

## CHAPTER 3

# Prosecution

During the past two decades, many prosecutors working in the juvenile, criminal, federal, tribal, and military justice systems have changed how they respond to victims of crime in significant ways. They have played an active role in helping to implement victims' rights and services nationwide. Heightened sensitivity to the needs of crime victims by prosecutors has helped to increase victim participation in the criminal justice process.

A national survey of prosecutors conducted by the Bureau of Justice Statistics (BJS) in 1990 found that prosecutors are much more responsive to crime victims than they were in 1974, when the National District Attorneys Association conducted a similar survey. The BJS study noted that

the resources, policies, and practices of prosecutors . . . bear directly on the nation's response to crime. The results from the first national survey of prosecutors in more than 15 years reveal an institution that has had to change to meet new challenges in criminal justice. One important change is the increased attention and assistance being given by prosecutors to victims of crime.<sup>1</sup>

## How Prosecutors Are Responding to Victims of Crime

In 1982, the *Final Report* of the President's Task Force on Victims of Crime examined specific areas in which prosecutors could improve their response to crime victims.<sup>2</sup> The Task Force urged prosecutors to:

- Inform victims of the status of their cases from the time of the initial charging decision to determination of parole.
- Bring to the attention of the court the views of victims of violent crime on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution.
- Establish procedures to ensure that such victims are given the opportunity to make their views on these matters known.
- Charge and pursue to the fullest extent of the law defendants who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses.

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*The U.S. Attorney's Office will no longer be just a big concrete and glass building down on Fourth Street where people only go after they've been victimized. Prosecutors will now have names, faces, and phone numbers; they will be working in the community they serve and they will be teaming up with citizens to deter crime.*

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Eric H. Holder, Jr.,  
Deputy Attorney General, and  
former United States Attorney,  
District of Columbia,  
June 3, 1996,  
Introducing the Fifth District  
Community Prosecution  
Pilot Project

- Strongly discourage case continuances, establish on-call systems for victims and witnesses to help prevent unnecessary inconveniences caused by schedule changes and case continuances, and implement prompt property return procedures.
- Give special consideration to both adult and child victims of sexual assault and establish victim-witness assistance programs.

In this section, *New Directions* charts the progress of the nation's prosecutors in putting these principles into practice. It then offers recommendations for further action in areas in which implementation of victims' rights and services has been slow or nonexistent.

One of the most dramatic developments affecting prosecutorial response to crime victims has been the enactment of laws requiring prosecutors to provide fundamental rights to crime victims. According to a study conducted by the Bureau of Justice Statistics in 1994, 86 percent of prosecutors' offices nationwide were required by law to provide services to victims; 82 percent were required to notify victims of the disposition of felony cases concerning them; 60 percent were required to provide victim restitution assistance; and 58 percent were required to assist with victim compensation procedures.<sup>3</sup> However, these legislative mandates have not been implemented by many prosecutors. For example, in a recent study sponsored by the National Institute of Justice, nearly half of all violent crime victims were not informed of plea agreement negotiations, even where they had a legal right to be consulted.<sup>4</sup>

In 1994, there were approximately 2,350 chief prosecutors and 22,000 assistant prosecutors serving the nation's 3,109 counties and independent cities, but nearly half of the U.S. population fell under the jurisdiction of just 127 offices.<sup>5</sup> These offices are located in large metropolitan areas with populations of 500,000 or more, employ large staffs, and often have a greater ability to develop specialized programs and services. Nationwide, the typical size of a prosecutor's office is eight staff members, and nearly one-third of chief prosecutors serve only part-time.<sup>6</sup> The ability of prosecutors to provide specialized victims' services sometimes differs among local prosecutors' offices due, in part, to disparities in the size of and resources available to them. Often, prosecutors in the largest jurisdictions have more resources to establish comprehensive victim assistance programs than do prosecutors in smaller jurisdictions. These obstacles, however, should not preclude all offices from implementing victims' rights and services. Meeting victims' basic needs should be a top priority for every prosecutor in the nation.

On the state level, there is a growing trend among state attorneys general to establish victim assistance programs or to assign personnel

to provide victim support and services. According to the National Association of Attorneys General, this trend is the result of two forces: the enactment of state victims' rights constitutional amendments and the fact that many attorneys general are former district attorneys who have seen the benefits of providing services for victims in their local jurisdictions.<sup>7</sup>

On the federal level, 93 U.S. Attorneys and more than 4,000 Assistant U.S. Attorneys prosecute federal crimes.<sup>8</sup> Today, almost every U.S. Attorney's office employs a victim/witness coordinator. Recent federal statutes and the *Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines)* require that prosecutors make their "best efforts" to implement federal victims' rights laws.<sup>9</sup>

### **Increasing Victim Participation During Prosecution**

One of the most important and basic rights of victims during prosecution is the right to participate. Victims' satisfaction with prosecutors increases dramatically if they are invited into the decision-making process and given the opportunity to present statements at sentencing and other critical stages. According to a national study conducted from 1992 to 1994 by the National Victim Center, Mothers Against Drunk Driving, and the American Prosecutors Research Institute, with support from the Office for Victims of Crime (OVC), 67 percent of victims were satisfied with prosecutors if they were allowed to present an impact statement. When victims were not given an opportunity to do so, only 18 percent were satisfied with prosecutors.<sup>10</sup>

Victim involvement in key decisions should be a cornerstone of victims' rights in every jurisdiction, but state laws and prosecutors' individual policies vary widely. While victim input into sentencing decisions through the use of victim impact statements or allocution has increased since 1982, victim input at earlier, crucial moments is often ignored. Prosecutors should listen to victims, facilitate their input into pre-release hearings and case continuances, and consult with them prior to entering into plea agreements. Victim input into bail decisions, plea agreements, and case continuances must be increased. Currently, only six states require prosecutors to consult with victims about pretrial release. However, 29 states require prosecutors to "consult with" or "obtain the views of" victims at the plea agreement stage.<sup>11</sup>

Victim input fares much better as the case moves through the criminal justice system. All states now allow some form of victim input into parole decisions, and an increasing number of states allow various forms of input at hearings for work release, furlough, and pardon.

At the federal level, the *AG Guidelines* highlight the significance of attorney consultation with victims regarding pleas. They require

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*Every prosecutor in our office has been institutionally sensitized to the needs of victims. At minimum, we do not lose cases because victims decline to participate; at maximum, our success as prosecutors has been dramatically enhanced. We are, purely and simply, far more able and effective performing our role of protecting the public and ensuring swift, fair, and equal justice.*

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Massachusetts Attorney  
General Scott Harshbarger,  
Former District Attorney

prosecutors to make diligent and reasonable efforts to consult with victims and witnesses and to provide them with the earliest possible notice of the terms of any negotiated plea, including the acceptance of a plea of *nolo contendere* or the rendering of a verdict after the trial, if the victim has provided a current address or phone number.<sup>12</sup>

Moreover, victims have a basic right to be informed of the status of their case, but state laws designating prosecutor responsibility for case status notification are inconsistent across the nation. There is a wide range in the means of notification required, and not all laws assign responsibility for notification specifically to prosecutors. Without clearly assigned responsibilities, individual prosecutors are left to their own interpretations of statutes or their own sense of responsibility.

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*The days of disposing of criminal cases without consulting with the victim are hopefully gone. Consultation with the victim is a critical part of the case to make sure that victim justice is truly done for every crime victim. It is not justice unless it is justice for both the victim and the defendant.*

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Arthur C. "Cappy" Eads,  
District Attorney,  
Bell County, Texas

### **Protecting Victims and Witnesses from Intimidation and Harm**

Responding to threats and acts of intimidation against victims and witnesses is one of prosecutors' greatest challenges. A national survey in 1994 funded by the National Institute of Justice found that intimidation of victims and witnesses was a major problem for 54 percent of prosecutors in jurisdictions with more than 250,000 residents and for 43 percent of prosecutors in jurisdictions with between 50,000 and 250,000 residents.<sup>13</sup>

Statutes enacted to protect victims and witnesses from harm take various forms. For instance, several states have created criminal offenses for intimidating, harassing, or retaliating against a victim or witness.<sup>14</sup> Many states give crime victims a right to protection, either in statute or by constitutional amendment.<sup>15</sup> At least 27 states require that victims and witnesses be informed of the measures that are available for their protection.<sup>16</sup> Other states have enacted pretrial reforms that require the court to consider the safety of a victim or witness in ruling on a pretrial release.<sup>17</sup> More than 30 states have established separate waiting areas for victims and prosecution witnesses that protect them from the defendant and defense witnesses.<sup>18</sup> Many states have more than one protective measure available. In addition, several states have amended their pretrial release laws to require or permit the courts to enter "no contact" orders as a condition of release. At least 17 states permit or require the entry of such orders as a condition of release in cases where there is risk of victim or witness intimidation.<sup>19</sup>

While great legislative strides have been made to enact victim-witness protection laws, the reality is that many victims are still afraid to come forward and report crime to the police because they fear retaliation. This is particularly evident in cases involving victims and witnesses of gang-related crimes and domestic violence. Within the past few years, all 50 states have made stalking a crime by statute,

allowing enhanced prosecutorial response to threats of intimidation and harm.<sup>20</sup> Other innovative approaches to victim and witness intimidation are being implemented by prosecutors in communities across the nation.

- In Clark County, Nevada, the District Attorney's Victim Witness Assistance Center provides a variety of services to protect victims and witnesses from intimidation, including assessing their security needs and making arrangements for temporary housing in motels or longer term relocation in public housing. Advocates are available 24 hours a day and work with the police department to provide emergency response to victims or witnesses in danger, including relocation in the middle of the night.<sup>21</sup>
- In February 1994, the Department of Housing and Urban Development (HUD) began a national witness relocation initiative as part of Operation Safe Home, an initiative to reduce drug trafficking and crime in public housing launched by HUD, the Department of Justice, the Department of Treasury, and the Office of National Drug Control. The relocation program allows residents of public housing to move to other public housing across the country so that they can participate as witnesses in criminal prosecutions. The program was developed because many public housing residents have been unwilling to serve as witnesses due to fear of reprisals.<sup>22</sup>

## **Innovations Beyond the President's Task Force Report**

In many areas, it is clear that the system of rights and services available to crime victims throughout prosecution has grown well beyond the recommendations of the 1982 President's Task Force. Notable is the emergence of specialized and vertical prosecution units, multidisciplinary team approaches, community prosecution, crime prevention initiatives, and other programs and policies that have significantly improved the treatment of victims in the criminal justice system.

### **Special Prosecution Units**

Many prosecutors have created special units within their offices to serve victim populations with similar needs, such as victims of domestic violence, sexual assault, and child abuse. Prosecutors in these units receive extensive training in their area of specialization. Cases are handled through vertical prosecution, allowing prosecutors to build rapport with victims by remaining with the case from intake to sentencing. These units ensure that victims do not have to tell their story repeatedly to prosecutors at various stages of the case.

- In Kenosha, Wisconsin, the district attorney has established special prosecution units for domestic violence and sensitive crimes. The Kenosha Domestic Abuse Intervention Program emphasizes speedy disposition of cases. Charging decisions are made within 24 hours, and cases are usually resolved within several weeks. All batterers are required to participate in a mandatory treatment program as a condition of community supervision. The Sensitive Crimes Unit handles all of the county's adult and child sexual assault cases. Both units provide training on domestic violence, sexual assault, batterers' issues, and victim dynamics for all police departments in the jurisdiction.
- In Pinellas County, Florida, the state's attorney's office has designated a prosecutor to handle all elder exploitation and neglect cases. The position, which is part of a special prosecution unit, is responsible for police training and community outreach and education in conjunction with traditional prosecutor roles. To better address the special needs of elderly crime victims during the prosecution of a case, the prosecutor visits victims at their residence to conduct and videotape interviews. The prosecutor can then file motions to perpetuate testimony and to secure a speedy trial pursuant to Florida law.

### **Innovative Programs for Victims with Special Needs**

Many prosecutors' offices have established innovative programs to assist victims with special needs, including non-English speaking victims who need help with translation, elderly victims who need assistance with transportation, and victims with disabilities.

- The Los Angeles County Domestic Violence Council, founded in 1979 as the first joint government-private sector domestic violence program in California and chaired by a member of the district attorney's office, has initiated five innovative approaches to the problem of domestic violence. The council has raised more than \$200,000 to fund a domestic violence hotline in five languages; started a children's art therapy program in domestic violence shelters; coordinated a program in which visiting nurses provide services at shelters; funded the construction of two children's playrooms in prosecutors' offices; and developed a computer network to link all domestic violence shelters in Los Angeles County.
- The Victim Services Unit in the Philadelphia, Pennsylvania, District Attorney's Office uses Vietnamese and Cambodian victim-witness coordinators to assist Southeast Asian victims throughout the case process, including translating written and oral information and helping victims access emergency medical and financial assistance. The coordinators conduct crime prevention programs and victim assistance awareness programs for students in local schools.



- The Victim-Witness Assistance Program in the Cook County, Illinois, State's Attorney's Office employs a full-time victim-witness coordinator for seniors, who works in conjunction with the program's disability specialist and the office's Elderly Abuse Unit. The coordinator performs traditional functions of the victim advocate such as attending court, arranging for transportation to and from the courthouse, and ensuring the availability of wheelchairs and assistance in the courthouse. The program also addresses the needs of other special population groups. Advocates have been assigned to assist gay and lesbian victims and witnesses and to victims and witnesses who are physically disabled.

Another important area of progress for prosecutors has been their leadership in establishing or participating in multidisciplinary teams for the investigation and prosecution of child abuse. Multidisciplinary teams bring together professionals from different disciplines in one location to respond to a specific crime. By using this coordinated response, prosecutors reduce the number of times a child victim must be interviewed and significantly diminish the likelihood that a child will be revictimized by an insensitive criminal justice system.

- In Huntsville, Alabama, the district attorney established the nation's first children's advocacy center in 1984 to reduce the trauma the system was inflicting on children during the investigation and prosecution of child sexual abuse cases. Rather than requiring children to retell their story through repeated interviews and examinations by law enforcement, prosecution, medical, mental health, and social services agencies, the district attorney created a multidisciplinary approach in which all of these professionals work together. Today, over 350 advocacy centers have been established in 48 states.<sup>23</sup>
- In Santa Cruz, California, prosecutors established a central multidisciplinary interview center at a local child care center to coordinate the efforts of law enforcement agencies in sexual abuse cases. The center contains state-of-the-art technology for videotaping and one-way observation of interviews. All local law enforcement agencies have agreed to use the center's designated interviewer to avoid any legal conflicts over the interview process. The assistant district attorney participates in each interview, and a child protective service worker observes the child's responses to determine if he or she should be returned to a home where an alleged molestation has been reported.

## **Community Prosecution**

Increasing numbers of prosecutors' offices are adopting the philosophy of community prosecution. Traditionally, the prosecutor has served as a public jurist or sanction setter, seeking indictments and convictions

after police investigations. The two essential features of community prosecution are working in the community to identify problems that are detrimental to the quality of life in the community and solving those problems through community action and the application of civil and criminal laws. Today, prosecutors are expanding their roles as community leaders through establishing interdisciplinary partnerships with other governmental and private agencies and becoming more visible to the public. Some jurisdictions have even decentralized the prosecutor's main office and established satellite offices that are more responsive to the neighborhoods in which they are located. In Santa Monica, California, prosecutors trained in child victimization work onsite at Stuart House, the local children's advocacy center, coordinating cases with law enforcement offices from several jurisdictions and the team of social workers and advocates assigned to the facility.

For community prosecution to work, prosecutors must address the root causes of crime and examine systemwide approaches to assisting crime victims. By taking this broader approach, prosecutors can accomplish a multitude of objectives not possible with the traditional, narrow focus of punishing actions in a single case.

- The U.S. Attorney's Office in the District of Columbia has created a community prosecution program in the Fifth Police District to work with residents to respond aggressively to the crime problems that afflict their neighborhood. Nineteen prosecutors have been assigned to the project. Their proactive approach to crime prevention, intervention, and victim assistance emphasizes organizing community activism, identifying the problems in the community that breed crime, bringing together individuals in the community who can solve these problems, attending community meetings, and getting out on the streets and talking to residents and shopkeepers about the program. The prosecutors are solely responsible for handling all criminal cases within the Fifth Police District and do not take other cases that could divert their resources and attention. Two prosecutors in the program work in the district police station to serve as a direct link between the community and the U.S. Attorney's Office.
- In Wisconsin, an interesting approach to providing input from a neighborhood in which a crime has been committed was developed by the District Attorney for Milwaukee, Wisconsin, and the U.S. Attorney for the Eastern District of Wisconsin. These prosecutors encourage members of the community to submit community impact statements to the court. Their statements, which are generally used in cases involving drugs, prostitution, gangs and graffiti, provide a vehicle for neighborhoods affected by an offender's criminal acts to inform the court about the crime's impact on them, both individually and collectively.



- Multnomah County, Oregon, District Attorney Michael Shrunck calls his program the “Neighborhood District Attorney” to emphasize that prosecution is not the primary activity of the attorneys assigned to the program. As one of his deputies said, “We are attorneys for our districts, seeking to solve problems and using the law only when necessary.” The role of the Neighborhood District Attorney is to help develop and implement long-term strategies that address problems in the community in order to enhance its quality of life.

## **The Role of Prosecutors in Crime Prevention**

Increasingly, prosecutors are becoming involved in crime prevention programs in their communities, and many have initiated such programs in cooperation with schools. Prosecutors have firsthand knowledge that truancy contributes to juvenile crime; that it is often too late to change patterns of truancy once a child reaches junior high or high school; and that if older brothers and sisters are truant, younger siblings will often follow in their footsteps.

- In St. Joseph, Missouri, the city’s prosecuting attorney started one of the nation’s first grade school truancy prosecution programs. The program allows the prosecution of parents for their children’s truancy under a state statute addressing educational neglect. Parents are prosecuted only after failing to respond to a written notice from the school and the prosecutor’s office of school policies and state laws mandating attendance. The jurisdiction of approximately 80,000 residents prosecutes an average of 35 truancy cases a year. According to the city prosecutor, the program has improved school attendance.

Finally, the following innovative program illustrates how prosecutors can work more effectively to reduce drunk driving.

- The District Attorney’s Office in Santa Cruz County, California, is developing a unique program to respond to alcohol-impaired drivers called STAR-DUI. A creative extension of the “Neighborhood Watch” concept, the program will allow motorists who observe other vehicles weaving or driving erratically to use their cellular telephones to place cost-free calls to police dispatchers by dialing \*DUI. Whenever possible, on-duty officers will then stop the reported vehicle and evaluate its driver for symptoms of intoxication. In cases in which the suspect vehicle cannot be located, the registered owner, as indicated by the reported license plate, will be sent a letter from the District Attorney’s Office advising him or her of the DUI report and the criminal penalties that are imposed for DUI violations. Repeat mentions of a suspect from callers will trigger the police to start a special investigation and prosecution effort. The program will be publicized through a series of public service announcements in the local media.

## **Recommendations from the Field for Prosecutors**

The following recommendations cover policy, procedure, and program reforms for prosecutors to implement to enhance victims' rights and services. Because of the varying capabilities of prosecutors' offices around the country, the prosecutors' working group that helped to develop and review these proposals emphasized that some of the recommendations may not be practical for all offices, especially ones with small staffs. The group also expressed concern that consultation with victims might not be practicable in every case, especially in cases involving large numbers of victims or when law enforcement objectives would be undermined, such as in cases involving confidential informants. At a minimum, prosecutors should ensure that crime victims receive notice of their legislatively and constitutionally mandated rights and provide information and referrals about available community-based services.

### **PROSECUTORS RECOMMENDATION FROM THE FIELD #1**

**Prosecutors' offices should notify victims in a timely manner of the date, time, and location of the following: charging of defendant, pretrial hearings, plea negotiations, the trial, all schedule changes, and the sentencing hearing. Timely notification, orally or in writing, of advanced scheduling should be provided in relevant languages. Statutes should require prosecutors to verify notifications with documentation in case files or through another mechanism.**

Informing crime victims about key events within the justice system so that they will have a chance to exercise their rights of participation is critical. Today, laws requiring victim notification of arrest, pretrial hearings, the trial, schedule changes, sentencing, parole hearing, and release from incarceration have been enacted in most states.

However, clear statutory or constitutional language is needed in each state to define the type of case notification that prosecutors should provide. Not only do state statutes vary in the types of notification required, few assign responsibility for implementation to specific criminal justice officials. Without strict definitions of what their responsibility entails, prosecutors are left to their own interpretations. In states where the prosecutor's responsibility is specifically designated, such as Missouri, prosecutors have been much more effective in addressing this issue.

An OVC-sponsored project entitled *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance*, conducted by the National Victim Center in partnership with the American Prosecutors Research Institute and Mothers Against Drunk Driving, identified over 30 additional types of notifications throughout the criminal justice process, a number well beyond current statewide statutes and practices.<sup>24</sup> A model bill of rights with specific prosecutorial notification provisions was developed by a coalition of national victims organizations in the early 1990s.<sup>25</sup>

To reach all victims in the community, particularly populations underserved due to barriers of language, culture, and disability, notification should be provided in the manner and means most likely to effect actual notice, such as using appropriate languages and media.

#### PROSECUTORS RECOMMENDATION FROM THE FIELD #2

**Prosecutors should establish victim-witness assistance units to ensure that victims of crime receive at least a basic level of service, including information, notification, consultation, and participation. Prosecutors' offices should develop and incorporate into performance evaluations written definitions of the roles and responsibilities of prosecuting attorneys, victim-witness professionals, and other relevant staff and volunteers.**

The 1982 President's Task Force noted that "experience has shown that the only way of ensuring that the needs of victims and witnesses are met is to have a separate unit solely dedicated to their assistance. Prosecutors, police, court personnel, and others in the criminal and juvenile justice systems are already overworked; moreover, these professionals may have to direct their primary efforts in ways not always consistent with response to victim needs." Although today many prosecutors' offices have victim-witness assistance units, national standards have not been adopted to ensure continuity and quality of services. In addition, to emphasize the importance of providing victim-witness services, evaluations for prosecutors and victim-witness coordinators of their performance in this important area should be a critical element of their performance reviews.

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*Prosecutors have an obligation to continue to improve and expand services to victims of crime, to speak on behalf of the victim, and to protect the victim from any injustice. Prosecutors must continue to sensitize all members of the criminal justice system to treat victims like people, not pieces of evidence.*

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Harold O. Boscovich,  
Director, Victim/Witness  
Assistance Division,  
District Attorney's Office,  
Alameda County, California

PROSECUTORS RECOMMENDATION FROM THE FIELD #3

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*As doctors rely on nurses for the skilled continuum of care, prosecutors find that advocates provide the daily connection, knowledge, and compassion to guide victims through the justice labyrinth. The advocate's expertise is not the law, rather the resuscitation of lives devastated by those who violate the law.*

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Vicki Sharp, Director,  
PIMA County Attorney's Office  
Victim Witness Program,  
Tucson, Arizona

**Prosecutors should use the full range of measures at their disposal to ensure that victims and witnesses are protected from intimidation and harassment. These measures include ensuring that victims are informed about safety precautions, advising the court of victims' fears and concerns about safety prior to any bail or bond proceedings, automatically requesting no-contact orders and enforcing them if violated, and utilizing witness relocation programs and technology to help protect victims.**

The President's Task Force stated that prosecutors should "charge and pursue to the fullest extent of the law defendants who harass, threaten, injure or otherwise attempt to intimidate or retaliate against victims or witnesses."<sup>26</sup> Victim and witness intimidation and harm remains one of the greatest threats to the proper functioning of the criminal and juvenile justice systems. Victims and witnesses are often threatened or harassed by defendants and their friends and relatives, and in many cases it is difficult for prosecutors to file charges of intimidation because the perpetrator is not identifiable.<sup>27</sup>

Prosecutors should always ask victims a simple question: "Are you afraid?" and then ensure that victims and witnesses are routinely given information on remedies such as restraining orders and protective orders to help reduce the likelihood of intimidation and harassment. To help protect victims of violent crimes, prosecutors should make every effort to collect victim impact evidence prior to pretrial release proceedings so that victims' fears and concerns about safety can be addressed. Victims should be encouraged to make an oral statement at these hearings.

In cases in which victims submit sworn statements asserting harassment, threats, physical violence, or intimidation by the defendant (or at the defendant's direction) against the victim or the victim's immediate family, the prosecuting attorney should request that the defendant's bail or release on personal recognizance be revoked.

When necessary, prosecutors should establish or use existing witness relocation programs, including those offered through the U.S. Department of Housing and Urban Development, in which witnesses who fear reprisal are transferred to safer housing. Technology is

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expanding the range of protection measures that prosecutors can use to increase victim safety. Among the most effective tools now used to protect victims and witnesses are cellular telephones, alarm systems that notify police directly, and electronic bracelets to track defendants' movements.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #4**

**Prosecutors should address criminal and juvenile justice problems that afflict their communities by exploring the establishment of community prosecution programs as an adjunct to traditional prosecution. Prosecutors should recognize the important role that they can play in reducing crime and should use the authority of their office to support effective crime prevention strategies tailored to the cultures and language needs of their communities.**

Like community policing, community prosecution brings an organized justice response to the public safety needs of a neighborhood. This innovative approach to prosecution is currently being implemented and evaluated by some prosecutor's offices across the country. Over the next few years, these efforts will show the impact of this new philosophy of prosecution. Prosecutors across the nation are establishing crime prevention programs and participating in community coalitions. They go into schools and talk to youth about their offices' vigorous prosecution policies against youth crime. For children who may not yet grasp the consequences of crime, hearing from prosecutors can make a difference. Prosecutors are also participating in public awareness campaigns, and these crime prevention efforts should be expanded. In all of their community prosecution initiatives, as in Portland, Oregon, prosecutors should ensure that staff include victim advocates and reflect the cultures and languages of the community.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #5**

**Prosecutors should play a central role in establishing multidisciplinary efforts to respond to crime.**

The concept and practice of prosecutors forming and joining multidisciplinary teams has become widely accepted. The power of employing a multidisciplinary response to crime was first shown in the

handling of child sexual abuse cases. As noted earlier in this chapter, more than 350 children's advocacy centers now exist across the nation. In many of these facilities, prosecutors work alongside other professionals such as police, medical and mental health personnel, victim advocates, and child protection workers. Some prosecutors have adapted this multidisciplinary approach to prosecuting sexual assault and domestic violence cases as well.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #6**

**Prosecutors should advocate for the rights of victims to have their views heard by judges on bail decisions, continuances, plea bargains, dismissals, sentencing, and restitution. Policies and procedures should be put into place in all prosecutors' offices to ensure that victims are informed in a timely manner of these crucial rights in forms of communication they understand.**

Victim input into key prosecution decisions is a cornerstone of victims' rights. However, state law and individual prosecutor policy in this area varies widely. Since the President's Task Force, victim input into sentencing decisions through victim impact statements or allocution has increased dramatically. In other decisions such as plea bargains and release on bail, victims are often not provided rights for consultation under state statute. Nevertheless, prosecutors can advocate for the voices of victims to be heard in their courtrooms. Even in states that have passed victim participation statutes and constitutional amendments, many prosecutors' offices lack policies and procedures to ensure such participation.

All states have passed laws that allow some form of submission of victim impact information either at the time of sentencing or in the presentence investigation report, but studies show that most crime victims do not submit victim impact statements. While some victims choose not to submit a victim impact statement, many do not because the prosecuting attorney fails to inform them that they have such a right. More than three-quarters of violent crime victims surveyed in states with weak victims' rights protections reported that they were not given an opportunity to make a victim impact statement. Even in states with strong protections for victims' rights, nearly half of victims surveyed said they were not given an opportunity to make a statement.<sup>28</sup> One study has found that when crime victims are encouraged to contribute information about their victimization, over 90 percent do so.<sup>29</sup>



**PROSECUTORS RECOMMENDATION FROM THE FIELD #7**

**Prosecutors should make every effort, if the victim has provided a current address or telephone number, to consult with the victim on the terms of any negotiated plea, including the acceptance of a plea of guilty or *nolo contendere*.**

Because such a large percentage of felony cases are disposed of by plea agreements and sentencing is often negotiated as part of the plea agreement, it is essential for prosecutors to seek victim input before finalizing plea or sentencing agreements. While time constraints and overwhelming caseloads make it difficult for prosecutors to delay recommendations for sentences as part of plea agreements, in violent crimes prosecutors should request judges to postpone any recommendation for sentence until the victim is notified, consulted, and provided with an opportunity to submit an impact statement.

There are clearly times when the prosecutor cannot ethically abide by the victim's preferences, as when it would defeat an obligation to accord similar sanctions for similar crimes, or the evidence cannot sustain a conviction at a higher level. There are also times when the prosecutor can neither accept the victim's wishes nor explain the reason for a contemplated plea agreement, such as when the defendant is cooperating with an ongoing investigation or working undercover.

In these cases, prosecutors should not avoid conferring with victims, who will likely learn about the "lenient" plea and call the victim-witness advocate to demand an explanation. A better technique is for the prosecutor or advocate to confer with victims beforehand and indicate at the end that a plea to a lesser crime may be accepted on "public policy" grounds, which can be described in writing in published prosecutorial guidelines. The prosecutor or advocate should then explain that one or more of those legitimate grounds will guide the final decision. Victims may be upset with such a partial explanation, but less so than having their right to consultation ignored. If a victim raises an objection to the plea at the subsequent hearing, it is appropriate for the prosecutor and defense attorney to inform the court privately about the basis of the plea. In addition, in cases involving large numbers of victims and some other special circumstances, representatives of prosecutor and victim organizations should meet to develop protocols for an effective response.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #8**

**In all cases, particularly those involving sexual assault, the prosecuting attorney should confer with the victim or survivors before deciding not to file charges, or before deciding to seek dismissal of charges already filed.**

According to state court data, about one in five criminal cases is resolved by a prosecutorial decision not to continue or by a court ruling to drop the charges.<sup>30</sup> It is critical that victims have a voice before such a momentous decision is made final. Victims have a vital interest in knowing what is happening with the prosecution of the person charged with the crime against them. It is particularly important for sexual assault victims to have a voice before the important decision of not moving forward with a case is finalized. Speaking with these victims before making a filing decision also benefits the prosecutor by providing another opportunity to evaluate victim credibility. In some cases, prosecutors may change their mind about declining to prosecute because they recognize that the victim will make a good witness.

While prosecutors decline to file charges in many cases brought to them by law enforcement and others, it is often a difficult decision. For a victim, not knowing why the crime was not prosecuted makes their experience even more painful. It is good practice in all cases to confer with victims and survivors regarding filing decisions so they have a clear understanding of the status of the case. The prosecutor should explain the decision not to bring charges and advise the victim of other options they may have available to them, including in some cases filing a civil lawsuit.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #9**

**Prosecutors should establish policies to “fast track” the prosecution of sexual assault, domestic violence, elderly and child abuse, and other particularly sensitive cases to shorten the length of time from arrest to disposition. Prosecutors should encourage judges to give top priority to these cases on the trial docket and should try to ensure that the case goes to trial when initially scheduled.**

Victims complain that delays and continuances are one of their primary frustrations with the criminal and juvenile justice systems. States need to examine victim-oriented speedy trial laws and establish realistic time limits for case prosecution. When continuances cannot be avoided, prosecutors should notify victims and witnesses as soon as possible to prevent inconvenience and costs such as child care, transportation, and time lost from work. In addition, procedures should be established to ensure that cases are continued to dates agreeable to victims and witnesses, and those dates should be secured in advance whenever possible. Reasons for continuances should be explained on the record.

Arguing that delays and continuances can result in the “unavailability of some witnesses and the fading memory of others,” the President’s Task Force recommended that prosecutors “vigorously oppose continuances except when they are necessary for the accomplishment of legitimate investigatory procedures or to accommodate the scheduling needs of victims.”<sup>31</sup> Case continuances prolong and intensify the victimization experience and related trauma. They are sometimes used as a defense tactic to discourage victims from participating in the system. According to the Task Force, “whenever possible it should be determined in advance if a continuance is to be granted and the victim should be informed.”<sup>32</sup> This recommendation remains valid today.

On the federal level, U.S. Attorneys now routinely use the speedy trial provision in the Federal Rules of Criminal Procedure to expedite cases involving child victims.<sup>33</sup> The Federal Rules state that “in a proceeding in which a child is called to give testimony, on motion by the Attorney for the Government or guardian ad litem, or on its own motion, the court may designate the case as one of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other.”<sup>34</sup>

#### PROSECUTORS RECOMMENDATION FROM THE FIELD #10

### **Prosecutors’ offices should use technology to enhance the implementation of victims’ rights.**

The President’s Task Force was farsighted in recommending in 1982 that prosecutors’ offices use an on-call system for victims and witnesses to help prevent unnecessary inconveniences caused by schedule changes and case continuances. Today, the on-call method is a basic service provided by prosecutors and the courts. In hearings conducted across the nation, the Task Force heard countless testimony from victims and witnesses who had appeared for a hearing or trial, ready to cooperate, only to be told to leave and return another day.

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*Across the country, many citizens have lost faith in the criminal justice system. For years, victims have been treated as mere after-thoughts, expected to be there to testify when needed, but otherwise not informed, not consulted, and not made whole. Indeed, it seems that for many years the only right that a victim had was to be present at the scene of the crime. Those harmed most by crime must be afforded justice — not only those accused of crime.*

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Richard M. Romley,  
County Attorney,  
Maricopa County, Arizona,  
Stated in the January/February  
1997 edition of  
*The Prosecutor*, a publication of  
the National District Attorneys  
Association

The Task Force believed that such a system would benefit the justice system as well by reducing witness fees and police overtime pay.

Prosecutors should play a leadership role in encouraging uses of technology that benefit victims. They can encourage judges to allow distance viewing of proceedings by victims, especially in cases where there have been changes in venue. This was accomplished with great success in the Denver trials of the bombing of the Alfred P. Murrah Federal Building. In those trials, victims watched the proceedings in Denver, Colorado, from a site in Oklahoma City via a closed-circuit broadcast. In the future, victims should have the ability to watch proceedings or provide a victim impact statement from their home or worksite via an interactive linkup.

To assist victims in the federal justice system, President Clinton recently called upon the Attorney General to adopt a nationwide automated victim information and notification system.<sup>35</sup> In November 1997, Congress authorized \$8 million in funding for such a system which is in the process of being developed by the Department of Justice.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #11**

**Prosecutors should adopt vertical prosecution for domestic violence, sexual assault, and child abuse cases.**

When a typical case comes into a prosecutor's office, less experienced prosecutors are often assigned to handle preliminary matters such as pretrial release hearings, arraignments, and preliminary hearings. Cases prosecuted as felonies are often reassigned to more experienced prosecutors to serve as trial attorneys. While this practice is useful to give new attorneys experience and allow seasoned attorneys to prepare for trial or plea negotiations, it can be very upsetting to victims by forcing them to retell their story to another attorney with whom they have not yet developed a trusting relationship.

Vertical prosecution prevents this discomfort by retaining the same prosecutor on a case from intake to disposition, just as the defendant generally has one attorney throughout. Moreover, vertical prosecution allows prosecutors to develop expertise on specific types of cases and resources available to assist each type of crime victim.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #12**

**Prosecutors should work closely with victim service providers as well as victims of domestic violence to establish appropriate prosecution policies and support research to assess the effectiveness of proceeding without victim testimony in domestic violence cases.**

While some prosecutors have instituted blanket “no drop” policies in domestic violence cases, such a policy removes from victims the power to determine dismissal of charges in domestic violence cases and may, as a result, place victims in danger of further violence. Many prosecutors employ this policy to help eliminate the alarming number of domestic violence cases that simply fall out of the criminal justice system with no adverse consequences to the batterer. “No drop” policies should be modified to ensure that case by case determination is made of the safety of proceeding without a victim’s testimony in each domestic violence case. Input from the victim is critical to the effective and safe resolution of domestic violence cases.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #13**

**Victims’ rights and sensitivity education should be provided to all law students as part of their basic education in law school and to all prosecutors during their initial orientation and throughout their careers.**

Law school graduates hired as prosecutors are unlikely to have received any training regarding the impact of victimization or the rights of crime victims. While law schools offer courses on criminal law and procedure, the majority still do not provide specialized courses on victims’ rights.

Prosecutors’ offices should provide comprehensive courses on victims’ rights and services for new prosecutors as well as continuing education for all staff. Without thorough education on victims’ rights, inexperienced lawyers entering the profession will have little if any knowledge on the rights and needs of crime victims. All education should include instruction on victims with disabilities and multicultural issues, and trainers for all subjects should include a diverse array of knowledgeable professionals and volunteers, including victims of crime.

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*Just as every law student learns about the rights of the accused, so should they learn about the rights of victims.*

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Increasingly, states are requiring that attorneys receive continuing legal education on certain victims' issues. Arkansas, California, Illinois, Maryland, and Tennessee, for example, have statutorily mandated that prosecutors handling child abuse cases receive specific continuing legal education in these critical areas. Integrating domestic violence issues, as well as other victims' issues, into legal and prosecutor education programs will improve the ethical standards of the legal profession, as well as produce better representation for victims.

**PROSECUTORS RECOMMENDATION FROM THE FIELD #14**

**Prosecutors' offices should establish procedures to ensure the prompt return of victims' property, absent the need for it as actual evidence in court.**

The 1982 President's Task Force recommended that prosecutors recognize their responsibility "to release property as expeditiously as possible, to take the initiative in doing so, and to establish the procedures necessary to bring about the expeditious restoration of property to its lawful owner."<sup>36</sup> To do this effectively, the Task Force recommended that prosecutors work with law enforcement and the judiciary to develop procedures and protocol for expeditious property return.<sup>37</sup>

Today, all states have passed expedited property return laws. Most laws conform with the advice of the Task Force. While some items may need to be retained for admission during the trial, items that can be presented to the jury just as effectively by a photograph should be returned to the victim.

State law is often unclear on who has the absolute responsibility to establish property return procedures. A patchwork of property return policies exists nationwide. In many jurisdictions victims must pay storage fees for recovered vehicles, or their property is sold at police auctions before they can claim it.

In 1989, the Council for Court Excellence developed a guide, *Recovering Your Stolen Property: How to Get it Back Once the Police Find It*, that was included as a national model for criminal justice protocol in the OVC-funded *Focus on the Future: A Systems Approach to Prosecution and Victim Assistance*.<sup>38</sup> Similar property return guides should be developed and distributed to victims nationwide.



The recommendations in this chapter were based upon input from participants at public hearings and reaction and working groups, as well as papers submitted by experts in the field, identified in Appendix A. The recommendations do not necessarily reflect all of the views of the contributors, nor do they necessarily represent the official views of the Department of Justice.

## Endnotes

- 1 Bureau of Justice Statistics, *Prosecutors in State Courts 1990*, BJS bulletin, Washington, D.C.: U.S. Department of Justice, March 1992, NCJ 134500.
- 2 President's Task Force on Victims of Crime, *Final Report*, Washington, D.C.: U.S. Government Printing Office, December 1982:63-64.
- 3 De Frances, C. J., S. K. Smith, and L. van der Does, *Prosecutors in State Courts 1994*, BJS Bulletin, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, October 1996, NCJ-151656. This data was compiled from a national survey of prosecutors conducted in 1994.
- 4 Beatty, D., S. Smith Howley, and D. G. Kilpatrick, *Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims, Sub-Report: Crime Victim Responses Regarding Victims' Rights*, Arlington, VA: National Victim Center, 1997:3.
- 5 President's Task Force on Victims of Crime, *Final Report, 2*.
- 6 *Id.*
- 7 This information was reported on April 18, 1997 by Tracy Sanders of the National Association of Attorneys General.
- 8 U.S. Department of Justice, *Legal Activities 1995-1996*, Attorney Distribution Chart Washington, D.C.: U.S. Department of Justice, 1995:3.
- 9 U.S. Department of Justice, *Attorney General Guidelines for Victim and Witness Assistance*, Washington, D.C.: U.S. Department of Justice, Office of the Attorney General, 1995:5.
- 10 Alexander, E.K. and J.H. Lord, *A Victim's Right to Speak, A Nation's Responsibility to Listen*, Arlington, VA: National Victim Center, Mothers Against Drunk Driving, and American Prosecutors Research Institute: grant from the U.S. Department of Justice, Office for Victims of Crime, National Victim Center, 1994:40.
- 11 National Victim Center, *1996 Victims' Rights Sourcebook: A Compilation and Comparison of Victims' Rights Laws*, Arlington, VA: National Victim Center, 1997:Section 5.
- 12 *Id.* at 10; U.S. Department of Justice, *Attorney General Guidelines for Victim and Witness Assistance*.
- 13 Finn, P., and K. Murphy Healy, *Preventing Gang - and Drug-Related Witness Intimidation*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, November 1996:5.
- 14 See e.g., KAN. STAT. ANN. § 21-3832; ME. REV. STAT. ANN. tit. 17A § 454.
- 15 ALASKA CONST. Art.1, sec. 24, HAW. REV. STAT. § 801D-4; ILL. CONST. ART. 1, Sec. 8.1.
- 16 National Victim Center, *1996 Victims' Rights Sourcebook*, Section 4 at 99. See e.g., DEL. CODE ANN. tit. 11 § 9406 and 9411; MASS. GEN. LAWS ch. 258B- §3.
- 17 See e.g., COLO. REV. STAT. §§ 16-4-101, 16-4-105.
- 18 National Victim Center, *1996 Victims' Rights Sourcebook*, Section 4, at 100. See e.g., ARIZ. REV. STAT. § 13-4431, IND. CODE § 35-37-4-11, MICH. COMP. LAWS §§ 28.1287 (757)(787).
- 19 *Id.*

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- 20 *Id.*
- 21 U.S. Department of Justice, *Serving Crime Victims and Witnesses, 2nd Edition* 66, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, February 1997:66.
- 22 *See* Preferences for Admission to Assisted Housing, 24 C.F.R. 880.615 (1996). HUD has made “Displacements to avoid reprisals” a federal preference for involuntary displacement, allowing housing authorities to quickly accept and/or move residents who have provided information on criminal activities to a law enforcement agency, or based on a threat assessment, have been determined by a law enforcement agency to be at risk of violence as a reprisal for providing such information. *See Preventing Gangs- and Drug-Related Witness Intimidation*, National Institute of Justice, November 1996:34-35.
- 23 As of November 1997, the National Network of Children’s Advocacy Centers, located in Washington, D.C., reports that over 350 Children Advocacy Centers exist nationwide.
- 24 National Victim Center, American Prosecutor’s Research Institute, and Mothers Against Drunk Driving, *Focus on the Future: A System’s Approach to Prosecution and Victim Assistance*, National Victim Center, American Prosecutor’s Research Institute, and Mothers Against Drunk Driving supported by a grant from the U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 1994.
- 25 The two primary victim organizations that developed the model bill were the National Organization for Victim Assistance and the National Victim Center.
- 26 President’s Task Force on Victims of Crime, *Final Report*, 66.
- 27 *Id.* at 67.
- 28 Beatty, *Statutory and Constitutional Protection of Victims’ Rights*, 4.
- 29 *Id.* at 3.
- 30 Ostrom, B. J., and N. Kauder, *Examining the Work of State Courts, 1994, A National Perspective from the Court Statistics Project — Annual Report*, Conference of State Court Administrators, the State Justice Institute, and the National Center for State Courts, 1996:56.
- 31 President’s Task Force on Victims of Crime, *Final Report*, 67-68.
- 32 *Id.* at 68.
- 33 Tit. 18 U.S.C.A. § 3509(j) (speedy trial).
- 34 *Id.*
- 35 *Renewing Our Commitment to Crime Victims*, Presidential Memorandum for the Attorney General (June 27, 1996).
- 36 President’s Task Force on Victims of Crime, *Final Report*, 69.
- 37 *Id.* at 68 (Prosecutor Recommendation), 59-60 (Police Recommendation), and 81 (Judiciary Recommendation).
- 38 National Victim Center, *Focus on the Future*.
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