.D. CONST. art. VI, §7; TENN. CONST. art.1, §9; TEX.CONST. art.1, §10; UTAH CONST. art.I, §12; VT.CONST. ch.I, art.10; VA.CONST. art.I, §8; WASH.CONST. art.1, §22; W.VA.CONST. art.3, §14; WIS.CONST. art.1, §7; WYO.CONST. art.1, §10.

<sup>137</sup> *State*: ALA.R.CRIM.P. 8; ALASKA R.CRIM.P. 45; ARIZ.R.CRIM.P. 8.1 to 8.7; ARK.R.CRIM.P. art.VIII; CAL.PENAL CODE §§1381 to 1387.2; COLO.REV.STAT. §18-1-405; CONN.SUPER.CT.R. §§956B to 956F; DEL.SUPER.CT.CRIM.R. 48 (b); FLA.R.CRIM.P. 3.191; GA.CODE ANN. §§17-7-170 to 17-7-171; HAW.R. PENAL PRO. 48; IDAHO CODE §§19-3501 to 3506; ILL.COMP.STAT.ANN. ch.725 §5/103-5; IND.R.CRIM.P. 4; IOWA CODE ANN. §813.2, R.27; KAN.STAT.ANN. §22-3402; LA. CODE CRIM.PRO. arts. 578 to 583; ME.R.CRIM.P. 48(b); MD.CODE ANN. art. 27, §591; MASS.R.CRIM.P. 36; MICH.R.CRIM.P. 6.004; MINN.R.CRIM.P. 11.10; MISS. CODE ANN. §99-17-1; Mo.ANN. STAT. §545.780; NEB. REV.STAT. §§29-1205 to 29-1209; NEV.REV.STAT. §178.556; N.J.R.CRIM.P. 3:25-3; N.M.R.CRIM.P. 5-604; N.Y. CRIM.PRO.LAW §§30.10 to 30.30; N.C.GEN.STAT. §15A-701 to 704; N.D.R.CRIM. PRO. 48(b); OHIO REV.CODE ANN. §§2945.71 to 73; OHIO.R.CRIM.P. 48(b); OKLA. STAT.ANN. tit.22 §§811 to 817; ORE.REV.STAT. §§135.747 to 765; PA.R.CRIM.P. 1100; R.I.GEN.LAWS §12-13-7; S.C.CODE ANN. §17-23-90; S.D.COD.LAWS

“Ironically, however, the defendant is often the only person involved in a criminal proceeding without an interest in a prompt trial. Delay often works to the defendant’s advantage. Witnesses may become unavailable, their memories may fade, evidence may be lost, changes in the law may be beneficial, or the case may simply receive a lower priority with the passage of time.”<sup>138</sup>

Until recently, victims had no comparable rights, although their advocates contended they had a very real interest in prompt disposition. Some victims sought to put a traumatic episode behind them; some wanted to see justice done quickly; some hoped simply to end the trail of inconveniences and hardship that all too often fell to their lot as witnesses.<sup>139</sup> Or so they were portrayed.

Not everyone accepted this picture, or more precisely not everyone agreed that the picture as portrayed was complete.<sup>140</sup>

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ANN. §23A-44-3 to 23A-44-5.1; TENN.R.CRIM.P. 48(b); TEX.CRIM.PRO.CODE ANN. arts.32A.01 to 32A.02; UTAH R.CRIM.P. 25; VT.R. CRIM.P. 48(b); VT.S.CT.ADMIN. ORD. 5; VA.CODE ANN. §§19.2-241 to 19.2-243; WASH.SUPER.CT.R.CRIM. 3.3; W.VA.CODE §62-3-1; WIS.STAT.ANN. §971.10; WYO. R.CRIM.P. 48(b).

*Federal:* 18 U.S.C. 3161-3174.

<sup>138</sup> Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah’s Victims’ Rights Amendment*, 1994 UTAH LAW REVIEW 1373, 1402.

<sup>139</sup> See e.g., Kelly, *Victims’ Perceptions of Criminal Justice*, 11 PEPPERDINE LAW REVIEW 15, 19-20 (1984)(“Postponements were particularly difficult to tolerate. Studies show that witnesses’ opinions of the court deteriorate as the number of postponements increases. Sixth percent of the victims interviewed had their court date postponed at least once. Delay in court hinders the victim’s recovery. As one woman stated: ‘Your life is on hold until it’s over.’ Victims believed continuances were granted with little consideration of their feelings. Additionally, decisions on case dispositions and sentencing were usually made regardless of victims’ interest. It is these imbalances that victims seek to correct”).

<sup>140</sup> Henderson, *The Wrongs of Victim’s Rights*, 37 STANFORD LAW REVIEW 937, 974-77 (1985)(“A second major victim’s rights proposal gives victims a ‘right’ to oppose continuances. Victim’s rights advocates frequently blame defense lawyers for obtaining continuances that unduly prolong the agony of the crime victim by rendering it impossible for victims ‘to put their experience behind them.’ Proponents of the crime control model view so-called stalling tactics of defense attorneys to be an overwhelming block to both efficiency and swift and sure punishment, two hallmarks of this model.

“While defense abuse of continuances occurs, the development of both the prosecution and the defense in a serious case can, and does, take time. Investigation, forensic tests, interviews, and visits to crime scenes, among other things, are often time-consuming. And in many cases, motions must be researched, prepared, and argued. Although many of those accused of a crime turn out to be guilty, investigation and preparation in even the most seemingly impossible cases occasionally do demonstrate that the accused is in fact innocent. Moreover, rushing to a judgment because of presumption of guilt serves neither the victim nor society, particularly if the real culprit remains at large.

“Victims are likely to want a psychological ‘resolution’ of the matter, but this kind of resolution does not ultimately depend on the outcome of the criminal case. It is simplistic to assert that the rituals of condemnation will erase so profound an experience for an individual. Continuances and delays may cause a victim to relive the event, but a victim is likely to relive portions of the event whether or not there is a delay. Issues raised by victimization do not

Most of the states have since enacted statutory or constitutional provisions establishing a victim's right to "prompt" or "timely" disposition of the case in one form or another.<sup>141</sup> Many have also made efforts to minimize the adverse impact of the delays that do occur by either providing for employer intercession services<sup>142</sup> and/or

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resolve themselves quickly: A reintegration and understanding of such questions as mortality, meaning, and responsibility take time. Therefore, delay may be of great benefit to a victim's psychological state, and time is necessary to heal the psychic wounds created by victimization. Only for those victims who completely deny or repress their experience is a delay likely to be traumatizing, because in having to recover the experience, they will be without defenses or understanding.

"Sometimes a delay enables victims to be better prepared for the evidence that will be introduced at trial. . . . Endless delays and confusion can harm victims, but rushing towards a conclusion can be equally harmful. Temporal distance from the event is important to healing, and treating the victim with respect may ultimately benefit the victim more than rapid process").

<sup>141</sup> LA.REV.STAT.ANN. §46:1844 [J.] ("The victim shall have the right to a speedy disposition and prompt and final conclusion of the case after conviction and sentencing").

N.H.REV.STAT.ANN. §21-M:8-k ("To the extent that they can be reasonably guaranteed by the courts and by law enforcement and correctional authorities, and are not inconsistent with the constitutional or statutory rights of the accused, crime victims are entitled to the following rights . . . (g) the right to have inconveniences associated with participation in the criminal justice process minimized").

UTAH CODE ANN. §77-38-7 ("(1) In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's or minor's right to speedy trial. (2) The victim of a crime has the right to a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor and to prompt and final conclusion of the case after the disposition or conviction and sentence, including prompt and final conclusion of all collateral attacks on dispositions or criminal judgments. (3)(a) In ruling on any motion by a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy disposition of the case. (b) If a continuance is granted, the court shall enter in the record the specific reason for the continuance and the procedures that have been taken to avoid further delays"). See Appendix XII for citations and capsulized descriptions of other examples.

<sup>142</sup> ARK.CODE ANN. §16-21-106 ("(a) The several prosecuting attorneys and deputy prosecuting attorneys may provide the following services to victims of crimes and witnesses of crimes and the family members of all homicide victims, whether or not they are witnesses in criminal proceedings: . . . (7) Intercede with such persons' employers to assure that the employers cooperate with the criminal justice process in order to minimize loss of pay and other benefits resulting from court appearances").

MONT.CODE ANN. §46-24-205("(1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from the place of employment. (2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. The agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for the serious

by prohibiting employers from penalizing victim/witnesses for attending court proceedings.<sup>143</sup> And most call for the prompt return of a victim's property, taken for evidentiary purposes, as soon as it is no longer needed.<sup>144</sup>

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financial strain"). See Appendix XIII for capsule summaries of other examples.

<sup>143</sup> OHIO REV.CODE ANN. §2930.18 ("No employer of a victim shall discharge, discipline, or otherwise retaliate against the victim, a member of the victim's family, or a victim's representative for participating, at the prosecutor's request, in preparation for a criminal or delinquency proceeding or for attendance, pursuant to a subpoena at a criminal or delinquency proceeding if the attendant is reasonably necessary to protect the interests of the victim. . . . An employer who knowingly violates this section is in contempt of court").

N.D.CENT.CODE §§27-09.1-17 ("1. An employer may not deprive an employee of employment, lay off, penalize, threaten, or otherwise coerce an employee with respect thereto, because the employee receives a summons or subpoena, responds thereto, serves as a juror or witness, or attends court for jury service or to give testimony pursuant to a subpoena. 2. Any employer who violates subsection 1 is guilty of a class B misdemeanor. 3. If an employer discharges an employee in violation of subsection 1, the employee within ninety days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable may not exceed lost wages for six weeks. If the employee prevails, the employee must be allowed a reasonable attorney's fee fixed by the court").

WIS.STAT.ANN. §103.87 ("No employer may discharge an employe because the employe is subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48 or 938. On or before the first business day after the receipt of a subpoena to testify, the employe shall give the employer notice if he or she will have to be absent from employment because he or she has been subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch.48 or 938. If a person is subpoenaed to testify in an action or proceeding as a result of a crime, as defined in s. 950.02(1m), against the person's employer or an incident involving the person during the course of his or her employment, the employer shall not decrease or withhold the employe's pay for any time lost resulting from compliance with the subpoena. An employer who violates this section may be fined not more than \$200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Except as provided in this section, restitution shall be in accordance with s. 973.20").

See also, ALA.CODE §15-23-81; ALASKA STAT. §12.61.017; CONN.GEN.STAT. ANN. §54-85b; DEL.CODE ANN. tit.11 §9409; FLA.STAT.ANN. §90.52; ILL.COMP. LAWS ANN. ch.725 §5/115-18; IOWA CODE ANN. §915.23; MD.CTS.& JUD.PROC. CODE ANN. §9-205; MICH.COMP.LAWS ANN. §§780.762, 780.822; MINN.STAT.ANN. §611A.036; MO.ANN.STAT. §595.209; MONT.CODE ANN. §46-24-205; NEV.REV. STAT. §50.070; N.Y.PENAL LAW §215.14; N.D.CENT.CODE §27-09.1-17; VT.STAT. ANN. tit.13 §5313; VA.CODE ANN. §18.2-465.1; WYO.STAT. §1-40-209.

<sup>144</sup> WASH.REV.CODE ANN. §7.69.030(7)("There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights: . . . (7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken").

N.Y.EXEC.LAW §642 ("3. Law enforcement agencies and district attorneys shall promptly return property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial"). See also Appendix XIV.

The federal statutory victims' bill of rights, 42 U.S.C. 10606, does not include an employment, property return, or a speedy trial provision, but Congress has encouraged the states to include a right to a reasonably expeditious trial among the rights they afford victims.<sup>145</sup>

Past proposals like S.J.Res. 6 and S.J.Res. 44 have not referred to employment or property rights but have entitled victims to "a final disposition of the proceedings relating to the crime free from unreasonable delay." In the absence of further development either in its legislative history or in implementing legislation, courts called upon to construe such a provision might well find guidance in the Supreme Court's identification of the factors to be weighed when testing for unacceptable delay under the speedy trial and due process clauses: "length of delay, reasons for the delay, defendant's assertion of his right, and prejudice to the defendant."<sup>146</sup>

## Other Pre-Trial Motions & Proceedings

Little focused attention seems to have been given thus far to the role victims and their interests should play in the sundry pre-trial motions and proceedings (other than bail or the acceptance of guilty pleas at the end of the plea bargaining process). This is so even though the prompt disposition and speedy trial formulae appear to anticipate either victim participation or an increased appreciation of victim concerns in such proceedings.<sup>147</sup>

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Rule 41(e) of the Federal Rules of Criminal Procedure establishes a procedure for the return of property seized by federal officials. The rule was originally limited to the recovery of property unlawfully seized, 3 WRIGHT, FEDERAL PRACTICE & PROCEDURE: CRIMINAL §673 (1982 & 1997 Supp.), but its ancestry notwithstanding it seems at least arguable that the demands of the victim property return statutes and Rule 41(e) mirror the dictates of the Fourth Amendment, either standing alone or in conjunction with due process, cf., *Davis v. Gracey*, 111 F.3d 1472, 1477 (10th Cir. 1997).

<sup>145</sup> 42 U.S.C. 10606 nt. ("It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights: . . . (4) Victims of crime should have the right to a reasonable assurance that the accused will be tried in an expeditious manner").

<sup>146</sup> *Barker v. Wingo*, 407 U.S. 514, 530 (1972)(speedy trial); *United States v. \$8,850*, 461 U.S. 555, 564 (due process concerning delays between the seizure of property and the initiation of in rem forfeiture proceedings); S.Rep.No. 105-409, at 31 ("In determining what delay is 'unreasonable,' the courts can look to the precedents that exist interpreting a defendant's right to a speedy trial").

<sup>147</sup> Eikenberry, *Victims of Crime/Victims of Justice*, 34 WAYNE LAW REVIEW 29, 40 (1987)("Decisions on pretrial motions may have a significant impact on the outcome of a case, and can seriously affect the victim's participation in the trial. Such decisions should be based on information that includes the impact on the victim. Decisions on pretrial motions may have a significant impact on the outcome of a case, and can seriously affect the victim's participation in the trial. Such decisions should be based on information that includes the impact on the victim. Victims may suffer inconvenience and additional psychological trauma as a result of the court's decision to continue a trial date or to change venue. Victims frequently find it difficult to take time off work and pay travel expenses in order to attend the

Victims in several states may also be able to claim a role in pre-trial motions practice based on the more general of the right-to-be-heard-in-all-critical-proceedings provisions.<sup>148</sup> Otherwise, victims are probably not entitled to address the court, as a matter of right, on questions of change of venue, continuances, severance, exclusion of evidence, etc.<sup>149</sup>

Right-to-be-heard language, like that found in S.J.Res.6 (105th Cong.) appears insufficiently elastic to reach pre-trial motions unaided: “Each victim . . . shall have the right . . . to be heard . . . at a public pretrial or trial proceeding *to determine a release from custody, an acceptance of a negotiated plea, or a sentence*; . . . (emphasis added).” The phraseology does not seem to anticipate victim participation in pre-trial practice except with respect to questions of bail, plea bargaining or sentencing.<sup>150</sup>

Congress and the states, might achieve the same result within their respective jurisdictions however, through the enactment of enforcement legislation to fulfill any amendment promise of “a final disposition . . . free from unreasonable delay.” If so, a constitutional conflict might arise should changes of venue, severance or the granting of other pre-trial motions be grounded in rights that the Constitution now promise the accused. In the Oklahoma City bombing cases, for example, the change of venue and severance appear to have been ordered by the court in the interest of assuring the accused of the right to a trial before an impartial jury. It is unclear whether passage

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trial. These problems are compounded when the trial date is repeatedly postponed or the trial is moved to another city. The inconveniences of lost work and travel time are in addition to the emotional stress experienced by the victim, who must repeatedly prepare to testify to an often terrifying criminal act. While the need to schedule an expert witness or to avoid pretrial publicity may override the victim’s interests in some cases, the victim still should have an opportunity to voice to the judge the potential impact of the decision”).

<sup>148</sup> ALA.CONST., Amend. 557; COLO.CONST. art.II, §16a; FLA.CONST. art.I, §16(b); UTAH CONST. art.I, §28; WYO.STAT. §§1-40-203, 1-40-206.

<sup>149</sup> *The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime?* 16 NEW ENGLAND JOURNAL ON CRIMINAL & CIVIL CONFINEMENT 241, 244 (1990)(“it was stated in *Linda R.S. v. Richard D.* [410 U.S. 614, 619 (1973)]”) that ‘a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution . . . . [A] private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.’ In summary, a member of the general public does not have an extensive right of participation in the criminal justice process. Although for the most part she has a right to be present during judicial proceedings, she does not have the right to be informed or the right to be heard”); see also, *United States v. McVeigh*, 106 F.3d 325, 334-35 (10th Cir. 1997)(holding that victims had no standing to contest a pre-trial sequestration order to which they were subject and that the federal Victims Rights Act, 42 U.S.C. 10606, could not be construed as conveying such standing since it expressly repudiated any intent to create a cause of action for noncompliance).

<sup>150</sup> Cf., S.Rept. 105-409 at 27 (“A victim would not have a right to speak, by virtue of this amendment, at a hearing to determine ‘unconditional’ release. For example, a victim could not claim a right to be heard at a hearing to determine the jurisdiction of the court or compliance with the governing statute of limitations, even though a finding in favor of the defendant on these points might indirectly and ultimately lead to the ‘release’ of the defendant”).



of S.J.Res. 6 and implementing legislation would be construed as requiring subordination of the fair trial rights of the accused to the victims' speedy trial and convenience interests.

## Trial

The Sixth Amendment promises the accused a public trial by an impartial jury.<sup>151</sup> It does not mention victims. Their status is at best that of any other member of the general public for Sixth Amendment purposes and, in fact, the Constitution screens the accused's right to an impartial jury trial from the over exuberance members of the public.<sup>152</sup>

Moreover, victims are even more likely to be barred from the courtroom during trial than members of the general public. Ironically, the victim's status as a witness, the avenue of most likely access to pre-trial proceedings, is the very attribute most likely to result in exclusion from the trial.

Sequestration, or the practice of separating witnesses and holding outside the courtroom all but the witness on the stand, is of ancient origins and "consists merely in preventing one prospective witness from being taught by hearing another's

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<sup>151</sup> *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence,"* U.S.Const. Amend. VI (emphasis added).

<sup>152</sup> *Woods v. Dugger*, 923 F.2d 1454, 1459-460 (11th Cir. 1991)(finding a Sixth Amendment violation in the case involving the murder of prison guard, marked by extensive pretrial publicity, in a community where a substantial percentage of the population were employed by the prison system, and in which more than half of the members in attendance during the course of the trial were uniformed prison guards); *Norris v. Risley*, 918 F.2d 828, 834 (9th Cir.1990)(finding a Sixth Amendment violation in a kidnapping/rape case in which women wearing "Women Against Rape" buttons permeated the courtroom and its environs)("we find the risk unconstitutionally great that these large and boldly highlighted buttons tainted Norris's right to a fair trial both by eroding the presumption of innocence and by allowing extraneous, prejudicial considerations and cross-examination"). *Norris* also noted a similar view among the state courts, "A decision of the West Virginia Supreme Court is informative regarding the wearing of buttons during trial. *State v. Franklin*, 327 S.E.2d 449 (W.Va. 1985) involved a prosecution for driving under the influence of alcohol, result in death. During the trial, various spectators from an organization campaigning under the acronym MADD (Mothers Against Drunk Drivers) wore buttons inscribed with the capital letters MADD. Most jurors knew what the initials stood for. In reversing the conviction and remanding for a new trial, the court noted that the trial court's `cardinal failure . . . was to take no action whatever against a predominant group of ordinary citizens who were tooth and nail opposed to any finding that the defendant was not guilty.' *Id.* at 455," 918 F.2d at 832.

testimony.”<sup>153</sup> The principle has been embodied in Rule 615 of the Federal Rules of Evidence and in state rules that adopt the federal practice.<sup>154</sup>

Victims’ advocates contend that it should be fundamental that individuals may attend the entire trial involving the crime visited upon them.<sup>155</sup> Yet an absolute right to attend all proceedings may sometimes be unfair, and in some instances even a violation of due process or the right to trial by an impartial jury.<sup>156</sup>

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<sup>153</sup> VI WIGMORE ON EVIDENCE §§1837, 1838 (1940 ed.).

<sup>154</sup> F.R.Evid. 615(“At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party’s cause”).

<sup>155</sup> Eikenberry, *Victims of Crime/Victims of Justice*, 34 WAYNE LAW REVIEW 29, 41 (1987)(“Observation of the trial is critically important to many victims since it is the victim’s opportunity to see justice done. The victim’s presence during the trial may also facilitate healing of the debilitating psychological wounds suffered by a crime victim. The right of a victim to be present in court during the trial, unlike that of other witnesses, should not be qualified and should be balanced only against the defendant’s right to receive a fair trial. As long as the victim is not disruptive, the victim should never be excluded from the trial once he has testified. Nor should the victim be excluded prior to testifying, unless the victim’s presence would jeopardize the prosecutor’s case. A victim should never be excluded merely because the defense attorney or prosecutor has so requested. The victim’s right to be present should outweigh most competing interests”).

*The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime?*, 16 NEW ENGLAND JOURNAL ON CRIMINAL & CIVIL COMMITMENT 241, 249 (1990)(“Since victimization wounds psychologically, it is important that victims observe the trial if they choose to do so, thus providing them the opportunity to see justice done”). It might also be argued that the presence of the victim/witness at trial is as likely to trigger recall as to taint testimony.

<sup>156</sup> Lamborn, *Victim Participation in the Criminal Justice Process: The Proposals for a Constitutional Amendment*, 34 WAYNE LAW REVIEW 125, 159-60 (1987)(“multiple eyewitness victims of a robbery might well be excluded from the trial, except when they are testifying, on the basis of the defendant’s rights to a fair trial and the effective confrontation of the witnesses against him. These constitutional rights of the accused might require that the judge exercise this discretion to exclude witnesses even in the face of a law purporting to grant the victim the absolute right to be present throughout the trial. The judge might be required to consider such matters as whether the victim was actually a witness to the alleged crime, whether his testimony is likely to raise substantial issues at trial, whether more than one witness is expected to testify on these issues, and whether requiring that the victim be the first witness and thereafter allowing him to remain in the courtroom would adequately protect the rights of both the victim and the accused”).

*Victims’ Rights’ or a Fair Trial Wronged?*, 41 BUFFALO LAW REVIEW 245, 271-72 (1993)(“the right of access for a victim should not be denied once the victim has testified and negated the basis for his exclusion. However . . . the victim should have no greater role in the trial. The victims’ rights movement has made tremendous progress in helping victims receive counseling and compensation and has increased public awareness of their plight. These forms of assistance are accomplished through programs and services that function outside of the courtroom and apart from the trial. Thus, pushing for change inside the courtroom is

In response to the debate, about a third of the states now permit victims to attend all court proceedings regardless of whether the victim is scheduled to testify;<sup>157</sup> another group allows witnesses who are victims to attend subject to a showing as to why they should be excluded;<sup>158</sup> a few leave the matter in the general discretion of the trial

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inappropriate.”).

Some have suggested that the prosecution should be empowered to decide when the victim/witness should be excluded in order to avoid a defendant’s taking advantage of the continuous presence of the victim/witness, Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah’s Victims’ Rights Amendment*, 1994 UTAH LAW REVIEW 1373, 1393 (explaining a statute reflecting this view)(“The prosecutors’ concern was that there might be circumstances in which, if a victim was present during trial, a defense attorney might convince a jury that the victim’s testimony was irretrievably tainted from hearing the testimony of other witnesses. Because prosecutors are in the best position to make the tactical decision of when to prevent such an attack by the defense, the prosecutors were given the sole power to exclude victim-witnesses. Such prosecutorial power generally serves victims’ best interests because effective prosecution is good for victims”).

<sup>157</sup> ORE.REV.STAT. §40.385 (“At the request of a party the court may order witnesses excluded until the time of final argument, and it may make the order of its own motion. This rule does not authorize exclusion of . . . (4) the victim in a criminal case”).

See also, ALA.CONST., Amend. 557, ALA.CODE §§15-23-67, 15-14-53, 15-14-54, 15-14-55; ALA.R.EVID. 615; ALASKA CONST. Art.I, §24; ALASKA R.EVID. 615; ARIZ. CONST. Art.2, §2.1, ARIZ.REV.STAT.ANN. §13-4420, ARIZ.R.EVID. 615; ARK.R.EVID. 616; COLO.CONST. Art.II, §16a, COLO.REV.STAT.ANN. §24-4.1-302.5; IDAHO CONST. Art.1, §22, IDAHO CODE §19-5306; KAN.CONST. art.15 §15, KAN.STAT. ANN. §74-7335; MD.CONST. Art.47, MD.R.EVID. 5-615; MO.CONST. Art.1, §32, MO.ANN.STAT. §595.209; N.H.REV.STAT.ANN. §21-M:8-k; N.M. CONST. art.II, §24, N.MEX.STAT.ANN. §31-26-4; N.C. CONST. art.1, §37(1)91); OKLA. CONST. art.II, §34; ORE. CONST. art.I, §42(a)(b), ORE.R.EVID. 615; S.C. CONST. art. I, §24[3]; S.C.CODE §16-3-1545; S.D.COD.LAWS §19-14-29; TENN. CONST. art.I, §35[3]; UTAH CONST. art.I, UTAH CODE ANN. §§77-38-2(5), 77-38-4, UTAH R.EVID. 615.

A few accomplish this result by requiring the victims who are witnesses testify first and then be allowed to remain: VT.R.EVID. 615 (“At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion; after a witness’ testimony has been completed, however, the witness may remain within the courtroom, even if the witness subsequently may be called upon by the other party or recalled in rebuttal, unless a party shows good cause for the witness to be excluded. . .”). See also, LA.CODE EVID. art.615; NEV.REV.STAT. §§50.155, 171.204; MICH.CONST. Art.1, §24, MICH.COMP.LAWS ANN. §780.761; WASH.REV.CODE ANN. §7.69A.030.

<sup>158</sup> CAL.PENAL CODE §§1102.6 (subject to the provisions of §777 where the victim is a witness, victims have the right to attend subject to a showing of an overriding interest prejudiced by the presence of the victim); CAL. EVID.CODE §777 (the trial court may exclude witnesses at its discretion); CONN.CONST. art.I, §8[b.](the victim has the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person’s testimony would be materially affected if such person hears other testimony); DEL.CODE ANN. tit.11 §9407 (a victim or an individual designated by the victim may be present whenever a defendant has a right to be present during a court proceeding concerning the crime charged other than a grand jury proceeding, unless good cause can be shown by the defendant to exclude the victim); FLA.CONST. Art.1, §16(b)(victims have the right to be present at all critical stages of the criminal proceedings to

court;<sup>159</sup> and some have maintained the traditional rule — witnesses are sequestered whether they are victims or not.<sup>160</sup> Perhaps in order to compensate for sequestration, to protect victims and other witnesses, and to help preserve order, a number of states hold out the promise of separate and secure waiting area during trial, if possible.<sup>161</sup>

Subject to Rule 615 of the Federal Rules of Evidence which permits exclusion of victim/witnesses, the federal statutory victims' bill of rights recognizes the right of victims "to be present at all public court proceedings related to the offense, unless the

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the extent that the victim's presence does not interfere with the constitutional rights of the accused), FLA.STAT.ANN. §960.001(a)[7.] (same); ILL.CONST. Art.1, §8.1(a)(8) ("The right to be present at the trial and all other court proceedings on the same basis as the accused, 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"); IND.CONST. Art.1, §13(b) ("Victims of crime . . . shall have the right to be . . . present during public hearings. . . to the extent that exercising these rights does not infringe upon the constitutional rights of the accused"); MASS.GEN.LAWS ANN. ch.258B §3(b)(victims have the right to attend all court proceedings unless they are to testify and the court determines their testimony will be materially affected unless they are sequestered); NEB.CONST. art.I, §28(1) ("A victim of crime . . . shall have . . . the right to be present at trial unless the trial court finds sequestration necessary for a fair trial for the defendant"); N.J.CONST., art.1, ¶22 ("A victim of crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered"); OHIO REV.CODE ANN. §2930.09 (victim may be present whenever defendant is present other than during grand jury proceedings or when excluded by the court in the interests of a fair trial); VA.CODE §19.2-265.01 (victims may attend unless the court determines that their presence "would substantially impair the conduct of a fair trial"); WIS.CONST. Art.1, §9m (victims have the right to attend trial unless court finds attendance would be detrimental to a fair trial of the defendant); WYO.STAT. §1-40-206 (absent a showing of good cause, a victim has the same right to attend trial proceedings as the defendant).

<sup>159</sup> R.I.R.EVID. 615 (emphasis added) ("At the request of a party the court *may* order witnesses excluded so that they cannot hear the testimony of other witnesses . . ."). The federal rule in contrast declares that the court "shall" order sequestration under such circumstances.

See also, GA.CODE ANN. §24-9-61.1; IOWA R.EVID. 615; ME.R.EVID. 615; MASS.R.EVID. 615; MINN.R.EVID. 615; PA.R.EVID. 615.

<sup>160</sup> HAW.R.EVID. 615; KY.R.EVID. 615; MISS. R.EVID. 615; MONT.R.EVID. 615; N.D.CENT.CODE §12.1-34-02, N.D.R.EVID. 615; W.VA.R.EVID. 615.

<sup>161</sup> LA.REV.STAT.ANN. §46:1844 [G],(1) ("While the court shall provide, whenever possible, a secure waiting area during court proceedings which does not require victims, witnesses, or homicide victims' families to be in close proximity to defendants, their families or friends, it shall provide a secure waiting area in cases involving violent crimes").

TEX.CRIM.PRO. CODE ANN. art.56.02(a)(8) ("A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system: . . . (8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings"). See Appendix XV for citations to other similar provisions.

court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial,” 42 U.S.C. 10606(b)(4).

In federal capital cases, victims who attend a trial are not disqualified from appearing as witnesses at subsequent sentencing hearings absent a danger of unfair prejudice, jury confusion, of the jury being misled, or as constitutionally required.<sup>162</sup>

Many of the proposals, like S.J.Res.6 (105th Cong.) make uniform the right of all victims of violent crime “to notice of, and not to be excluded from, all public proceedings relating to the crime,” state and federal, juvenile and adult. They make no explicit provision for instances where the victim is also a witness. They are likewise silent as to how unavoidable conflicts between the rights it conveys and the constitutional rights of the accused (at least as they exist until ratification of a victims’ rights amendment) are to be resolved.

## Sentencing

At common law, victims had no right to address the court before sentence was imposed upon a convicted defendant. The victim’s right to bring the impact of the crime upon him to the attention of the court was one of the early goals of the victim’s rights efforts. The Supreme Court has struggled with the propriety of victim impact statements in the context of capital punishment cases, ultimately concluding that they pose no necessary infringement upon the rights of the accused.<sup>163</sup> It is said that permitting victim impact statements serves several beneficial purposes: (1) to protect the victim’s interest in having the court order the defendant to make restitution,<sup>164</sup> (2)

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<sup>162</sup> 18 U.S.C. 3510(b)(“Capital Cases — Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, testify as to the effect of the offense on the victim and the victim’s family or as to any other factor for which notice is required under section 3593(a)”).

18 U.S.C. 3593(c)(“Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials except that information may be excluded if its probative value is outweighed by the danger for creating unfair prejudice, confusing the issues, or misleading the jury. For purposes of the preceding sentence, the fact that a victim, as defined in section 3510, attended or observed the trial shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury”). See also, *United States v. McVeigh*, 958 F.Supp. 512, 514 (D.Colo. 1997).

<sup>163</sup> In *Booth v. Maryland*, 482 U.S. 496 (1987), the Supreme Court held the Eighth Amendment did not permit the presentation of victim impact evidence to a sentencing jury in a death penalty case; in *Payne v. Tennessee*, 501 U.S. 808 (1991), it repudiated *Booth* and declared that victim impact statements were not inherently suspect.

<sup>164</sup> Gittler, *Expanding the Role of the Victim in a Criminal Action: An Overview of Issues and Problems*, 11 PEPPERDINE LAW REVIEW 117, 172-3 (1984)(“the sentence imposed by the court on the convicted offender is determinative of whether the victim will receive restitution and, if granted, how much restitution the victim will receive. . . . [M]any sentencing statutes now provide for victim restitution — which has become an increasingly popular sentencing alternative — and the terms of a restitutive sentence should turn upon the injuries,

to increase the possibility that the sentence imposed will reflect the damage done and therefore the seriousness of the crime,<sup>165</sup> (3) to balance the pleas for the defendant that have traditionally been heard at that point,<sup>166</sup> and (4) to restore some level of dignity and respect for the victim.<sup>167</sup>

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damages and losses suffered by the victim”).

<sup>165</sup> *Id.* (“Victim participation can also be supported on the ground that the victim has information relevant to an informed sentencing decision. Statutory sentencing schemes may expressly mandate or permit that factors relating to the victim be taken into account in fashioning a dispositional order. In some states, such schemes set forth presumptive sentences for particular offenses and specify aggravating or mitigating circumstances which the court may consider in imposing a harsher or more lenient sentence than the presumptive sentence. These statutorily defined aggravating or mitigating factors may include factors such as other offender’s treatment of the victim during the commission of the crime, the victim’s provocation of or consent to the crime, and the harm to the victim resulting from the crime. In jurisdictions where presumptive sentencing legislation has not been enacted, judges still sometimes consider factors relating to the victim as aggravating or mitigating factors in the exercise of their discretionary power to impose sentences”).

<sup>166</sup> *Booth v. Maryland*, 482 U.S. at 520 (Scalia, J., dissenting)(“Many citizens have found one-sided and hence unjust the criminal trial in which a parade of witnesses comes forth to testify to the pressures beyond normal human experience that drove the defendant to commit his crime, with no one to lay before the sentencing authority the full reality of human suffering the defendant has produced — which (and not moral guilt alone) is one of the reasons society deems his act worthy of the prescribed penalty”); *Payne v. Tennessee: The Supreme Court Places its Stamp of Approval on the Use of “Victim Impact Evidence” During Capital Sentencing Proceedings*, 1992 BRIGHAM YOUNG UNIVERSITY LAW REVIEW 841, 852 (“*Payne* strikes a fair balance between the rights of the criminal defendant and the murder victim. *Booth* advanced the requirement that a capital defendant be treated as a ‘unique individual human being.’ As part of this treatment, the defendant was allowed to introduce at the sentencing phase of a trial virtually any relevant mitigating evidence. While virtually no limits were placed on what the defendant could introduce, the state was precluded from introducing evidence about either the victim’s personal characteristics or the loss to the victim’s family and society. *Booth* failed to realize that victim impact evidence is not inconsistent with the requirement of treating the defendant as a ‘unique individual human being.’ To the contrary, the admission of victim impact evidence makes the sentencing process more individualized by augmenting the information that the jury should consider in determining the appropriate punishment. Moreover, fairness demands that the state be able to introduce evidence showing the victim’s uniqueness as an individual human being. This gives the jury all the relevant information about the defendant’s moral guilt to make a fully individualized decision based upon the personal responsibility of that particular individual”); McLeod, *Victim Participation at Sentencing*, 22 CRIMINAL LAW BULLETIN 501, 506-7 (1986)(“Two lives – the defendant’s and the victim’s – are profoundly affected by a criminal sentence. The court cannot make an informed decision on a just punishment if it hears from only one side”).

<sup>167</sup> *Sentencing Criminals: The Constitutionality of Victim Impact Statements*, 60 MISSOURI LAW REVIEW 731, 735 (1995).

Critics counter that the use of victim impact statements introduces irrelevancies into the sentencing process,<sup>168</sup> distorts the rationale for sentencing thereby leading to disparate results,<sup>169</sup> leads to putting the victim on trial,<sup>170</sup> and in cases where the jury

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<sup>168</sup> *Booth v. Maryland*, 482 U.S. 496, 502-3 (1987)(The victim impact statement “in this case provided the jury with two types of information. First, it described the personal characteristics of the victims and the emotional impact of the crimes on the family. Second, it set forth the family members’ opinions and characterizations of the crime and the defendant.” In a process designed to assess the blameworthiness of the defendant, “this information is irrelevant to a capital sentencing decision, and . . . its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner”).

<sup>169</sup> *Booth v. Maryland*, 482 U.S. at 505-6 (“but in some cases the victim will not leave behind a family, or the family members may be less articulate in describing their feelings even though their sense of loss is equally severe. The fact that the imposition of the death sentence may turn on such distinctions illustrates the danger of allowing juries to consider this information. Certainly the degree to which a family is willing and able to express its grief is irrelevant to the decision whether a defendant, who may merit the death penalty, should live or die. . . . Nor is there any justification for permitting such a decision to turn on the perception that the victim was a sterling member of the community rather than someone of questionable character”).

Hall, *Victims’ Voices in Criminal Court: The Need for Restraint*, 28 AMERICAN CRIMINAL LAW REVIEW 233, 259-60 (1991)(“Some dimensions of the disparity concern are profoundly disquieting. One of these is the potential for a disparate sentence for the offender based upon the victim’s wealth. Some statutes provide that victim input may be presented by the victim or a ‘representative.’ To the extent, then, that a privately retained attorney (or other compensated agent) is able to present a more forceful or convincing ‘case’ for the victim, clearly the financial well-being of the victim will determine whether that option is economically feasible. Should a defendant’s sentence be based, even in part, upon the fact that the victim is wealthy (perhaps meaning a harsher sentence) or poor (likely suggesting a more lenient sentence)?

“. . . A second concern is the extent to which a defendant’s sentence or case disposition could be affected by the victim’s race. It has been forcefully asserted — at least in capital cases — that sentencing of similarly-situated offenders may vary based upon the race of the victim. Specifically, because of the selective empathy, more lenient sentences may occur in black-victim crimes than in white-victim crimes. One way to at least minimize the potential for race-of-the-victim disparities in sentencing is to implement measures, such as sentencing guidelines, to check the exercise of discretion. Permitting victims to make sentence recommendations, on the other hand, may exacerbate the disparity of sentences by reason of that individual’s race”).

<sup>170</sup> *Booth v. Maryland*, 482 U.S. at 507 (“Putting aside the strategic risks of attacking the victim’s character before the jury, in appropriate cases the defendant presumably would be permitted to put on evidence that the victim was of dubious moral character, was unpopular, or was ostracized from his family. The prospect of a ‘mini-trial’ on the victim’s character is more than simply unappealing, it could well distract the sentencing jury from its constitutionally required task — determining whether the death penalty is appropriate in light of the background and record of the accused and the particular circumstances of the crime”).

Berger, *Payne and Suffering — A Personal Reflection and a Victim-Centered Critique*, 20 FLORIDA STATE UNIVERSITY LAW REVIEW 21, 50 (1992)(“In a nutshell, although few defense counsel may have the temerity to assail the Bronsteins or their survivors, more will surely dare to attack the drunk, addicted, insane, unorthodox, friendless, immoral, or criminal

determines or recommends the sentence to be imposed, may be unfairly inflammatory.<sup>171</sup>

Nevertheless, the most prevalent of victims' rights among the states is the right to have victim impact information presented to sentencing authorities.<sup>172</sup> There is, however, tremendous diversity of method among the states. Many call for inclusion in a presentencing report prepared for the court in one way or another,<sup>173</sup> often

victim. It is precisely when a victim's life has not been blameless that the defense will try to impugn it. What *Booth's* opponents did not appreciate is that the same principle of relevance that makes a victim's personal, familial, and social worth pertinent evidence in aggravation makes his or her worthlessness in these respects pertinent evidence in mitigation `in the sense that [it] might serve as a basis for a sentence less than death.' The *Payne* principle not only allows defendants to counter proof of a victim's good character and of family members' grief with evidence and argument that the deceased was, in truth, neither good nor grieved; it also allows defendants to place the character of a victim on trial even if the prosecutor did not. Thus, besmirching the deceased's memory whenever feasible has now become an unavoidable, even if highly distasteful, duty of defense attorneys.")

<sup>171</sup> Cf., *Payne v. Tennessee*, 501 U.S. at 827, and 501 U.S. at 831 (O'Connor, J., concurring)("We do not hold today that victim impact evidence must be admitted, or even that it should be admitted. We hold merely that if a State decides to permit consideration of this evidence, `the Eighth Amendment erects no per se bar' Ante at 827. If, in a particular case, a witness' testimony or a prosecutor's remark so infects the sentencing process as to render it fundamentally unfair, the defendant may seek appropriate relief under the Due Process Clause. . .").

<sup>172</sup> See Appendix XVIII.

<sup>173</sup> E.g., F.R.Crim.P. 32(b): "(1) When Made. The probation officer must make a presentence investigation and submit a report to the court before the sentence is imposed, unless: (A) the court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. Sec. 3553; and (B) the court explains this finding on the record.

(2) Presence of Counsel. On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

(3) Nondisclosure. The report must not be submitted to the court or its contents disclosed to anyone unless the defendant has consented in writing, has pleaded guilty or nolo contendere, or has been found guilty.

(4) Contents of the Presentence Report. The presentence report must contain

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(B) the classification of the offense and of the defendant under the categories established by the Sentencing Commission under 28 U.S.C. Sec. 994(a), as the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission under 28 U.S.C. Sec. 994(a)(1); and the probation officer's explanation of any factors that may suggest a different sentence--within or without the applicable guideline--that would be more appropriate, given all the circumstances;

(C) a reference to any pertinent policy statement issued by the Sentencing Commission under 28 U.S.C. Sec. 994(a)(2);

(D) verified information, stated in a nonargumentative style, containing an assessment of the financial, social, psychological, and medical impact on any individual against whom the



supplemented by a right to make some kind of subsequent presentation as federal law

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offense has been committed;

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(G) any other information required by the court.

(5) Exclusions. The presentence report must exclude:

(A) any diagnostic opinions that, if disclosed, might seriously disrupt a program of rehabilitation;

(B) sources of information obtained upon a promise of confidentiality; or

(C) any other information that, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.

(6) Disclosure and Objections.

(A) Not less than 35 days before the sentencing hearing--unless the defendant waives this minimum period--the probation officer must furnish the presentence report to the defendant, the defendant's counsel, and the attorney for the Government. The court may, by local rule or in individual cases, direct that the probation officer not disclose the probation officer's recommendation, if any, on the sentence.

(B) Within 14 days after receiving the presentence report, the parties shall communicate in writing to the probation officer, and to each other, any objections to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the presentence report. After receiving objections, the probation officer may meet with the defendant, the defendant's counsel, and the attorney for the Government to discuss those objections. The probation officer may also conduct a further investigation and revise the presentence report as appropriate.

(C) Not later than 7 days before the sentencing hearing, the probation officer must submit the presentence report to the court, together with an addendum setting forth any unresolved objections, the grounds for those objections, and the probation officer's comments on the objections. At the same time, the probation officer must furnish the revisions of the presentence report and the addendum to the defendant, the defendant's counsel, and the attorney for the Government.

(D) Except for any unresolved objection under subdivision (b)(6)(B), the court may, at the hearing, accept the presentence report as its findings of fact. For good cause shown, the court may allow a new objection to be raised at any time before imposing sentence."

permits.<sup>174</sup> Some are specific as to the information that may be included;<sup>175</sup> some

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<sup>174</sup> TENN.CODE ANN. §40-35-209(b) (“At the sentencing hearing, the court shall afford the parties the opportunity to be heard . . . and may afford the victim of the offense or the family of the victim the opportunity to testify relevant to the sentencing of the defendant. . .”).

F.R.CRIM.P. 32(c) “(1) Sentencing Hearing. At the sentencing hearing, the court must afford counsel for the defendant and for the Government an opportunity to comment on the probation officer’s determinations and on other matters relating to the appropriate sentence, and must rule on any unresolved objections to the presentence report. The court may, in its discretion, permit the parties to introduce testimony or other evidence on the objections. For each matter controverted, the court must make either a finding on the allegation or a determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing. A written record of these findings and determinations must be appended to any copy of the presentence report made available to the Bureau of Prisons.

(2) Production of Statements at Sentencing Hearing. Rule 26.2(a)-(d) and (f) applies at a sentencing hearing under this rule. If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the movant, the court may not consider the affidavit or testimony of the witness whose statement is withheld.

(3) Imposition of Sentence. Before imposing sentence, the court must:

(A) verify that the defendant and defendant’s counsel have read and discussed the presentence report made available under subdivision (b)(6)(A). If the court has received information excluded from the presentence report under subdivision (b)(5) the court — in lieu of making that information available — must summarize it in writing, if the information will be relied on in determining sentence. The court must also give the defendant and the defendant’s counsel a reasonable opportunity to comment on that information;

(B) afford defendant’s counsel an opportunity to speak on behalf of the defendant;

(C) address the defendant personally and determine whether the defendant wishes to make a statement and to present any information in mitigation of the sentence;

(D) afford the attorney for the Government an opportunity equivalent to that of the defendant’s counsel to speak to the court; and

(E) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement or present any information in relation to the sentence.

(4) In Camera Proceedings. The court’s summary of information under subdivision (c)(3)(A) may be in camera. Upon joint motion by the defendant and by the attorney for the Government, the court may hear in camera the statements--made under subdivision (c)(3)(B), (C), (D), and (E)--by the defendant, the defendant’s counsel, the victim, or the attorney for the Government.

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<sup>175</sup> FLA.STAT.ANN. §921.143 (“(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has been convicted of any felony or who has pleaded guilty or nolo contendere to any crime, . . . the sentencing court shall permit the victim of the crime for which the defendant is being sentenced, or the next of kin of the victim if the victim has died from causes related to the crime to: (a) Appear before the sentencing court for the purpose of making a statement under oath for the record; and (b) Submit a written statement under oath to the office of the state attorney general, which statement shall be filed with the sentencing court.

“(2) The state attorney or any assistant state attorney shall advise all victims or, when appropriate, their next of kin that statements, whether oral or written shall relate to the facts of the case and the extent of any harm, including social, psychological, or physical harm, financial losses, loss of earnings directly or indirectly resulting from the crime for which the

permit the victim to address the court directly; others do not.<sup>176</sup>

S.J.Res. 6 (105th Cong.) afforded victims the right “to be heard . . . and to submit a written statement at a . . . trial proceeding to determine . . . a sentence.” The proposal did not address the question of whether relevancy, repetition, or any other limitation may be imposed upon exercise of the right. This may be a matter within the legislative authority conveyed in section 3 of the Resolution,<sup>177</sup> but even there the breadth of power may be uncertain in cases that do not involve a threat to “public safety or judicial efficiency in mass victim cases.”<sup>178</sup>

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defendant is being sentenced and any other matter relevant to an appropriate disposition and sentence. . .”).

<sup>176</sup> E.g., PA.STAT.ANN. tit. 18 §11.201 (“Victims of crime have the following rights: . . . (5) To have opportunity to offer prior comment on the sentencing or a defendant to include the submission of a written victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim’s family and to have such comment considered by the judge when determining the defendant’s sentence”).

KY.REV.STAT. §451.520 (“(1) The attorney for the Commonwealth shall notify the victim that, upon conviction of the defendant, the victim has the right to submit a written victim impact statement to the probation officer responsible for preparing the pre-sentence investigation report for inclusion in the report or to the court should such a report be waived by the defendant. (2) The impact statement may contain, but need not be limited to, a description for the nature and extent of any physical, psychological or financial harm suffered by the victim, the victim’s need for restitution and whether the victim has applied for or received compensation for financial loss, and the victim’s recommendation for an appropriate sentence. The victim impact statement shall be considered by the court prior to any decision on the sentencing or release, including . . . probation, of the defendant”).

<sup>177</sup> “The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases,” S.J.Res. 6, §3.

<sup>178</sup> Although S.J.Res. 44 replaced the public safety language with compelling interest terminology — (“The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest”) — the Committee Report declared that the victim allocation right was subject to legislative and judicial limitation, S.Rept. 105-409 at 28-9 (“the victim’s right to be heard at sentencing will not be unlimited, just as the defendant’s right to be heard at sentencing is not unlimited today. Congress and the States remain free to set certain limits on what is relevant victim impact testimony. For example, a jurisdiction might determine that a victim’s views on the desirability or undesirability of a capital sentence is not relevant in a capital proceeding . . . . As with defendants’ existing rights to be heard, a court may set reasonable limits on the length and content of statements”).

It remains to be seen whether the envisioned flexibility would have extended far enough to permit the type of prosecutorial exclusionary option apparently used in the Oklahoma City trial, see *Senate Hearing* at 71-2 (statement of Marsha A. Kight) (“I will be attending the trial, but not because I don’t want to testify at the sentencing hearing. I would like to speak for myself and [my murdered daughter] Frankie and [her surviving daughter] Morgan, but the prosecution team has told me that under the current rules, I am ineligible to be a witness because I am a member of a minority group – those who oppose the death penalty. If the constitutional amendment had already been passed, I could accept an implementation statute

## Other Post Conviction Matters

### *Parole*

The debate on the victim's opportunity to be heard on parole is an extension of the debate involving victim participation in sentencing — to what extent is the seriousness of the crime (weighed by its impact on its victims) a relevant, valid factor in determining how long an offender should be imprisoned. There are some differences between initial sentencing and parole. The venue for parole hearings is less like to be victim convenient,<sup>179</sup> the objections of parole and prison officials based on concerns of enlarged case loads are mentioned more often,<sup>180</sup> and the “truth-in-sentencing” trend has increased the number of jurisdictions that have established sentencing guidelines and/or abolished parole.<sup>181</sup> But as with sentencing, in most jurisdictions victims are permitted to make their views known to parole authorities.<sup>182</sup>

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limiting the number of impact witnesses. I could also accept that I might not win a random drawing to speak at any sentencing. What I could not accept is a philosophical test that automatically excludes people like me from speaking”).

<sup>179</sup> *Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment*, 8 ST. JOHN'S JOURNAL OF LEGAL COMMENTARY 225, 242 (1992).

<sup>180</sup> *Id.* at 243; McLeod, *Something New Has Been Added: Parole Boards Are Turning to Victims Before Making Their Decisions*, 4 CRIMINAL JUSTICE 12, 15 (Spring, 1989).

<sup>181</sup> “Truth-in-Sentencing” is a characterization of the approach reflected in the 1984 federal Sentencing Reform Act under which most federal offenders actually serve a substantial percentage of the time to which they are sentenced, i.e., judicial discretion to suspend sentences or grant probation is limited; sentences guidelines limit the range of sentences that may be imposed for a particular offense; parole and extensive good time allowances are abolished, 98 Stat. 1987 (1984). Each of these changes limits sentencing discretion – either the sentence the court may impose or the discretion of prison and parole authorities to set and adjust release dates.

Systems which confine or direct sentencing discretion so that similar cases will receive similar sentences may be somewhat at odds with the notion that the participation of victims can influence the sentence imposed in individual cases. Sentencing guideline systems of varying types are in place for the federal government, 28 U.S.C. 991 to 998, and several of the states, ARK.CODE ANN. §16-90-803, DEL. CODE ANN. tit.11 §§6580, 6581; FLA.R.CRIM.P. R.3.701; KAN.STAT.ANN. §74-9101; MASS.GEN.LAWS ANN. ch.211E, §§1 to 4; MICH.COMP. LAWS ANN. ch.776; MINN.STAT.ANN. ch.244 App; N.C.GEN.STAT. §§15A-1340.10 to 15A-1340.17; OHIO REV.CODE §§2929.11 to 2929.14; ORE.REV.STAT. §§137.637 to 137.671; PA.STAT.ANN. tit.42 §9721 app. (204 Pa.Code §§303.1 to 303.18); S.C. CODE §§24-26-10 to 24-26-60; TENN.CODE ANN. §§40-35-101 to 40-35-504; UTAH CODE JUD.ADMIN. App.D; VA.CODE ANN. §§17.1-800 to 17.1-806; WASH.REV. CODE ANN. §§9.94A.010 to 9.94A.420.

<sup>182</sup> ORE. REV.STAT. §144.120(7)(“The State Board of Parole and Post-Prison Supervision must attempt to notify the victim, if the victim requests to be notified and furnishes the board a current address, and [to notify] the district attorney of the committing county[, ] at least 30 days before all hearings by sending written notice to the current addresses of both. The victim, personally or by counsel, and the district attorney from the committing jurisdiction shall have the right to appear at any hearing or, in their discretion to submit a written statement adequately and reasonably expressing any views concerning the crime and

Parole has been abolished in the federal system. It is available only with respect to crimes committed prior to November 1, 1987, 18 U.S.C. 4201 note. For parole of prisoners convicted of such crimes, victim impact information must be considered.<sup>183</sup>

S.J.Res.6 (105th Cong.) empowered victims to be notified of, attend, and participate in parole hearings: “Each victim . . . shall have the rights to notice of, and not to be excluded from, all public proceedings relating to the crime: To be heard . . . and to submit a written statement at a . . . trial proceeding to determine a release from custody . . . ; To the rights described in the preceding portions of this section at a public parole proceeding, or a non-public parole proceeding to the extent they are afforded to the convicted offender.”<sup>184</sup>

## Release or Escape

Most states afford victims the option of being notified when an offender is to be released or has escaped from custody or both.<sup>185</sup> Existing federal law, extends the

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the person responsible. The victim and the district attorney shall be given access to the information that the board or division will rely upon and shall be given adequate time to rebut the information. Both the victim and the district attorney may present information or evidence at any hearing, subject to such reasonable rules as may be imposed by the officers conducting the hearing. For the purposes of this subsection, ‘victim’ includes the actual victim, a representative selected by the victim, the victim’s next of kin or, in the case of abuse of corpse in any degree, an appropriate member of the immediate family of the decedent”).

PA.STAT.ANN. tit.18 §11.201(“Victims of crimes have the following rights: . . . (7) in personal injury crimes where the offender is sentenced to a State correctional facility, to be given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement and be provided immediate note of an escape of the offender”). See Appendix XVI for citations to other examples.

<sup>183</sup> 18 U.S.C. 4207 (1982 ed.)(“In making a determination under this chapter [relating to release on parole] the Commission shall consider. . . (5) a statement, which may presented orally or otherwise by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim. . .”).

<sup>184</sup> S.J.Res. 44, as reported out of Committee, had essentially the same provisions (“A victim . . . shall have the rights: to reasonable notice of, and not to be excluded from, all public proceedings relating to the crime; to be heard . . . and to submit a statement at all such proceedings to determine a conditional release from custody . . . ; to the foregoing rights at a parole proceeding that is not public to the extent they are afforded to the convicted offender”).

<sup>185</sup> E.g., W.VA.CODE §61-11A-8; (“(a) At the time a complaint is sworn out for a charge of murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson, sexual offenses against minors, or any violent crime against a spouse, former spouse, child or stepchild, the prosecuting attorney shall provide written notice to the victim or victim’s family member that he or she may be notified prior to and upon the release or escape of the defendant to work release, home confinement, parole, furlough or upon the escape from any correctional facility.

“(b) The commissioner of corrections, regional jail supervisors or city sheriff operating a jail which releases any person shall, from which they have received a written request for

notification option only to the release of offenders, 42 U.S.C. 10605(b)(7). Several proposals including S.J.Res. 6 and S.J.Res. 44 reached both release and escape.

## Review

In addition to notification of release rights, victims' rights provisions sometimes call for victim notification of the outcome of appellate or collateral proceedings. Although victims, or more likely victims' rights organizations, may petition to file as amicus curiae during any appellate review, victims ordinarily have no right to participate as parties at interest.<sup>186</sup>

On one hand, a victim's inability to be heard during the course of a defendant's appeals or to appeal an acquittal or the dismissal of a charge or other decision perceived as adverse to the victim's interests could seriously limit enforcement of victims' rights. On the other, affording victims such rights could prove extremely

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notification, provide written notice to the last known address or addresses provided by the victim, or in the case of a minor child, to the custodial parent of the child, upon release of the defendant. Additionally, notice provided in the case of escape shall be by telephone").

Unless otherwise noted the following statutes require notice of both release and escape: ALA.CODE §15-23-78 (release); ALASKA CONST. Art.I, §24, ALASKA STAT. §33.30.013; ARIZ. CONST. Art. 2, §2.1, ARIZ.REV.STAT.ANN. §13-4412; ARK.CODE ANN. §2-29-114 (escape); CAL.PENAL CODE §§11155 to 11158; COLO. REV.STAT.ANN. §24-4.1-303; CONN.CONST. Art.1, §8 (release), CONN.GEN.STAT. ANN. §54-231 (release); DEL. CODE ANN. tit.11 §9413; FLA.STAT.ANN. §960.001.

GA.CODE ANN. §42-1-11; HAW.REV.STAT. §706-673(escape), §706-670.5 (release); IDAHO CODE §19-5306; ILL.CONST. Art.1, §8.1 (release), ILL.COMP.LAWS ANN. ch.725 §§120/4, 120/4.5; IND.CODE ANN. §35-33-12-3; IOWA CODE ANN. §§910A.9, 910A.9A; KY.REV.STAT.ANN. §197.170 (release); LA.REV.STAT.ANN. §46:1844; ME.REV.STAT.ANN. tit.17-A §1175 (release).

MASS.GEN.LAWS ANN. ch.258B §3; MICH.CONST. Art.I, §24 (release), MICH. COMP.LAWS ANN. §§780.828 to 780.830; MINN.STAT.ANN. §611A.06; MO. CONST. Art.I, §32, MO.ANN.STAT. §595.209; MONT.CODE ANN. §46-24-212; NEB.REV. STAT. §81-1850; NEV.REV.STAT. §178.5698 (release); N.H. REV.STAT.ANN. §21-M:8-k; N.J.STAT.ANN. §52:4B-44; N.MEX.STAT.ANN. §31-26-4; N.Y.CRIM. PRO. LAW §380.50; N.C.CONST. Art. 1, §37, N.C.GEN.STAT. §15A-825; N.D.CENT. CODE §12.1-34-02; OHIO REV.CODE ANN. §2930.16; OKLA.CONST. Art.2, §34. OKLA.STAT.ANN. tit.57 §513.2 (release); ORE.REV.STAT. §144.260 (release); PA. STAT.ANN. tit.71 §180-9.8; R.I.GEN.LAWS §12-28-3 (release); S.C.CONST. Art. I, §24, S.C.CODE ANN. §16-3-1530; S.D.COD.LAWS ANN. §23A-28C-1; TENN.CODE ANN. §40-38-103(release); TEX.CODE CRIM.PRO.ANN. art.56.12; UTAH CODE ANN. §64-13-14.7; VT.STAT.ANN. tit.13 §5305; VA.CODE ANN. §19.2-11.01. WASH. REV.CODE ANN. §9.94A.155; W.VA.CODE §61-11A-8; WIS.STAT. ANN. §§304.063 (release), 301.38 (escape); WYO.STAT. §1-40-204.

<sup>186</sup> *United States v. McVeigh*, 106 F.3d 325, 334-36 (10th Cir. 1997)(neither the constitutional right of public access to federal criminal proceedings, recognized in *Richmond Newspapers, Inc.v. Virginia*, 448 U.S. 555 (1980), nor the federal Victims' Rights and Restitution Act, 42 U.S.C. 106060(b)(4) provide victim/ witnesses with standing sufficient to support an interlocutory appeal and petition for mandamus of a trial court order barring from trial any victim/ witnesses who were to appear either as witnesses at the trial or who were to make victim impact statements during sentencing should the accused be convicted).

costly and time consuming. Each of these concerns become more compelling if the question is narrowed to whether victims should be able appeal before the completion of trial. A victim's right to notice and attendance at trial becomes considerably less meaningful if its denial can only be challenged after trial. Yet interrupting the trial pending the resolution of victim challenges could prove exceptionally disruptive.

S.J.Res.6 (105th Cong.) was somewhat ambivalent on the matter. At one point it suggests rather strongly that the rights it provided did not extend beyond sentencing ("each victim . . . shall have the right . . . To be heard . . . at a public *pretrial or trial proceeding* to determine a release from custody, an acceptance of a negotiated plea, or a sentence." S.J.Res.6 §1 (emphasis added)). It reinforced the implication by declaring that pretrial proceedings may not be delayed in order to vindicate victims' rights. ("The victim shall have standing to assert the rights established by this article. However, nothing in this article shall provide grounds for the victim to challenge a charging decision or a conviction; to obtain a stay of trial; or to compel a new trial," S.J.Res.6 §2). Yet further on it asserted the general rights of notice, attendance and participation apply to federal and state proceedings specifically mentioning collateral but not appellate proceedings. ("The rights established by this article shall apply in all Federal and State proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and collateral proceedings such as habeas corpus, and including proceedings in any district or territory of the United States not within a State," S.J.Res.6 §5). The adjustments made in S.J.Res. 44 indicate that victims have a right to be notified of public appellate proceedings but not to be heard at them.<sup>187</sup>

### ***Presence at Execution***

Historically, capital punishment and other types of corporal punishment were administered publicly.<sup>188</sup> Victims and anyone else so inclined might attend.<sup>189</sup> Most state laws now call for executions to occur in the presence of official witnesses, rather

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<sup>187</sup> S.J.Res. 44, §1 ("A victim of a crime of violence, as these terms may be defined by law, shall have the rights: to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime; to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence"). S.J.Res. 44 omitted the reference to collateral proceedings found in section 5 of S.J.Res. 6. The Committee Report confirmed that victims were entitled to notice but said nothing of any right to attend and be heard, S.Rept. 105-409 at 25-9 ("*To reasonable notice of \* \* \* any public proceedings relating to the crime . . . [This] right applies not only to initial hearings on a case, but also rehearings, hearing at an appellate level, and any case on a subsequent remand*")(italics in the original as a caption).

<sup>188</sup> *The Executioner's Song: Is There a Right to Listen?* 69 VIRGINIA LAW REVIEW 373, 375-78 (1983).

<sup>189</sup> At the time of public executions, rape and robbery, as well as murder, were capital offenses in a number of states. As a consequence, direct victims of a capital offense might well be available to witness the execution of the offender. Since it appears that only crimes involving the taking of a human life may today be made punishable by death, only the family or friends of a victim would be available to attend.

than being conducted publicly.<sup>190</sup> Those who attend are either identified by statute<sup>191</sup> or their selection is left to the discretion of prison authorities.<sup>192</sup> A handful permit the families of victims or their representatives to be present.<sup>193</sup> And in several, although

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<sup>190</sup> ALA.CODE §15-18-83; ARIZ.REV.STAT.ANN. §13-705; ARK.CODE ANN. §16-90-502; CAL.PENAL CODE §3605; COLO.REV.STAT.ANN. §16-11-404; CONN.GEN.STAT.ANN. §54-100; DEL.CODE ANN. tit.11 §4209(f); FLA. STAT.ANN. §922.11; GA.CODE ANN. §17-10-41; ILL.COMP.LAWS ANN. ch. 725 §5/119-5; IND.CODE ANN. §35-38-6-6; KAN.STAT.ANN. §22-4003; KY.REV.STAT. ANN. §431.250; LA. REV.STAT.ANN. §15:570; MD. CODE ANN. art.27 §73; MASS.GEN.LAWS ANN. ch.279 §65; MISS.CODE ANN. §99-19-55; MO.ANN.STAT. §546.740; MONT.CODE ANN. §46-19-103; NEB.REV.STAT. §29-2534; NEV.REV.STAT. §176.355; N.H.REV. STAT.ANN. §630:6; N.J.STAT.ANN. §2C:49-7; N.MEX.STAT.ANN. §31-14-15; N.Y. CORR.LAW §660; N.C.GEN.STAT. §15-190; OHIO REV.CODE ANN. §2949.25; OKLA. STAT.ANN. tit.22 §1015; ORE. REV.STAT. §137.473; PA.STAT.ANN. tit.61 §§3005, 3006; S.C.CODE ANN. §24-3-550; S.D.COD.LAWS ANN. §23A-27A-34; TENN.CODE ANN. §40-23-116; TEX.CRIM.PRO. CODE ANN. art. 43.20; UTAH CODE ANN. §77-19-11; VT.STAT.ANN. tit.13 §7105; VA.CODE ANN. §53.1-234; WASH.REV.CODE ANN. §10.95.185; WYO.STAT. §7-13-908.

<sup>191</sup> E.g. CONN.GEN.STAT.ANN. §54-100 (“ . . . Besides the warden or deputy warden and such number of correction officers as he thinks necessary, the following persons may be present at the execution, but no others: The sheriff of the county in which the prisoner was tried and convicted, the commissioner, a physician of a correctional institution, a clergyman in attendance upon the prisoner and such other adults, as the prisoner may designate, not exceeding three in number, representatives of not more than five newspapers in the county where the crime was committed, and one reporter for each of the daily newspapers published in the city of Hartford”).

<sup>192</sup> E.g., ARIZ.REV.STAT.ANN. §13-705 (“The director of the state department of corrections or the director’s designee shall be present at the execution of all death sentences and shall invite the attorney general and at least twelve reputable citizens of the director’s selection to be present at the execution. The director shall, at the request of the defendant, permit clergymen, not exceeding two, whom the defendant names and any persons, relatives or friends, not exceeding five, to be present at the execution. The director may invite peace officers as the director deems expedient to witness the execution. No persons other than those set forth in this section shall be present at the execution nor shall any minor be allowed to witness the execution”).

<sup>193</sup> E.g., OKLA.STAT.ANN. tit.22 §1015: “. . . the warden [of the state prison at McAlester] must be present along with other necessary prison and corrections officials to carry out the execution. The warden must invite the presence of a physician and the district attorney of the country in which the crime occurred, the judge who presided at the trial issuing the sentence of death, the chief of police of the municipality in which the crime occurred, if applicable, and sheriff of the county wherein the conviction was had, to witness the execution; in addition, the cabinet secretary of public safety must be invested and the warden shall, at the request of the defendant, permit the presence of such ministers of the defendant’s choice, not exceeding two, and any persons, relatives or friends, not to exceed five, as the defendant may name; provided, reporters from the recognized members of the news media will be admitted upon proper identification, application and approval of the warden. . . . A place shall be provided within the walls of the state prison at McAlester so that individuals who are eighteen (18) years of age or older and who are members of the immediate family of any deceased victim of the defendant may witness the execution. The immediate family members shall be allowed to witness the execution from an area that is separate from the area to which other nonfamily member witnesses . . . As used in this section, `members of the immediate family’



the number of official witnesses may be limited, prison officials enjoy relatively unlimited discretion which they would appear free to exercise to the benefit of the families of victims or their representatives.<sup>194</sup> State law ordinarily determines who may attend federal executions.<sup>195</sup>

The proposals have been silent on the question and appear to leave the issue unaddressed. Some do promise victims the right to “notice of, and not to be excluded from, all public proceedings relating to the crime. . .”, but since executions are not public the language seems inapplicable.

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means the spouse, a child by birth or adoption, a step child, a parent, a grandparent or a sibling of the deceased victim or the spouse of any immediate family member specified in this subsection.” See also, ALA.CODE §15-18-93 (not more than 2 members of the victim’s immediate family); CAL.PENAL CODE §3605 (members of the victim’s immediate family); KY.REV.STAT.ANN. §431.250 (3 members of the victim’s immediate family); LA.REV.STAT.ANN. §15:570 (no more than 2 members of the victims family); MISS.CODE ANN. §99-19-55 (2 members of the victim’s immediate family); N.C.GEN.STAT. §15-190 (2 members of the victim’s family); PA.STAT.ANN. tit. 61 §3005 (not more than 4 “victims” (family members of a murdered individual are classified as victims); S.C.CODE ANN. §24-3-550 (3 representatives from the family of the victim); WASH.REV.CODE ANN. §10.95.185 (superintendent of the prison determines the number of witnesses from various groups include representatives of the families of the victims).

Only one state, New Jersey, appears to explicitly bar victims’ relatives from the execution, N.J.STAT.ANN. §2C:49-7[d.]: “the commissioner shall not authorize or permit any person who is related by either blood or marriage to the sentenced persons or to the victim to be present at the execution. . . .”

<sup>194</sup> COLO.REV.STAT.ANN. §16-11-404: “. . . There shall also be present [at the execution of a death sentence] a physician and such guards, attendants and other persons as the executive director or his designee in his discretion deems desirable, not to exceed fifteen persons. . . .”

MD. CODE ANN. art.27 §73(a): “The Commissioner of Corrections shall select at least 6 and not more than 12 respectable citizens to observe the execution, in addition to the persons who are otherwise required to supervise, perform, or participate in the execution.”

See also, ARK.CODE ANN. §16-90-502 (6 to 12 persons); CAL.PENAL CODE §3605; DEL.CODE ANN. tit.11 §4209(f)(the court may designate no more than 10 official witnesses); FLA.STAT.ANN. §922.11 (12 witnesses); GA.CODE ANN. §17-10-41; ILL.COMP.LAWS ANN. ch. 725 §5/119-5 (6 persons); KAN.STAT.ANN. §22-4003 (up to 6 persons); LA.REV.STAT.ANN. §15:570 (5 to 7 persons); MO.ANN.STAT. §546.740; MONT.CODE ANN. §46-19-103 (up to 12 persons, 3 of whom may be designated by the prisoner); NEV.REV.STAT. §176.355; N.H.REV.STAT.ANN. §630:6 (up to 12 persons); N.MEX.STAT.ANN. §31-14-15; N.Y.CORR.LAW §660 (6 persons); PA.STAT.ANN. tit.42 §9711(l)(6 reputable persons); S.C.CODE ANN. §24-3-550 (2 persons); S.D.COD.LAWS ANN. §23A-27A-34 (up to 10 persons) VT.STAT. ANN. tit.13 §7105; VA.CODE ANN. §53.1-234.

<sup>195</sup> 18 U.S.C. 3596 (“. . . the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of the State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law”).

## Enforcement

Experience among the states suggests that enforcement may be the stumbling block for the proposed amendment, for there seem to be few palatable alternatives. It is possible to draft the amendment to the United States Constitution so that victims' rights enforcement is paramount. Legal proceedings conducted without honoring victims' rights would be rendered null; parole hearings rescheduled and conducted anew; plea bargains rejected; trials begun again; unfaithful public servants exposed to civil and criminal liability; inattentive governmental entities made subject to claims and court orders.

State victims' rights provisions often disclaim any intention to create a cause of action for disappointed victims and/or grounds for a defendant to overturn criminal proceedings against him.<sup>196</sup> As noted earlier, the perceived inadequacy of state provisions have helped fuel the drive for a federal constitutional amendment, but the commentators have only infrequently addressed how a federal constitutional right might be most appropriately enforced. Some have noted that if a victims' rights amendment were silent on the question its demands would be enforceable against the state officials under section 1983 of the civil rights laws, 42 U.S.C. 1983, and against federal officials under the *Bivens* doctrine.<sup>197</sup> A few proponents suggest that the equitable powers of the courts — mandamus and injunctive relief claimed in a declarative action — would be available to enforce those amendment proposals that

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<sup>196</sup> ALA.CONST. Amend. 557(b) (“Nothing in this amendment or in any enabling statute adopted pursuant to this amendment shall be construed as creating a cause of action against the state or any of its agencies, officials, employees, or political subdivisions. . .”).

ID.CONST. Art.I, §22 (“ . . . Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute. . .”).

GA.CODE §17-17-15 (“(a) Failure to provide or to timely provide any of the information or notifications required by this chapter shall not subject the person responsible for such notification or that person’s employer to any liability for damages. (b) Failure to provide a victim with any of the rights required by law shall not give an accused a basis for error in either an appellate action or a post-conviction writ of habeas corpus. (c) This chapter does not confer upon a victim any standing to participate as a party in a criminal proceeding or to contest the disposition of any charge. (d) The enumeration of these rights shall not be construed to deny or diminish other notification rights granted by state law. (e) The victim may waive any of the information or notification or other rights provided for by this chapter”). See Appendix XVII for the citation to other similar provisions.

<sup>197</sup> E.g., *The Victims’ Bill of Rights: Are Victims All Dressed Up With No Place to Go?* 8 ST.JOHN’S JOURNAL OF LEGAL COMMENTARY 251, 273 (1992). The minority views expressed in the Senate Report accompanying S.J.Res. 44 suggested that the Committee majority at one time felt that state violations of the amendment would give rise to action for damages under 42 U.S.C. 1983, S.Rept. 105-409 at 74.

explicitly deny the possibility of imposing civil sanctions upon government entities or their officials for failure to comply.<sup>198</sup>

This might appear to have been the intent with respect to proposals like S.J.Res.6 (105th Cong.) that deny victims a cause of action for damages or grounds to interrupt a criminal trial and otherwise leave the crafting of enforcement mechanisms to Congress and the state legislatures.<sup>199</sup> In any event, none of the proposals immunize public officials from criminal liability for violation of the victims' rights amendment, a fact no everyone applauds.<sup>200</sup>

## Legislative Powers

The grant of legislative implementing authority may shield against the appearance of the unexpected and undesirable consequences discovered after ratification of a constitutional amendment. The difficulty of amending the Constitution argues for a legislative safety valve. Of course, this argument loses considerable force when one

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<sup>198</sup> *House Hearing* at 172 (prepared statement of Associate Attorney General John R. Schmidt). Not everyone considers this a positive result, S.Rept. 105-409 at 49 (minority views of Sen. Thompson)(“While S.J.Res. 44 does not offer victims the opportunity to sue for damages to vindicate their rights, it does allow them to seek injunctive or declarative relief, and perhaps writs of mandamus. There also could be large class actions against State authorities. This could lead to disruptive and costly Federal court intrusion[s] into State criminal justice systems”).

<sup>199</sup> “SECTION 2. The victim shall have standing to assert the rights established by this article. However, nothing in this article shall provide grounds for the victim to challenge a charging decision or a conviction; to obtain a stay of trial; or to compel a new trial. Nothing in this article shall give rise to a claim for damages against the United States, a State, a political subdivision, or a public official, nor provide grounds for the accused or convicted offender to obtain any form of relief.

“SECTION 3. The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.”

Note that the official immunity granted in section 2 is limited to “a claim for damages,” considerably narrower than the immunity in the present federal victims' rights legislation which is couched in more general terms, “a cause of action or defense in favor of any person,” 42 U.S.C. 10606(c). This wording would appear to avoid the problem suggested by *United States v. McVeigh*, 106 F.3d 325, 335 (10th Cir. 1997) when it held that the more generous immunity grant of 10606(c) foreclosed the possibility of equitable relief against governmental entities or officials for failure to afford victims rights under section 10606.

<sup>200</sup> S.Rept. 105-409 at 61 (minority views of Sens. Leahy, Kennedy and Kohl)(“There can be no doubt that prosecutors would feel personally constrained by the proposed amendment. S.J.Res. 44's express prohibition on claims for damages only increases the likelihood that courts would find other ways to vindicate its newly-minted rights. Just last year, the U.S. Supreme Court confirmed that the Federal civil rights laws permit criminal prosecutions in Federal court of any State official who willfully and under color of law deprived any person of any rights secured or protected under the Federal Constitution. *United States v. Lanier*, 520 U.S. 259 (1997)”).

of the principal reasons for enacting a constitutional amendment rather than merely enacting a statute is to ensure that the rights it grants are not easily denied or diluted.

One of the perils implicit in opting for extensive legislative powers is the prospect of unfulfilled promises. It is certainly possible to draft a very generally worded constitutional amendment in anticipation of future legislative refinements. And these may be forthcoming. But it may also happen that the refinements must be laboriously crafted through the courts because legislative resolution proves either unattainable or less than universally appealing.

Early proposals granted Congress and the state legislatures the power to enact implementing legislation within their respective jurisdictions.<sup>201</sup> Over time, some of the proposals began to expand the explicit legislative authority of Congress<sup>202</sup> and then to constrict the explicit legislative authority of the states.<sup>203</sup>

The Committee Report explained, however, that the loss of state legislative authority was less sweeping than it might have appeared. It asserts that the power to define the class of victims to whom the amendment would apply was by implication to be shared by Congress and the states.<sup>204</sup> Subject to preemptive federal legislation, the states would be permitted to paint the scope of the amendment as broadly or as

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<sup>201</sup> E.g., S.J.Res. 52, §2 (104th Cong.) (“The several States, with respect to a proceeding in a State forum, and the Congress, with respect to a proceeding in a United States forum, shall have the power to enforce this article by appropriate legislation”); H.J.Res. 71, §3 (105th Cong.) (“The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required by public interest”).

<sup>202</sup> S.J.Res. 6, §3 (“The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases”), §1 (“Each victim of a crime of violence and *other crimes that Congress may define by law*, shall have the rights to . . . .”) (emphasis added), §5 (“The rights established by this article shall apply in . . . military proceedings *to the extent that Congress may provide by law* . . . .”) (emphasis added).

<sup>203</sup> S.J.Res. 44, §3 (“The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest”).

H.J.Res. 129, §3 (“The Congress shall have the power to enforce this article by appropriate legislation”). The questions involving impact on the states are less vexing in the case of H.J.Res. 129 which only applies to federal proceedings, §5 (“The rights established by this article shall apply in all Federal proceedings. . . .”).

<sup>204</sup> S.Rept. 105-409 at 23 (“The Committee anticipates that Congress will quickly pass an implementing statute defining ‘victim’ for Federal proceedings. Moreover, nothing removes from the states their plenary authority to enact definitional laws for purposes of their own criminal system. . . . Since the legislatures define what is criminal conduct, it makes equal sense for them to also have the ability to further refine the definition of ‘victim’”).

narrowly as they chose.<sup>205</sup> Some Committee members were troubled by this resolution,<sup>206</sup> some skeptical that it could hold sway.<sup>207</sup>

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<sup>205</sup> S.Rept. 105-409 at 35 (“This provision is similar to existing language found in section 5 of the 14th amendment to the Constitution. This provision will be interpreted in similar fashion to allow Congress to ‘enforce’ the rights, that is, to insure that the rights conveyed by the amendment are in fact respected. At the same time, consistent with the plain language of the provision, the Federal Government and the States will retain their power to implement the amendment. For example, the States will, subject to the Supremacy Clause, flesh out the contours of the amendment by providing definitions of ‘victim’ of crime and ‘crimes of violence’”).

<sup>206</sup> “Unlike previous versions of the proposed amendment, which permitted States to enforce the amendment in their jurisdictions, S.J.Res. 44 gives Congress exclusive power to ‘enforce this article by appropriate legislation.’ I believe that granting Congress sole power to enforce the provisions of the victims’ rights amendment and thus, *inter alia*, to define term such as ‘victim’ and ‘violent crime’ and to enforce the guarantees of ‘reasonable notice’ of public proceedings and of the rights established by the amendment will be a significant and troubling step towards federalization of crime and the nationalization of our criminal justice system. . . . It is possible that the victims’ rights constitutional amendment will lack [the] flexibility that is the hallmark of our Federal system, and perhaps in the process invalidate many State victims rights provisions. Such a prospect should give us pause,” S.Rept. 105-409 at 44-5 (additional views of Sen. Hatch).

<sup>207</sup> “The majority appears to believe that it can control some of the inevitable damage through explications in the Committee report about how the amendment will operate. We doubt that the courts will care much for such efforts. They will look first at the plain meaning of the text of the amendment. They will seek guidance in Supreme Court precedents interpreting provisions using similar language. They will not resort to the majority report to interpret wording that is clearly understood in current legal and political circles. Any interpretative value of the majority report is further undermined by the inconsistency of the document, which in some situations narrows the impact of the amendment . . . and in other circumstances expands the impact of the amendment (*e.g.*, by devising a role for States in implementing the amendment . . .). Such inconsistency renders the majority report . . . legally meaningless. Weaknesses in the text of the amendment cannot with any confidence be cured by the majority’s views, especially not when the majority’s analysis is so directly at odds with the amendment’s plain language and with settled constitutional doctrine.

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“The majority report attempts to deflect the federalism concerns raised by S.J.Res. 44 by suggesting that the States will retain ‘plenary authority’ to implement the amendment within their own criminal systems. We find this suggestion surprising given the plain language of the amendment’s implementation clause (in section 3): ‘The Congress shall have the power to enforce this article by appropriate legislation.’ Identical language in earlier constitutional amendments has been read to vest enforcement authority exclusive in the Congress. In the case of S.J.Res. 44, moreover, the text is illuminated by the legislative history. Earlier drafts of the amendment expressly extended enforcement authority to the states. These drafts drew fire from constitutional scholars, who expressed doubt that constitutionally-authorized State laws could be supreme over State constitutions or even over federal laws, and concern that, for the first time, rights secured by the Federal Constitution would mean different things in different parts of the country. The Committee then amended the text to its current formulation. Faced with this history and text, the courts will surely conclude that S.J.Res. 44 deprives States of any authority to legislate in the area of victims’ rights,” S.Rept. 105-409 at 50-1, 68-9 (minority views of Sens. Leahy, Kennedy and Kohl).

## Preemptive and Amending Impact

The question of the states' legislative powers to implement the victims' rights amendment suggests another question. How much, if any, of existing state victims' rights law will survive an amendment?

Under the present state of the law, statutory and state constitutional provisions are confined by the Bill of Rights, U.S.Const. Art. VI, cl.2. When their advocates have said nothing in them imperils defendant's rights under the United States Constitution, they are right; nothing could. But an amendment to the United States Constitution stands on different footing. It amends the Constitution. Its very purpose is to make constitutional that which would otherwise not have been.<sup>208</sup> It may uniformly subordinate defendants' rights to victims' rights. It may require any conflicting law or constitution precept, state or federal, to yield. Even in the absence of a conflict, it may preempt the field, sweeping away all laws, ordinances, precedents, and decisions — compatible and incompatible alike — on any matter touching upon the same subject. It may have none or some of these consequences depending upon its language and the intent behind its language.

The principles used to interpret preemptive impact under the Supremacy Clause are fairly well developed. “[P]re-emption of state law [may occur] either by express provision, by implication, or by a conflict between federal and state law. And yet, despite the variety of these opportunities for federal preeminence, [the Court has] never assumed lightly that Congress does not intend to supplant state law. Indeed, in cases . . . where federal law is said to bar state action in fields of traditional state regulation, [the Court has] worked on the assumption that the historic police powers of the states were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress,” *New York Conference of Blue Cross v. Travelers Insurance Co.*, 514 U.S. 645, 654-55 (1995). Conversely, by the virtue of the Supremacy Clause where the subject matter is one which the Constitution relegates to the federal domain, the vitality of state law is dependent upon the largess of Congress and the Constitution, *United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 800-802 (1995).

A victims' rights amendment to the United States Constitution that relegates the area to the federal domain, confines state authority to that which the amendment permits or allows Congress to permit.

Few advocates have explicitly called for “king-of-the-hill” victims' rights amendment, but the thought seems imbedded in the complaint that existing law lacks uniformity. How else can universal symmetry be accomplished but by implementation of a single standard that fills in where pre-existing law comes up short and shaves off where its generosity exceeds the standard?

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<sup>208</sup> S.Rept. 105-409, at 67 (minority views of Sens. Leahy, Kennedy, and Kohl)(quoting former Deputy Attorney General Philip Heymann)(“If it is not intended to free the States and Federal Government from restrictions found in the Bill of Rights — which would be a reckless tampering with provisions that have served us very well for more than 200 years — it is unclear what purpose the amendment serves”).

S.J.Res. 6 (105th Cong.) applied to federal and state proceedings and permitted the states to enact enforcement mechanisms within their jurisdictions; it was otherwise silent on the amendment's relationship to state law. The statement accompanying its introduction implied an intent to establish minimum standards but to permit more generous laws to continue in place: "A Federal amendment would establish a basic floor of crime victims' rights — a floor below which States could not go," 143 *Cong. Rec.* S560 (daily ed. Jan. 21, 1997)(remarks of Sen. Kyl).

The Committee Report was even more explicit with respect to S.J.Res. 44, "many States have already extended rights to victims of such offenses and the amendment in no way restricts such rights. In other words, the amendment sets a national 'floor' for the protection of victims' rights, not any sort of 'ceiling.'" S.Rept. 105-409, at 24.

Questions of the amendment's impact on the rights afforded the accused may not be so easily discerned. The principles of construction called into play in the case of a conflict between a victims' rights amendment and rights established elsewhere in the Constitution are similar to those used to resolve federal-state conflicts.

Intent of the drafters is paramount. The courts will make every effort to reconcile apparent conflicts between constitutional provisions, cf., *Vimar Seguros Y Reasdeguros v. Sky Reefer*, 515 U.S. 528, 533 (1995). In the case of unavoidable conflict between provisions of equal dignity, the latest in time prevails, *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976). If there is an unavoidable conflict between a right granted by an adopted victims' rights amendment and some other portion of the Constitution, the most recently adopted provision will prevail.

S.J.Res. 6 was designed to eliminate the unfair treatment that results because the criminal justice "system . . . permits the defendant's constitutional rights always to trump the protection given to victims," yet to do so in a manner that "will not deny or infringe any constitutional right of any person accused or convicted of a crime," 143 *Cong. Rec.* S560-61 (daily ed. Jan. 21, 1997)(remarks of Sen. Kyl). In instances of unavoidable conflict between victim and defendant rights, this seems to mean the prosecution must yield. The text of S.J.Res. 6 hardly defeats this interpretation with the assurance that the amendment is not to "provide grounds for the accused or convicted offender to obtain any form of relief," since the rights of the accused come not from the victims' rights amendment but from the Sixth Amendment or some other source within the Constitution.

S.J.Res. 44 was left in a somewhat different posture, when the Committee explicitly rejected a change in the amendment that would have stated that "[n]othing in this article shall be construed to deny or diminish the rights of an accused as guaranteed by this Constitution," S.Rept. 105-409 at 38. The refusal to accept the amendment might have been read to mean that in the case of unavoidable conflict victims' rights should prevail over defendants' rights. The text of the report, however, appeared to repudiate such an interpretation by rejecting the later-in-time analysis and

by using a fair-trial-free-press example in which the defendant's rights prevail in the case of unavoidable conflict.<sup>209</sup>

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<sup>209</sup> S.Rept. 105-409, at 22-3 (“The Crime Victims’ Rights Amendment creates rights, not in opposition to those of defendants, but in parallel to them. The parallel goal in both instances is to erect protections from abuse by State actors. Thus, just as defendants have a sixth amendment right to a ‘speedy trial,’ the Crime Victims’ Rights Amendment extends to victims the right to consideration of their interest ‘in a trial free from unreasonable.’ These rights cannot collide, since they are both designed to bring criminal proceedings to a close within a reasonable time. ‘[I]f any conflict were to emerge, courts would retain ultimate responsibility for harmonizing the rights at stake.’ . . . In this respect, the Committee found unpersuasive the contention that the courts will woodenly interpret the later-adopted Crime Victims’ Rights Amendment as superced[ing] provisions in previously-adopted ones. Such a cannon of construction can be useful when two measures address precisely the same subject. But no rigid rule of constitutional interpretation requires giving unblinking precedence to later enactments on separate subjects, and the Committee does not believe such a rule would — or should — be applied in this instance. Instead, the Committee trusts the courts to harmonize the rights of victims and defendants to ensure that both are appropriately protected. The courts have, for example, long experience in accommodating the rights of the press and the public to attend a trial with the rights of a defendant to a fair trial. The same sort of accommodations can be arrived at to dissipate any tension between victims’ and defendants’ rights”).

Although critics may have questioned whether the courts would always be able to “dissipate any tension between victims’ and defendants’ rights,” the fair-trial-free-press area may indicate how infrequently truly unavoidable conflicts were likely to occur, for a general discussion see, *Twenty-Eighth Annual Review of Criminal Procedure — Public Access*, 87 Georgetown Law Journal 1641 (1999).



APPENDICES

I

TEXT OF PROPOSED AMENDMENTS TO  
THE UNITED STATES CONSTITUTION

**Bills in the 106th Congress**

*S.J.Res. 3*

SECTION 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights:

- to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;
- to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;
- to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;
- to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence;
- to reasonable notice of a release or escape from custody relating to the crime;
- to consideration of the interest of the victim that any trial be free from unreasonable delay;
- to an order of restitution from the convicted offender;
- to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and
- to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

SECTION 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

SECTION 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.

*H.J.Res. 64*

SECTION 1. Each individual who is a victim of a crime for which the defendant can be imprisoned for a period longer than one year or any other crime that involves violence shall have the rights:

- to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;
- to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;
- to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence;

to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;

- to reasonable notice of a release or escape from custody relating to the crime;
- to consideration of the interest of the victim that any trial be free from unreasonable delay;
- to an order of restitution from the convicted offender;
- to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and
- to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

SECTION 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

SECTION 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.

### **Bills in the 105th Congress**

#### *S.J.Res.6*

SECTION 1. Each victim of a crime of violence, and other crimes that Congress may define by law, shall have the rights to notice of, and not to be excluded from, all public proceedings relating to the crime:

- To be heard, if present, and to submit a written statement at a public pretrial or trial proceeding to determine a release from custody, an acceptance of a negotiated plea, or a sentence;
- To the rights described in the preceding portions of this section at a public parole proceeding, or at a non-public parole proceeding to the extent they are afforded to the convicted offender;
- To notice of a release pursuant to a public or parole proceeding or an escape;
- To a final disposition of the proceedings relating to the crime free from unreasonable delay;
- To an order of restitution from the convicted offender;
- To consideration for the safety of the victim in determining any release from custody; and
- To notice of the rights established by this article; however, the rights to notice under this section are not violated if the proper authorities make a reasonable effort, but are unable to provide the notice, or if the failure of the victim to make a reasonable effort to make those authorities aware of the victim's whereabouts prevents that notice.

SECTION 2. The victim shall have standing to assert the rights established by this article. However, nothing in this article shall provide grounds for the victim to challenge a charging decision or a conviction; to obtain a stay of trial; or to compel a new trial. Nothing in this article shall give rise to a claim for damages against the United States, a State, a political subdivision, or a public official, nor provide grounds for the accused or convicted offender to obtain any form of relief.

SECTION 3. The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.

SECTION 4. The rights established by this article shall apply to all proceedings that begin on or after the 180th day after the ratification of this article.

## CRS-70

SECTION 5. The rights established by this article shall apply in all Federal and State proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and collateral proceedings such as habeas corpus, and including proceedings in any district or territory of the United States not within a State.

### *S.J.Res.44 as Amended in Committee*

SECTION 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights:

- to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;
- to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;
- to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;
- to reasonable notice of a release or escape from custody relating to the crime;
- to consideration of the interest of the victim that any trial be free from unreasonable delay;
- to an order of restitution from the convicted offender;
- to consideration for the safety of the victim in determining any conditional release from custody; and
- to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to a claim for damages against the United States, a State, a political subdivision, or a public official or employee.

SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

SECTION 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

SECTION 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory or possession of the United States.

### *H.J.Res.71*

SECTION 1. Each individual who is a victim of a crime for which the defendant can be imprisoned for a period longer than one year or any other crime that involves violence shall have the right –

- to notice of, and not to be excluded from, any public proceedings relating to the crime;
  - to be heard, if present, and to submit a written statement at all public proceedings, relating to the crime, to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;
  - to the rights described in the preceding portion of this section at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;
  - to notice of any release or escape from custody relating to the crime;
  - to seek relief from unreasonable delay of the final disposition of the proceedings relating to the crime;
  - to an order of restitution from the convicted offender;
  - to consideration for the safety of the victim in determining any release from custody; and
  - to reasonable notice of the rights established by this article;
- however, the rights to notice under this section are not violated if the proper authorities make a reasonable effort, but are unable to provide the notice, or if the failure of the victim to make a reasonable effort to make those authorities aware of the victim's whereabouts prevents that notice.

## CRS-71

SECTION 2. The victim shall have standing to assert the rights established by this article. However, nothing in this article shall provide grounds for the victim to overturn a charging decision, a conviction, or a sentence; to obtain a stay of trial; or to compel a new trial. Nothing in this article shall give rise to any claim for damages, nor provide grounds for the accused or convicted offender to obtain any form of relief.

SECTION 3. The Congress and the States shall have the power to enforce this article within their respective jurisdictions by appropriate legislation, including the power to enact exceptions when required by the public interest.

SECTION 4. The rights established by this article shall apply to all proceedings that begin on or after the 180th day after the ratification of this article.

SECTION 5. The rights and immunities established by this article shall apply in all Federal and State proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and collateral such as habeas corpus, and including similar proceedings in any district or territory of the United States not within a State.

### *H.J.Res. 129*

SECTION 1. Each individual of a crime of violence shall have the rights –

- (1) to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;
- (2) to be heard, if present, and to submit a written statement at all public proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;
- (3) to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;
- (4) to reasonable notice of any release or escape from custody relating to the crime;
- (5) to consideration for the interest of the victim in a trial free from unreasonable delay;
- (6) to an order of restitution from the convicted offender;
- (7) to consideration for the safety of the victim in determining any release from custody; and
- (8) to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim's representative shall have standing to assert the rights established by this article.

SECTION 3. Congress shall have the power to implement and enforce this article by appropriate legislation.

SECTION 4. The rights established by this article shall apply to all proceedings that begin on or after the 180th day after the ratification of this article.

SECTION 5. The rights established by this article shall apply in all Federal proceedings, including military proceedings to the extent that Congress may provide by law, juvenile justice proceedings, and proceedings in any district or territory of the United States not within a State.

### **Bills in the 104th Congress**

#### *S.J.Res.52/H.J.Res.174*

Section 1. To ensure that the victim is treated with fairness, dignity, and respect, from the occurrence of a crime of violence and other crimes as may be defined by law pursuant to section 2 of this article, and throughout the criminal, military, and juvenile justice processes, as a matter of fundamental rights to liberty, justice, and due process, the victim shall have the following rights: to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender; to be heard at any proceeding involving sentencing, including the right to object to a previously negotiated plea, or a release from custody; to be informed of any release or escape; and to a speedy trial, a final conclusion free from unreasonable delay, full restitution from the convicted offender, reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender, and notice of the victim's rights.

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Section 2. The several States, with respect to a proceeding in a State forum, and the Congress, with respect to a proceeding in a United States forum, shall have the power to implement further this article by appropriate legislation.

### *H.J.Res. 173*

Section 1. To ensure that victims are treated with fairness, dignity, and respect, in each prosecution by the United States or a State, for a crime either involving violence or for which the defendant can be imprisoned for a period longer than one year, any victim of the crime shall have the rights to receive notice of, and to be present at, every stage of the public proceedings, unless the court determines there is good cause for the victim not to be present; to comment at any such proceeding involving the possible release of the defendant from custody, the acceptance of any plea agreement with the defendant, or the sentencing of the defendant; to be informed of any release or escape of the defendant; to receive reasonable protection from physical harm or intimidation relating to the proceedings; to have the proceedings resolved in a prompt and timely manner; and to have the court order restitution from the defendant upon conviction.

Section 2. The rights established in section 1 shall be made available to victims upon request to the prosecuting authority and in the manner provided by law under section 3.

Section 3. The legislatures of the States, with respect to a proceeding in a State forum, and the Congress, with respect to a proceeding in a United States forum, shall have the power to enforce this article by appropriate legislation.

### *Proposal Circulated During the 1996 American Bar Association Convention*

Section 1. In all criminal prosecutions, including military courts-martial, and comparable cases involving juvenile offenders, the victims of a crime of violence, or of other crimes that Congress and the States may define by law pursuant to section 2 of this article shall have the following rights: to be informed of and not excluded from any proceeding in which those rights are extended to the accused or convicted offender; to be given the opportunity to be heard at every proceeding relating to a plea bargain, sentencing, or release from custody, whether pre- or post-trial; to be informed of any release or escape; to be given a speedy trial and a final conclusion free of from unreasonable delay; to an order of restitution from the convicted offender; to reasonable conditions of confinement or release to protect the victim from violence or intimidation from the accused or convicted offender; and to notice of the victim's rights.

Section 2. The Congress, with respect to a proceeding in a United States forum, and each State, with respect to a proceeding in a State forum, shall have the power to implement further this article by appropriate legislation. The victim shall have standing to assert in the relevant proceeding the rights established by this article.

Section 3. Nothing in this article shall give rise to a cause of action for damages against the United States, a State, a political subdivision, or any public official.

Section 4. The victim's exercise or failure to exercise any right granted by this article shall not be grounds for a defendant to dismiss any criminal charge, set aside any conviction or sentence, or to obtain any form of relief.

Section 5. The rights established in section 1 of this article shall be applicable to the states to the same extent that an accused's right's pursuant to the sixth article of amendment to the Constitution of the United States are made applicable.

## II

CITATIONS TO AND A SAMPLING OF STATE  
CONSTITUTIONAL PROVISIONS**Citations**

ALA.CONST., Amend. 557;  
ALASKA CONST. art.I, §24;  
ARIZ.CONST. art.2, §2.1;  
CAL.CONST. art.I, §28;  
COLO.CONST. art.II, §16a;

CONN.CONST. art.I, §8[b.];  
FLA.CONST. art.I, §16(b);  
IDAHO CONST. art.I, §22;  
ILL.CONST. art.I, §8.1;  
IND.CONST. art.1, §13;

LA.CONST. art.1, §25;  
KAN.CONST. art.15, §15;  
MD.D.OF RTS. art.47;  
MICH.CONST. art.I, §24;  
MISS. CONST. art. 3, §26A  
MO.CONST. art.I, §32;

MONT. CONST. Art.2, §28;  
NEB.CONST. Art.1, §28;  
NEV.CONST. art.1, §8;  
N.J. CONST. art.I, §22;  
N.MEX. CONST. art.II, §24;

N.C.CONST. art.I, §37;  
OHIO CONST. art.I, §10a;  
OKLA.CONST. art.II, §34;  
ORE.CONST. art. I, §24;  
R.I.CONST. art.I, §23;

S.C.CONST. art.I, §24;  
TENN.CONST. ART.I, §35;  
TEX.CONST. art.I, §30;  
UTAH CONST. art.I, §28;  
VA.CONST. art.I, §8-A;  
WASH.CONST. art.I, §35;  
WIS. CONST. art.I, §9m.

## Examples

### California

(a) *Legislative findings and declaration; rights of victims.* The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) *Restitution.* It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adopt of this section.

(c) *Right to Safe Schools.* All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) *Right to Truth-in-Evidence.* Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) *Public Safety Bail.* A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) *Use of Prior Convictions.* Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) *Serious felony.* As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c). CAL.CONST. Art.1, §28.

### Illinois

(a) Crime victims, as defined by law, shall have the following rights as provided by law: (1) the right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process. (2) The right to notification of court proceedings. (3) The right to communicate with the prosecutor. (4) The right to make a statement to the court at sentencing. (5) The right to information about the conviction, sentence, imprisonment, and release of the accused. (6) The right to timely disposition of the case following the arrest of the accused; (7) The right to be reasonably protected from the accused throughout the criminal

justice process. (8) The right to be present at the trial and all other court proceedings on the same basis as the accused, 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 trial. (9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice. (10) The right to restitution.

(b) The General Assembly may provide by law for the enforcement of this Section.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case. ILL.CONST. Art.1, §8.1

### **Maryland**

(a) A victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process.

(b) In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms "crime", "criminal justice proceeding", and "victim" are specified by law.

(c) Nothing in this Article permits any civil cause of action for monetary damages for violation of any of its provisions or authorizes a victim of crime to take any action to stay a criminal justice proceeding. MD. CONST. Art.47.

### **Utah**

(1) To preserve and protect victims' rights to justice and due process, victims of crimes have these rights as defined by law: (a) To be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process; (b) Upon request, to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a lawful representative, once a criminal information or indictment charging a crime has been publicly filed in court; and (c) To have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider, without evidentiary limitation, reliable information concerning the background, character, and conduct of a person convicted of an offense except that this subsection does not apply to capital cases or situations involving privileges.

(2) Nothing in this section shall be construed as creating a cause of action for money damages, costs, or attorneys fees, or for dismissing any criminal charge, or relief from any criminal judgment.

(3) The provisions of this section shall extend to all felony crimes and such other crimes or acts, including juvenile offenses, as the Legislature may provide.

(4) The Legislature shall have the power to enforce and define this section by statute. UTAH CONST. Art.I, §28.



## III

## CITATIONS AND TEXT OF SELECTED FEDERAL &amp; STATE STATUTES

## Citations

ALA.CODE §§15-23-60 to 15-23-84;  
 ALASKA STAT. §§12.61.010 to 12.61.050;  
 ARIZ.REV.STAT.ANN. §§13-4401 to 13-4438;  
 ARK.CODE ANN. §§16-90-1101 to 16-90-1115;  
 CAL.PENAL CODE §§679 to 679.04;  
  
 COLO.REV.STAT.ANN. §§24-4.1-301 to 24-4.1-304;  
 CONN.GEN.STAT.ANN. §§54-201 to 54-233;  
 DEL.CODE ANN. tit.11 §§9401 to 9419;  
 FLA.STAT.ANN. §§960.001 to 960.297;  
 GA.CODE ANN. §§ 17-17-1 to 17-17-165;  
  
 HAW.REV.STAT. §§801D-1 to 801D-7;  
 IDAHO CODE §19-5306;  
 ILL.COMP.LAWS ANN. ch.725 §§120/1 to 120/9;  
 IND.CODE ANN. §§35-40-5-1 to 35-40-5-9;  
 IOWA CODE ANN. §§915.1 to 915.100  
 KAN.STAT.ANN. §74-7333;  
 KY.REV.STAT.ANN. §§421.500 to 421.550;  
 LA.REV.STAT.ANN. §§46:1841 to 46:1844;  
 ME.REV.STAT.ANN. tit.17-A §§1171 to 1175;  
 MD.CODE ANN. art.27 §§761 to 789;  
  
 MASS.GEN.LAWS ANN. ch.258B §§1 to 13;  
 MICH.COMP.LAWS ANN. §§780.751 to 780.834;  
 MINN.STAT.ANN. §§611A.01 to 611A.90;  
 MISS.CODE ANN. §§99-43-1 to 99-43-49;  
 MO.ANN.STAT. §§595.200 to 595.218;  
 MONT.CODE ANN. §§46-24-101 to 46-24-213;  
  
 NEB.REV.STAT. §81-1848;  
 NEV.REV.STAT. §§178.569 to 178.571;  
 N.H.REV.STAT.ANN. §21-M:8-k;  
 N.J.STAT.ANN. §§52:4B-36 to 52:4B-49;  
 N.MEX.STAT.ANN. §§31-26-1 to 31-26-14;  
  
 N.Y.EXEC.LAW §§640 to 649;  
 N.C.GEN.STAT. §§15A-830 to 15A-841;  
 N.D.CENT.CODE §§12.1-34-01 to 12.1-34-05;  
 OHIO REV.CODE ANN. §§2930.01 to 2930.19;  
 OKLA.STAT.ANN. tit. 19 §215.33;  
  
 ORE.REV.STAT. §§147.405 to 147.421;  
 PA.STAT.ANN. tit.18 §11.201;  
 R.I.GEN.LAWS §§12-28-1 to 12-28-12;  
 S.C.CODE ANN. §§16-3-1510 to 16-3-1565;  
 S.D.COD.LAWS ANN. §§23A-28C-1 to 23A-28C-6;  
  
 TENN.CODE ANN. §§40-38-101 to 40-38-108;  
 TEX.CODE OF CRIM.PRO. arts.56.01 to 56.12;  
 UTAH CODE ANN. §§77-38-1 to 77-38-14;  
 VT.STAT.ANN. tit.13 §§5301 to 5321;  
 VA.CODE ANN. §§19.2-11.01 to 19.2-11.4;  
  
 WASH.REV.CODE ANN. §§7.69.020 to 7.69.030;  
 W.VA.CODE §§61-11A-1 to 61-11A-8;  
 WIS.STAT.ANN. §§950.01 to 950.11;  
 WYO.STAT. §§1-40-201 to 1-40-210.

## Examples

### Federal

#### Victims' rights

##### (a) Best efforts to accord rights

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) of this section.

##### (b) Rights of crime victims

A crime victim has the following rights:

- (1) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (2) The right to be reasonably protected from the accused offender.
- (3) The right to be notified of court proceedings.
- (4) 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.
- (5) The right to confer with [the] attorney for the Government in the case.
- (6) The right to restitution.
- (7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

##### (c) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section. 104 Stat. 4820, 42 U.S.C. 10606.

It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights:

#### Sense of Congress With Respect to Victims of Crime

It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights:

- (1) Victims of crime should be treated with compassion, respect and dignity throughout the criminal justice process.
- (2) Victims of crime should be reasonably protected from the accused throughout the criminal justice process.
- (3) Victims of crime should have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as the decision to plea-bargain.
- (4) Victims of crime should have the right to a reasonable assurance that the accused will be tried in an expeditious manner.
- (5) A victim of crime should have the right to be present at all proceedings related to the offense against him, unless the victim is to testify and the court determines that the victim's testimony would be materially prejudiced by hearing other testimony at the trial.
- (6) Victims of crime should have the right to information about the conviction, sentencing and imprisonment of the person who committed the crime against them.
- (7) Victims of crime should be compensated for the damage resulting from the crime to the fullest extent possible by the person convicted of the crime.
- (8) Victims of crime should have a statutorily designated advisory role in deciding the early release status of the person convicted of the crime against them.
- (9) A victim of crime should never be forced to endure again the emotional and physical consequences of the original crime. 104 Stat. 4822, 42 U.S.C. 10606 nt.

##### (a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

##### (b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall--

- (1) identify the victim or victims of a crime;
- (2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section; and
- (3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c) of this section.

(c) Description of services

- (1) A responsible official shall--
  - (A) inform a victim of the place where the victim may receive emergency medical and social services;
  - (B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;
  - (C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and
  - (D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).
- (2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.
- (3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of--
  - (A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
  - (B) the arrest of a suspected offender;
  - (C) the filing of charges against a suspected offender;
  - (D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) of this title, is entitled to attend;
  - (E) the release or detention status of an offender or suspected offender;
  - (F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial;
 and
  - (G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.
- (4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.
- (5) After trial, a responsible official shall provide a victim the earliest possible notice of--
  - (A) the scheduling of a parole hearing for the offender;
  - (B) the escape, work release, furlough, or any other form of release from custody of the offender;
 and
  - (C) the death of the offender, if the offender dies while in custody.
- (6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.
- (7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.
- (8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c) of this section.

(e) Definitions

For the purposes of this section--

- (1) the term "responsible official" means a person designated pursuant to subsection (a) of this section to perform the functions of a responsible official under that section; and

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including--

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court. 42 U.S.C. 10607

## Missouri

1. The following rights shall automatically be afforded to victims of dangerous felonies, as such term is defined in section 556.061, RSMo, victims of murder in the first degree, as defined in section 565.020, RSMo, victims of voluntary manslaughter, as defined in section 565.023, RSMo, and victims of attempt to commit one of the preceding crimes, as defined in section 564.011 RSMo; and, upon written request, the following rights shall be afforded to victims of all other crimes and witnesses of crimes:

(1) For victims, the right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult;

(2) For victims, the right to information about the crime, as provided for in subdivision (5) of this subsection;

(3) For victims and witnesses, to be informed, in a timely manner, by the prosecutor’s office of the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case. Final disposition information shall be provided within five days;

(4) For victims, the right to confer with and to be informed by the prosecutor regarding bail hearings, guilty pleas, pleas under chapter 552, RSMo., or its successors, hearings, sentencing and probation revocation hearings and the right to be heard at such hearings, including juvenile proceedings, unless in the determination of the court the interest of justice require otherwise;

(5) The right to be informed by local law enforcement agencies, the appropriate juvenile authorities or the custodial authority of the following: (a) the status of any case concerning a crime against the victim, including juvenile offenses; (b) the right to be informed by local law enforcement agencies or the appropriate juvenile authorities, of the availability of victim compensation assistance, assistance in obtaining documentation of the victim’s losses, including, but not limited to and subject to existing law concerning protected information closed records, access to copies of complete, unaltered, unedited investigation reports of motor vehicle, pedestrian, and other similar accidents upon request to the appropriate law enforcement agency by the victim or the victim’s representative, and emergency crisis intervention services available in the community; (c) Any release of such person on bond or for any other reason; (d) Within twenty-four hours, any escape by such person from a municipal detention facility, county jail, a correctional facility operated by the department of corrections, mental health facility, or the division of youth services or any agency thereof, and any subsequent recapture of such person;

(6) For victims, the right to be informed by appropriate juvenile authorities of probation revocation hearings initiated by the juvenile authority and the right to be heard at such hearings or to offer a written statement, video or audio tape in lieu of a personal appearance, the right to be informed by the board of probation and parole of probation revocation hearings imitated by the board and of parole hearings, the right to be present at each and every phase of parole hearings and the right to be heard at probation revocation and parole hearings or to offer a written statement, video or audio take in lieu of a personal appearance, and the right to be informed by the custodial mental health facility or agency thereof of any hearings for the release of a person committed pursuant to the provisions of chapter 552, RSMo, the right to be present at such hearings, the right to be heard at such hearings or to offer a written statement, video or audio tape in lieu of personal appearance;

(7) For victims and witnesses, upon their written request, the right to be informed by the appropriate custodial authority, including any municipal detention facility, juvenile detention facility, county jail, correctional facility operated by the department of corrections, mental health facility, division of youth services or agency thereof if the offense would have been a felony if committed by an adult, post-conviction, or commitment pursuant to the provisions of chapter 552, RSMo, of the following: (a) the projected date of such person’s release from confinement; (b) Any release of such person on bond; (c) Any release of such person on furlough, work release, trial release, electronic monitoring program, or to a community correctional

facility or program or release for any other reason, in advance of such release; (d) Any scheduled parole or release hearings regarding such person and any changes in the scheduling of such hearings. No such hearing shall be conducted without thirty days advance notice; (e) Within twenty-four hours, any escape by such person from a municipal detention facility, county jail, a correctional facility operated by the department of corrections, mental health facility, or the division of youth services or any agency thereof, and any subsequent recapture of such person; (f) Any decision by a parole board, juvenile releasing authority, or circuit court presiding over releases pursuant to the provisions of chapter 552, RSMo, to release such person or any decision by the governor to commute the sentence of such person or pardon such person; (g) Notification within thirty days of the death of such person;

(8) For witnesses, who have been summoned by the prosecuting attorney and for victims, to be notified by the prosecuting attorney in a timely manner when a court proceeding will not go on as scheduled;

(9) For victims and witnesses, the right to reasonable protection from the defendant or any person acting on behalf of the defendant from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;

(10) For victims and witnesses, on charged cases or submitted cases where no charge decision has yet been made to be informed by the prosecuting attorney of the status of the case and of the availability of victim compensation services available within the community and information relative to applying for such assistance or services, and of the any final decision by the prosecuting attorney not to file charges;

(11) For victims, to be informed by the prosecuting attorney of the right to restitution which shall be enforceable in same manner as any other cause of action as otherwise provided by law;

(12) For victims and witnesses, to be informed by the court and the prosecuting attorney of procedures to be followed in order to apply for and receive any witness fee to which they are entitled;

(13) When a victim's property is no longer need for evidentiary reasons or needs to be retained pending an appeal, the prosecuting attorney or any law enforcement agency having possession of the property shall, upon request of the victim, return such property to the victim within five working days unless the property is contraband or subject to forfeiture proceedings, or provide written explanation of the reason why such property shall not be returned;

(14) An employer may not discharge or discipline any witness, victim or member of a victim's immediate family for honoring a subpoena to testify in a criminal proceeding or for participating in the preparation of a criminal proceeding;

(15) For victims, to be provided with creditor intercession services by the prosecuting attorney if the victim is unable, as a result of the crime, temporarily to meet financial obligations;

(16) For victims and witnesses, the right to speedy disposition of their cases, and for victims, the right to speedy appellate review of their cases, provided that nothing in this subdivision shall prevent the defendant from having sufficient time to prepare his defense. The attorney general shall provide victims, upon their written request, case status information throughout the appellate process of their cases. The provisions of this subdivision shall apply only to proceedings involving the particular case to which the person is a victim or witness;

(17) For victims and witnesses, to be provided by the court, a secure waiting area during court proceedings, and to receive notification of the date, time and location of any hearing conducted by the court for reconsideration of any sentence imposed, modification of such sentence or recall and release of any defendant from incarceration.

2. The provisions of subsection 1 of this section shall not be construed to imply any victim who is incarcerated by the department of corrections or any local law enforcement agency has a right to be released to attend any hearing or that the department of corrections or the local law enforcement agency has any duty to transport such incarcerated victim to any hearing.

3. Those persons entitled to notice of events pursuant to the provisions of subsection 1 of this section shall provide the appropriate person or agency with their current addresses and telephone numbers or the addresses or telephone numbers at which they wish notification to be given.

4. Notification by the appropriate person or agency by certified mail to the most current address provided by the victim shall constitute compliance with the victim notification requirement of this section.

5. Victims' rights as established in section 32 of article I of the Missouri Constitution or the laws of this state pertaining to the rights of victims of crime shall be granted and enforced regardless of the desires of a defendant and no privileges of confidentiality shall exist in favor of parole hearings or probation revocation hearings. The rights of victims granted in this section are absolute and the policy of this state is that the victim's rights are paramount to the defendant's rights. The victim has an absolute right to be present at any hearing in which the defendant is present before a probation or parole hearing officer. MO.STAT.ANN. §595.209

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A victim shall have the right to: A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process; B. timely disposition of the case; C. be reasonably protected from the accused throughout the criminal justice process; D. notification of court proceedings; E. attend all public court proceedings the accused has the right to attend; F. confer with the prosecution; G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused; H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury; I. information about the conviction, sentencing, imprisonment, escape or release of the accused; J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property. N.M.STAT.ANN. §31-26-4

## IV

## Restitution Statutes: Citations

## Federal

18 U.S.C. 3663 to 3664

## State

ALA.CODE §§15-18-65 to 15-18-78;  
 ALASKA STAT. §12.55.045;  
 ARIZ.REV.STAT. ANN. §§13-804 to 13-820;  
 ARK.CODE ANN. §16-90-301 to 16-90-308;  
 CAL.PENAL CODE §§1202.4, 1202.41;  
 COLO.REV.STAT.ANN. §§17-28-101, 17-28-102;  
 CONN.GEN.STAT.ANN. §53a-28, 53a-28a;  
 DEL.CODE ANN. tit.11 §§4106, 9010;  
 FLA.STAT.ANN. §775.089;  
 GA.CODE ANN. §§17-14-1 to 17-14-17;  
 HAW.REV.STAT. §706-645, 706-646;  
 IDAHO CODE §§19-5301 to 19-5306;  
 ILL.COMP.LAWS ANN. ch.730 §5/5-5-6;  
 IND. CODE ANN. §35-50-5-3;  
 IOWA CODE ANN. §915.100;  
 KAN.STAT.ANN. §§21-4603e; 19-4801 to 19-4813;  
 KY.REV. STAT.ANN. §§532.032, 532.033;  
 LA.REV.STAT.ANN. §14:1844; LA.CODE CRIM.PRO. art. 895.1;  
 ME.REV.STAT.ANN. tit.17-A §§1321 to 1330;  
 MD.CODE ANN. art.27 §§805A to 812;  
 MASS.GEN.LAWS ANN. ch.258B §3;  
 MICH. COMP. LAWS ANN. §§769.1a, 780.766 to 780.768;  
 MINN.STAT.ANN. §§611A.04, 611A.045;  
 MISS.CODE ANN. §§99-37-1 to 99-37-25;  
 MO.ANN.STAT. §595.200;  
 MONT.CODE ANN. §§46-18-241 to 46-18-248;  
 NEB.REV.STAT. §§29-2280 to 29-2289;  
 NEV.REV. STAT. §§176.033, 209.4827 to 209.4843;  
 N.H.REV.STAT.ANN. §§651:63 to 651:67;  
 N.J.STAT.ANN. §2C:43-3;  
 N.MEX.STAT.ANN. §31-17-1;  
 N.Y. PENAL LAW §60.27;  
 N.C.GEN.STAT. §§15A-834, 15A-1340.34 to 15A-1340.38;  
 N.D.CENT. CODE §12.1-32-08;  
 OHIO REV. CODE ANN. §2929.18;  
 OKLA.STAT.ANN. tit.22 §991a;  
 ORE.REV.STAT. §§137. 101 to 137.109;  
 PA.STAT.ANN. tit.18 §1106;  
 R.I.GEN.LAWS §§12-19-32 to 12-19-34.  
 S.C. CODE ANN. §17-25-322;  
 S.D.COD.LAWS ANN. §§23A-28-1 to 23A-28-14;  
 TENN.CODE ANN. §§40-20-116, 40-38-106;  
 TEX.CODE CRIM.PRO. art.42.037;  
 UTAH CODE ANN. §77-32a-1;  
 VT.STAT.ANN. tit.13 7043;  
 VA.CODE ANN. §§19.2-305 to 19.2-305.4;  
 WASH.REV.CODE ANN. §§9.94A.140 to 9.94A.145;  
 W.VA.CODE §§61-11A-4, 61-11A-5;  
 WIS.STAT.ANN. §973.20;  
 WYO.STAT. §§7-9-101 to 7-9-115.

**Federal***18 U.S.C. 3663. Order of restitution*

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)(i) The court, in determining whether to order restitution under this section, shall consider--

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant--

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense--

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of--

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110--

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B)(i)(II) and (ii), when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.



(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under chapter 46 or chapter 96 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

*18 U.S.C. 3663A. Mandatory restitution to victims of certain crimes*

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(b) The order of restitution shall require that such defendant--

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense--

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to--

(i) the greater of--

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim--

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense--

(A) that is--

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, including any offense committed by fraud or deceit; or

(iii) an offense described in section 1365 (relating to tampering with consumer products);

and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) if the court finds, from facts on the record, that--

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664. 18 U.S.C. 3663A.

*18 U.S.C. 3664. Procedure for issuance and enforcement of order of restitution*

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

(d)(1) Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable--

(A) provide notice to all identified victims of--

(i) the offense or offenses of which the defendant was convicted;

(ii) the amounts subject to restitution submitted to the probation officer;

(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

(iv) the scheduled date, time, and place of the sentencing hearing;

(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the

defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

(5) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of--

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(4) An in-kind payment described in paragraph (3) may be in the form of--

(A) return of property;

(B) replacement of property; or

(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

(g)(1) No victim shall be required to participate in any phase of a restitution order.

(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.

(j)(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in--

- (A) any Federal civil proceeding; and
- (B) any State civil proceeding, to the extent provided by the law of the State.

(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

(ii) by all other available and reasonable means.

(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

(n) If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

(o) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that--

(1) such a sentence can subsequently be--

- (A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;
- (B) appealed and modified under section 3742;
- (C) amended under section 3664(d)(3); or
- (D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

(p) Nothing in this section or sections 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.

#### *§ 2248. Mandatory restitution [sexual abuse]*

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter [relating to sexual abuse].

(b) Scope and nature of order.--

(1) Directions.--The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for--

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys’ fees, plus any costs incurred in obtaining a civil protection order; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.--(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

- (i) the economic circumstances of the defendant; or
- (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Definition.--For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

*18 U.S.C. 2259. Mandatory restitution [sexual exploitation of children]*

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter [relating to the sexual exploitation of children].

(b) Scope and nature of order.--

(1) Directions.--The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for--

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys’ fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.--(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

- (i) the economic circumstances of the defendant; or
- (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Definition.--For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

*18 U.S.C. 2264. Restitution [domestic violence and stalking]*

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter [relating to domestic violence and stalking].

(b) Scope and nature of order.--

(1) Directions.--The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for--

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.--(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim defined.--For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

*18 U.S.C. 2327. Mandatory restitution [telemarketing fraud]*

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution to all victims of any offense for which an enhanced penalty is provided under section 2326.

(b) Scope and nature of order.--

(1) Directions.--The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term "full amount of the victim's losses" means all losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.--(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim defined.--In this section, the term "victim" has the meaning given that term in section 3663A(a)(2).

**Victim Compensation and Assistance Statutes:  
Samples & Citations**

**Citations**

ALA.CODE §§15-23-1- to 15-23-23;  
 ALASKA STAT. §§18.67.010 to 18.67.180;  
 ARIZ.REV.STAT.ANN. §§41-2401 to 41-2408;  
 ARK.CODE ANN. §§16-90-701 to 16-90-719;  
 CAL.GOV.CODE §§13960 to 13969.4;

COLO.REV.STAT.ANN. §§24-4.1-100.1 to 24-4.1-207;  
 CONN.GEN.STAT.ANN. §§54-201 to 54-233;  
 DEL. CODE ANN. tit.11 §§9001 to 9019;  
 FLA.STAT.ANN. §§960.01 to 960.28;  
 GA.CODE ANN. §§17-15-1- to 17-15-14;

HAW.REV.STAT. §§351-1 to 351-88;  
 IDAHO CODE §§72-1001 to 72-1025;  
 ILL.COMP. LAWS ANN. ch.740 §§45/1 to 45/20;  
 IND.CODE ANN. §§5-2-6.1-1 to 5-2-6.1-48;  
 IOWA CODE ANN. §§915.80 to 915.94;

KAN.STAT.ANN. §§ 19-4801 to 19-4813;  
 KY.REV.STAT.ANN. §§346.010 to 346.190;  
 LA.REV.STAT.ANN. §§46:1801 to 46:1821;  
 ME.REV. STAT.ANN. tit.5 §§3360 to 3360-L;  
 MD.CODE ANN. art.27 §§815 to 828;

MASS.GEN.LAWS ANN. ch.258C §§1 to 13;  
 MICH.COMP.LAWS ANN. §§18.351 to 18.368;  
 MINN.STAT.ANN. §§611A.51 to 611A.68;  
 MISS.CODE ANN. §§99-41-1 to 99-41-29;  
 MO.ANN. STAT. §§595.010 to 595.105;

MONT.CODE ANN. §53-9-101 to 53-9-133;  
 NEB.REV.STAT. §§81-1801 to 81-1842;  
 NEV.REV. STAT. §§217.005 to 217.480;  
 N.H.REV.STAT.ANN. §§21-M:8g to 21-M:8j;  
 N.J. STAT.ANN. §§52:4B-1 to 52:4B-33;

N.MEX.STAT.ANN. §§31-22-1 to 31-22-24;  
 N.Y. EXEC.LAW §§620 to 635;  
 N.C.GEN.STAT. §§15B-1 to 15B-25;  
 N.D.CENT.CODE §§54-23.4-01 to 54-23.4-18;  
 OHIO REV.CODE ANN. §§2743.51 to 2743.72;

OKLA. STAT.ANN. tit.21 §§142.1 to 142.36;  
 ORE.REV.STAT. §§147.005 to 147.391;  
 PA. STAT.ANN. tit.18 §§11.701 to 11.710;  
 R.I.GEN. LAWS §§12-25-17 to 12-25-31;  
 S.C. CODE ANN. §§16-3-1110 to 16-3-1420;

S.D.COD.LAWS ANN. §§23A-28B-1 to 23A-28B-44;  
 TENN.CODE ANN. §§29-13-101 to 29-13-411;  
 TEX.CODE CRIM.PRO. arts. 56.31 to 56.64;  
 UTAH CODE ANN. §§63-25a-401 to 63-25a-428;  
 VT.STAT.ANN. tit.13 §§5351 to 5358;

VA.CODE ANN. §§19.2-368.1 to 19.2-368.18;  
 WASH.REV.CODE ANN. §§7.68.010 to 7.68.915;  
 W.VA.CODE §§14-2A-1 to 14-2A-29;  
 WIS.STAT.ANN. §§949.001 to 949.18;  
 WYO.STAT. §§1-40-102 to 1-40-119.

**Examples****Federal****Crime victim compensation**

(a) Authority of Director [of the Office for Victims of Crime]; grants

(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for the administration of the State crime victim compensation program receiving the grant.

(b) Eligible crime victim compensation programs

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if--

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for--

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2) such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if--

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of Title 18), or are States not having eligible crime victim compensation programs;

(7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and

(8) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) Exclusion from income for purposes of means tests

Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

(d) Definitions

As used in this section--



(1) the term “property damage” does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) the term “medical expenses” includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses and other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term “compensable crime” means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes crimes involving terrorism, driving while intoxicated, and domestic violence; and

(4) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(e) Relationship to certain Federal programs

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,--

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program. 42 U.S.C. 10602

**Crime victim assistance**

(a) Grant authority of Director; chief executive of States; amount; insufficient funds

(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 10601(d)(2) of this title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

(2) Such chief executive shall--

(A) certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse;

(B) certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime. The Director, after consultation with State and local officials and representatives from private organizations, shall issue guidelines to implement this section that provide flexibility to the States in determining the populations of victims of violent crimes that may be underserved in their respective States;

(C) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and

(D) provide such other information and assurances related to the purposes of this section as the Director may reasonably require.

(3) The amounts of grants under paragraph (1) shall be--

(A) the base amount to each State; and

(B) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State’s population in relation to the population of all States.

(4) If the amount available for grants under paragraph (1) is insufficient to provide the base amount to each State, the funds available shall be distributed equally among the States.

(5) As used in this subsection, the term “base amount” means--

(A) \$150,000 for fiscal years 1989 through 1991; and

(B) \$200,000 thereafter.

(b) Eligibility of program; factors; limitation on expending of sums

(1) A victim assistance program is an eligible crime victim assistance program for the purposes of this section if such program--

(A) is operated by a public agency or a nonprofit organization, or a combination of such agencies or organizations or of both such agencies and organizations, and provides services to victims of crime;

(B) demonstrates--

(i) a record of providing effective services to victims of crime and financial support from sources other than the Fund; or

(ii) substantial financial support from sources other than the Fund;

(C) utilizes volunteers in providing such services, unless and to the extent the chief executive determines that compelling reasons exist to waive this requirement;

(D) promotes within the community served coordinated public and private efforts to aid crime victims; and

(E) assists potential recipients in seeking crime victim compensation benefits.

(2) Except as provided in paragraph (3), an eligible crime victim assistance program shall expend sums received under subsection (a) of this section only for providing services to victims of crime.

(3) Not more than 5 percent of sums received under subsection (a) of this section may be used for the administration of the State crime victim assistance program receiving such sums.

(c) Grants: purposes; distribution; duties of Director; reimbursement by Director

(1) The Director, shall make grants--

(A) for demonstration projects and training and technical assistance services to eligible crime victim assistance programs; and

(B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

(2) Of the amount available for grants under this subsection--

(A) not more than 50 percent shall be used for grants under paragraph (1)(A); and

(B) not less than 50 percent shall be used for grants under paragraph (1)(B).

(3) The Director shall--

(A) be responsible for monitoring compliance with guidelines for fair treatment of crime victims and witnesses issued under section 6 of the Victim and Witness Protection Act of 1982 (Public Law 97-291);

(B) consult with the heads of Federal law enforcement agencies that have responsibilities affecting victims of Federal crimes;

(C) coordinate victim services provided by the Federal Government with victim services offered by other public agencies and nonprofit organizations; and

(D) perform such other functions related to the purposes of this title as the Director deems appropriate.

(4) The Director may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.

(d) Definitions

As used in this section--

(1) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

(2) the term "services to victims of crime" includes--

(A) crises intervention services;

(B) providing, in an emergency, transportation to court, short-term child care services, and temporary housing and security measures;

(C) assistance in participating in criminal justice proceedings; and

(D) payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are otherwise not reimbursed or paid;

(3) the term "services to victims of Federal crime" means services to victims of crime with respect to Federal crime, and includes--

(A) training of law enforcement personnel in the delivery of services to victims of Federal crime;

(B) preparation, publication, and distribution of informational materials--

(i) setting forth services offered to victims of crime; and

(ii) concerning services to victims of Federal crime for use by Federal law enforcement personnel; and

(C) salaries of personnel who provide services to victims of crime, to the extent that such personnel provide such services;

(4) the term "crises intervention services" means counseling to provide emotional support in crises arising from the occurrence of crime; and

(5) the term "chief executive" includes a person designated by a chief executive to perform the functions of the chief executive under this section. 42 U.S.C. 10603.

## Alaska

### Purpose

It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expenses as a result of certain serious crimes

or in attempts to prevent the commission of crime or to apprehend suspected criminals. ALASKA STAT. §18.67.010.

#### Violent Crimes Compensation Board

(a) There is the Violent Crimes Compensation Board in the Department of Public Safety composed of three members to be appointed by the governor. . . . ALASKA STAT. §18.67.020.

#### Application for compensation

(a) A person who may be eligible for compensation under this chapter may make application to the board. In a case in which the person entitled to make application is a minor, the application may be made on the person's behalf by a parent or guardian. In a case in which the person entitled to make application is mentally incompetent, the application may be made on the person's behalf by a parent, guardian, or other individual authorized to administer the person's estate. . . . ALASKA STAT. §18.67.030.

#### Action on application; hearings

(a) Upon application made under the provisions of this chapter, the board shall consider the application and rule on it. The board may, upon its own motion, order a hearing, specifying the time and place it is to be held; if a hearing is ordered, the board shall give notice to the applicant. If after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish the applicant a written statement of the reason for the ruling. If, within 30 days after receipt of this statement, the applicant requests a hearing on the application, the board shall specify a time and place for a hearing and shall give notice to the applicant. If a request for a hearing is not made within the specified time, the decision of the board is final. . . .

ALASKA STAT. §18.67.040.

#### Attorney fees

The board may, as part of an order entered under this chapter, determine and allow reasonable attorney fees, which may not exceed 25 per cent of the first \$1,000 amount awarded as compensation, 15 per cent of the next \$9,000 amount awarded as compensation, and 7.5 per cent of the amount awarded as compensation over \$10,000 under AS 18.67.070, to be paid in addition to the amount of the compensation, to the attorney representing the applicant. An attorney may not ask for, contract for, charge, demand, collect, or receive a larger sum than the amount allowed by the board in the award of attorney fees. An attorney who violates this section shall forfeit any fee awarded and shall repay the state the fee awarded under this section. ALASKA STAT. §18.67.050.

#### Regulations

In performance of its functions, the board is authorized to make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this chapter and relating to other matters the board considers appropriate. ALASKA STAT. §18.67.060.

#### Standards for compensation

For the purpose of determining the amount of compensation payable under this chapter, the board shall, insofar as practicable, formulate standards for uniform application of this chapter and take into consideration rates and amounts of compensation payable for injuries and death under other laws of the state and of the United States and the availability of funds appropriated for the purposes of this chapter. ALASKA STAT. §18.67.070.

#### Awarding compensation

(a) In a case in which a person is injured or killed by an incident specified in AS 18.67.101(1), or by the act of any other persons that is within the description of offenses listed in AS 18.67.101(2), the board may order the payment of compensation in accordance with the provisions of this chapter: (1) to or for the benefit of the injured person; (2) in the case of personal injury or death of the victim, to a person responsible or who has been responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury or death; (3) in the case of death of the victim, to or for the benefit of one or more of the dependents of the victim; or (4) to the provider of a service under AS 18.67.110(b). . . . ALASKA STAT. §18.67.080.

#### Recovery from collateral source

(a) Up to the maximum set in AS 18.67.130(c), the board may award compensation for losses and expenses allowable under AS 18.67.110 for which the applicant is not compensated by the offender or a person on behalf of the offender, or by the United States, a state, or any of its subdivisions or agencies, or

a private source or emergency awards under AS 18.67.120, for injury or death compensation under this chapter.

(b) If compensation is awarded under this chapter and the person receiving it also receives a collateral sum under (a) of this section that has not been deducted from it, the board may require that the person refund either the amount of the collateral sum or the amount of compensation paid to the person under this chapter, whichever is less.

(c) Notwithstanding the provisions (a) and (b) of this section, in the case of the death of a victim, the value of a life insurance policy may not be considered a collateral sum that may be deducted under this section. ALASKA STAT. §18.67.090.

Incidents and offenses to which this chapter applies

The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death resulting from (1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or (2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: (A) murder in any degree; (B) manslaughter; (C) criminally negligent homicide; (D) assault in any degree; (E) kidnapping; (F) sexual assault in any degree; (G) sexual abuse of a minor; (H) robbery in any degree; (I) threats to do bodily harm; or (J) driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated. ALASKA STAT. §18.67.101.

Nature of the compensation

(a) The board may order the payment of compensation under this chapter for (1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim; (2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining of or similar employment-oriented rehabilitative services for the victim; (3) pecuniary loss to the dependents of the deceased victim; and (4) any other loss resulting from the personal injury or death of the victim that the board determines to be reasonable. . . . ALASKA STAT. §18.67.110.

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Limitations on awarding compensation

(a) An order for the payment of compensation may not be made under AS 18.67.080 unless (1) the application has been made within two years after the date of the personal injury or death; (2) the personal injury or death was the result of an incident or offense listed in AS 18.67.101 that has been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made; and (3) in the discretion of the board, the applicant has cooperated with law enforcement and prosecution officials to further prosecution of the offender if appropriate and to avoid further injury by the offender to the applicant and injury to persons in the care of the applicant who are exposed to possible injury by the offender.

(b) Compensation may not be awarded if the victim [(1)] violated a penal law of the state, which violation caused or contributed to the victim's injuries or death; or [(2)] is injured as a result of the operation of a motor vehicle, boat, or airplane unless the vehicle was used by the offender while intoxicated or as a weapon in deliberate attempt to injure or kill the victim.

(c) Compensation may not be awarded under this chapter in an amount in excess of \$25,000 per victim per incident. However, in case of the death of a victim who has more than one dependent eligible for compensation, the total compensation that may be awarded as a result of that death may not exceed \$40,000. . . . ALASKA STAT. §18.67.130.

Recovery from offender

When an order for the payment of compensation for personal injury or death is made under this chapter, the board, upon payment of the amount of the order, is subrogated to the cause of action of the applicant against the person responsible for the injury or death and is entitled to bring an action against the person for the amount of the damage sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant.

## VI

**Definitions of “Victim”  
for Victims’ Rights Purposes**

**Federal**

42 U.S.C. 10607 (“victim’ means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including--

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and  
(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court”)

**State Constitutions**

ALA.CONST. Amend.557 (“crime victims, as defined by law . . .”); ALASKA CONST. Art.I, §24 (“crime victims, as defined by law. . .”); ARIZ.CONST. Art.2, §2.1(C)(“victim’ means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the persons, spouse, parent, child, or other lawful representative, except if the person is in custody for an offense or is the accused”); CONN.CONST. (“in all criminal prosecutions, a victim, as the General Assembly may define by law. . .”); IDAHO CONST. Art.1, §22 (“a crime victim, as defined by statute. . .”); ILL.CONST. Art., §8.1 (“crime victims, as defined by law. . .”); IND.CONST. Art.1, §13(b)(“victims of crime, as defined by law. . .”); KAN.CONST. Art.15, §15 (victims of crime, as defined by law . . .”); MD.DECL.OF RTS. Art.47 (victims rights “as implemented and . . . specified by law”); MICH.CONST. Art.1, §24 (“crime victims, as defined by law. . .”); MO.CONST. Art.1, §32(“crime victims, as defined by law. . .”).

N.J.CONST. Art.1, ¶22 (“victim of crime’ means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide”); N.MEX.CONST. Art.II, §24 (“a victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim’s representative shall have the following rights as provided by law. . .”); N.C.CONST. Art.I, §37 (victims of crime, as prescribed by law . . .”).

ORE.CONST. Art.I, §42(5)(“victim’ means persons who have suffered financial, social, psychological or physical harm as a result of a crime or juvenile offense, and includes, in the case of a homicide, a member of the immediate family of the decedent, and, in the case of a minor victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a victim. In criminal cases not involving a victim, the people of the State of Oregon represented by the State of Oregon, shall have the same rights conferred by this section on victims”); S.C. CONST. Art.I, §24(C)(2)(“victim” means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term `victim’ also includes the person’s spouse, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated”); TEX.CONST. Art.I, §30(c)(“the legislature may enact laws to define the term `victim’ and to enforce these and other rights of crime victims”); WIS.CONST. Art.1, §9m (“crime victims, as defined by law. . .”).

**State Statutes**

ALA.CODE §15-23-60(19),(7) (“Victim. A person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the spouse, sibling, parent, child, or guardian of the person, except if the person is in custody for an offense or is the accused;” “Criminal Offense. Conduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence has been committed”); ALASKA STAT. §12.55.185 (“‘Victim’ means a person against whom an offense has been perpetrated; or one of the following, not the perpetrator, if the person [against whom the offense has been committed] is dead, a minor, incompetent, or incapacitated: (i) an individual living in a spousal relationship with the [direct victim], a parent, adult child, guardian, or custodian of the [direct victim]; or [if the victim is dead] any other interested person, as may be designated by a person having authority in law to do so”).

ARIZ.REV.CODE ANN. §13-4401 (“‘Victim’ means a person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the person’s spouse, parent, child, or other lawful representative, except if the person is in custody for an offense or is the accused,” “‘criminal offense’ means conduct that gives a peace officer or prosecutor probable cause to believe that a felony or that a misdemeanor involving physical injury, the threat of physical injury or a sexual offense has occurred”); CAL.PENAL CODE §679.01 (“‘Victim’ means a person against whom a crime has been committed,” “‘crime’ means an act committed in this state which, if committed by a competent adult, would constitute a misdemeanor or felony”); COLO.REV.STAT.ANN. §24-4.1-302 (“‘Victim’ means any natural person against whom any [violent felony] has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan . . . if such person is deceased or incapacitated, the person’s spouse, parent, child, sibling, grandparent, significant other, or other lawful representative”; “‘Crime’ means any of the following offenses as defined by the statutes of the state of Colorado, whether committed by an adult or a juvenile:” murder in the 1st or 2d degree; manslaughter, criminal negligent homicide, vehicular homicide, assault in the 1st, 2d or 3d degree, vehicular assault, menacing, kidnapping in the 1st or 2d degree, sexual assault in the 1st, 2d or 3d degree, sexual assault on a child, robbery, aggravated robbery, incest, aggravated incest, child abuse, sexual exploitation of children, crimes of domestic violence, or attempt, conspiracy or solicitation to commit one of those offenses); CONN.GEN.STAT.ANN. §54-201 (“‘victim’ means a person injured or killed as a result of criminal conduct”).

DEL.CODE ANN. tit.11 §9401 (“‘Victim’ means the person, organization, partnership, business, corporation, agency or government entity identified as the victim of bribery or a [violent] crime in a police report, a criminal complaint or warrant, an indictment or information or other charge instrument. ‘Victim’ includes a parent, guardian or custodian of a victim who is unable to meaningfully understand or participate in the legal process due to physical, psychological or mental impairment [and] includes . . . relations of a deceased victim if the relation is not the defendant, codefendant or conspirator. . . [and] includes qualifying neighborhood or homeowners associations”); FLA.STAT.ANN. §960.03 (“‘victim’ means a person who suffers personal physical injury or death as a direct result of a crime [commission by any person, including a juvenile offender, of a felony or misdemeanor offense punishable under the laws of this state, which results in physical injury or death]”); GA.CODE ANN. §17-17-3 (“‘Victim’ means a person against whom a crime has been perpetrated; or in the event of the death of the crime victim; or [a] . . . relation if the relation is not either in custody for an offense or the defendant . . . ; or a parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if such parent, guardian, or custodian is in custody for an offense or is the defendant,” “‘crime’ means an act committed in this state which constitutes a . . . crime against persons, [a] sexual offense, burglary, arson, theft, armed robbery, sexual exploitation of children, [vehicular] homicide, or [vehicular assault]”).

HAW.REV.STAT. §801D-2 (“‘Victim means a person against whom a crime has been committed by either an adult or a juvenile”); IDAHO CODE §19-5306 (“‘Victim is an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense”); ILL.COMP.LAWS ANN. ch.725 §120/3 (“‘crime victim’ means a person physically injured in this State as a result of a violent crime perpetrated or attempted against that person or a person who suffers injury to or loss of property as a result of a violent crime perpetrated or attempted against that person or a single representative who may be the spouse, parent, child or sibling of a person killed as a result of a violent crime perpetrated against the person killed or the spouse, parent, child or sibling of any person granted rights under this Act who is physically or mentally incapable of exercising such rights, except where the spouse, parent, child or sibling is also the defendant or prisoner or any person against who a violent crime has been committed or any person who has suffered personal injury as a result of a violation of [the laws prohibiting driving while intoxicated, involuntary manslaughter, or reckless homicide]”). IND.CODE ANN. §35-40-4-8 (“‘Victim’ means a person that has suffered direct harm as a result of a crime that was perpetrated directly against the person. The term does not include a person that has been charged with a crime arising out the same occurrence”); IOWA CODE ANN. §915.10 (“‘Victim’ means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state . . . [and] includes the immediate family members of a victim who died or was rendered

incompetent as a result of the offense or who was under eighteen years of age at the time of the offense”); KAN.STAT.ANN. §74-7333 (“victim’ means any person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime against such person”); KY.REV.STAT.ANN. §421.500 (“victim’ means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the 1st or 2d degree, sexual abuse, wanton endangerment, criminal abuse, or incest . . .”); LA.REV.STAT.ANN. §46:1842 (“Victim” means a person against whom an offense against the person that is a felony has been committed”); MD.CODE ANN. art.27 §770 (“Victim’ means an individual who suffers direct or threatened physical, emotional, or financial harm as a direct result of a crime or delinquent act, including a family member or guardian of a minor, incompetent, or homicide victim”); MASS.GEN.LAWS ANN. ch.258B §1 (“victim’ means any natural person who suffers direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of a crime or delinquency offense, as demonstrated by the issuance of a complaint or indictment, the family members of such person if the person is a minor, incompetent or deceased . . .”); MINN.STAT.ANN. §611A.01 (“Victim’ means a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime and for purposes of [restitution] also includes a corporation that incurs loss or harm as a result of a crime, a government entity that incurs loss or harm as a result of a crime, and any other entity authorized receive restitution under section 609.10 to 609.125. If the victim is a natural person and is deceased, `victim’ means the deceased’s surviving spouse or next of kin”); MISS.CODE ANN. §99-43-3 (“victim’ means a person against whom the criminal offense has been committed, or if the person is deceased or incapacitated, the lawful representative”); NEB.REV.STAT. §81-1801 (“victim’ means a person who is injured or killed as a result of [the commission of a crime]”); N.H.REV.STAT.ANN. §21-M:8-k (“Victim’ means a person who suffers direct or threatened physical, emotional, psychological or financial harm as a result of the commission or the attempted commission of a [felony] [or] the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim”).

N.J.STAT.ANN. §52:4B-39 (“victim’ means a person who suffers personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person”); N.MEX.STAT.ANN. §31-26-3 (“victim’ means an individual against whom a [crime of violence] is committed [or] . . . a family member or a victim’s representative when the individual against whom a criminal offense was committed is a minor, is incompetent or is a homicide victim”); N.Y.EXEC.LAW §621 (“a person who suffers personal physical injury as a direct result of a crime; or a person who is the victim of a [kidnapping]”); N.C.GEN.STAT. §15A-824 (“victim’ means a person against whom there is probable cause to believe a [felony or serious misdemeanor] has been committed”); N.D.CENT.CODE §12.1-34-01 (“Victim’ means a natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act”; “Crime’ includes all felony offenses; class A misdemeanors, excluding violations . . . for no-account checks; . . . and any of the offenses in this subsection that may result in adjudication of delinquency).

S.C.CODE ANN. §16-3-1510 (“Victim’ means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense as defined in this section. `Victim’ also includes the person’s spouse, parent, child, or the lawful representative of a victim who is : (a) deceased; (b) a minor; (c) incompetent; or (d) physically or psychologically incapacitated. `Victim” does not include a spouse, parent, child, or lawful representative who is the subject of an investigation for, who is charged with, or who has been convicted or pled guilty or nolo contendere to the offense in question. `Victim’ also does not include a spouse, parent, child or lawful representative who is acting on behalf of the suspect, juvenile offender, or defendant. “Criminal offense’ means an offense against the person or an offense against the property of the person when the value of the property destroyed or the cost of the damage is in excess of one thousand dollars, including both common law and statutory offenses. `Criminal offense’ does not include the drawing or uttering of a fraudulent check”); S.D.COD.LAWS ANN. §23A-28C-4 (“victim means any person being the direct of subject of . . . a crime of violence, simple assault [in a domestic context, or drunk driving]”); TEX.CODE OF CRIM.PRO.ANN. art.56.01 (“Victim’ means a person who is the victim of sexual assault, kidnapping or aggravated robbery or who has suffered bodily injury or death as a result of the criminal conduct of another”); UTAH CODE ANN. §77-38-2 (“Victim of a crime’ means any natural person against whom the charge crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan . . . For purposes of the right to be present, `victim of a crime’ does

not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult or who is in custody for mental or psychological treatment. . . . For purposes of the right to be present and heard at a public hearing . . . an the right to notice . . . `victim of a crime' includes any victim originally named in an allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty"); VT.STAT.ANN. tit.13 § 5301 (“Victim’ means a person who sustains physical, emotional or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include family members of a minor, incompetent or a homicide victim”); VA.CODE ANN. §19.2-11.01 (“victim’ means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of an assault and battery, stalking, sexual battery, attempted sexual battery, maiming, or driving while intoxicated, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such person who is physically or mentally incapacitated or was the victim of a homicide; however, “victim” does not mean a parent, child, spouse or legal guardian who commits a felony or other enumerated crimina offense against a victim as defined in clause (i) of this subsection”); WASH.REV.CODE ANN. §7.69.020 (“Victim” means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed;” “crime’ means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law”).

W.VA. CODE §61-11A-2 (“victim’ means a person who is a victim of a felony, the fiduciary of a deceased victim’s estate or a member of a deceased victim’s immediate family”); WIS.STAT.ANN. §950.02 (“Victim’ means any of the following: 1. A person against whom a crime has been committed. 2. If the person specified in subd.1. is a child, a parent, guardian or legal custodian of the child. 3. If a person specified in subd.1. is physically or emotionally unable to exercise the rights granted under s.950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd.1. or a family member of the person specified in subd.1. 4. If a person specified in subd.1. is deceased, any of the following: a. A family member of the person who is deceased. b. A person who resided with the person who is deceased. 5. If the person specified in subd.1. has been determined to be incompetent under ch.880, the guardian of the person appointed under ch.880;” “crime’ means an act committed in this state which, if committed by a competent adult, would constitution a crime”); WYO.STAT. §1-40-202 (“Victim’ means an individual who has suffered direct or threatened physical, emotional or financial harm as the result of the commission of a criminal act or a family member of a victim who is a minor or an incompetent or a surviving family member of a homicide victim”).



## VII

**Victim Treatment**

ALASKA CONST. Art.I, §24 (right to be treated with dignity, respect and fairness); ARIZ.CONST. Art.2, §2.1; COLO.REV.STAT.ANN. §24-4.1-302.5 (fairness, respect and dignity); HAW.REV.STAT. §801D-1 (dignity, respect, courtesy and sensitivity); IDAHO CONST. Art.1, §22 and IDAHO CODE §19-5306 (right to be treated with fairness, respect, dignity and privacy); ILL.CONST. Art.1, §8.1 (right to be treated with fairness and respect for their dignity and privacy), ILL. COMP.LAWS ANN. ch.725 §120/2 (same); KAN.STAT.ANN. §74-7333 (fair[ness], compassion, respect for dignity and privacy and suffer a minimum of unnecessary inconvenience); LA.CONST. art.1, §25 (fairness, dignity, and respect); MD.CONST. art. 47 (dignity, respect and sensitivity); MICH.CONST. Art.1, §24 (fairness and respect for dignity and privacy); MONT. CODE ANN. §46-24-101 (fair and proper treatment); N.H.REV.STAT.ANN. §21-M:8-k (right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process); N.J.CONST. Art.1, ¶22 (fairness, compassion and respect), N.J.STAT.ANN. §52:4B-36 (dignity and compassion); N.MEX.CONST. Art.II, §24 (fairness and respect for dignity and privacy), N.M.STAT. ANN. §31-26-2 (dignity, respect and sensitivity); OHIO CONST. Art.I, §10a (fairness, dignity and respect); OKLA.CONST. Art.2, §34 (same); ORE.CONST. Art.I, §42 (due dignity and respect); PA.STAT.ANN. tit.18 §11.102 (dignity, respect, courtesy and sensitivity); R.I.CONST. Art. 23 (dignity, respect and sensitivity); TENN.CODE ANN. §40-38-102 (dignity and compassion); TEX.CONST. Art.1, §30 (fairness and respect for dignity and privacy); UTAH CONST. Art.1, §28 (fairness, respect, and dignity); VT.STAT. ANN. tit.13 §5303 (courtesy and sensitivity); VA.CODE ANN. §19.2-11.01 (dignity, respect and sensitivity); WASH.CONST. Art.1, §35 (dignity and respect); WIS.CONST. Art.I, §9m (fairness, dignity and respect for privacy); WYO.STAT. §1-40-203 (compassion, respect and sensitivity).

## VIII

**Pre-Charge Victim Notification Rights**

ALA.CODE §15-23-62 (“Within 72 hours, unless the victim is unavailable or incapacitated as a result of the crime, after the initial contact between a victim of a reported crime and the law enforcement agency either responding to the report of the crime of the victim or another person, or having responsibility for investigating the crime, the law enforcement agency shall provide to the victim in a manner and form designed and produced for the appropriate governmental agency or office, the following information: (1) The availability of emergency and crisis services. (2) The availability of victims’ compensation benefits and the name, address, and telephone number of the Alabama Crime Victims Compensation Commission. (3) The name of the law enforcement officer and telephone number of the law enforcement agency with the following statement attached: ‘If within 60 days you are not notified of an arrest in your case, you may call the telephone number of the law enforcement agency for the status of the case.’ (4) The procedural steps involved in a criminal prosecution. (5) The rights authorized by the Alabama Constitution on rights of victims, including a form to invoke these rights. (6) The existence and eligibility requirements of restitution and compensation pursuant to Section 15-18-65 et seq. (7) A recommended procedure if the victim is subjected to threats or intimidation. (8) The name and telephone number of the office of the prosecuting attorney to contact for further information”).

N.M.STAT.ANN. §31-26-8 (“the law enforcement agency that investigates a criminal offense shall: A. inform the victim of medical services and crisis intervention services available to victims; B. provide the victim with the police report number for the criminal offense and a copy of the following statement: ‘If within thirty days you are not notified of an arrest in your case, you may call (telephone number for the law enforcement agency) to obtain information on the status of your case’; and C. provide the victim with the name of the district attorney for the judicial district in which the criminal offense was committed and the address and telephone number for that district attorney’s office).

**Citations**

ALA.CODE §15-23-62; ALASKA STAT. §12.61.010 (right to prompt access to medical assistance and to informed of the procedure to apply for victims’ compensation); ARIZ.REV.STAT.ANN. §§13-4405 (investigating agency must provide victim with form permitting request of rights, showing method of designating a representative, and informing of rights including information on medical services, sources of protection in domestic violence cases, identification of assistance programs, how to get case status information, and (if requested) information on initial appearance and the victim’s right to be heard); COLO.REV.STAT.ANN. §24-4.1-303(10)(law enforcement agency must inform victims of their rights, of the availability of victim services, compensation, protective procedures, and available public records, identification of officers and prosecutors assigned to the case).

DEL.CODE ANN. tit.11 §9410 (victims must be informed of their rights, available victim services, victims’ compensation, bail, and how to obtain information on the status the case); FLA. STAT.ANN. §960.001 (victims have a right to information concerning victim compensation, services, the role of the victim in criminal and juvenile proceedings, victim rights); GA.CODE ANN. §17-17-6 (law enforcement officers notify victims of the possibility of bail for the accused, the victim’s rights and role in the criminal process, victim compensation, and victim services); HAW.REV.STAT. §801D-4 (victim has right to notification of the existence of victim services); ILL.COMP.LAWS ANN. ch.725 §§120/4 (victim has right to notification of victims’ rights), 120/4.5(victim has right to reasonable disclosure as to the status of the case); KY.REV.STAT.ANN. §421.500 (law enforcement officers must notify victims of available victim services, victim compensation, the role of the victim in the criminal process).

LA.REV.STAT.ANN. §46:1844 (law enforcement officers must inform victims of victim services, victim compensation, the role of the victim in the criminal process, victim rights); MD.CODE ANN. art.27 §848 (victims have right to be informed of arrest upon written request); MICH.COMP.LAWS ANN. §780.753 (law enforcement agency must provide information concerning victim services, compensation, contact in the prosecutor’s office, and contact for status information); MINN.STAT. ANN. §611A.02 (law enforcement agency must provide information concerning victim reparations, privacy, protection against domestic violence, victim assistance, victim rights, restitution); MISS. CODE ANN. §99-43-7 (victims rights include the rights to notice, within 72 hours, of victims’ services, benefits, case information and other rights); MO.ANN.STAT. §595.209 (victims have a right to be informed of compensation and other victim services).

N.H.REV.STAT. ANN. §21-M:8-k (right to be informed of status, dates of proceedings, available social services); MONT. CODE ANN. §§46-24-201, 46-24-202, 46-24-203 (law enforcement officers must inform victims of medical services, victims compensation, the role of victim in the criminal process, the name of police and prosecutor’s office contacts, protective services, and of the arrest and/or release of as suspect on

bail); N.MEX.STAT.ANN. §31-26-8; N.Y.EXEC.LAW §641 (victims should routinely receive victim services and information concerning victim compensation, victim services, role of the victim in criminal process, protective services, (if requested) notice of the arrest of the accused); N.C.GEN. STAT. §15A-831 (to the extent reasonably possible public officials should see to it that victims are informed of victim services, privacy, compensation, the plea bargaining process); N.D.CENT.CODE §12.1-34-02 (officials must notify victims of status of investigation, filing of criminal charges, arrests, social services, timing of proceedings); OHIO REV. CODE ANN. §2930.04 (law enforcement agency must inform victims of victims rights, victim services, victim reparations and compensation, protective services, telephone number of case officer and prosecutor); PA.STAT.ANN. tit.18 §11.212 (law enforcement agencies are responsible to inform victims of available services, of any arrest of a suspect); R.I.GEN.LAWS §12-28-3 (victims must be informed of the status of the investigation and of available social services).

S.C.CODE ANN. §§16-3-1520, 16-3-1525 (right to be informed of the status of the case from investigation to final disposition and to be informed of available social services); TEX.CRIM.PRO.CODE ANN. art.56.07 (law enforcement agency must notify victim of emergency and medical services, victim compensation, law enforcement and prosecutor's contact person, and how to obtain status information); VT.STAT.ANN. tit.13 §5314 (victims should be informed of rights under the act, social services available to the victim, victims compensation, and in cases of certain serious crimes, of law enforcement and prosecutorial contact person, and whether a suspect has been arrested); VA. CODE ANN. §19.2-11.01 (victims must be informed of available social services); WASH.REV.CODE ANN. §7.69.030(a)(victims of violent or sex crimes have a right to receive a written statement of rights, including identification of victims program contact person); W.VA.CODE §61-11A-6 (law enforcement agencies should ensure that victims receive emergency medical assistance and are informed of victims compensation, victim services, role of the victim and procedures in the criminal justice system); WIS.STAT.ANN. §950.04 (victims have a right to be informed of social and protective services); WYO.STAT. §1-40-204 (victims should be informed of rights under the act, social services available to the victim, victims compensation, interpreter or translation of victim rights, law enforcement contact person, right to employ an attorney).

## IX

## Bail

ALA.CONST. Amend. 557 (victims have the right to be notified, present and to be heard at “all crucial stages of [the] criminal proceedings”); ALA.CODE §15-23-63 (the prosecutor must inform victims of all criminal proceedings other than the initial appearance); ALA.CODE §15-23-75 (victims are entitled to requested notice of the defendants released on bail under bond); ALASKA CONST. Art.I, §24 (“crime victims . . . shall have . . . the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court,” the right to be notified and be present at any proceedings that the defendant has a right to attend, and the right to be heard “at any proceeding where the accused’s release from custody is being considered” ); ARIZ. CONST. Art.2, §2.1 (the victim has a right to be heard at “any proceeding involving post-arrest release decisions”), ARIZ.REV.STAT.ANN. §§13-4406 (victim must be notified of the time and place for defendant’s bail hearing), 13-4421 (the victim has a right to heard at any proceeding in which the court is considering the pre-trial released of the accused); ARK.R.EVID. 616 (victims have the right to present at any proceeding, hearing or trial involving the offense).

COLO.CONST. Art.II, §16a (victims have the right to be heard when relevant, informed and present at all critical stages of the criminal justice process); COLO.REV.STAT.ANN. §§24-4.1-302, 24-4.1-302.5 (a victim has the right to present at bail hearings and to be heard at proceeding involving a bond reduction or modification); CONN.CONST. Art.I, §8[b] (the victim has a right to be notified of and to attend all court proceedings that the defendant has a right to attend); DEL. CODE ANN. tit.11 §9407 (victims have a right to notification of the time, place and date and to attend any criminal proceedings that the accused has the right to attend other than grand jury proceedings); FLA.CONST. Art.I, §16(b)(victims have the right to be informed, be present and to be heard when relevant, at all critical stages of the criminal proceedings), FLA.STAT.ANN. §960.001(g) (the case of violent crimes, prosecutor must solicit victim views concerning release of the accused pending judicial proceedings); GA.CODE ANN. §17-17-7 (wherever possible the prosecutor must notify the victim of bail proceedings, afford the victim the opportunity to comment, and inform the victim of the release of the accused).

HAW.REV.STAT. §801D-4 (victims have the right to be informed of the release of the accused on bail); IDAHO CONST. Art.1, §22 and IDAHO CODE §19-5306 (victims have the right to be notified and to be heard on all matters concerning release); ILL.COMP.LAWS ANN. ch.725 §120/4.5 (victims have the right to advance notice of bail proceedings and of the release of the accused on bail); IND. CONST. art.1, §13 (victims have the right to be notified of and to attend public hearings “to the extent that exercising these rights does not infringe upon the constitutional rights of the accused”); IOWA CODE ANN. §915.16 (victims have the right to be notified of release of the accused on bail and of the conditions of release); KAN.CONST. Art.15, §15, KAN. STAT.ANN. §74-7335 (victims have the right to notified of and be present at public hearings of the criminal justice process including preliminary hearings); KY.REV.STAT.ANN. §421.500 (victims have the right to be notified of bail hearings and to be consulted by the prosecutor on the release of the accused on bail); LA.REV.STAT.ANN. §46:1844 (victims have the right to be notified of the arraignment of the defendant and of any pretrial release on bail).

MD.CODE ANN. art.27 §770 (the prosecutor must notify of court proceedings and if the victim is not notified or is unable to attend must notify the victim of the outcome of proceedings including bail hearings); MASS.GEN.LAWS ANN. ch.258B §3 (victims have a right to attend all criminal proceedings subject to sequestration); MICH.CONST. Art.1, §24 (victims have the right to attend any court proceedings that the defendant has a right to attend), MICH.COMP.LAWS ANN. §§780.755 (the prosecutor is required to notify victims of the availability of pretrial release for the defendant and to move revocation of bail if the victim is threatened by or on behalf of the defendant); MINN.STAT.ANN. §§629.72, 629.73, 629.735 (victims are entitled to notice of the release of the defendant on bail), 629.725 (victims are entitled to notice of bail hearings); MO.CONST. art.1, §32 (victims have the right to be informed of and heard at bail hearings), MO.ANN.STAT. §595.209 (victims have the right to confer with prosecutor concerning bail).

MONT.CODE ANN. §§46-24-104, 46-24-203 (victims have the right to confer with the prosecutor concerning their views on bail and to be informed of the release of the defendant on bail); NEB.REV.STAT. §81-1848 (victims have the right to be notified of scheduled court proceedings); NEV.CONST. art.1, §8 (victims have a right to be notified and attend public hearings involving critical stages of the a criminal proceeding; NEV.REV.STAT. §178.5698 (victims have the right to be informed of the specifics of a defendants release on bail prior to trial); N.H. REV.STAT. ANN. §21-M:8-k (victims have the right to be notified of all court proceedings and to attend any proceedings the defendant has the right to attend); N.J.STAT.ANN. §52:4B-44 (victims should be informed of the time, date, and place of the defendant’s initial appearance); N.MEX. CONST. art.II, §24, N.MEX.STAT.ANN. §31-26-4 (victims have the right to notice of all court proceedings and to attend all public court proceedings that the defendant has a right to attend); N.Y.EXEC.LAW §641 (victims have the right to notification of the initial appearance of the defendant and of the defendant’ release on bail).

N.C.GEN.STAT. §15A-825 (victims have the right to notified of bail hearings in serious cases); N.D.CENT.CODE §12.1-34-02 (victims must be informed of bail hearings and of the procedures for enforcing); OHIO REV.CODE ANN. §2930.06 (victims are entitled to notification of court proceedings), §2930.09 (victims may attend all critical proceedings other than those before the grand jury subject to sequestration); ORE.CONST. art.I, §42 (victims have the right to be present and be heard at critical criminal proceeding that the defendant has the right to attend subject to the constitutional rights of the defendant); ORE.REV.STAT. §135.250 (victims may petition the court to include a no-contact condition in the defendant's pretrial release); R.I.GEN.LAWS §12-28-3 (the victim has a right to be notified of bail hearing and of release of defendant on bail); S.C.CONST. Art.I, §24 (victims have the right to be "reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail"), S.C.CODE ANN. §16-3-1525 (victims have the right to be notified of bail hearings and to make recommendations to the magistrate).

S.D.COD.LAWS ANN. §23A-28C-1 (the victim has a right to testify at bail hearing regarding evidence that the accused is a danger to the victim or the community); TENN.CODE ANN. §40-38-103 (the victim is entitled to notification of the time, place and date any judicial proceedings following indictment or presentment); TEX.CONST. art.I, §30(victims have the right to be notified and present at all public court proceedings subject sequestration), TEX.CRIM.PRO. CODE ANN. art.56.02(2)(victims have the right to have magistrate take victim safety into account in setting conditions for bail); UTAH CONST. art.I, §38 (victims have the right to be informed of, be present at, and be heard at all "important criminal justice hearings" once the defendant has been charged), UTAH CODE ANN. §77-38-4(right to be present and be heard by judge setting conditions for and granting release of defendant on bail); VT.STAT.ANN. tit.13 §5308 (victim has right to be present at arraignment and prosecutor should determine and advise court of victim's position on bail issues); VA.CONST. Art.I, §8-A (victims have the right to timely notification of court proceedings and to be advised of the release of the accused); VA.CODE ANN. §19.2-11.01 (victims have a right to be notified of, attend, and be heard by the court "at all critical stages of the criminal justice process"); WASH.CONST. Art.1, §35 (victim has a right to notification of and to attend all judicial proceedings which the defendant has the right to attend and to make a statement at any proceeding where the defendant's release is at issue); W.VA.CODE §61-11A-6 (if possible victims should receive advance notification of judicial proceedings relating to their case include . . . the initial appearance of an accused before a judicial officer; the release of the accused pending judicial proceedings. . . . The victim of a serious crime. . . shall be consulted . . .in order to obtain the views of the victim . . . about: . . . release of the accused pending judicial proceedings"); WIS.CONST. art.1, §9m (victims are to be notified of and are to attend court proceedings subject to sequestration); WYO.STAT. §1-40-204 (victims have the right to be informed of the "status of the cases from the initial police investigation to the final appellate review, and the right to be informed of date, time and place, and "to attend all hearings and proceedings involving the case").

### Privacy & Protection

ALA.CODE §15-23-69 (victim's address, phone number, place of employment and other particulars not matter of public record; if victim is reasonably apprehensive of harm, he or she need not be compelled to testify prior to trial with respect to particulars); ALASKA STAT. §§12.61.100 to 12.61.150 (confidentiality of victims' addresses and telephone numbers); ARIZ. CONST. Art.2, §2.1 (right to refuse interview with defendant or his or her representative); ARIZ. REV.STAT.ANN. §§13-4433 (same), 13-4434 (victim has right not to testify as to address, telephone number, place of employment unless ordered by the court under compelling need); ARK.CODE ANN. §16-21-106(prosecutors have an obligation to assist victims to obtain protection from harm or threats arising out cooperation with the police or prosecution); CAL.EVID.CODE §352.1 (court may order the victim's current address and telephone number be excluded from hearings where disclosure would endanger the victim in sex offenses cases). COLO.REV.STAT.ANN. §24-4.1-303(2)(victims address, telephone number, place of employment and other personal information about victim or the victim's family must be kept confidential); CONN.CONST. Art.1, §8 (victims have the right to be reasonably protected from the accused throughout the criminal justice process); DEL.CODE ANN. tit.11 §9406 (victims are to be given name and telephone number of the member of the police force responsible to advise them on the procedures to be followed if they are threatened); FLA.STAT.ANN. §§92.56, 794.024, 794.026(confidentiality of personal information concerning the victims of sexual offenses); GA.CODE ANN. §17-17-10(defense counsel are forbidden to provide personal information concerning a victim to the accused).

HAW.REV.STAT. §801D-4(victims have a right to protected from threats and harm); IDAHO CONST. Art.1, §22 and IDAHO CODE §19-5306 (right to refuse interview by accused or his counsel); ILL.COMP.LAWS ANN. ch.725 §120/4 (throughout the course of criminal proceedings victims have a right to reasonable protection from harm caused by the accused); IND.CODE ANN. §35-37-4-12(if a victim's safety is in danger, they need not give personal information during their testimony); IOWA CODE ANN. §915.36 (the identity and related information concerning child victims of sexual abuse, incest or sexual exploitation may not be publicly disclosed; "In order to protect the welfare of the child, the name of the child and identifying biographical information shall not appear in the information or indictment or any other public record. Instead, a nondescriptive designation shall appear on all public records. The nonpublic records containing the child's name and identifying biographical information shall be kept by the court; does not apply to the release of information of an accused or accused's counsel; however, the use or release of this information by the accused or accused's counsel for purposes other than the preparation of defense constitutes contempt).

LA.REV.STAT.ANN. §46:1844 (name, address and identity of juvenile victims must be kept confidential); KAN.STAT.ANN. §74-7333(measures may be taken for the safety and protection of victims from harm and intimidation); KY.REV.STAT.ANN. §421.500(victims are entitled to notification of the protection available against intimidation, harassment and retaliation); MD.CODE ANN. art.27 §835 (victim protection and relocation services); MASS.GEN.LAWS ANN. ch.258B §3 (victims shall be afforded, to the greatest extent possible and subject to appropriate and to available resources to be informed of the right to request confidentiality in the criminal justice system; upon approval, no law enforcement agency, prosecutor, defense counsel, or parole, probation or corrections official may disclose or state in open court, except among themselves, the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness, except as otherwise ordered by the court").

MICH.COMP.LAWS ANN. §780.758 ((1)(based on the victim's reasonable apprehension of threats by the defendant, the prosecutor may move that the victim or any other witness not be compelled to testify at pretrial proceedings or at trial for purposes of identifying the victim as to the victim's address, place of employment, or other personal identification without the victim's consent); MINN.STAT.ANN. §611.035 (confidentiality of victim's home address or place of employment); MISS.CODE ANN. §99-43-25 (on petition of the prosecutor, court may bar disclosure victims' identity, residence, place of employment or other related information during judicial proceedings); MO.CONST. Art.1, §32 (victims have the right to reasonable protection from the defendant or any person acting on his behalf) and MO.ANN.STAT. §595.209 (same); MONT.CODE ANN. §46-24-202(the police and prosecutors are required to inform victims of the availability of protective services).

NEB.REV.STAT. §18-1848(victims have a right to be protected from harm and threats); NEV. REV.STAT. §178.5692(adequate protective measures must be taken on behalf of victims); N.H.REV. STAT.ANN. §21-M:8-k (address, place of employment and other personal information of the victim are subject privacy protection); N.J.STAT.ANN. §§52:4B-36(victims have a right to be free from intimidation), 52-4B-44 (victims are entitled to information concerning crime prevention and the availability of responses to intimidation); N.M.CONST. Art.2, §24 (victims have a right to reasonable protection from the accused throughout the judicial process); N.Y.EXEC.LAW §641 (victims are entitled to protection from intimidation); N.C.GEN.STAT. §15A-825 (a victim's home address is not relevant and he may request that state's attorney object to questioning that would reveal it).

N.D.CENT.CODE §12.1-34-02 (victims not required to testify as to home address, phone number, or place of employment absent a showing of good cause); OHIO REV.CODE ANN. §2930.07 (address or place of employment of a victim are confidential); OKLA.STAT.ANN. tit.22 §984.2(if necessary for victim protection, personal information concerning the victim may remain confidential); ORE. CONST. Art.I, §42 (victims have the right to be reasonably protected from the defendant throughout the criminal justice process); PA.STAT.ANN. tit.18 §11.214 (the Bureau of Victims Services must be the addresses, telephone numbers and other personal information concerning victims confidential); R.I.GEN. LAWS §12-28-3(victims have the right to receive information about resources available for protection against harm and threats arising out of cooperation with the authorities).

S.C.CONST. Art.I, §24 (victims have the right to be free from intimidation and harassment and to be reasonably protected from the accused throughout the criminal justice process); S.D.COD.LAWS ANN. §23A-28C-1 (victims are entitled to protection from intimidation); TENN. CODE ANN. §40-38-102 (victims have a right to protection and to prompt action in cases of intimidation or retaliation); TEX.CODE CRIM.PRO.ANN. art.56.09 (address and telephone number not part of the public record as far as reasonably practical); UTAH CODE ANN. §77-38-6 (address, telephone number, or place of employment may not released except under court order); VT.STAT.ANN. tit.13 §5310 (victims are not required to disclose their address or place of employment unless the court finds the defense is prejudiced by nondisclosure). VA.CODE ANN. §19.2-11.2 (victims enjoy the right of nondisclosure of their address, telephone number, place of employment); WASH.REV.CODE ANN. §§7.69.030, 7.69A.030 (victims are entitled to protection from harassment and threats and to information on the protection services available to them); W.VA. CODE §61-11A-6(victims have a right to information as to available protective services); WIS.STAT. ANN. §950.04 (victims should receive protection from harm and threats arising out cooperation with authorities and information as to available protection); WYO.STAT. §1-40-205 (victims have a right to be free from harassment, intimidation, and retaliation, to measures taken for their protection, and to information concerning available procedures for their safety).

## XI

**Plea Bargaining**

ALA.CONST. Amend.No. 557 (victims have the right to be heard when authorized at all crucial stages of the criminal proceedings), ALA.CODE §§15-23-64, 15-23-71 (the prosecutor is required to confer with victims prior to final disposition pursuant to a plea bargain and prior to any trial and the court may not accept a plea agreement unless advised that efforts have been made to confer with the victim and that the victim was given notice of right to be present when the plea agreement was to be offered to the court as well as the particulars of the agreement); ALASKA CONST. Art.I, §24 (victims have the right to confer with the prosecutor); ARIZ.CONST. Art.2, §2.1 (victims have a right to be heard at any proceeding involving a negotiated plea), ARIZ.REV.STAT.ANN. §§13-4419, 13-4423 (victim has a right to confer with the prosecutor about the disposition of the case including the victim's views on any plea negotiations, to confer with the prosecutor prior to any trial, and to be present and to be heard at any proceeding at which the results of a plea bargain with the defendant are presented to the court); ARK.CODE ANN. §16-21-106 (victims have a right to confer with prosecutors concerning acceptance of a negotiated plea).

CAL.PENAL CODE §679.02(victims in violent crimes are entitled to notification of a pending pretrial disposition before a change of plea is entered before the court); COLO.CONST. Art.II, §16a (victims have the right to be heard when relevant at all critical stages of the criminal justice process), COLO.REV.STAT.ANN. §24-4.1-302.5 (victims have the right to consult with the prosecutor prior to disposition of the case, prior to trial and to be heard before the court accepts any negotiated plea); CONN.CONST. art.I, §8[b.](victims have "the right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea . . . by the accused"); DEL.CODE ANN. tit.11 §9405 (the prosecutor must confer with the victim before "amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion"); FLA.CONST., Art.I, §16(b)(victims have the right to be heard when relevant at all crucial stages of the criminal proceedings), FLA.STAT.ANN. §960.001 (prosecutors consult with victims and solicit their views on plea bargain offers).

GA.CODE ANN. §17-17-11 (victims must be afforded an opportunity to comment on the prosecution's plea negotiations); HAW. REV.STAT. §801D-4 (victims have a right to consult with the prosecutor); IDAHO CONST. Art.1, §22, IDAHO CODE §19-5306 (victims have the right to confer with the prosecutor and to be heard on any plea of guilty); ILL.CONST. Art.1, §8.1(victims have the right to communication with the prosecutor), ILL.COMP.LAWS ANN. ch.725 §120/4.5 (upon request, the prosecutor must explain the details of a plea to the victim and "where practical," consult with the victim and consider any victim impact statement before offering a plea bargain and to enter into plea negotiations); IND.CONST. Art.1, §13(b)(victims have the right to confer with the prosecution), IND.CODE ANN. §35-40-5-3 (same); IOWA CODE ANN. §915.13 (registered victims are entitled to notification of the time and place of all court proceedings and informed of plea agreements).

KAN.STAT.ANN. §§22-3436, 74-7333 (prosecutor must consult with victims concerning any plea bargain); KY.REV.STAT.ANN. §421.500 (prosecutor must consult with victims concerning any plea bargain); LA.REV.STAT.ANN. §46:1844 (victims have the right to be consulted by prosecutor for their views on a proposed plea bargain); ME.REV.STAT.ANN. tit.15 §812 (victims must be given notice of the details of a plea bargain prior to its submission to the court); MD.CODE ANN. Art.27, §770 (victims have a right to prior notification of all court proceedings); MASS. GEN.LAWS ANN. ch.258B §3 (the prosecutor must confer with victims concerning plea bargaining and inform the court if they object to the prosecutor's sentencing recommendation); MICH.CONST. Art.1, §24 (victims have the right to confer with the prosecutor), MICH.COMP.LAWS ANN. §780.756 (same); MINN.STAT.ANN. §§611A.03, 611.031, 611A.0315 (prosecutor must inform the victim of the content of any plea bargain, of the intent to recommend pretrial diversion, and of the intent to not charge a suspect in a domestic violence case); MISS.CODE §§99-43-11, 99-43-13 (victims have a right to confer with the prosecutor prior trial or final disposition by plea agreement).

MO.CONST. Art.1, §32(victims have the right to heard on plea bargains), MO.ANN.STAT. §595.209 (victims have the right to confer with the prosecutor and to be informed of bail hearings and plea bargains); MONT.CODE ANN. §46-24-104 (prosecutors must confer with victims to secure their views on plea negotiations); NEB.CONST. Art.1, §28 (victims have the right to be informed of all criminal court proceedings); NEV.CONST. Art.1, §8 (victims have the right to be informed of criminal proceedings at any stage); N.H.REV.STAT.ANN. §21-M:8-k (victims have the right to confer with the prosecutor concerning any plea bargain and to appear and make written or oral impact statement prior to any plea bargain agreement); N.J.STAT.ANN. §52:4B-44 (victims are entitled to advance notice of the submission of a plea agreement for court approval); N.MEX. CONST. Art.II, §24 (victims have a right to confer with the prosecutor); N.MEX.STAT.ANN. §31-24-5(the victim must be afforded an opportunity to confer with the prosecutor); N.Y. EXEC.LAW §§642, 647 (victims have a right to confer with the prosecutor concerning plea agreements and the court should consider the victim's views in considering whether to accept a negotiated plea).



N.C.CONST. Art.I, §37 (victims have the right to be informed and present at court proceedings of the accused); N.D.CENT.CODE §12.1-34-02 (victims must be notified of the time and place of all court proceedings); OHIO REV.CODE ANN. §2930.06 (the prosecutor must confer with the victim before a suspect can be permitted to enter pretrial diversion, or before the dismissal or amendment of charges, or entry of a plea bargain); OKLA.STAT.ANN. tit.19 §215.33 (victims must be informed of plea bargain); PA.STAT.ANN. tit.18 §11.201(victims who sustain personal injuries have the right to submit comments to the prosecutor concerning dropping or reducing charges in a plea bargain); R.I.GEN.LAWS §12-28-4.1 (victims have the right to address court regarding plea negotiations), 12-28-3 (they may also to give prosecutor impact statement to be given to the court and the parole board); S.C. CONST. Art.I, §24 (victims have the right to confer with the prosecutor), S.C.CODE ANN. §16-3-1540 (victims enjoy the right to confer with the prosecutor and to discuss any plea bargain); S.D.COD. LAWS ANN. §§23A-28C-1 (victims have the written to submit written statements as to whether plea or sentencing bargains should be entered into).

TENN.CODE ANN. §40-38-103 (victims have a right to be informed of any plea bargain); TEX. CONST. Art.I, §30 (victims have the right to confer with the prosecutor); UTAH CONST. Art.I, §28 (victims have a right to be heard at important criminal justice hearings); VT.STAT.ANN. tit.13, §7006(victims have a right to be heard by the court before accepting a plea bargaining); VA.CONST. Art.I, §8-A (victims have a right to confer with the prosecutor); WASH.REV.CODE ANN. §§9.94A.080, 9.94A.090 (victims of violent crimes have a right to be informed of the results of plea bargaining and to have their views made known to the court); W.VA.CODE §61-11A-6(5)(“The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, shall be consulted by the prosecuting attorney in order to obtain the views of the victim or family about the disposition of any criminal case brought as a result of such crime, including the views of the victim or family about (A) Dismissal; (B) Release of the accused pending judicial proceedings; (C) Plea Negotiations; and Pretrial diversion program”); WIS.CONST. Art.1, §9m (victims have a right to confer with the prosecutor); WYO.STAT. §1-40-204 (victims have right to notice of potential plea negotiations and of any plea agreement reached).

## XII

## Speedy Trial

ALA.CODE §15-25-6 (sex offenses involving children as victims or witnesses must be tried promptly); ALASKA CONST. Art.I, §24 (victims have a right to timely disposition of the case); ARIZ. CONST. Art.2, §2.1 (victims have a right to speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence), ARIZ.REV.STAT. ANN. §13-4435 (same); ARK. CODE ANN. §16-80-102 (courts must give priority to criminal cases involving children as victims); CAL.PENAL CODE §679.02 (victims are entitled to expeditious disposition); COLO.REV.STAT.ANN. §24-4.1-302.5(o)(victims have “the right to be assured that in any criminal proceeding the court, the prosecutor, and other law enforcement officials will take appropriate action to achieve a swift and fair resolution of the proceedings”); CONN.CONST. Art.1, §8(b)(victims have a right to timely disposition of the case following the arrest of the accused, provided the rights of the accused are not abridged); DEL. CODE ANN. tit.11 §9404 (“the court shall consider the interest of the victim in a speedy prosecution [and] proceedings shall be expedited in cases involving a child victim or witness particularly in child abuse and sexual abuse cases”).

FLA.STAT.ANN. §960.001(a)[7.](victims have a right “to a prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved to the extent that this right does not interfere with the constitutional rights of the accused”); IDAHO CONST. Art.1, §22, IDAHO CODE §19-5306 (victims are entitled to speedy disposition of case); ILL.CONST. Art.1, §8.1 (victims have a right to the timely disposal of the case), ILL.COMP.LAWS ANN. ch.725 §120/4 (victims have the right to a timely disposition of the case following arrest of the accused); KY.REV.STAT.ANN. §421.510 (speedy trial motions are permitted in sex offense cases where the victim is a child); LA.REV.STAT.ANN. §46:1844 (victims have the right to “speedy disposition and prompt and final conclusion of the case after conviction and sentencing”); MASS.GEN.LAWS ANN. ch.258B §4 (victims have the right to prompt disposition of the case); MICH.CONST. Art.I, §24 (victims have the right to a timely disposition of the case following an arrest), MICH.COMP.LAWS ANN. §780.759 (victims of child abuse, sexual assaults, and victims who are elderly or disabled may petition for a speedy trial).

MISS.CODE ANN. §99-43-19 (victims have the right “to a final disposition of the criminal proceeding free from unreasonable delay. . . . [T]he court, in determining whether to grant a ny continuance, should make every reasonable effort to consider whether granting such continuance shall be prejudicial to the victim”); MO.CONST. Art.1, §32 (victims have a right to speedy disposition as long as the defendant is provided the time required to prepare a defense), MO.ANN.STAT. §595.209 (same); NEB.REV.STAT. §81-1848 (victims have a right to speedy disposition); N.H.REV.STAT.ANN. §21-M:8-k(II)(g)(victims have the right to have inconveniences associated with participation in the criminal justice process minimized); N.J.STAT.ANN. §52:4B-36 (victims have the right to have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible); N.MEX. CONST. Art.II, §24 (victims have a right to timely disposition of the case), N.MEX.STAT.ANN. §31-26-4 (victims have the right to timely disposition of their cases); N.Y.EXEC.LAW §642-a (courts should take appropriate steps to ensure a speedy trial in cases involving an alleged child victim); N.D.CENT.CODE §12.1-34-02 (right to prompt disposition of the case); OHIO REV.CODE ANN. §2930.08 (prosecutor must inform the victim of the reasons for any delay he requests and inform the court of any victim objections to the request); R.I.GEN.LAWS 11-37-11.2 (crimes involving children or elderly victims must be tried promptly).

S.C.CONST. Art.I, §24 (victims have a right to reasonable disposition and prompt and final conclusion of the case); TENN.CODE ANN. §40-38-105 (the court must make an effort to complete the case within 180 days of indictment and criminal cases involving personal injury are given priority over property crime cases); UTAH CODE ANN. §77-38-7 (the victim’s right to speedy resolution must be considered by the court in scheduling; victims are also entitled to prompt and final conclusion without unwarranted delay caused at the behest of the accused; and the court must consider the interests of the victim in considering any requests for continuances); VT.STAT.ANN. tit.13 §5312 (victims have a right to notification of any motions likely to delay disposition and to be heard on whether the motions should be granted); WIS.CONST. Art.1, §9m (victims have a right to timely disposition of the case); WIS.STAT.ANN. §950.04 (victims are entitled to speedy disposition of the case); WYO.STAT. §1-40-207 (the court shall consider the victim’s interest in scheduling trial; but this does not limit defense and prosecution to negotiate with respect to timing).

## XIII

## Victim Attendance: Generally

## Constitutions

ALA.CONST. Amend. 557 (“victims . . . are entitled to the right . . . to be present . . . at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the person accused of committing the crime. . .”); ALASKA CONST. Art.I, §24 (“victims . . . shall have . . . the right to . . . be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present”); ARIZ.CONST. Art. 2, §2.1 (“a victim . . . has a right . . . To be present at . . . all criminal proceedings when the defendant has the right to be present”); COLO.CONST. Art.2, §16a (“victim[s] . . . shall have the right to be . . . present at all criminal stages of the criminal judicial process”); CONN.CONST. Art.1, §8.b.(5)(“a victim . . . shall have . . . (5) the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person’s testimony would be materially affected if such person hears other testimony”); FLA.CONST. Art.1, §16(b)(“Victims . . . are entitled to the right . . . to be present . . . at all critical stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused); IDAHO CONST. Art.I, §22(4)(“A . . . victim . . . has the following rights . . . (4) To be present at all criminal justice proceedings”); ILL.CONST. Art.1, §8.1(a)(8)(“victims . . . shall have . . . The right to be present at the trial and all other court proceedings on the same basis as the accused 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); IND.CONST. Art.I, §13(b)(“Victims . . . shall have the right to be . . . present during public hearings . . . to the extent that exercising these rights does not infringe upon the constitutional rights of the accused); KAN.CONST. Art.15, §15(a)(“Victims . . . shall have be entitled . . . the right . . . to be present at public hearings . . . to the extent that these rights do not infringe upon the constitutional or statutory rights of the accused); LA.CONST. Art.1, §25 (“a victim . . . shall have the right . . . to be present . . . during all critical stages of preconviction and postconviction proceedings . . .”); MD.CONST., DECL.RTS. Art.47(b)(“a victim . . . shall have the right . . . to attend . . . a criminal justice proceeding. . . “); MICH.CONST. Art.1, §24 (“victims . . . shall have . . . The right to attend trial and all other court proceedings the accused has the right to attend. . .”); MISS.CONST. Art.3, §26A(1)(“Victims . . . shall have the right . . . to be present and to be heard, when authorized by law, during public hearings”); MO.CONST. Art.I, §32 (“victims . . . shall have . . . (1) The right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings were the offense would have been a felony if committed by an adult); NEB. CONST. Art. I, §28 (“A victim . . . shall have . . . the right be present at trial unless the trial court finds sequestration necessary for a fair trial for the defendant, and the right to . . . be present at . . . sentencing, parole, pardon, commutation, and conditional release proceedings”); NEV.CONST. Art.1, §8 (“The legislature shall provide by law for the rights of victims . . . to be . . . (b) Present at all public hearings involving the critical stages of a criminal proceeding”); N.J.CONST. Art. I, §22 (“A victim. . . shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered . . .”); N.MEX.CONST. Art.II, §24 (“A victim . . . shall have (5) the right to attend all public court proceedings the accused has the right to attend); N.C.CONST. Art.1, §37(1)(a)(“Victims . . . shall be entitled to . . . (a) The right . . . to be present at court proceedings of the accused”); OHIO CONST. Art.I, §10A (“Victims . . . shall be accorded rights to reasonable and appropriate . . . access . . . in the criminal justice process); OKLA.CONST.. Art.II. §34 (a victim . . . has a right to be present at any proceeding where the defendant has a right to be present”); ORE.CONST. Art.I, §42(1)(“the following rights are hereby granted to victims in all prosecutions for crimes and juvenile delinquency proceedings . . . (b) The right to be present at . . . any critical stage of the proceedings where the criminal defendant is present, including trial”); S.C.CONST. Art.I, §24(A)(“victims . . . have the right to . . . be . . . present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present”); TENN.CONST. Art.I, §35 (“victims shall be entitled to the following basic rights . . . 3. The right to be present at all proceedings where the defendant has the right to be present); TEX.CONST. Art.I, §30(b)(“the crime victim has the following rights . . . (2) 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); UTAH CONST. Art.I, §28(1)(“victim . . . have these rights . . . to . . . be present at . . . important criminal justice hearings related to the victim”); WASH.CONST. Art.I, §35 (“a victim . . . shall have the right . . . subject to the discretion of the individual presiding over the trial or court proceedings, [to] attend trial and all other court proceedings the defendant has the right to attend”); WIS.CONST. Art.I, §9m (“This state shall ensure that crime victims have the following privileges . . . the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant”).

## Statutes

ALA.CODE §§15-14-53 (“The victim of a criminal offense shall be entitled to be present in any court exercising any jurisdiction over such offense”); ALASKA STAT. §§12.61.010 (“Victims . . . have the following rights: (1) the right to be present during any proceeding in (A) prosecution and sentencing of a defendant if the defendant has the right to be present including being present during testimony even if the victim is likely to be called as a witness; (B) the adjudication of a minor as [a delinquent]”); ARIZ.REV.STAT.ANN. §13-4420 (“The victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present); ARK.CODE ANN. §16-90-1103(a) (“The victim . . . may be present whenever the defendant has a right to be present during court proceeding concerning the crime charged, other than a grand jury proceeding, unless the court determines that exclusion of the victim. . . is necessary to protect the defendant’s right to a fair trial or the confidentiality or fairness of a juvenile proceeding); CAL. PENAL CODE §1105.6 (“a victim shall be entitled to be present and seated at all criminal proceedings where the defendant . . . and the general public are entitled to be present [subject to exceptions based on overriding interests]”); COLO.REV.STAT.ANN. §24-4.1-302.5 (“each victim . . . shall have the following rights . . . (b) the right to be . . . present for all critical stages of the criminal justice process”); DEL.FAM.CT.CIV.R. 24, DEL.CODE tit.11 §9407 (“a victim . . . may be present whenever a defendant has a right to be present during a court proceeding concerning the crime charged other than a grand jury proceeding, unless good cause can be shown by the defendant to exclude the victim”); IDAHO CODE §19-5306 (“each victim of a criminal or juvenile offense shall be . . . (b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings”); ILL.COMP.STAT.ANN. ch.725, 4 (“victims shall have the following rights . . . (8) The right to be present at the trial and all other court proceedings on the same basis as the accused, 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”); MD.CODE ANN. Art. 27 §857 (“A victim . . . shall have the right to attend, if practicable, any proceeding in which the defendant has the right to appear”); MASS.GEN.LAWS ANN. ch. 258B, §3 (“victims . . . shall be afforded the following basic and fundamental rights . . . to be present at all court proceedings related to the offense committed against the victim, unless the victim . . . is to testify and the court determines that the person’s testimony would be materially affected by hearing other testimony at trial and orders the person to be excluded from the courtroom during certain other testimony”) MICH.COMP.LAWS ANN. §780.761 (“The victim has a right to be present through the entire trial of the defendant . . . .If the victim is going to be called as a witness, the court may, for good cause shown, order the victim to be sequestered until the victim first testifies”); MISS.CODE ANN. §99-43-21 (“The victim has the right to be present throughout all criminal proceedings”); MO.ANN.STAT. §595.209 (“the following rights shall be afforded to victims . . . (1) For victims, the right to be present at all criminal justice proceedings at which the defendant has such right, including juvenile proceedings where the offense would have been a felony if committed by an adult”); N.H.REV.STAT.ANN. §21-M:8-k (“To the extent that they can be reasonably guaranteed . . . and are not inconsistent with the . . . rights of the accused, crime victims are entitled to the following rights . . . (e) The right to attend trial and all other court proceedings the accused has the right to attend); N.MEX.STAT.ANN. §31-26-4 (“A victim shall have the right to . . . E. attend all public court proceedings the accused has the right to attend”); N.C.GEN.STAT. §15A-832(e) (“When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings. This subsection shall not be construed to interfere with the defendant’s right to a fair trial); OHIO REV.CODE ANN. §2930.09 (“A victim in a case may be present whenever the defendant in the case is present during any stage of the case against the defendant that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant’s right to a fair trial”); S.D.COD.LAWS ANN. §23A-28C-1 (“victims . . . have the following rights . . . (6) To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case”); TEX.CODE CRIM.PRO.ANN. art.56.02(b) (“A victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case”); UTAH CODE ANN. §78-38-4 (“The victim . . . shall have the right to be present at the important criminal or juvenile justice hearings”); VT.STAT.ANN. tit.33 §5509 (“The victim of a listed crime [of violence] shall be entitled to be present during all court proceedings subject to the provisions of Rule 615 [relating to sequestration]”); VA.CODE ANN. §§19.2-265.01 (“During the trial of every criminal case and in all court proceedings attendant to trial, whether before, during or after trial . . . at which the defendant is permitted . . . any victim . . . may remain in the courtroom and shall not be excluded unless the court determines . . . the presence of the victim would substantially impair the conduct of a fair trial”); WASH.REV.CODE ANN. §7.69.030 (“There shall be a reasonable effort made to ensure that victims . . . have the following rights . . . (11) With respect to victims . . . to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not be excluded solely because they have testified”); WIS.STAT.ANN. §950.04 (“Victims . . . have the following rights:. . . To attend court proceedings in the case); WYO.STAT. §1-40-206 (“Unless the court for good cause

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shown shall find to the contrary, the victim . . . shall have the right to be present at all trial proceedings which may be attended by the defendant”).

**XIV**  
**Victim Attendance: Juvenile Proceedings**

PA.STAT.ANN. tit.42 §6336(d) (“Except in hearings to declare a person in contempt of court and in hearings as specified in subsection (e), the general public shall be excluded from hearings under this chapter. Only the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding or in the work of the court shall be admitted by court . . .”).

R.I.GEN.STAT. §14-1-30 (“In hearings of any case, the general public shall be excluded; only an attorney or attorneys, selected by the parents or guardian of a child to represent the child, may attend and only such other persons shall be admitted as have a direct interest in the case, and as the justice may direct. All cases involving children shall be heard separately and apart from the trial of cases against adults”)

ALA.CODE §§12-15-65 (general public excluded not mention of victims); ALASKA STAT. §47.12.110 (general public excluded but victims may attend), ALASKA CONST. Art.I,§24, ALASKA STAT. §12.61.010 (victims’ rights provisions contain explicit right to attend delinquency proceedings); ARIZ.REV.STAT.ANN. §8-400 (victims have a right to attend); ARK.CODE ANN. §§9-27-327, 16-90-1103(a) (closed hearings, no mention of victim attendance; but victims’ rights provisions afford a specific right to attend delinquency proceedings); CAL.WEL.&INST.CODE §676 (closed to the public generally; proceedings in the case of designated violent crimes are open but may be closed upon victim request in some instances); COLO.REV.STAT.ANN. §19-2-112 (victims have a right to attend); CONN.SUPER.CT.R. §25-59 (court may hear family matters in chambers; no mention of victim attendance); DEL.FAM.CT.CIV.R. 24, DEL.FAM.CT.CRIM. R. 42 (juvenile proceedings are conducted in private; no mention of victim attendance); FLA.STAT.ANN. §§985.205, 985.206 (proceedings are open to the public and victims have a right to attend); GA.CODE ANN. §15-11-28 (proceedings concerning designated felonies are open to the public, proceedings are otherwise closed; no mention of victim attendance); HAW. REV.STAT. §571-41 (general public is excluded but a victim may be accompanied by a family member or attorney when testifying or otherwise in attendance); IDAHO CODE §§16-1608, 19-5306 (general public is excluded; no mention of victim of attendance; but victims’ rights provisions grant victims a right to attend delinquency proceedings); ILL.COMP.LAWS ANN. ch.705 §405/5-115, ch.725 §120/4 (victims have a right to attend); IND.CODE ANN. §§31-32-6-3, 31-32-6-4 (proceedings are open in cases involving murder or felony but are otherwise closed); IOWA CODE ANN. §§232.39, 602.1601 (proceedings are open but may be closed if the court finds that potential harm to the child outweighs the interest in open proceedings); KAN.STAT.ANN. §74-7335 (victims have a right to attend); KY.REV.STAT.ANN. §610.070 (general public is excluded but victims may attend); LA.CHILD.CODE ANN. arts.879, 811.1 (victims may attend proceedings involving 1st or 2d degree murder, aggravated rape, aggravated kidnapping or armed robbery; attendance is not among the rights granted victims of juvenile misconduct otherwise); ME.REV.STAT.ANN. tit.15, §3307 (public may not be excluded from proceedings involving murder or class A, B or C crimes); MD.CT.R. §11-110 (general public excluded from proceedings; no mention of victim attendance); MASS.GEN.LAWS ANN. ch.119 §65 (proceedings closed to the general public; no mention of victim attendance); MICH.COMP.LAWS ANN. §172A.17 (proceedings are generally open but may be closed on the motion of the child or the victim); MINN. STAT.ANN. §260.155 (victims have a right to attend subject to a sequestration order); MISS.CODE ANN. §43-21-203 (general public excluded from proceedings; no mention of victim attendance); MO. ANN.STAT. §§211.171, 595.209, MO.CONST. Art.I, §32 (general public excluded from proceedings except in cases of murder or class A or B felonies which are open; no mention of victim of attendance; but victims’ rights provisions afford victims an explicit right to attend delinquency proceedings); MONT.CODE ANN. §41-5-1502 (proceedings are open); NEV.REV.STAT. §62.193 (proceedings are open but may be closed at the discretion of the court which may nevertheless allow victims to attend); N.H.REV.STAT.ANN. §169-B:34 (proceedings are closed but victims may attend); N.J.STAT.ANN. §§2A:4A-60 (proceedings are closed but may be opened upon motion of a victim, inter alia); N.MEX.STAT.ANN. §32A-2-16 (proceedings are open unless closed by the court); N.Y.FAM.CT.ACT §341.1 (court has discretion as to whether proceedings are open or closed); N.C. GEN.STAT. §7B-801 (court has discretion as to whether proceedings are open or closed); N.D.CENT. CODE §27-20-24 (proceedings are closed to the public but victims may attend); OHIO REV.CODE ANN. §2151.35 (proceedings closed to the general public; no mention of victim attendance); OKLA. STAT.ANN. tit. 10 §§7303-4.2 (victims have a right to attend subject to a sequestration order); PA. STAT.ANN. tit.42 §6336 (general public excluded but victims may attend); R.I.GEN.LAWS §14-1-30 (general public excluded; no mention of victim attendance); S.C.CONST. Art.I, §9, S.C.CODE ANN. §20-7-755 (reconciliation of constitutional requirement that judicial proceedings be open and statutory provision that juvenile proceedings be closed the public requires that juvenile proceedings remain open subject to being closed upon a showing of cause on the basis of the interests of the child, *Ex parte Columbia Newspapers, Inc.*, 286 S.C. 116, 333 S.E.2d 337 (1985)); S.D.COD.LAWS ANN. §§26-7A-36, 26-7A-36.1 (general public excluded; victims may attend, but are subject to sequestration); TENN.CODE

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ANN. §37-1-124 (general public excluded; no mention of victim attendance); TEX.FAM.CODE ANN. art.58.04 (proceedings are open; victims may attend unless sequestered); UTAH CODE ANN. §§78-3a-515 [formerly §78-3a-511], 78-38-4 (general public excluded; victims may attend in felony cases; victims' rights provision includes the right to attend juvenile justice proceedings); VT.STAT.ANN. tit.33 §5523 (proceedings are closed; no mention of victim attendance); VA.CODE ANN. §§16.1-302, 16.1-302.1 (proceedings are closed, but victims may attend); WASH.REV.CODE ANN. §123.40.140 (proceedings are open but may be closed at the discretion of the court); W.VA.CODE §49-5-2 (general public excluded; victims may attend in cases of felonies); WIS.STAT.ANN. §938.299 (general public excluded; victims may attend); WYO.STAT. §14-6-224 (general public excluded; victims may attend).

**XV**  
**Employment Protection**

ALA.CODE §15-23-81(“victim[s] shall respond to a subpoena to testify in a criminal proceeding or to participate in the reasonable preparation of criminal proceeding[s] without the loss of employment, or the intimidation, threats, or fear of loss of employment”); ALASKA STAT. §12.61.017 (victims penalized by their employers for responding to a subpoena or attending proceedings at the request of the prosecution have a cause of action for actual and punitive damages); ARK.CODE ANN. §16-21-106(victims are entitled to employment intercession services); COLO.REV.STAT.ANN. §24-4.1-302.5 (victims have the right to employer intercession services); CONN.GEN.STAT.ANN. §54-85b (it is a criminal offense for an employer to penalize an employee for appearing as a witness in compliance with a subpoena); DEL.CODE ANN. tit.11 §9409 (employers may not penalize victims for participation in the preparation of a case or for attending court proceedings); FLA.STAT.ANN. §§960.001(i)(victims are entitled to employer intercession services), 90.52 (witnesses penalized by their employers because of the witness’s compliance with a subpoena have a cause of action for damages and punitive damages); HAW.REV.STAT. §621-10.5 (employers who penalize witnesses for compliance with judicial subpoenas are subject to criminal penalties and civil liability).

ILL.COMP.LAWS ANN. ch.725 §§120/4.5 (victims are entitled to employer intercession services), 5/115-18 (an employer who penalizes an employee/witness to a crime for attending court proceedings is guilty of contempt of court); IOWA CODE ANN. §915.232 (it is a crime to penalize an employee because of their service as a witness; employees in such cases have a cause of action for damages, attorneys’ fees, cease and desist orders, and reinstatement); KY.REV.STAT.ANN. §421.500 (victims are entitled to employer intercession services); LA.REV.STAT. ANN. §46:1844 (victims are entitled to employer intercession services); ME.REV.STAT.ANN. tit.26 §850 (employers who do not grant leave to victims of violence are subject to a civil penalty); MD.CTS.& JUD.PROC.CODE ANN. §9-205 (employers may be fined up to \$1,000 for firing a witness for absences caused by the employee/witness’ compliance with a subpoena); MASS.GEN.LAWS ANN. ch.258B §3; MICH.COMP.LAWS ANN. §§780.762, 780.822 (it is a criminal offense for an employer to penalize a victim for complying with a subpoena or request to testify); MINN.STAT.ANN. §611A.036 (it is contempt of court for an employer to penalize a victim for testifying in a criminal case); MISS.CODE ANN. §99-43-45 (victims may not be subjected to loss or the threat of loss of employment for responding subpoenas); MO.ANN.STAT. §595.209 (employers may not penalize victims for cooperating with the prosecution of a criminal case).

MONT.CODE ANN. §46-24-205 (employers may not penalize a victim for cooperating with the prosecution of a case and victims are entitled to intercession services); NEB.REV.STAT. §81-1848(victims are entitled to employer intercession services); NEV.REV.STAT. §178.5694 (victims are entitled to employer intercession services if necessary), §50.070 (it is a crime for an employer to retaliate against a witness for compliance with or intended compliance with a subpoena; in such cases the witness/employee also has a cause of action for damages, attorneys’ fees and reinstatement); N.J.STAT.ANN. §52:4B-44 (victims are entitled to have the authorities notify their employers of the need for the need for the victim’s assistance); N.MEX.STAT.ANN. §31-26-4 (victims are entitled to employer intercession services); N.Y.EXEC.LAW §642 (victims are entitled to employer intercession services), N.Y. PENAL LAW §215.14 (it is a crime for an employer to penalize a victim or witness for attendance at criminal proceedings); N.C.GEN.STAT. §15A-825(victims are entitled to employer intercession services).

N.D. CENT.CODE §12.1-34-02 (victims are entitled to employer intercession services), §27-09.1-17 (it is a criminal offense for an employer to penalize a witness for compliance with a subpoena; in such a case, the employee/witness also has a cause of action for damages, attorneys’ fees and reinstatement); OHIO REV.CODE ANN. §2930.18 (it is contempt of court for an employer to penalize a victim for complying with a subpoena or cooperating with the prosecution in criminal proceedings); OKLA.STAT.ANN. tit.19 §215.33 (victims are entitled to employer intercession services); PA.STAT.ANN. tit.18 §4957 (an employer who penalizes a victim or witness because of their attendance at judicial proceedings is subject to criminal and civil liability (damages and attorneys fees)); R.I.GEN.LAWS §12-28-3 (victims are entitled to employer intercession services); S.C. CODE ANN. §16-3-1550 (employer retaliation against subpoenaed victims or witnesses constitutes contempt of court); TEX.CRIM.PROC. CODE ANN. art.56.02(10)(victims are entitled to have the prosecutor notify their employers of the need the victim’s cooperation and testimony); VT.STAT. ANN. tit.13 §5313 (“an employer may not discharge or discipline a victim . . . for honoring a subpoena to testify”); VA.CODE ANN. §§19.2-11.01, 18.2-465.1 (victims are entitled to employer intercession services; penalizing employees for responding to a subpoena is a criminal offense).

WASH.REV.CODE ANN. §7.69.030(8)(victims are entitled to employer intercession services); W.VA.CODE §61-11A-6(victims are entitled to employer intercession services); WIS.STAT.ANN. §950.04 (victims are entitled to employer intercession services); WYO.STAT. §1-40-209 (victims should not be penalized by employers for responding to subpoenas or otherwise assisting in the criminal justice process; victims may request the police, prosecutors and/or defense counsel to explain the need for the victim’s cooperation to employers).



## XVI

**Return of Victims' Property**

ALA.CODE §15-23-77;	N.H.REV.STAT.ANN. §21-M:8-k;
ARIZ.REV.STAT.ANN. §13-4429;	N.J. STAT.ANN. §52:4B-36;
ARK.CODE ANN. §16-21-106;	N.MEX.CONST. Art.2, §24, N.MEX.STAT.ANN.
CAL.PENAL CODE §679.02;	§31-26-4;
COLO.REV.STAT.ANN. §24-4.1-302.5;	N.Y.EXEC.LAW §647;
CONN.GEN. STAT.ANN. §54-203;	N.C.GEN.STAT. §15A-825;
DEL.CODE ANN. tit.11 §9408;	N.D.CENT.CODE §12.1-34-02;
FLA.STAT.ANN. §690.001(h);	OHIO REV.CODE ANN. §2930.11;
HAW.REV.STAT. §801D-4;	OKLA.STAT.ANN. tit.19 §215.33;
IDAHO CONST. Art.1, §22 and IDAHO CODE	PA.STAT.ANN. tit.18 §11.201;
§19-5306;	R.I.GEN.LAWS §12-28-3;
ILL.COMP.LAWS ANN. ch.725 §120/4.5;	S.C.CODE ANN. §16-3-1535;
KY.REV.STAT.ANN. §421.500;	S.D.COD.LAWS ANN. §23A-37-14;
LA.REV.STAT.ANN. §46:1844;	TENN.CODE ANN. §40-38-106;
MD.CTS. & JUD.PROC.CODE ANN. §3-836	TEX.CRIM.PRO.CODE ANN. art.56.02(9);
(victims of delinquency), MD.CODE ANN.	UTAH CODE ANN. §§77-37-3, 77-24-1 to 77-25-
art.27, §848;	5;
MASS.GEN.LAWS ANN. ch.258B §3;	VT.STAT.ANN. tit.13 §5311;
MICH.COMP.LAWS ANN. §780.754;	VA.CODE ANN. §§19.2-11.01, 19.2-270.1, 19.2-
MO.ANN.STAT. §595.209;	270.2;
MISS.CODE ANN. §99-43-39;	WASH.REV.CODE ANN. §7.69.030(7);
MONT. CODE ANN. §46-24-206;	W.VA.CODE §6-11A-6;
NEB.REV. STAT. §81-1848;	Wis.STAT.ANN. §950.04;
NEV.REV.STAT. §179.5696;	WYO.STAT. §1-40-208.

## XVII

**Secure Waiting Areas for Sequester Victims**

ALA.CODE §15-23-68;  
 ALASKA STAT. §12.61.010;  
 ARIZ.REV.STAT.ANN. §13-4431;  
 ARK.CODE ANN. §16-21-106;  
 CAL.PENAL CODE §13835.5;

COLO.REV.STAT.ANN. §24-4.1-302.5(p);  
 DEL.CODE ANN. tit.11 §904;  
 FLA. STAT.ANN. §960.001(n);  
 GA. CODE ANN. §17-17-9;  
 HAW.REV.STAT. §801D-4;

ILL.COMP.LAWS ANN. ch.725 §120/5;  
 LA.REV.STAT.ANN. §46:1844;  
 MD.CODE ANN. Art.27 §847;  
 MASS.GEN.LAWS ANN. ch.258B §3;  
 MICH. COMP.LAWS ANN. §780.757;

MINN.STAT.ANN. §611A.034;  
 MISS.CODE ANN. §99-43-23;  
 MO.ANN.STAT. §595.209;  
 NEB.REV.STAT. §81-1848;  
 NEV.REV.STAT. §178.5696;  
 N.H.REV.STAT. ANN. §21-M:8-k;

N.J.STAT.ANN. §52:4B-36;  
 N.Y.EXEC.LAW §647;  
 N.C.GEN.STAT. §15A-832;  
 N.D.CENT.CODE §12.1-34-02;  
 OHIO REV.CODE ANN. §2930.10;

OKLA. STAT.ANN. tit.19 §215.33;  
 R.I.GEN.LAWS §12-28-3;  
 S.C.CODE ANN. §16-3-1550;  
 TENN.CODE ANN. §40-38-102;  
 TEX.CRIM.PRO.CODE ANN. art.56.02(8);

UTAH CODE JUD.ADM. Rule 4-601;  
 VA.CODE ANN. §19.2-11.01;  
 WASH.REV.CODE ANN. §7.69.030(6);  
 W.VA.CODE §61-11A-6;  
 WIS.STAT.ANN. §950.04;  
 WYO.STAT. §1-40-205.

## XVIII

**Victim Impact Statements: Sentencing**

## F.R.CRIM.P. 32

## (b) Presentence Investigation and Report.

(1) When Made. The probation officer must make a presentence investigation and submit a report to the court before the sentence is imposed, unless:

(A) the court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. Sec. 3553; and

(B) the court explains this finding on the record.

(2) Presence of Counsel. On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.

(3) Nondisclosure. The report must not be submitted to the court or its contents disclosed to anyone unless the defendant has consented in writing, has pleaded guilty or nolo contendere, or has been found guilty.

(4) Contents of the Presentence Report. The presentence report must contain--

\* \* \*

(B) the classification of the offense and of the defendant under the categories established by the Sentencing Commission under 28 U.S.C. Sec. 994(a), as the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission under 28 U.S.C. Sec. 994(a)(1); and the probation officer's explanation of any factors that may suggest a different sentence--within or without the applicable guideline--that would be more appropriate, given all the circumstances;

(C) a reference to any pertinent policy statement issued by the Sentencing Commission under 28 U.S.C. Sec. 994(a)(2);

(D) verified information, stated in a nonargumentative style, containing an assessment of the financial, social, psychological, and medical impact on any individual against whom the offense has been committed;

\* \* \*

(G) any other information required by the court.

(5) Exclusions. The presentence report must exclude:

(A) any diagnostic opinions that, if disclosed, might seriously disrupt a program of rehabilitation;

(B) sources of information obtained upon a promise of confidentiality; or

(C) any other information that, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.

(6) Disclosure and Objections.

(A) Not less than 35 days before the sentencing hearing--unless the defendant waives this minimum period--the probation officer must furnish the presentence report to the defendant, the defendant's counsel, and the attorney for the Government. The court may, by local rule or in individual cases, direct that the probation officer not disclose the probation officer's recommendation, if any, on the sentence.

(B) Within 14 days after receiving the presentence report, the parties shall communicate in writing to the probation officer, and to each other, any objections to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the presentence report. After receiving objections, the probation officer may meet with the defendant, the defendant's counsel, and the attorney for the Government to discuss those objections. The probation officer may also conduct a further investigation and revise the presentence report as appropriate.

(C) Not later than 7 days before the sentencing hearing, the probation officer must submit the presentence report to the court, together with an addendum setting forth any unresolved objections, the grounds for those objections, and the probation officer's comments on the objections. At the same time, the probation officer must furnish the revisions of the presentence report and the addendum to the defendant, the defendant's counsel, and the attorney for the Government.

(D) Except for any unresolved objection under subdivision (b)(6)(B), the court may, at the hearing, accept the presentence report as its findings of fact. For good cause shown, the court may allow a new objection to be raised at any time before imposing sentence.

(c) Sentence

(1) Sentencing Hearing. At the sentencing hearing, the court must afford counsel for the defendant and for the Government an opportunity to comment on the probation officer's determinations and on other matters relating to the appropriate sentence, and must rule on any unresolved objections to the presentence report. The court may, in its discretion, permit the parties to introduce testimony or other evidence on the objections. For each matter controverted, the court must make either a finding on the allegation or a

determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing. A written record of these findings and determinations must be appended to any copy of the presentence report made available to the Bureau of Prisons.

(2) Production of Statements at Sentencing Hearing. Rule 26.2(a)-(d) and (f) applies at a sentencing hearing under this rule. If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the movant, the court may not consider the affidavit or testimony of the witness whose statement is withheld.

(3) Imposition of Sentence. Before imposing sentence, the court must:

(A) verify that the defendant and defendant's counsel have read and discussed the presentence report made available under subdivision (b)(6)(A). If the court has received information excluded from the presentence report under subdivision (b)(5) the court--in lieu of making that information available--must summarize it in writing, if the information will be relied on in determining sentence. The court must also give the defendant and the defendant's counsel a reasonable opportunity to comment on that information;

(B) afford defendant's counsel an opportunity to speak on behalf of the defendant;

(C) address the defendant personally and determine whether the defendant wishes to make a statement and to present any information in mitigation of the sentence;

(D) afford the attorney for the Government an opportunity equivalent to that of the defendant's counsel to speak to the court; and

(E) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement or present any information in relation to the sentence.

(4) In Camera Proceedings. The court's summary of information under subdivision (c)(3)(A) may be in camera. Upon joint motion by the defendant and by the attorney for the Government, the court may hear in camera the statements--made under subdivision (c)(3)(B), (C), (D), and (E)--by the defendant, the defendant's counsel, the victim, or the attorney for the Government.

\* \* \*

(f) Definitions. For purposes of this rule--

(1) "victim" means any individual against whom an offense has been committed for which a sentence is to be imposed, but the right of allocution under subdivision (c)(3)(E) may be exercised instead by--

(A) a parent or legal guardian if the victim is below the age of eighteen years or incompetent; or

(B) one or more family members or relatives designated by the court if the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

(2) "crime of violence or sexual abuse" means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.

ALA.CODE §§15-23-72 (the victim has a right to pre-sentencing information), 15-23-73 (victims have the right to submit a written impact statement or make an oral statement to the probation officer for use in the presentence report and to review and have a copy of the report), 15-73-74 (victims have the right to present evidence, an impact statement or information during any pre-sentencing, sentencing or restitution hearings); ALASKA CONST. Art.1, §24 (victims have the right to heard at sentencing, before or after conviction or juvenile adjudication); ALASKA STAT. §§12.61.010 (victims have the right to make written or oral statement for use in the pre-sentence report), 12.55.022 (presentence reports must include provisions on victim impact), 12.55.023 (victims have a right to examine report and may submit written statement or make sworn or unsworn oral statement), 12.61.015 (victims have the right to appear at any sentencing hearing for the defendant and present a written or sworn or unsworn oral statement).

ARIZ.CONST. Art.2, §2.1 (victims have a right to examine the presentence report and to be heard at the sentencing proceedings), ARIZ.REV.STAT.ANN. §§13-4424 to 4426 (a victim may submit a written impact statement for consideration as part of the presentence report, to inspect the presentence report, and to present evidence, information and opinion at the sentencing hearing), 8-290.14 (victims of delinquent acts may submit a written or oral impact statement for inclusion on the predisposition report which the probation officer must consider in preparing the report);

ARK.CODE ANN. §16-97-102 (victims have a right be heard by the court prior to sentencing); CAL. PENAL CODE §§679.02, 1191.1 (right to appear, be heard and have views considered at sentencing and to be informed of these rights).

COLO.REV.STAT.ANN. §§24-4.1-302, 24-4.1-302.5 (victims have a right to give the prosecutor a written or oral victim impact statement); CONN.CONST. Art.1, §8(b)(victims have the right to make a statement to the court at sentencing), CONN.GEN.STAT.ANN. §§54-91c (the victim may make an oral impact statement or submit a written statement for the court to consider prior to sentencing); DEL.CODE ANN. tit.11 §§4331, 9415 (in preparing the presentence report, a reasonable effort to confer with the victim shall be

made); FLA.STAT.ANN. §921.143(victims have the right to address written or oral impact statements to the court prior to sentencing); GA.CODE ANN. §17-10-1.1(victims may submit an impact statement for inclusion in the presentencing report and they may provide the prosecutor with a statement to present to the court prior to sentencing);

HAW.REV.STAT. §706-604(victims are allowed to address the court on disposition prior to sentencing); IDAHO CONST. Art.1, §22 (victims have a right to examine the presentence report and to be heard at the sentencing proceedings), and IDAHO CODE §19-5306 (victims have the right to consult in preparation of the presentence report and to be heard on sentencing); ILL.CONST. Art.1, §8.1 (right to make statement to the court at the time of sentencing), ILL.COMP.LAWS ANN. ch.725 §120/6(same); IND.CODE ANN. §§35-40-5-5, 35-40-5-6 (victims have a right to make a written or oral statement for use in [preparation of the presentence report, to read the presentence report, and to be heard at any proceeding involving sentencing); IOWA CODE ANN. §915.21 (victims may file a written impact statement with the prosecution or make an oral impact statement before the court);

KAN.CONST. Art.15, §15 (victims have the right to heard at sentencing), KAN.STAT.ANN. §22-3424 (the victim may address the court before sentence is imposed); KY.REV.STAT.ANN. §§421.500, 421.520(prosecutors must notify victims of their right to submit a written impact statement be used in the presentence report or filed with the court; the impact statement must considered by the court when determining sentence); LA.CRIM.PRO.CODE ANN. art.875(B)(a victim impact statement must be included in the presentence report), LA.REV.STAT.ANN. §46:1844 (victims have the right to submit written impact statements and to address the court at sentencing proceedings); ME.REV.STAT.ANN. tit.17-A §1174 (victims must be given the opportunity to make an impact statement, orally or in written, to the court prior to sentencing); MD.CODE ANN. art.41 §4-609, art.27 §§780, 781 (victim impact statements should be included in presentence reports in all felony cases involving loss or injury; at the discretion of the court and the request of the prosecutor victims or members of their family may address the court or jury prior to sentencing in cases of death or serious bodily injury); MASS.GEN.LAWS ANN. ch.258B §3(p)(victims have the right to make a written or oral impact statement), ch.279 §4B (same and the prosecutor must also file a victim impact statement as part of the presentence report).

MICH.CONST. Art.1, §24 (victims have the right to heard at sentencing), MICH.COMP.LAWS ANN. §§780.752, 780.763, 780.764, 780.791 to 780.793 (victims including victims of acts of delinquency have the right to submit information for the presentencing report and to make a written or oral impact statement to the court at the time of sentencing); MINN.STAT. ANN. §§611A.01, 611A.037, 611A.038 (victims have the right to submit a presentencing impact statement and to make an oral or written impact statement to the court prior to sentencing); MISS.CODE ANN. §§99-43-31, 99-43-33 (victims have a right to make an impact statement for consideration in the presentence report, during the entry of a guilty plea, sentencing or restitution proceeding); MO.CONST. Art.1, §32 (victims have the right to heard at sentencing) MO.ANN.STAT. §§217.762(presentence reports must contain victim impact statements), 557.041 (victims may make an oral or written impact statement before the court prior to sentencing).

MONT.CODE ANN. §46-18-112 (presentence reports must include victim impact information; victims may make either an oral or a written impact statement before the court prior to sentencing); NEB.REV.STAT. §29-2261 (presentencing reports must include any victim impact statement); NEV.CONST. Art.1, §8 (victims have the right to heard at sentencing) NEV.REV.STAT. §176.015 (before sentencing, the victim must be given an opportunity to make an impact statement to the court); N.H.REV.STAT.ANN. §§21-M:8-k; 651:4-a (the victim has the right to submit information for the presentence report; to attend any sentencing hearing; and to be heard or submit victim impact statement); N.J.STAT.ANN. §§2C:44-6 (victims have a right to submit an impact statement for inclusion in the presentence report); 52:4B-6 (victims have the right to make an impact statement before the court prior to sentencing); N.MEX.CONST. Art.2 §24 (victims have the right to heard at sentencing), N.MEX.STAT.ANN. §§31-26-3, 31-26-4 (victims have a right to make an impact statement to the court prior to sentencing).

N.Y.CRIM.PRO.LAW §390.30(3)(b), 380.50 (presentence reports must contain victim impact information and victims are entitled to make an impact statement to the court prior to sentencing), N.Y.EXEC.LAW §§646, 647 (the victim may make an impact statement that the court shall consider before passing sentence); N.C.GEN.STAT. §15A-833 (victims have a right to prepare and submit an impact statement for the sentencing court); N.D.CENT.CODE §§12.1-34-01, 12.1-34-02 (victims are notified by the prosecutor of their right to submit an impact statement prior to sentencing and for inclusion in any presentence report); OHIO REV.CODE ANN. §§2930.12 to 2930.14 (victims have the right to make an impact statement for the presentencing report, to have it considered, and to be notified of these rights), 2947.051(victim impact statements are to be considered by the court in imposing sentence); OKLA.CONST. Art.2., §34 (victims have the right to heard at sentencing), OKLA.STAT.ANN. tit.22 §§982, 984, 984.1 (victims have the right to submit an impact statement for the presentence report; victims may present oral or written impact statements to the court prior to sentencing).

ORE.REV.STAT. §§137.530, 144.790(3)(preparation of a presentence report is to include the opportunity for a victim impact statement); PA.STAT.ANN. tit.18 §11.201 (prior to sentencing victims have

the right to submit a written impact statement for consideration by the sentencing court), PA.R.CRIM.P. 1403 (any presentence report must include a victim impact statement); R.I. CONST. Art.1, §23 (before sentencing, victims have the right to make a statement to the court concerning the impact of the crime upon them), R.I.GEN.LAWS §§12-28-3 (victims have the right to make a statement for inclusion in the presentencing report), 12-28-4 (they also have the right to address the court prior to sentencing); S.C.CONST. Art.I, §24 (victims have the right to heard at sentencing), S.C.CODE ANN. §16-3-1535 (victims have the right to submit a written or oral impact statement to be considered prior to sentencing); S.D.COD.LAWS ANN. §23A-28C-1 (victims have a right to submit a written impact statement to be considered by the sentencing judge); TENN.CODE ANN. §§40-35-201 to 40-38-208 (victims have the right to submit a written impact statement considered by the sentencing judge); TEX.CRIM.PRO.CODE ANN. arts. 42.03(victims may appear before the court at sentencing and make an impact statement), 56.02(5), 56.03(victims have the right to provide information for the preparation of the presentence report and to read a statement prior to sentencing; the court is required to consider the statement in imposing sentence).

UTAH CODE ANN. §77-38-4 (victims have the right to be heard at noncapital sentencing hearings in oral, taped or written form); VT.STAT.ANN. tit.13 §7006 (victims have the right to appear at sentencing and make a statement to the court); tit.33 §5529a (victims of delinquent acts have the right to file a written or taped impact statement that must be considered by the court in determining disposition); VA.CONST. Art.I, §8-A (victims have the right to heard at sentencing), VA.CODE ANN. §§19.2-11.01 (victims shall be given the opportunity pursuant to §19.2-299.1 to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§16,1-274 and 53.1-155 or any other applicable law); WASH.CONST. Art.1, §35 (victims have the right to heard at sentencing), WASH.REV.CODE ANN. §7.69.020, 7.69.030(13)(victims have the right to submit a written or oral impact statement to the court prior to sentencing); W.VA.CODE §§61-11A-2, 61-11A-3 (pre-sentence reports contain victim impact statements; victims may make a written or oral impact statement to the court prior to sentencing); WIS.CONST. Art.1, §9m (victims have the right to heard at sentencing), WIS.STAT.ANN. §950.04 (right to have court informed of impact of crime on the victim); WYO.STAT. §§7-21-101 to 7-21-103 (victims have the right to notice of the defendant's conviction and of their right to make a written or oral statement for the presentence report and to make a written or oral statement to the court at the time of sentencing).

**Victim Impact Statements: Parole**

ALA.CODE §§15-23-79, 15-22-36;  
ALASKA STAT. §33.16.120;  
ARIZ. CONST. Art.2, §2.1, ARIZ.REV.STAT.ANN.  
§13-4414;  
ARK.CODE ANN. §§16-93-702, 16-93-703;

CAL.PENAL CODE §§679.02, 3043.2, CAL.  
WELF.& INST.CODE §1767;  
COLO.REV.STAT.ANN. §17-2-214;  
CONN.GEN.STAT. ANN. §54-126a;  
DEL.CODE ANN. tit. 11 §4350;

FLA.STAT.ANN. §960.001;  
GA.CODE ANN. §17-10-1.1;  
HAW.REV.STAT.706-669(7);  
ILL.COMP.LAWS ANN. ch.730 §105/35;  
IND.CODE ANN. §11-13-3-3;

IOWA CODE ANN. §915.18;  
KAN.STAT.ANN. §22-3717;  
KY.REV.STAT. ANN. §§421.530, §439.340;  
LA.REV.STAT.ANN. §46:1844;  
MD.CODE ANN. art.41 §§4-504, 4-511A;

MASS.GEN.LAWS ANN. ch.258B §3, ch.127  
§133A;  
MICH.COMP.LAWS ANN. §780.771;  
MINN.STAT.ANN. §638.04;  
MISS.CODE ANN. §99-43-43;

MO.ANN.STAT. §595.209;  
MONT.CODE ANN. §46-23-204;  
NEB.REV.STAT. §81-1848;  
NEV.REV.STAT. §213.010;  
N.H.REV.STAT.ANN. §§21-M:8-k, 651-A:11-a;

N.J. STAT.ANN. §30:4-123.55;  
N.Y.EXEC. LAW §259-i;  
N.C.GEN.STAT. §15A-838 (pardons &  
commutations)  
N.D.CENT.CODE §12.1-34-02;  
OHIO REV.CODE ANN. §§2930.17, 2943. 041;  
OKLA.STAT.ANN. tit.57 §332.2;

ORE. REV.STAT. §144.120;  
PA.STAT.ANN. tit.18 §11.201;  
R.I.GEN.LAWS §12-28-6;  
S.C. CODE ANN. §§16-3-1530, 16-3-1560;  
S.D.COD.LAWS ANN. §23A-28C-1(10);

TENN. CODE ANN. §40--28-504;  
TEX.CRIM. PRO.CODE ANN. arts.56.02(7),  
42.18(f);  
UTAH CODE ANN. §77-27-9.5;  
VA.CODE ANN. §§19.2-299, 53.1-155;

VT.STAT.ANN. tit.28 §507;  
W.VA.CODE §§62-12-13, 62-13-23;  
WIS.STAT.ANN. §950.045;  
WYO.STAT. §7-13-402.

Of the states that do not provide for victim impact statements in a parole context, most have abolished earlier release on parole, ME.REV.STAT.ANN. tit.34-A §§5801 to 5803; N.MEX. STAT. ANN. §§31-21-10, 31-18-15; N.C.GEN.STAT. §15A-1368.2; WASH.REV.CODE ANN. §9.95.110.

## XX

**Pardon Consideration:  
Victims Rights to Notice and Comment**

<p>Ala.Code §§15-23-36, 15-23-79; Alaska Stat. §33.20.080; Ark.Code Ann. §16-93-204; Conn.Gen.Stat.Ann. §18-27a; Del.Code Ann. tit.11 §4361;</p> <p>Ind.Code Ann. §11-9-2-2 (notice of pardon consideration); Iowa Code Ann. §915.19; Kan.Stat. Ann. §22-3701 (notice of pardon consideration); La.Rev.Stat.Ann. §46:1844; Md.Corr.Serv.Code Ann. §7-805;</p> <p>Mich.Comp.Laws Ann. §791.244; Minn.Stat. Ann. §§638.04, 638.06; Miss.Code Ann. §99-43-43; Nev.Rev.Stat. §213.010; N.C.Gen.Stat. §15A-838;</p>	<p>N.D.Cent.Code §12.1-34-02; Ohio Rev. Code Ann. §2967.12; Okla.Stat.Ann. tit.57 §332.2; Ore.Rev.Stat. §167.730 (Governor may request victim statements and must include them required reports); Pa.Stat.Ann. tit.18 §11.201;</p> <p>S.D.Cod.Laws Ann. §§24-14-4, 24-14-6 (publication notice with statement opportunities to anyone who feels aggrieved); Utah Code Ann. §§77-27-9, 77-27-9.5; Wis.Stat.Ann. §§304.09, 304.10; Wyo.Stat. §1-40-204 (notice of pardon consideration)</p>
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## XXI

**Right to or Obligation to Provide  
General Notification of Victims' Rights**

<p>ARIZ.CONST. art. 2, §2.1; ARK.CODE ANN. §16-90-1107; DEL.CODE ANN. tit. 11, §9410; GA.CODE ANN. §17-17-6; IND.CODE ANN. §35-40-5-9;</p> <p>LA.CONST. art.1, §25; MD.DECL.OF RTS. art.47(b); MASS.GEN.LAWS ANN. ch.258B, §3; MICH.COMP.LAWS ANN. §780.756; MINN.STAT.ANN. §611A.02;</p>	<p>MISS.CODE ANN. §99-43-7; N.J.STAT.ANN. §52:4B-42; N.MEX.STAT.ANN. §31-26-9; N.C.GEN.STAT. §15A-832; OHIO REV.CODE ANN. §2930.04;</p> <p>ORE.CONST. art.I, §42; S.D.COD.LAWS ANN. §23A-28C-2; TENN.COST. art.II, §2; WYO.STAT. §1-40-203.</p>
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## XXII

**Enforcement Limitations**

ALA.CONST. Amend. 557(b) (nothing in the amendment or the enabling legislation enacted to implement it may be construed as creating a cause of action against the State, any of its agents, officers, employees, or subdivisions), ALA.CODE §§15-23-84 (defendant may not use failure to afford victims' rights as a ground to challenge his conviction or sentence), 15-23-66 (victim has no right to direct prosecution); 15-14-57 (failure of victim to attend the defendant's trial is not an appeal by the defendant); ALASKA STAT. §12.61.010 (failure to comply does not create a cause of action against the state or any of its agencies); ARIZ. CONST. Art.2, §2.1 (exercise of victim's rights not the basis for dismissal or reversal of conviction of defendant), ARIZ.REV.STAT.ANN. §13-4436 (same), ARIZ. CONST. Art.2, §2.1 (state, political subdivision, agency, employee or officer are liable for any violation of victims' rights occurring prior to October 15, 1992); COLO.REV.STAT.ANN. §§24-4.1-303(16),(17); ARK.CODE ANN. §16-90-1102 (no claim for damages against a government employee, official, or entity); CONN.CONST. art.1, §8 (nothing in the constitutional provision may be used as the basis for vacating a conviction or otherwise securing appellate relief in a criminal case). CONN.GEN.STAT.ANN. §§54-223, 54-224 (no cause of action /no appeal); DEL.CODE ANN. tit.11 §9402 (no cause of action /no appeal); FLA.STAT.ANN. §960.001(5) (not cause of action against the state or any of its agencies or political subdivisions); GA.CODE ANN. §17-17-15 (no cause of action /no appeal); HAW.REV.STAT. §801D-5 (no cause of action /no appeal); IDAHO CONST. Art.1, §22, IDAHO CODE §19-5306 (failure to comply does not create a cause of action against the state or any person, may not be used as grounds to reverse a conviction or vacate a sentence or to seek the appointment of counsel); ILL.CONST. Art.1, §8.1 (nothing in the constitutional provision may be used as the basis for vacating a conviction or otherwise securing appellate relief in a criminal case), ILL.COMP.LAWS ANN. ch.725 §120/9 (failure to comply does not create a cause of action nor provide grounds to reverse a conviction or vacate a sentence); IND.CODE ANN. §§35-40-2-1, 35-40-3-1 (no cause of action/no appeal); IOWA CODE ANN. §915.2 (no cause of action); KAN.CONST. Art.15, §15 (constitutional provision may be used as the basis to set aside or void a finding of guilty or not guilty, or acceptance of a guilty plea or to set aside a sentence or any other final disposition of a criminal case; nor does it create a cause of action for damages against the state, any of its subdivision, or employees), KAN.STAT.ANN. §74-7333 (no cause for failure to comply); KY.REV.STAT. ANN. §§421.540, 421.550 (failure to provide victim rights does not constitute a ground for vacating a defendant's conviction or sentence nor does it create a cause of action in the victim).

LA.REV.STAT.ANN. §46:1844 (no cause of action and no defendant right to vacate sentence or conviction for failure to afford victim rights); MD.CONST, DECL. OF RTS. Art.47 (nothing in the constitutional provision creates a cause of action or authorizes a victim to stay a criminal proceeding); MASS.GEN.LAWS ANN. ch.258B §§10, 11 (no cause of action /no appeal); MICH.COMP. LAWS ANN. §§780.773, 780.774 (no cause of action /no appeal); MINN.STAT.ANN. §611A.037 (no appeal); MISS.CODE ANN. §99-43-49)(no appeal); MO.CONST. Art.1, §32 (no cause of action and defendant's conviction or sentence not vacated for failure to provide rights); MO.ANN.STAT. §595.218 (no cause of action created by violation); MONT.CODE §46-24-105 (no cause of action against the state or its political subdivisions); N.H.REV.STAT.ANN. §21-M:8-k (no cause of action created and no defendant right established); N.MEX.CONST. Art.2, §24 (those accused or convicted of committing a crime against a victim have no standing to contest the failure to comply with the constitution's victims' rights section), N.MEX.STAT.ANN. §§31-26-13, 31-26-14 (no cause of action nor standing in the accused may be based on a failure to provide victims' rights); N.Y.EXEC.LAW §649 (no cause of action); N.C.CONST. art.1, §37 (the constitutional provision provides no grounds for a cause of action against the state, its subdivisions, agencies or employees nor any basis for relief in a criminal case or related proceeding), N.C.GEN.STAT. §§15A-839, 840(no cause of action; no appeal).

N.D.CENT.CODE §12.1-35-06(no cause of action created against state or its employees for failure to comply and failure to comply is not grounds for setting aside a defendant's conviction or sentence); OHIO CONST. Art.I, 10a (constitutional provision does not provide the basis for a cause of action against the state, any subdivision, officer or employee nor does provide the basis to disturb the decisions in any criminal matter), OHIO REV.CODE ANN. §2930.19 (no cause/no appeal); OKLA.CONST. art.2, §34 (neither constitutional provision nor the exercise of any rights granted by it provide the grounds to dismiss or otherwise set aside any criminal proceeding, conviction or sentence); PA.STAT.ANN. tit. 18 §11.5101(no cause of action or defense in favor of any person); R.I.GEN. LAWS §12-28-7 (failure to comply is not grounds for reversing a conviction or vacating a sentence); S.C.CONST. Art.I, §24 (the constitutional provision does not create a cause of action against the state or any of its officers or employees nor does it provide a basis for dismissing a criminal proceeding or setting aside a criminal sentence or conviction, victims may however be granted mandamus to enforce its provisions), S.C.CODE ANN. §16-3-1565(no cause of action).

S.D.COD.LAWS ANN. §23A-28C-3 (failure to comply does not create a cause of action nor provide the basis for a defendant's conviction or sentence to be vacated); TENN.CODE ANN. §40-38-108 (no cause of action and no defendants' rights created by failure to comply with victims' rights provisions); TEX.CONST.

Art.1, §30 Tex.Crim.Pro.Code Ann. art.56.02(d)(no appeals); UTAH CONST. art.1, §28 (the constitutional provision does not create a cause of action nor the basis to disturb a decision in a criminal proceeding), UTAH CODE ANN. §§77-38-12 (failure to provide victims' rights is not a basis for dismissing charges, vacating convictions nor creating a right to appointed counsel), 77-38-11 (injunctive relief but not money damages or attorneys fees); VA.CONST. Art.I, §8-A (the constitutional provision does not create a cause of action nor the basis to disturb a decision in a criminal proceeding), VA.CODE ANN. §19.2-11.01[C]; WASH.CONST. Art.1, §35 (the provision in the constitution does not provide the basis for appeal by a defendant nor grounds for the appointment of counsel for a victim); W.VA.CODE §61-11A-8(b)(no cause of action); WIS.STAT.ANN. §950.10 (no cause of action/no appeals); WYO.STAT. §§1-40-210 (no civil liability for violation; evidence of compliance or lack of compliance with victims' rights provisions is not admissible in any criminal proceeding), 1-40-203 (courts may not enforce victims rights where they conflict with the constitutional or statutory rights of the defendant), 7-21-103 (failure to comply with the victim impact statement requirements may not be used by the defendant to challenge his conviction or sentence or to claim a civil cause of action).

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