

New Directions in Victims' Rights

The backbone of our justice system is the laws that give it shape and coherence. For many years, victims of crime were unrecognized in criminal and juvenile justice laws. To the extent victims of crime had a role in the justice system, it was narrow; to the extent victims had rights, they were few. This section examines the nation's progress in enacting laws to establish and enforce rights for crime victims. It is based upon papers submitted by leading experts in the field as well as the input of countless victim advocates, justice system professionals, crime victims, and others at public hearings and in working groups. This section reviews the nation's progress in the past two decades toward establishing state and federal rights for victims of crime, including a federal constitutional amendment to guarantee those rights. It also presents recommendations from the field for ensuring that victims' rights, including fundamental rights for victims of juvenile offenders, are expanded and enforced within the American justice system.

CHAPTER 1

Victims' Rights

Victims' Rights: Two Decades of Dramatic Change

The enactment of the nation's first state bill of rights for crime victims in 1980 in Wisconsin ushered in an era of dramatic progress for victims' rights.¹ In 1982, the passage of the federal Victim and Witness Protection Act² and the release of the *Final Report* of the President's Task Force on Victims of Crime brought national prominence to crime victims' concerns. The *Final Report* established a broad agenda for implementing victims rights and services, and most of its 68 recommendations are highlighted throughout this report. This section reviews many of the state and federal initiatives to expand the rights of crime victims since these seminal events.

State Initiatives

State progress in legislating rights for crime victims within the criminal and juvenile justice systems since the 1982 *Final Report* has been remarkable. When the Task Force began its work, only four states had enacted a set of basic rights for crime victims in the criminal justice system, commonly referred to as victims' bills of rights.³ Today, every state has laws protecting victims' rights. Moreover, victims' rights have been strengthened in 29 states by constitutional mandate.⁴

The scope of rights extended to crime victims also has expanded significantly.⁵ Although states have not established one standard set of rights for victims, most bills of rights contain basic provisions for victims to be treated with dignity and compassion, to be informed of the status of their case, to be notified of hearings and trial dates, to be heard at sentencing and parole through victim impact statements, and to receive restitution from convicted offenders.

Most states afford victims the right to notice of events and proceedings at various stages of the judicial process. Moreover, 35 states give victims the right to attend most criminal justice proceedings and 24 constitutionally protect that right.⁶ Every state now allows courts to consider victim impact information at sentencing, and at least 41 states allow victims to make oral statements during sentencing hearings.⁷ Virtually every state requires victim impact information as part of the presentence report, and at least half of the states expressly require the court to consider that information in sentencing decisions.⁸

Let us make sure that we give our victims the right to be heard—not in some dispassionate way in an impact statement, but in a courtroom if they want to be heard, so that people can know what it's like to be a victim. Let us give them an opportunity to participate, to be there, and to hold the criminal justice system at every level accountable.

U.S. Attorney General
Janet Reno
New York City National
Candlelight Vigil
April 25, 1993

Each year, hundreds of new victims' rights laws and innovative practices are enacted and implemented across the country. Since 1990, after cases of stalking received national attention from the media and victim advocacy groups, all 50 states and the District of Columbia modified their laws to criminalize stalking.⁹ Some state legislatures also reacted swiftly to the escalation of juvenile crime to record levels in the early 1990s by extending at least some rights to victims of juvenile offenders. In 1992, for example, only five states provided victims the right to be notified of a disposition hearing involving a juvenile. By 1995, 25 states provided this right.¹⁰

Despite this record of success, however, victims are still being denied their right to participate in the justice system. Many victims' rights laws are not being implemented, and most states still have not enacted fundamental reforms such as consultation by prosecutors with victims prior to plea agreements, victim input into important pretrial release decisions such as the granting of bail, protection of victims from intimidation and harm, and comprehensive rights for victims of juvenile offenders.¹¹

Sadly today, victims' rights largely remain 'paper promises.' For too many victims and families, the criminal justice system remains more criminal than just when it comes to protecting their rights.

Roberta Roper, Founder,
Stephanie Roper
Committee, Co-chair,
National Victims' Constitutional
Amendment Network

Federal Initiatives

The 1982 passage of the federal Victim and Witness Protection Act and the release of the *Final Report* of the President's Task Force on Victims of Crime were the catalysts for a decade of advances in victims' rights.¹² The Act became a national model for state victims' rights laws, while the *Final Report's* 68 recommendations spurred legislative reforms and initiatives to improve criminal justice and allied professionals' response to crime victims.

Congress' strong advocacy for crime victims was reflected in the Victim and Witness Protection Act's statement of purpose: "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the federal government does all that is possible to assist victims and witnesses of crime, within the limits of available resources, without infringing on the constitutional rights of the defendant; and to provide model legislation for state and local governments."¹³ Congress instructed the Attorney General to develop and implement guidelines for the Victim and Witness Protection Act within 270 days of its enactment. In response, the *Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines)* were issued in 1983, establishing standard policies and procedures and a code of conduct for federal criminal justice officials who interact with crime victims.¹⁴ The *AG Guidelines* have been updated periodically to incorporate new rights for victims, such as those set forth below.

In 1990, the Crime Control Act established a new framework for victims' rights by creating the first federal bill of rights for victims of crime.¹⁵ This legislation, referred to as the Victims' Rights and Restitution Act of 1990, or the Victims' Rights Act, requires federal law enforcement officers, prosecutors, and corrections officials to use their "best efforts" to ensure that victims receive basic rights and services.¹⁶ These include the right to be treated with fairness and with respect for the victim's dignity and privacy, to be reasonably protected from the accused, to be notified of court proceedings, to be present at all public court proceedings unless the court determines otherwise, to confer with the prosecutor, to restitution, and to information about the offender's conviction, sentencing, imprisonment, and release. The "best efforts" standard, however, made the federal law weaker than many state victims' rights laws, which make the provision of victims' rights and services mandatory.

In 1994, passage of the Violent Crime Control and Law Enforcement Act created new rights for victims of sexual assault, domestic violence, sexual exploitation, child abuse, and telemarketing fraud. The legislation also included significant funding for combating domestic violence and sexual assault, placing 100,000 community police officers on the street, and launching a variety of other crime prevention initiatives.¹⁷

In 1996, the Megan's Law amendment to the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Act was enacted to help ensure that communities are notified of the release and location of convicted sex offenders.¹⁸ President Clinton also signed the Antiterrorism Act that year to strengthen efforts against terrorists and to make restitution mandatory in violent crime cases.

In 1997, Congress passed the Victims' Rights Clarification Act, asserting that victims should have the right to both attend proceedings and deliver or submit a victim impact statement. This clarification was issued in response to a judicial ruling prior to the first trial regarding the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, that precluded victims who chose to attend the trial from providing a victim impact statement at sentencing. Also in 1997, Congress adopted the Federal Antistalking Law, which made it a federal offense to cross a state line to stalk another. The act also made stalking within federal jurisdictions a federal offense.¹⁹

The Proposal for a Federal Victims' Rights Constitutional Amendment

The 1982 Presidential Task Force urged the passage of federal constitutional protection for victims' rights, advocating that the Sixth Amendment to the U.S. Constitution be amended to create specific rights for crime victims.²⁰ Subsequently, at a meeting sponsored by the National Organization for Victim Assistance (NOVA) and Mothers

Even in states with a victims' rights constitutional amendment, the overall protection of victims is varied and uneven. In addition, without federal constitutional protection, victims' rights are always subject to being automatically trumped by defendants' rights.

Robert E. Preston, Co-chair,
National Victims' Constitutional
Amendment Network

Against Drunk Driving (MADD), victim activists and national victims' organizations created the National Victims' Constitutional Amendment Network (NVCAN) to provide leadership and coordination of efforts to amend the federal constitution.²¹

A decision was made by NVCAN to seek amendments to state constitutions before addressing a federal amendment. This strategy was adopted to enhance knowledge about the impact of state constitutional reforms for victims' rights and to establish a strong base of support prior to seeking a federal amendment. NVCAN spent the next decade assisting states in their efforts to pass amendments. One of the NVCAN members, the National Victim Center (NVC), played an important role during this period by serving as the central repository for information regarding constitutional amendment efforts around the country. Efforts to pass state constitutional amendments produced impressive results. In each of the 29 states where victims' rights amendments were put to a vote of the electorate, they won by an overwhelming majority, receiving 80 to 90 percent of the vote in most states.²²

When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in.

President William J. Clinton,
Rose Garden,
June 25, 1996

In 1996, federal lawmakers focused on the significance of federal constitutional rights for crime victims when resolutions to add crime victims' rights to the Constitution were introduced in the Senate by Senators Jon Kyl and Dianne Feinstein and in the House by Representative Henry Hyde. Constitutional protection of victims' rights has proven to be a nonpartisan issue. The proposed federal constitutional amendment received bipartisan support in the U.S. Congress and was supported in both political party platforms and by both Presidential candidates in 1996.

In a Rose Garden ceremony on June 25, 1996, President Clinton endorsed a federal victims' rights constitutional amendment, stating:

Participation in all forms of government is the essence of democracy. Victims should be guaranteed the right to participate in proceedings related to crimes committed against them. People accused of crimes have explicit constitutional rights. Ordinary citizens have a constitutional right to participate in criminal trials by serving on a jury. The press has a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be.

Rights for Victims of Juvenile Offenders

The President's Task Force recognized that many reforms in the juvenile justice system focused "solely on the benefits to be extended to offenders while ignoring the needs of a society burdened by their offenses."²³ The *Final Report* challenged the federal government to evaluate the juvenile

justice system from the perspective of the victim who, the report argued, is "no less traumatized because the offender was under age."²⁴

For most of this century, the emphasis on rehabilitating youthful offenders and protecting their confidentiality in the juvenile justice system has overshadowed the needs of their victims. The 1980s brought a decade of reforms to America's juvenile justice system, but few addressed the needs of crime victims. For example, when rights for victims of crime were enacted in state bills of rights in the 1980s, few states extended rights to the juvenile justice system. Of the 45 states that had enacted some form of victims' rights legislation by 1988, only 13 specifically defined their population to include victims of juveniles.²⁵ However, the dramatic increase in juvenile crime in the late 1980s and early 1990s, particularly the increase in the violent nature of such crimes, prompted demand for greater accountability from the juvenile justice system.²⁶

To ensure that victims of juvenile crimes are protected, states are enacting or amending victims' bills of rights to extend basic rights to victims of offenders in the juvenile justice system. While 46 states now allow courts to order restitution from juvenile offenders as part of the disposition of a delinquency proceeding or as part of an informal disposition, only half of the states have legislated comprehensive notification and participatory rights for victims of serious juvenile offenses.²⁷ With respect to victim notification, at least 25 states provide the right for victims to be notified of the disposition hearing, 23 states provide the right for victims to be notified of the adjudication hearing, and at least 25 states provide the right for victims to be notified of final adjudication.²⁸ With respect to victim participation, at least 28 states allow victims of juvenile offenders to submit a victim impact statement at disposition hearings, and 25 states allow victims to attend the disposition hearing.²⁹ Some of these states, however, only recognize these rights in cases involving offenses that would be considered felonies if committed by adults.³⁰

In the important area of plea consultation, by 1995, only 16 states had extended the right to victims of juvenile offenders to receive an explanation of or consultation about plea agreements.³¹ While protection from intimidation and harm remains important, laws in only 15 states establish the right of victims to be notified of juvenile offenders' bail and predisposition release.³² Texas has addressed this problem by passing a statute that gives victims the right to have the court consider their safety when determining if a juvenile should be detained prior to adjudication.³³

By 1997, eight states had raised victims' rights in the juvenile system to constitutional status. Alaska, Idaho, Missouri, Oregon, and South Carolina have included victims of juvenile offenders in their victims' rights constitutional amendments, and Arizona, Oklahoma, and Utah

The rights of victims of juvenile offenders should mirror the rights of victims of adult offenders in the United States. Crime victims should not be discriminated against based upon the age of their offenders.

Sharon English,
Deputy Director,
Office of Prevention
and Victim Services,
California Youth Authority

have authorized legislative extension of victims' constitutional rights to juvenile proceedings.³⁴

At the national level, juvenile crime and victimization received considerable attention in the 1990s. In 1991, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice released a nationwide evaluation of juvenile justice-based victim service programs, *Helping Victims and Witnesses in the Juvenile Justice System*, which served as an important early roadmap for federal action.³⁵ OJJDP also sponsored, in cooperation with the American Probation and Parole Association, the development of juvenile restitution programs, policies, and procedures.

In 1994, the Victims Committee of the American Correctional Association issued a report on victims of juvenile offenders, which found that the majority of victims' rights statutes enacted up to that time did not include protections for victims of juvenile offenders and that most state juvenile codes were silent about victims.³⁶ In 1996, crime victims' rights and services within juvenile justice systems were elevated to national importance with the release of the *National Juvenile Action Plan*, a comprehensive strategy to address juvenile violence, victims of juvenile offenders, and the juvenile justice system.³⁷ The document, developed by the Coordinating Council on Juvenile Justice and Delinquency Prevention, chaired by Attorney General Janet Reno, with extensive input from the Office for Victims of Crime, called for the expansion of victims' rights and services within juvenile justice systems.

While much has been accomplished for victims of juvenile offenders through state and federal action to reform the juvenile justice system, much remains to be done. Not only are rights for victims within the juvenile justice system inconsistent nationwide, many are not enforced. According to the National Victim Center, which conducted an in-depth review of victims' rights within the juvenile justice system, "most of the rights for victims of juvenile offenders should more accurately be called suggestions, or recommendations, as they are only advisory in nature."³⁸ As additional laws are enacted across the nation, enforcement of victims' rights in the juvenile justice system must be made as great a priority as it is in the adult criminal justice system.

Recommendations From the Field for Victims' Rights

A global challenge issued by the field that serves as the foundation for every recommendation in this section is that **consistent, fundamental rights for crime victims should be implemented in federal, state, juvenile, and tribal justice systems, as well as in administrative disciplinary proceedings, including military hearings.**

The rights described in this section are among the most significant recommendations in *New Directions*. While victims' rights have been enacted in states and at the federal level, they are by no means consistent nationwide. All too often they are not enforced because they have not been incorporated into the daily functioning of *all* justice systems and are not practiced by *all* justice professionals. Moreover, most systems lack enforcement mechanisms, leaving crime victims without adequate legal remedies to enforce their rights when they are violated.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #1

The U.S. Constitution should be amended to guarantee fundamental rights for victims of crime. Constitutionally protected rights should include the right to notice of public court proceedings and to attend them; to make a statement to the court about bail, sentencing, and accepting a plea; to be told about, to attend, and to speak at parole hearings; to notice when the defendant or convict escapes, is released, or dies; to an order of restitution from the convicted offender; to a disposition free from unreasonable delay; to consideration for the safety of the victim in determining any release from custody; to notice of these rights; and to standing to enforce them.^a

A federal constitutional amendment for victims' rights is needed for many different reasons, including: (1) to establish a consistent "floor of rights" for crime victims in every state and at the federal level; (2) to ensure that courts engage in a careful and conscientious balancing of the rights of victims and defendants; (3) to guarantee crime victims the opportunity to participate in proceedings related to crimes against them; and (4) to enhance the participation of victims in the criminal

^a On June 25, 1996, President Clinton announced his support for a victims' rights amendment to the Constitution. The President did not endorse any particular language, but made clear that any amendment should establish several rights, including the right: (1) to be notified about public court proceedings and not to be excluded from them; (2) to be heard, if present, regarding bail, sentencing and the acceptance of a plea; (3) to be told about parole hearings and to attend and speak at such hearings if present; (4) to notice of a defendant's release or escape; (5) to appropriate restitution; (6) to input concerning conditions of confinement and release to protect the victim from the defendant; and (7) to notice of their rights. At a June 1997 hearing before the U.S. House of Representatives Judiciary Committee, Attorney General Janet Reno testified to the Administration's belief that the victims' rights amendment must not erode defendants' fundamental protections. The Attorney General further testified that this goal can be achieved most effectively by including express language to that effect in the amendment.

justice process. A victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the state and federal levels. Such an amendment would ensure that rights for victims are on the same level as the fundamental rights of accused and convicted offenders. Most supporters believe that it is the only legal measure strong enough to ensure that the rights of victims are fully enforced across the country. They also believe, however, that the efforts to secure passage of a federal constitutional amendment for crime victims' rights should not supplant legislative initiatives at the state and federal level.

Granting victims of crime the ability to participate in the justice system is exactly the type of participatory right the Constitution is designed to protect and has been amended to permanently ensure. Such rights include the right to vote on an equal basis and the right to be heard when the government deprives one of life, liberty, or property.

While the Justice Department has not endorsed specific language for a victims' rights constitutional amendment, the importance of extending constitutional rights to crime victims has been strongly supported by Attorney General Janet Reno. In August 1996, she stated:

[It] is clear to me that the best way to secure consistent and comprehensive rights for victims is by including those fundamental rights within the U.S. Constitution. . . . What victims want is a voice, not a veto, in our criminal justice system. Today, victims' rights vary significantly from state to state. The federal government, adult and juvenile justice systems, and the military all provide different rights for victims. Victims' rights should not depend upon the state in which they live, whether the crime is federal or state, or whether it occurs on a military base or in Indian country. Fundamental rights for victims should apply in every forum.³⁹

The Attorney General reiterated her support for a victims' rights constitutional amendment in testimony before the Senate Judiciary Committee on April 16, 1997, and before the House Judiciary Committee on June 25, 1997.

While the vast majority of national victims' organizations and a number of other groups including the National Governors Association, the American Correctional Association, and the Victims' Committee of the International Association of Chiefs of Police favor a victims' rights constitutional amendment, some victims' organizations and civil rights and civil liberties groups do not support such an amendment.⁴⁰ Many of these organizations believe that such an amendment would undermine the rights of the accused, particularly the right to due process, and that

reforms should be achieved through statute rather than constitutional amendment. Organizations that advocate for battered women have expressed concern that victims of domestic violence who are tried as offenders may be disadvantaged by a victims' rights constitutional amendment. In addition, judges have raised concerns over the potential increase in federal court supervision of state court activities, and prosecutors and other justice officials have expressed concerns, including that they do not have the resources to implement victims' rights laws in cases involving large numbers of victims.

Advocates for a victims' rights constitutional amendment respond to these concerns by indicating that they are not proposing that victims' rights be given more weight than the rights of the accused. Rather, they want victims' rights to be given equal weight which would require courts to engage in a careful and conscientious balancing of the rights of both. They note that many judges across the country routinely bar victims of violent crime from attending the trials of the individuals accused of committing those crimes and do not consider whether prohibiting attendance actually would violate the defendant's right to due process. In addition, a victims' rights constitutional amendment is needed to ensure that courts do not determine that victims' statutory rights are automatically trumped by defendants' federal constitutional rights.

Proponents of a federal amendment also note that while states' victims' rights statutes and constitutional amendments have led to positive reforms, states have failed to implement state statutory and constitutional rights for victims in significant numbers of cases. In the mid-1990s, the National Victim Center, under a grant from the National Institute of Justice, studied implementation of victim rights laws in four states.⁴¹ Two states were selected because they had strong state statutory and constitutional protection of victims' rights, and two were selected because they had weaker protection. The study surveyed more than 1,300 crime victims and was the largest of its kind ever conducted. It found that many victims were still being denied their rights, even in states with strong legal protection.⁴² It concluded that state protections alone are insufficient to guarantee the provision of victims' rights.⁴³

Key findings of the study included:

- Nearly half of the victims, even in the two states with strong protection, did not receive notice of the sentencing hearing—notice that is essential for victims to exercise their right to make a statement at sentencing.
- While both of the states with strong statutes had laws requiring that victims be notified of plea negotiations, and neither of the weak protections states had such statutes, victims in both groups of states

It is our hope that putting victims' rights in the same document which guarantees the rights of the accused and convicted offenders, that they will not be subject to violation at will, nor subject to changing political winds. It is our hope that victims' rights will be taken just as seriously, and treated with as much respect, as the rights of the accused.

David Beatty,
Director of Public Policy,
National Victim Center

When my 16-year-old son was killed by a drunk driver, I wasn't allowed to give a victim impact statement or to tell the judge how the death of my child had affected our family. But the defendant brought a parade of witnesses on his behalf. Our forefathers recognized that as the times changed, so would the Constitution—and indeed it has. A time came for slavery to be abolished—and the Constitution was amended to assure it. A time came for women to vote—and the Constitution was amended to assure it. The time now has come for victims of crime to have a balanced voice with those of their offenders, and the United States Constitution must be amended to ensure it.

Katherine Prescott, former
National President,
Mothers Against Drunk Driving

were equally unlikely to be informed of such negotiations. Laws requiring notification of plea negotiations were not enforced in nearly half of the violent crime cases included in the study.

- Substantial numbers of victims in states with both strong and weak protection were not notified of other important rights and services, including the right to be heard at bond hearings, the right to be informed about protection against harassment and intimidation, and the right to discuss the case with the prosecutor.⁴⁴

National victims' organizations have reported several cases that illustrate how easily victims' statutory rights can be violated in the judicial process. In one case, a woman and her family were injured by a drunk driver. The defendant was charged with a felony. The woman told the prosecutor she wanted to provide a victim impact statement in open court, a right secured by the state's victims' bill of rights. The judge denied her request, citing his "busy docket."

Many victim advocacy groups believe that a federal constitutional amendment is needed to increase the involvement of victims in judicial proceedings. Today, many victims do not report crime or participate in the criminal justice system for a variety of reasons, including fear of revictimization by the system and retaliation by the offender. Victims will gain confidence in the system if their rights are recognized and enforced, their concerns for safety are given serious consideration, and they are treated with dignity and respect.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #2

Crime victims should have the right to notice of public court proceedings, including pretrial release hearings, plea agreements, sentencing, appeals, and appropriate postconviction release proceedings such as probation and parole hearings. Victims should also have the right to notice of any significant change in the status of defendants and to receive timely notice, upon request, of inmates' temporary or permanent release, or inmates' escape or death.

The right for crime victims to be notified about public court proceedings in a timely fashion is fundamental to their exercise of other rights such as the right to be present and heard. Without timely notification of proceedings, victims cannot exercise other participatory rights.

The 1982 Task Force on Victims of Crime recommended legislation and policies to ensure that victims are furnished case status information, prompt notice of scheduling changes for court proceedings, and prompt notice of defendants' arrest and bond status. Fifteen years later, many states, but not all, have adopted laws requiring such notice. While the majority of states mandate advance notice to crime victims of criminal proceedings and pretrial release, many have not implemented mechanisms to make such notice a reality. Procedures for notification, if defined at all, vary widely. Some states require immediate notice of a defendant's pretrial release. Others only provide victims with a telephone number to call to find out whether the arrested defendant has been released.

Many states do not require notification to victims of the filing of an appeal, the date of an appellate proceeding, or the results of the appeal. Also, most do not require notification of release from a mental facility or of temporary or conditional releases such as furloughs or work programs.

Some state laws require that notice be made "promptly" or within a specified period of time. Both prosecutors and victims often complain that in many instances the time between the scheduling of a hearing and the date of that hearing is too short to give victims adequate notice. Victims also complain that prosecutors do not inform them of plea agreements, the method used for disposition in the overwhelming majority of cases in the United States criminal justice system. Many state victims' rights laws do not require this type of notice.

Many states require victims to request notice, and most require victims to maintain a current address and telephone number on file with the notifying agency. In such cases, efforts should be made to establish a system whereby a single request will entitle victims to notice throughout the criminal justice process. Similarly, victims should be required to keep their addresses current with one agency that would serve as a central source of information for other officials within the criminal justice system. The most effective means of implementing this recommendation is to establish a centralized case tracking system that allows all relevant agencies to both access and update victim notification files, which would then be incorporated on secure, confidential screens. Victims could request notice and maintain contact information with all agencies by notifying only one agency.

Notification of victims when defendants or offenders are released can be a matter of life and death. Around the country, there are a large number of documented cases of women and children being killed by defendants and convicted offenders recently released from jail or prison. In many of these cases, the victims were unable to take precautions to save their lives because they had not been notified of the

For three years I was a victim of domestic violence, including being kidnapped, and raped. I consider myself a 'fortunate victim' as a conviction put the perpetrator in prison for many years. My concern at this point is his coming release. Upon his release my entire life will change. I hope and pray to remain stable...

A survivor of domestic violence

Our world is clearly hurtling into the next century at a rapid pace. New technologies are on the street that were unimaginable only a few years ago. Criminal justice practitioners have to be able to tap into these advances to ensure an effective and efficient response to violent crime and to respond to an increasing offender population. Indeed, we must all become part of the technological revolution that is changing our lives, our workplaces, and our world.

Laurie Robinson, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice

release. Notice of release is an essential part of a victim's right to reasonable protection, a fundamental right described more fully in Recommendation 6.

Today, some communities use automated voice response technology to notify victims of release information, including systems that phone victims repeatedly until they are reached. Other jurisdictions are implementing victim notification systems that combine several technological solutions.

Georgia's law requires officials to notify a stalking victim by telephone before an offender is released, or, if such notice cannot be made, to call the victim at least twice in no less than 15 minute intervals within 1 hour of the offender's release.⁴⁵ The court is also responsible for notifying victims of bail hearings by telephone.

The nation's largest offender release notification system was recently implemented in New York City, where 133,000 inmates are released annually from city jails. Any victim with access to a telephone can register for notification simply by calling a number and providing an inmate's name, date of birth, and date of arrest, or the inmate's state identification number. When the inmate is released or transferred from custody for any reason, the victim receives periodic telephone calls for 4 days or until the victim confirms receipt of the notification by entering a personal code. The police, local prosecutors, victim assistance providers, and local hotline staff have all been trained to explain the system and to encourage victims and intimidated witnesses to use it. Other systems in operation around the country allow victims and members of the public to determine the status of any incarcerated offender by calling an automated telephone information system.

Technology offers increasingly powerful tools for providing immediate notification to large numbers of crime victims through the Internet, televised press conferences, and community meetings when victim contact information is limited or when usual procedures are impractical. The Illinois Department of Corrections website allows victims to track the status and location of all inmates 24 hours a day, 7 days a week. Similar approaches are being developed in Ohio and Missouri. During the cases concerning the bombing of the Alfred P. Murrah Federal Building, prosecutors and victim-witness coordinators held several highly publicized meetings in the community for victims who wanted updated information and an opportunity to interact with prosecutors and other staff members. Representatives of prosecutors and victims organizations should meet to discuss protocols for ensuring appropriate notification in cases involving hundreds of victims, not only in cases of massive criminal violence, but also in white collar crime cases such as telemarketing fraud.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #3

Federal and state laws should be strengthened to ensure that victims have the right to be present throughout all public court proceedings.

The right of crime victims to attend proceedings is fundamental and essential to the meaningful exercise of the other participatory rights described in this report. Notice of proceedings means little if the victim must remain outside the court or hearing room while the proceedings take place.

The most common justification for denying a victim's right of attendance in court is the need to keep them sequestered as potential witnesses. There can be no meaningful attendance rights for victims unless they are generally exempt from this rule. Just as defendants have a right to be present throughout the court proceedings whether or not they testify, so too should victims of crime. Moreover, the presence of victims in the courtroom can be a positive force in furthering the truth-finding process by alerting prosecutors to misrepresentations in the testimony of other witnesses.

The legitimacy of victim attendance has been recognized in a number of states that provide that victims should not be subjected to court exclusion if they are potential witnesses, or in states where laws have been enacted that generally recognize an essentially unqualified right for victims to be present at these proceedings.⁴⁶ A number of states provide that crime victims should have the right to attend every proceeding that the defendant has the right to attend⁴⁷, or that victims be sequestered only on the same basis by which defendants are sequestered.⁴⁸ Louisiana deals with the sequestration issue by providing that victims must testify first and thereafter may attend the proceedings. Alabama allows victims to sit at the prosecutor's table during trial.⁴⁹ Statutes to give victims the right to attend proceedings should be adopted in more states, extended to the juvenile justice system, and strengthened and clarified in states that already purport to provide that right. In many states, the right to attend and be heard often attaches to "all crucial proceedings," with no clear definition of which proceedings are covered by the statute.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #4

Prosecutors should provide victims an opportunity for meaningful consultation prior to major case decisions such as dismissal,

reduction of charges, or acceptance of plea agreements. Judges should not accept plea agreements without first asking prosecutors on the record if they have consulted the victim, and judges should take the views of the victim into account before making a final sentencing decision. Special procedures should be developed for cases involving multiple crime victims, such as acts of mass violence, massive antitrust or telemarketing cases, where consultation may be difficult.

Many states give victims a right to consult with prosecutors. The most common of these laws require prosecutors to consult with victims prior to accepting plea agreements.⁵⁰ Others require prosecutors to consult with victims prior to dismissing charges,⁵¹ declining prosecution,⁵² or making other disposition decisions.⁵³ State laws also compel consultation with victims prior to trial.⁵⁴

Some states extend the right to consultation to victims in juvenile cases.⁵⁵ In addition, legislators have attempted to address victims' lack of knowledge about the justice system by requiring prosecutors to provide explanations of procedures and dispositional decisions in nontechnical language.⁵⁶ Typical are the Nebraska statutes requiring consultation "regarding the content of and reasons for the plea agreement."⁵⁷ Louisiana goes further by giving victims the right to retain private counsel to confer with the prosecution regarding disposition.⁵⁸

Enforcing victims' right to consultation, however, is another matter. Some states specifically require prosecutors to consider the recommendations of victims when making diversion decisions. Other states require prosecutors to confirm their consultation with the victim before a plea agreement may be accepted. In these states, prosecutors must state on the record that the victim was notified and the plea discussed, or explain why consultation was not possible.⁵⁹

Lack of communication about a proposed plea agreement continues to be one of the highest sources of victim dissatisfaction with the criminal justice system.⁶⁰ Victims should have the opportunity for meaningful consultation with the prosecutor at the plea agreement stage or prior to the dismissal of charges. While victims should not have the ability to veto prosecution decisions in a case, they should have a voice.

Victims' rights laws should recognize that cases involving large numbers of victims may call for exceptions to the requirement for victim consultation. This recognition should not, however, excuse prosecutors from their obligation to use any appropriate and reason-

able means of consulting with victims. In the Alfred P. Murrah Federal Building bombing case, which involved hundreds of crime victims, prosecutors held widely publicized community meetings to give victims numerous opportunities for consultation. Representatives of prosecutors and victims organizations should meet to develop a protocol for ensuring appropriate consultation in cases involving numerous victims.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #5

Crime victims should have the right to be heard in major court proceedings including pretrial release hearings, bail hearings, at sentencing, and before the disposition of plea agreements, probation, parole, and commutation. Input should be permitted through both allocution and submission of written, videotaped, or audiotaped statements.

In recognition of the special safety risks victims face when offenders are released, some states have also passed laws granting victims the right to attend and participate in pretrial release hearings. Many legislatures have adopted laws allowing judges to consider the risks offenders pose to the community in general and to individual victims when ruling on their release.⁶¹ Maryland has taken the concept one step further by passing a law that establishes a rebuttable presumption that those accused of violent crime constitute an inherent danger to other persons or to the community at large.⁶² Allowing the victim to be heard on the issue of pretrial release helps to inform the court about the degree of danger posed by a defendant.

Because most criminal cases are resolved through negotiated pleas, the right of victims to be heard by judges before a plea is accepted is essential to meaningful participation in the justice process.

In sentencing proceedings, convicted offenders traditionally have been given the right of allocution, while their victims have not. While all jurisdictions have adopted rights for victim input, not all states permit allocution, an oral statement provided in court by the victim or his or her representative. In addition, the right of victims to provide impact statements has not been extended to all victims, including those in the juvenile justice system. These shortfalls in existing laws must be corrected.

States should consider adopting the use of vertical impact statements and include them in criminal and juvenile case files at the

I don't believe half of the American population or even a small portion knows what can happen to you when you are a victim of a crime going through the criminal justice process.

A victim

outset. When necessary, victims should be allowed to update these statements to record the impact of victimization as time passes. While the right to be heard at sentencing is well-established, statutes allowing victim input at other stages of the justice process are just now gaining prominence. A few states provide that victims may make a written statement at the outset of the case; the statement then remains in the file for the court's consideration throughout the criminal justice proceedings. Victims should also have the right to submit audio- or videotaped statements, or statements via teleconferencing, particularly in parole and other postsentencing hearings, when appearing in criminal or juvenile justice proceedings would create a physical, emotional, or financial hardship for victims or put their safety at risk.

Crime victims' rights laws strive to give victims' standing in the criminal justice system, which is all about them, but has traditionally been without them.

State Senator William
Van Regenmorter,
Chairman of the
Judiciary Committee,
Michigan Senate

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #6

Victims and witnesses of crime should have the right to reasonable protection, including protection from intimidation. The safety of victims and witnesses should be considered in determining whether offenders should be released from custody prior to completing their full sentence.

The right to protection from intimidation, harassment, and retaliation by offenders and the accused is becoming a major focus of public and law enforcement attention. Justice officials report an increase in the harassment and intimidation of witnesses, making it increasingly difficult to obtain convictions because crime victims and witnesses are afraid to testify.⁶³ Legislatures have attempted to address this problem by mandating "no contact" orders as a condition of pretrial or posttrial release. In addition, victims' bills of rights generally require victims to be notified at the outset of the judicial process about legal action they can take to protect themselves from harassment and intimidation.

Harassment or intimidation of a victim or witness by a defendant or convicted offender should result in automatic revocation of pretrial or supervised posttrial release, and should be considered an aggravating factor in sentencing. Such violations should be charged and prosecuted under relevant antiharassment, intimidation, and stalking laws. Any punishment imposed for the separate crime of intimidation should run consecutively after the sanction for the original crime. All protective orders, including those issued as a condition of release, should be maintained in a central, automated database that can be accessed by law enforcement and other justice officials throughout the country. Violations of protective orders should be taken seriously, swiftly

sanctioned, and enforced not only within states but across state lines in accordance with current federal law.

Courts must have clear authority to detain defendants whose danger to victims or others cannot be controlled adequately by other means. Retaliation against a victim or witness when an offender is sentenced to probation or released on parole should result in revocation of that release.

States should also increase security in the courthouse to reduce the likelihood of violence when offenders and victims come into contact before, during, and after justice proceedings. Waiting areas for victims should be separate from those for defendants. Victim awareness education should be required for corrections, parole, and probation officials to increase their understanding of the dangers victims face and to help them communicate with victims about their concerns for safety.

These needs have been met in varying degrees by the states. Many states have enacted laws requiring courts to establish separate and secure waiting areas to protect witnesses and victims waiting to testify from contact with a defendant or his family and friends.⁶⁴ Many states have established specific offenses for the harassment of victims and witnesses⁶⁵ and made harassment grounds for bail revocation and reincarceration.⁶⁶ Some state legislatures have provided that victims need not submit to defense counsel requests for interviews or contact prior to trial.⁶⁷ At least 30 states have taken steps to limit or control face-to-face confrontations at parole hearings by holding separate proceedings for offenders and victims, permitting victims to testify outside the presence of the offender, including outside the prison setting, and teleconferencing offenders into parole hearings at which only parole officials and the victim are present.⁶⁸

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #7

Orders of full restitution for crime victims should be mandatory. Restitution orders should be automatically entered as civil judgments at the end of the offender's supervisory period if not paid. Alternatively, legislation could be enacted giving judges and paroling authorities jurisdiction for enforcing restitution orders until they are fully paid.

Restitution is one of the most significant factors influencing victim satisfaction with the criminal justice process.⁶⁹ While restitution has

always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable degree of justice. In part, this neglect led the President's 1982 Task Force to call for mandatory restitution in all criminal cases unless the presiding judge can offer compelling reasons why restitution should not be ordered.⁷⁰ More than half of the states (29) passed laws in response to this recommendation by the end of 1995.⁷¹ The exceptions permitted in state restitution laws vary considerably from state to state. South Carolina's statute requires that "compelling and substantial" reason be given for not ordering restitution, while courts in West Virginia need only show that restitution would be impracticable.⁷² In 1996, Congress made restitution mandatory in federal criminal cases involving violent crimes with the enactment of the Mandatory Victim Restitution Act, Title II of the Antiterrorism and Effective Death Penalty Act.⁷³

Historically, only persons who have suffered physical injury or financial loss as a direct result of crime have been eligible to receive restitution for out-of-pocket expenses. But as restitution statutes have evolved, definitions of who qualifies and the losses covered have broadened. Today, in some states, family members, victims' estates, and victim service agencies and private organizations that provide assistance to victims are eligible for restitution.⁷⁴ Definitions for compensable losses under state restitution laws have broadened as well. They now include the costs of psychological treatment, sexual assault exams, HIV testing, and occupational or rehabilitative therapy, as well as lost profits, moving and meal expenses, case-related travel expenses, and burial expenses.

Judges should be encouraged to order full restitution, which can be more effectively enforced through recent legislative innovations. Offenders who willfully fail to pay risk being held in contempt, imprisoned, or having their parole or probation extended or revoked. In some states, authorities are authorized to seize financial assets and property to satisfy restitution orders. Other states allow restitution orders to be enforced as civil judgments at the time of the order or at the end of the offender's supervisory period. During incarceration, prison wages, inheritances, federal and state income tax refunds, and lottery winnings should be automatically attachable. Moreover, probation and parole officials must be provided the motivation and means to administer restitution collection, and both must play an active role in enforcing orders when offenders refuse to pay. (For more information on restitution, see Chapter 15.)

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #8
Victims should have the right to disposition of proceedings free from unreasonable delay.

One of the greatest hardships victims endure in the criminal justice process is the delay of scheduled proceedings. Just as defendants have the right to a speedy trial, so too should crime victims. Repeated continuances cause serious hardships and trauma for victims as they review and relive their victimization in preparation for trial, only to find the case has been postponed. Delays are sometimes used as a defense tactic. As a case drags on, witnesses move away, die, give up in frustration, or lose clear recollections of the facts. The impact of continuances is particularly difficult for victims whose memories may fade over time or whose health may deteriorate.

The schedule and concerns of victims should be taken into consideration by judges before they grant continuances. A disposition free from unreasonable delay helps to ensure that victims as well as defendants receive speedy trials and that the impact of delay on victims is considered by judges in response to requests for continuances. Several states have already adopted such standards as law. As of 1996, 12 states gave crime victims a constitutional right to a speedy trial or prompt disposition of proceedings. At least 13 others have enacted statutes to give victims such a right or to ensure that their interests are considered in rulings on continuances.⁷⁵

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #9
All crime victims should have the right to a full range of services and support to help them recover physically, psychologically, and in practical ways from the effects of crime, whether or not they report the crime or become involved in related criminal prosecutions or juvenile adjudications.

In the aftermath of victimization, victims may have many different needs. Victims who report crime need information, assistance and protection when they choose to participate in the criminal and juvenile justice process. Not only should victims have the right to be heard or consulted in decisions that affect them, but they should receive protection if they are witnesses and transportation to and from legal proceedings.

The vision of America died at 9:02 a.m., April 19, 1995. Everyone feels so personally violated here. We have a single mission. The goal is to go from victim to survivor.

Jim Horn
FBI Agent, Retired
Behavioral Sciences Unit
Quantico, Virginia
Comments following the
Alfred P. Murrah Federal
Building bombing,
Oklahoma City, Oklahoma

Victims respond differently to their experiences. Some victims may be reluctant or unwilling to report the crimes committed against them and may fear involvement in the justice system. For example, some battered women may be too frightened to report violent incidents to the police. Sexual assault victims fear the loss of privacy in coming forward to report the crime. Other victims distrust law enforcement agencies, and immigrants who become victims sometimes fear deportation.

Regardless of whether they report the crime, many victims need emergency and ongoing services such as health care, shelter, lock replacement, cash assistance, social and community services and support, mental health counseling, victim compensation, child care services, referrals to support groups, translators, and transportation. Chapters 6 and 14 address these issues in greater detail.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #10

Crime victims should have fundamental rights that are enforced in all juvenile justice proceedings.

Traditionally, juvenile justice systems have been cloaked in secrecy. Victims have had limited rights within those systems, which were designed years ago to protect the confidentiality of juvenile offenders. Although some state victims' bills of rights and constitutional amendments include rights for victims of juvenile offenders, most states have extended only selected rights to these victims. Moreover, victims' rights enacted on the federal level do not apply to victims of juvenile offenders. The participation of victims in juvenile justice proceedings is important because it recognizes the impact of the crime on victims and encourages young offenders to consider the personal impact of their offenses. Putting a human face on the results of their destructive behavior helps offenders take responsibility for their actions and deters future crime.

The rights of victims of juvenile offenders should mirror the rights of victims of adult offenders. Victims of juvenile offenders should receive information and notification about the status of the case and the offender from the point of arrest through the juvenile corrections system. Victims of juvenile offenders are frustrated by their chronic inability to access vital information about their case due to confidentiality restrictions. Confidentiality protections for juvenile offenders which preclude victims from receiving vital information must be lifted.

Victims of juvenile offenders should have the right to provide input through victim impact statements. While all states now allow victim impact statements at sentencing in the criminal justice system, only

28 states had extended this right to victims of juvenile offenders as of 1995.⁷⁶ Without victim impact information, the financial, physical, and emotional injuries of crime cannot be considered when determining adequate restitution or appropriate sentencing.

Victims of juvenile offenders should have the right to restitution, and states should aggressively pursue collection and disbursement of such awards. Restitution is underutilized for victims of juvenile offenders. Restitution has two important benefits. It compensates the victim for losses suffered as a result of the juvenile's behavior, and it holds the juvenile accountable for the damages he or she has caused. Forty-six states have statutory authority to order juvenile offenders to pay restitution.⁷⁷ Some states make juveniles and their parents jointly responsible for damages in a civil action or restitution. The majority of the statutes place limits on the amount of damages or restitution that can be ordered.⁷⁸ Nonetheless, this important right is underutilized. A 1991 nationwide study found that only 17 states collect restitution from juvenile offenders, and only 13 state juvenile corrections agencies disperse the restitution to victims.⁷⁹

Finally, victims of juvenile offenders should have the same right to reasonable protection they would have enjoyed had the offender in their case been older. Half of the states give victims of adult offenders the right to be reasonably protected from the offender during the criminal justice process, while this right in most cases is not extended to victims of juvenile offenders. Given the increase in violent crimes by juveniles,⁸⁰ the need for protection is plainly present.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #11

All criminal and juvenile justice agencies, including courts, as well as victim assistance programs, should help ensure that victims receive information about their rights in a form they understand.

Justice system and allied professionals who come into contact with victims should provide an explanation of their rights and provide written information describing victims' rights and the services available to them. Furthermore, rights and services should be explained again at a later time if the victim initially is too traumatized to focus on the details of the information being provided. Explanations of rights and services should be reiterated by all justice personnel and victim service providers who interact with the victim.

To provide this critical information, justice and allied professionals need specialized training on the most effective communication

techniques to use with victims, including child and elderly victims, victims who do not speak English, victims from diverse cultures, and victims with disabilities, including those who are blind or deaf or who have cognitive or developmental disabilities. Brochures describing victims' rights and services should be developed in the languages used by crime victims in each community, and all brochures and critical victim information written in English should include a sentence offering the literature in other languages as needed. Special provisions should be made for communicating with victims who are blind or visually impaired using audiotapes, special computer disks, Braille, or other communication technologies. Service providers should be trained to use sign language interpreters and TDD technology to communicate with victims who are deaf or hard of hearing.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #12

Victims of crime should receive assistance in exercising their participatory rights. Advocates should be available to explain rights to victims, help them to exercise those rights and, when necessary, serve as their representatives in court and other key justice processes when victims are underage or incapacitated or if representation is otherwise appropriate.

One of the greatest barriers to victims participating in justice proceedings is their not having the means to do so. Many victims cannot afford to pay for parking, child care, or time off from work. Others do not have the resources to cover transportation costs to courts, especially if the trial or hearing is held outside their community. In these cases, every effort should be made to facilitate victim participation by providing special services such as child care, or paying for transportation and lodging expenses. For example, in the Alfred P. Murrah Federal Building bombing cases, government and non-profit agencies and the private sector formed a partnership to provide funding for victim travel expenses after the trial was moved from Oklahoma City to Denver, Colorado in 1997. In addition, the court in Denver set up a closed-circuit television communication in Oklahoma City to allow victims there to view the proceedings in Denver. New uses of technology should be considered to provide access to trials and other proceedings for victims who are physically unable to attend them. Furthermore, more consideration must be given to the tremendous diversity among victims in the design and delivery of victim services.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #13

States should review their victims' rights statutes and constitutional amendments to determine if fundamental rights are extended to all crime victims.

Victims' rights in many states apply only to a special "class" of crime victims—victims of felonies. Many serious domestic violence and drunk driving cases prosecuted as misdemeanors are thus not covered by victims' rights statutes. States should consider extending victims' rights in all cases, regardless of their classification as felony or misdemeanor or violent or nonviolent.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #14

States that have not already done so should adopt truth in sentencing reforms to ensure that victims know how long offenders will actually be incarcerated.

Under traditional sentencing practices in most jurisdictions, release dates for offenders were set by parole authorities, and the actual periods of incarceration served by offenders had little relationship to the prison terms specified in criminal sentences. In recent years, many jurisdictions have adopted truth in sentencing reforms to limit or abolish parole and to make the time an offender serves more predictable. In federal cases, for example, parole has been abolished and "good time" credits are limited to 15 percent of sentences, forcing federal offenders to serve at least 85 percent of the sentence imposed in court.⁸¹

In addition to furthering penal objectives, truth in sentencing reforms serve important interests of victims. Victims as well as the public are entitled to know how long an offender will actually be incarcerated. Victims should not be burdened with the anxiety that offenders will be released prematurely, compelling them to appear repeatedly at postconviction hearings.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #15

Federal and state laws should prohibit employers from taking adverse action against victims who must miss work to participate in the criminal or juvenile justice process.

Why are there laws if they only protect the criminal?

A crime victim

In his statement endorsing a Victims' Rights Constitutional Amendment on June 25, 1996, President Clinton indicated that "[t]here ought to be . . . in every law, federal and state, a protection for victims who participate in the criminal justice process not to be discriminated against on the job because they have to take time off. That protection today is accorded to jury members; it certainly ought to extend to people who are victims who need to be in the criminal justice process." Without this protection, many workers cannot exercise their fundamental right to participate in justice proceedings. All jurisdictions should adopt the reform proposed by the President, and it should be enacted into federal law.

While protections for jurors are limited, victims should have, at minimum, the same levels of protections as jury members. To the extent possible, employers should be required to work with employees and their unions to ensure that victims maintain their employment after absences due to attendance at criminal and juvenile justice proceedings. Victims should continue to receive salaries or wages, reduced by any witness fees received, for a designated period of time. Afterwards, they should be able to use vacation and sick leave. In addition, judges should be encouraged to take employment concerns of victims and their employers into consideration when scheduling proceedings.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #16

In cases where there is good cause to believe that bodily fluids were exchanged, victims should have the right to be tested and to have the accused or convicted offender tested at appropriate times for the HIV virus and sexually transmitted diseases. State statutes should require these tests to be conducted by specially trained personnel who can advise victims of the reliability, limitations, and significance of the test, as well as HIV treatment options. In addition, laws should specify the agency that will pay for HIV testing and pre- and posttest counseling, as well as treatment for any victims who test positive.

According to the National Victim Center, as of the end of the 1995 legislative session, 44 states had adopted laws providing mandatory testing of sexual offenders in cases involving sexual penetration or other exposure to an offender's bodily fluids. Of those, 16 make testing mandatory before conviction, and 33 require testing after. Six states

make testing mandatory both before and after conviction. Twenty-six states have a mandatory testing law that applies to juvenile offenders.⁸² In 1990, the Federal Government passed legislation making HIV testing of convicted sexual assault offenders mandatory for states to be eligible for certain prison grants.⁸³ The Violent Crime Control and Law Enforcement Act of 1994 gives Federal victims of sexual assault the right to obtain an order requiring the defendant to submit to an HIV test, and to obtain the results of that test.⁸⁴ It also provides for follow-up testing and counseling.

Typically, pretrial testing of defendants is left to the discretion of the court, which must find that there has been significant exposure and that the health and safety of the victim may be threatened. The court is required to hold a hearing, during which the victim must show that the defendant has been charged with a sexual offense and that the test would provide information necessary to protect the health of the victim and his/her partner(s). Some statutes permit a series of tests at 6-month intervals for up to 2 years to detect viruses that do not show up on initial tests.

When victims have possibly been exposed to HIV, they should be referred to an anonymous testing site that uses the most advanced technologies, guarantees maximum reliability of test results, and provides pre- and posttest counseling regarding transmission of the virus and the testing process. If after receiving pretest counseling the victim wants to determine the offender's HIV status, the offender should be tested as soon as possible, including prior to conviction, with a second test at least 3 months later. Regardless of the decision to test the offender or the test results, victims should be encouraged to be tested to determine their HIV status. Although testing the offender may be important to the victim, it should be emphasized that testing the offender does not replace focusing on the victim's medical and emotional needs. Testing the victim in the immediate aftermath of a victimization will only provide information about the victim's HIV status prior to the crime. If a victim was exposed to HIV during the crime, testing 1 month and then 3 months after the event (or at other times recommended by health authorities) will provide a clearer indication of whether the virus was transmitted by the crime. While there is a relatively low risk of transmission, victims who test positive should be given access to free FDA approved medical treatments of their choice.

Counseling is an essential part of responding to the risk of HIV transmission in a crime. Victims may not understand the latency of the disease, and may not fully appreciate the limited reliability of a negative test result. States frequently require counseling in conjunction with testing, but specifications vary widely from jurisdiction to jurisdiction. In some states, counseling must be provided contemporaneously with

the test, as in Maine, where counseling must discuss the nature, reliability, and significance of the test, as well as its confidential nature.⁸⁵ In contrast, other states such as Michigan simply require that the agency notifying the victim of the results of the test also refer the victim to counseling.⁸⁶ Oklahoma specifies that the victim receive counseling before and after the test.⁸⁷ Florida requires the testing agency to afford “immediate opportunity for face-to-face counseling” when the results are revealed to the victim.⁸⁸ In some states, the statute fails to provide for counseling.

Most laws require confidentiality of test results, but advocates still report problems with insurance companies that, upon learning of the victim’s HIV test or results, raise health insurance premiums or cancel the victim’s policy altogether. Minnesota has enacted a law to prohibit such practices.⁸⁹ Wisconsin’s law provides that the results of a test ordered by the court will not become part of a person’s permanent medical record. States should enact legislation to protect victims from such practices.

It is essential to recognize the impact of crime on a neighborhood and to give residents the information and means to get involved.

United States Attorney
Thomas Schneider,
Eastern District of Wisconsin

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #17

State and federal laws should allow, and criminal and juvenile justice agencies should facilitate, community impact statements as a means for members of a neighborhood or community that has been impacted by crime to have input into sentencing.

In many cases, neighborhoods and communities as well as individuals are victims of crime. This is especially true in drug, gang, and prostitution cases where criminal activity endangers and degrades entire neighborhoods, affecting property values and quality of life issues. A few prosecutors have pioneered the use of community impact statements, which are, in effect, an expanded version of the victim impact statement. For example, as noted in Chapter 3, the District Attorney for Milwaukee, Wisconsin and the United States Attorney for the Eastern District of Wisconsin notify members of the community when drug arrests are made and encourage them to become involved in the criminal proceedings by submitting impact statements. These offices inform residents in affected neighborhoods of arrests and trial dates and coordinate outreach efforts in concert with probation agencies to help them prepare their statements. To encourage this important type of participation in criminal justice proceedings, both state and federal laws should recognize communities as victims and permit this form of input.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #18**Victims should have standing to enforce their rights, and sanctions should be applied to criminal and juvenile justice professionals who deny victims their fundamental rights.**

Although more than 27,000 state and federal laws have been enacted to protect and enforce the interests, rights, and services for crime victims, the *consistent* implementation and enforcement of these laws is an area of great concern. Victims report that criminal and juvenile justice officials at times disregard their statutory and constitutional rights, and that they have no legal recourse when their rights are violated. States should enact provisions that give victims measures to enforce their rights when they are disregarded.

While limited legal remedies such as court-ordered injunctions and writs of mandamus are generally available to force criminal justice personnel to comply with the law, states are beginning to pass laws that provide specific statutory remedies and recourse for crime victims. A Maryland statute enables victims of violent crimes to apply for “leave to appeal” any final order that denies victims certain basic rights.⁹⁰ Arizona law grants victims the right to challenge postconviction release decisions resulting from hearings at which they were denied the opportunity to receive notice, attend, or be heard. Arizona law allows victims to sue for money damages any government entity responsible for the “intentional, knowing or grossly negligent violation” of the victims’ rights.⁹¹

It is critical that effective measures be available to remedy violations of victims’ rights, including authority for the government to obtain redress through applications for mandamus and appeal. The need for this reform in federal proceedings is illustrated by the first trial in the bombing of the Alfred P. Murrah Federal Building, in which the trial court ruled that victims would not be allowed to attend the trial if they wished to be heard at the sentencing stage. On review, the Tenth Circuit Court of Appeals held that victims had no standing to assert their right to be present and that the government could not enforce that right by appeal or by seeking a mandatory order.⁹²

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #19**States and the federal government should create compliance enforcement programs, sometimes referred to as victim ombudsman programs, to help facilitate the implementation of victims’ rights.**

State victims' rights compliance enforcement programs oversee justice officials' and agencies' compliance with crime victims' statutory and constitutional rights and investigate crime victim complaints relevant to those rights being violated.⁹³ A few states have created such programs within an existing agency or have established a new, state-level oversight authority. In initiating such a program, officials should consider the importance of meaningful remedies and sanctions for noncompliance with victims' rights laws; and ensure that victims, victim service providers, advocacy groups, and victim-sensitive justice professionals are involved in the program planning process. In addition, justice agencies should consider increasing crime or court surcharges to support a compliance enforcement functions, and should evaluate overall compliance enforcement system.

Innovative approaches to victims' rights oversight have been implemented in several states:

- The Minnesota Office of the Crime Victims Ombudsman (OCVO) protects the rights of victims by investigating statutory violations of victims' rights laws and mistreatment by criminal justice practitioners. OCVO is authorized to initiate its own investigation of alleged violations, recommend corrective action, and make its findings public to both the legislature and the press.
- The South Carolina Office of the Crime Victims' Ombudsman is empowered to act as a referral entity for victims in need of services, a liaison between victims and the criminal and juvenile justice systems in the course of their interaction, and a resolver of complaints made by victims against elements of those systems and against victim assistance programs. In addressing complaints, the South Carolina Ombudsman program is not limited to inquiries into violations of specific statutory rights, but may review other conduct that is potentially unfair to victims.⁹⁴
- Colorado has recently enacted a state-level coordinating committee that serves an ombudsman function for victims' rights implementation.⁹⁵ The Colorado Victims' Compensation and Assistance Coordinating Committee and its Victims' Rights Act (VRA) subcommittee help victims enforce their rights by overseeing the actions of local government agencies. The subcommittee and full coordinating committee have the power to investigate VRA violations and to recommend action with which an agency must comply to rectify victims' complaints. The two bodies also monitor the implementation of those suggestions and may refer issues of noncompliance to the governor or attorney general.⁹⁶
- Wisconsin has a state-level victims' services office—the Victim Resource Center (VRC)—which provides information and service referrals to victims and acts as a liaison between victims and

criminal justice agencies in resolving complaints concerning unlawful or inappropriate agency action. Though it lacks enforcement authority, the VRC protects victims' rights by investigating complaints and presenting its recommendations for corrective action to state criminal justice officials. The Wisconsin legislature is currently debating a measure that would prescribe remedies for violations of victims' rights laws and provide for the enforcement of Wisconsin's victims' rights constitutional amendment.⁹⁷

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #20

Federal crime victims' rights should apply in military proceedings.

The extensive range of information, notification, and participatory rights that have been enacted on the federal level should be fully implemented for victims' rights within military justice proceedings. Some victims' rights established at the federal level are not implemented in military courts. Restitution for victims is frequently ordered as part of sentences for federal crimes, but there is no authority to do so under the Uniform Code of Military Justice.⁹⁸ Moreover, the military justice system has failed to adopt "truth in sentencing" reforms and continues to parole offenders, a practice that generally has been abolished in federal criminal cases. The Uniform Code of Military Justice should be amended to make restitution mandatory.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #21

Indian tribes should review their legislation, policies, and court systems to enhance the fundamental rights of Native American victims.

There are 621 federally recognized tribes in the United States; each of these tribes is a separate sovereign with legislative and adjudicatory authority. There are 242 separate tribal court systems, trial and appellate, as well as numerous traditional dispute resolution forums unique to each tribal culture.⁹⁹ While many major crimes that occur in Indian country are prosecuted in federal or state courts, tribes retain concurrent criminal jurisdiction over Native American defendants.¹⁰⁰ Moreover, tribal courts are often the sole forum for prosecuting crimes and juvenile offenses involving child abuse and domestic violence.

Tribes should analyze and amend their laws and policies, as well as observe and change procedures of their courts, law enforcement offices, and human services agencies in order to protect and enhance the fundamental rights of Native American victims. Tribes should

establish joint tribal-state and federal forums to ensure that Native American victims are not lost in the jurisdictional complications of Indian country. They should also train their leaders, justice personnel, and community members on prevention measures and effective responses to crime in Indian country.

Notwithstanding political pressures and lack of economic resources, a number of tribes have successfully implemented crime victims' rights ordinances, mandatory arrest policies for domestic violence, safe houses, community education projects, and an array of culturally appropriate systems for protecting Native American crime victims. Some tribes have included the rights of crime victims in their codes. For example, the Uniform Sentencing Policy of the Courts of the Navajo Nation includes the rights for victims to have input into plea agreements, proposed sentences, and restitution decisions. The Salt River Pima-Maricopa Indian Community Council passed a Children's Bill of Rights, and the Crow Tribal Council developed rights for domestic violence victims that are set forth in its Domestic Abuse Code.

From tribal police intervention to tribal court proceedings, the victims of violent crime in Indian country must have rights available to them. They must be informed of their rights, encouraged to exercise their rights, and be protected from further harm. This is the basic responsibility of a tribal criminal justice system.

Joseph Myers,
Executive Director,
National Indian Justice Center

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #22

Victims of crime should have rights at administrative proceedings, including the right to have a person of their choice accompany them to the proceedings, the right to input regarding the sanction, and the right to notification of the sanction.

Agencies and institutions that seek to hold their employees or students accountable for their alleged criminal or negligent behavior often do so through administrative proceedings, including disciplinary hearings on college campuses in sexual assault cases and other crimes that violate college rules. Governmental and private sector organizations also conduct administrative hearings when an employee is accused of misconduct, which sometimes also constitutes a criminal act. These hearings are held to determine whether an employee or student should be dismissed or sanctioned.

Victims often complain about their lack of rights and protections at these hearings. For example, at disciplinary hearings on college campuses and in schools, as well as administrative proceedings when criminal justice personnel are accused of conduct violations, victims are frequently not allowed such fundamental rights as the right to be accompanied by a person of their choice and the right to submit a victim impact statement before the offender is sanctioned. Agencies and institutions should review their disciplinary codes and ensure that

fundamental victims' rights are incorporated. In addition, all cases involving criminal conduct should be referred to law enforcement for further investigation.

State laws should be strengthened to ensure that these victims receive appropriate rights. For example, California recently amended its Education Code to provide victims of sexual assault and harassment in public schools with the rights to: be accompanied by a parent or other support person during testimony in disciplinary hearings; adequate notice prior to being called to testify; testify at a hearing closed to the public; and have evidence of irrelevant sexual history excluded.¹⁰¹ The law also requires school districts to take further steps to provide a nonthreatening environment for child victims by adopting procedures that have become the standard across the country for children who testify as witnesses in other legal proceedings. Support for the law was initiated by the Santa Monica-UCLA Rape Treatment Center after the rape of a 12-year-old middle school student in a Los Angeles school by a fellow student. She had to face the accused attacker, his parents, and his attorney alone during an expulsion hearing.¹⁰²

The *Student Right to Know Campus Security Act of 1990*,¹⁰³ and *The Campus Sexual Assault Victims' Bill of Rights*¹⁰⁴ passed by Congress should be fully implemented. These laws should be amended to ensure that the same rights to be informed, present, and heard in criminal proceedings apply equally to disciplinary proceedings in school settings.

Other victims whose rights are woefully overlooked are victims of mentally ill offenders whose cases are adjudicated through an involuntary mental commitment process. Where applicable, these victims should receive the same rights as other victims, including the right to receive notice of release.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #23

Criminal and juvenile justice agencies should establish a means of monitoring their own compliance with crime victims' rights laws and require public documentation showing that victims were provided their rights or indicating an appropriate reason why they were not. In addition, independent audits should be conducted of state and federal agency compliance with victims' rights laws.

Criminal and juvenile justice agencies and institutions should develop and implement policies and procedures to ensure that all

crime victims are afforded the opportunity to exercise their rights. Monitoring should be mandatory at all stages of the justice systems. Criminal and juvenile justice agencies should document whether or not crime victims receive notice of and an opportunity to exercise their rights and, if not, why not. Such documentation is a significant step toward holding officials accountable and will enable agencies to monitor their compliance with legal mandates.

Further information is needed about the level of state and federal compliance with victims' rights laws to determine how to improve implementation of these laws. This information should be obtained through independent audits that can evaluate levels of compliance and propose needed reforms to improve the system.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #24

Introductory and continuing education for all criminal and juvenile justice professionals should address victims' rights, needs, and services, and incorporate involvement from crime victims themselves.

To increase compliance with victims' rights laws, states must make education on the rights of crime victims a priority during orientation and continuing education training programs for criminal and juvenile justice officials. Implementing victims' rights remains the responsibility of these officials. They must be educated about the importance of their victim-related responsibilities and sensitized to the critical needs of crime victims.

Training programs for law enforcement officers, prosecutors, and judges, as well as probation, parole, and corrections officials, have been developed and implemented on a broad scale through training and technical assistance grant projects funded by the Office for Victims of Crime. Some institutions responsible for educating and training these professionals are beginning to incorporate victim-related sensitivity training into their permanent curricula. In some states, such training is mandated by statute, but in others, the incorporation of victims' issues is voluntary.¹⁰⁵

Victim input into such educational programs is critical. Victim impact panels provide a vehicle for victims to tell justice professionals firsthand about the physical, financial, and emotional impact of crime. Developed by Mothers Against Drunk Driving as an educational tool in court-ordered probation programs for DUI offenders, and for youth offenders by the California Youth Authority, they are increasingly being

incorporated into numerous types of programs.¹⁰⁶ Moreover, victim sensitivity education and state-of-the-art curricula in victim issues must be included in academia in the fields of health care, medicine, psychology, social work, theology, business, law, and education.

VICTIMS' RIGHTS RECOMMENDATION FROM THE FIELD #25

New funding mechanisms must be developed to support the expansion and implementation of victims' rights and services nationwide.

Since its establishment in 1984, the Crime Victims Fund has provided more than \$2 billion to states to help implement victims' rights and services. Additional financial resources are needed at the federal, state, and local levels, however, to ensure consistent, comprehensive implementation of victim rights' laws and the provision of needed services to every crime victim.

While a federal constitutional amendment would provide the legal framework for securing victims' rights, many justice officials and victim advocates believe that the lack of implementation of rights is due in part to inadequate funding. In many places, a lack of funding has had the practical effect of denying victims their basic rights.

One potential new source of revenue on the federal level is funding generated under the False Claims Act, which triples the damages and penalties imposed in civil cases involving fraud against the federal government.¹⁰⁷ In past years, several hundred million dollars have been deposited into the Federal Treasury from judgments rendered in these cases. A significant portion of these funds should be used to ensure that state and federal victims' rights laws are enforced. In addition, provisions should be made to provide needed counseling to "whistle blowers" in these cases because they often suffer serious personal and professional consequences for reporting these crimes.

Another promising source of funding for crime victims is the Federal Racketeer Influenced and Corrupt Organizations Act, referred to as RICO.¹⁰⁸ RICO makes it a federal crime to engage in activities related to a "pattern of racketeering activity" related to the operation of any "enterprise" engaged in, or affecting, interstate commerce.¹⁰⁹ Penalties for violation of RICO include fines up to \$25,000 and prison terms up to 20 years, in addition to allowing the government to bring forfeiture proceedings against the organizations and the individuals involved in the organizations. Since the statute also specifically allows victims to bring civil suits in federal civil court for damages up to three times their actual economic damages and attorneys fees, victims (particularly victims of economic crimes such as fraud) should be made aware of

Fairly early in the history of the victims' movement, victim 'counselors' were taught that they also had to become victim 'advocates' if their clients were to avoid revictimization by the very institutions that were meant to help them. In time, the advocates were taught that 'case advocacy' was insufficient to ensure that the dignity of crime victims was to be respected—their rights to be heard had to be codified in law. Those who taught us these lessons include legal scholars, mental health researchers, and a host of other thoughtful academics. But most of all it was the victims themselves, against whom palpable injustices were being committed daily, who taught us that providing effective victim assistance is impossible in the absence of effective victim rights.

John H. Stein,
Deputy Director,
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Victim Assistance

their right to bring RICO actions against such offenders. Congress should also consider earmarking RICO fines and forfeitures to benefit crime victims in the same manner as most other federal criminal fines.

States depend on a variety of sources to fund victim assistance programs, and they must communicate more with each other about which strategies have been most successful. Sources of funding include following the VOCA funding formula of criminal fines and penalty assessments; using a portion of license fees such as fees for marriage licenses; incorporating checkoff boxes for donations to victim services on tax forms; inmate fund raisers; dedicating special, one-time legislative appropriations; and incorporating victim services funding into the annual legislative appropriations process.

More than half of the states impose some type of additional penalty assessment or cost as a condition of an offender's sentence to be used to provide funding for general victim services and assistance. Some states attach a nominal \$5 or \$10 court fee in all cases.¹¹⁰ Other states take into consideration the severity of the offense or the offender's age, and establish enhanced assessments in relation to such factors.¹¹¹ Another group of states bases offender penalties on the other court-imposed fines and penalties, adding on a certain percentage of the fine and/or penalty as a type of surcharge.¹¹² Still other states use a combination of approaches.¹¹³

In most states, license fees are used for a specific type of service as opposed to general victim assistance. The most prominent of these are fees attached to marriage licenses which generally are used to fund domestic violence shelters and programs.¹¹⁴ In other instances, the additional fees for marriage licenses or birth certificates are used for funding of child abuse treatment and prevention.¹¹⁵ A number of states include income tax designations as an income source for children's trust funds which provide services to abused or neglected children.¹¹⁶ Michigan estimates the costs of providing crime victims' rights services as well as the estimated revenue available for such services. The legislature is then notified to determine whether an appropriation should be requested.¹¹⁷

In Missouri, a special appropriation in 1996 financed the construction of shelters for battered women across the state. Oregon takes a percentage of punitive damages off the top of civil suits to fund victim compensation and assistance programs. States are also exploring creative funding mechanisms such as tapping into lottery money, taxes on tourism, and fees for hunting, gaming, and liquor licenses.

In a survey of state VOCA administrators conducted for this report, a majority responded that establishing a stable, predictable funding base for victims' services was one of the greatest challenges to implement-

ing comprehensive victims' services. Collections under VOCA have been unusually high in the past two years; however, since collections may fluctuate in future years, states must expand their sources of funding to protect and expand the remarkable advances for crime victims made in the past two decades.

On the local level, communities also must begin to fund victim assistance programs. Voters in Washtenaw County, Michigan were the first in the nation to approve a special one-time millage or tax to build and provide funding for a countywide domestic violence shelter. In some communities such as Maricopa County, Arizona, and San Diego, California, private foundations have been established to provide financial compensation to victims as well as to support local victim service programs.

In other communities victim services funds are designated as an "untouchable" portion of the city's budget. In Jacksonville, Florida, city funds are combined with state and federal funds to support a comprehensive victim services center. Local annual funding for the center is currently about \$900,000. It includes all of the profits from the county prison's canteen. Center staff screen 2,300 police reports monthly for appropriate outreach and work with 1,400 victims each month, providing a wide range of services. The philosophy of Jacksonville's approach is to establish crime victim services in such a way that victim assistance becomes an essential part of the infrastructure of the community, not an afterthought funded through sporadic or discretionary funding mechanisms.

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 National Organization for Victim Assistance, *1988 NOVA Legislative Directory*, Washington, D.C.: National Organization for Victim Assistance, 1988:191.
- 2 *Victim Witness Protection Act of 1982*, Pub. L. No. 97-291, § 4, 96 Stat. 1249 (codified at 18 U.S.C. §§ 1512-1515; Fed. R. Crim. P. 32); President's Task Force on Victims of Crime, *Final Report*, Washington, D.C.: U.S. Government Printing Office, December 1982.
- 3 Office of Justice Programs, *President's Task Force on Victims of Crime: Four Years Later*, Washington, D.C.: U.S. Government Printing Office, May 1986:4.
- 4 As of November 1997, victims' rights constitutional amendments have been ratified by voters in the following 29 states: AL, AK, AZ, CA, CO, CT, FL, ID, IL, IN, KS, MD, MI, MO, NE, NV, NJ, NM, NC, OH, OK, OR, RI, SC, TX, UT, VA, WA, and WI.
- 5 The National Victim Center's Legislative Tracking Database Project has collected, as of May 1996, more than 27,000 federal and state statutes related to the rights and interests of crime victims. The Center utilizes nearly 1,000 victim issue categories and subcategories to catalog the statutes.
- 6 National Victim Center, *1996 Victims' Rights Sourcebook: A Compilation and Comparison of Victims Rights Laws*, Arlington, VA: National Victim Center, 1997:§ 9 (hereinafter *1996 Victims' Rights Sourcebook*). As of 1995, the following states provide victims a right to attend most criminal justice proceedings: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, LA, MA, MI, MS, MO, NH, NJ, NM, OH, OK, SC, SD, TX, UT, VA, WA, WI. In November 1996, North Carolina, Oregon and Nevada passed constitutional amendments that, for the first time, guaranteed such access to victims. N.C. CONST., art. I, § 37(1)(a); OR. CONST., art. 1, § (1); NEV. CONST., art. 1, § 8(b). In addition, at the same time, Connecticut, Oklahoma, and South Carolina elevated to constitutional level rights of access previously provided by statute. CONN. CONST., art. 17(b); OKLA. CONST., art. II, § 34(A); S.C. CONST., art. I, § 24(A).
- 7 *Id.* States providing for oral testimony or a statement by the victim at a sentencing hearing are: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, IL, IN, KS, LA, ME, MD, MA, MI, MN, MO, MT, NB, NV, NH, NJ, NY, ND, OH, OK, OR, RI, SC, SD, TN, WV, UT, VT, WA, WI, WY.
- 8 *Id.* at § 9 (Table 9-B).
- 9 Violence Against Women Grants Office, *Domestic Violence and Stalking: The Second Annual Report to Congress*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Violence Against Women Grants Office, July 1997 :15
- 10 Szymanski, L., *Rights of Victims of Juvenile Crimes Statutes Analysis, 1993 Update*, National Center for Juvenile Justice, 1994:1-9. See also National Victim Center, 1996 *Victims' Rights Sourcebook*, § 13 (discussions of victims' rights at the juvenile level).
- 11 See generally, Beatty, D., S. Howley, and D. 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.
- 12 *Victim Witness Protection Act of 1982*, Pub. L. No. 97-291, § 4, 96 Stat. 1249 (codified at 18 U.S.C. §§ 1512-1515; Fed. R. Crim. P. 32); President's Task Force on Victims of Crime, *Final Report*.
- 13 *Id.* at § 2(b), reprinted at 18 U.S.C. § 1512.

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- 14 U.S. Department of Justice, *Guidelines for Victim and Witness Assistance*, Washington, D.C.: U.S. Department of Justice, Office of the Attorney General, 1983. These Guidelines have been revised several times, and between 1983 and 1995, the title was changed to *Attorney General Guidelines for Victim and Witness Assistance*. The *Guidelines* will be revised and reissued in fiscal year 1998.
 - 15 *Crime Control Act of 1990*, Pub. L. No. 101-647, Title V, §§ 502-503, 104 Stat. 4820 (codified at 42 U.S.C. §§ 10606-10607 (1990)).
 - 16 42 U.S.C. § 10606(a); 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, 1995:2,5 (hereinafter *1995 A.G. Guidelines*).
 - 17 *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. No. 103-322, Title IV, §§ 40113, 40221, 40503; Title XXV, § 250002(a)(2); Title XXIII, § 230101(b), 108 Stat. 1904-2078 (codified at 42 U.S.C. §10607(c)(7), 14011(b); 18 U.S.C. §§2263-2264, 2248, 2259 and at Fed. R. Crim. P. 32 (1994)).
 - 18 Megan's Law amendment to the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Act, 42 U.S.C. §14071.
 - 19 18 U.S.C. §2261A.
 - 20 President's Task Force on Victims of Crime, *Final Report*, 114-115.
 - 21 For further information, see "Constitutional Amendments for Crime Victims" by J. H. Stein, available from the National Organization for Victim Assistance in Washington, D.C. NVCAN was created following a meeting sponsored by the National Organization for Victim Assistance (NOVA) and Mothers Against Drunk Driving (MADD) in 1985. Robert Preston, president of the Florida-based Justice for Surviving Victims forcefully advocated that the group support the Task Force recommendation for a victims' rights amendment to the federal constitution. The coalition has grown to include many other victims, advocates, elected officials, and others from local, state, and national groups that represent all types of criminal victimization.
 - 22 This information has been compiled by the National Victims' Constitutional Amendment Network, (NVCAN) and the National Victim Center and appears in NVCAN's 1996 *Constitutional Amendment Action Kit*.
 - 23 President's Task Force on Victims of Crime, *Final Report*, 51.
 - 24 *Id.*
 - 25 Bourque, B., and R. Cronin, *Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook*, American Institutes for Research, Office of Juvenile Justice and Delinquency Prevention, April 1991.
 - 26 Since the release of the report in 1982, the number of crimes committed by juveniles skyrocketed between 1985 and 1994, and juvenile crime became much more violent. Between those years, murder arrests of juveniles increased 150 percent, robbery arrests of juveniles increased by 57 percent, and aggravated assault arrests of juveniles increased by 97 percent. Snyder, H. ET AL., *Juvenile Offenders and Victims: 1996 Update on Violence: Statistics Summary*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, February 1996:12 (report prepared by the National Center for Juvenile Justice, National Council of Juvenile and Family Court Judges). Crimes committed by juveniles against juveniles is also a growing concern. In 1992, 1.5 million violent crimes were committed against juveniles aged 12 to 17, a 23 percent increase in just 5 years. Moone, J., *Juvenile Victimization: 1987-1992*, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, June 1994:1. However, in 1995, violent juvenile crime arrests—contrary to predictions—declined by three percent. In relative terms this decline was small, but the nature of the decline gives hope for the future. The decline in juvenile murders in 1995 was mostly in gun-related murders by African-American males. "What's Behind the Recent Drop in Juvenile Violent Crime?" *Juvenile Justice*, Volume III, Number 2, Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, September 1997.

- 27 National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (Table 13-A, Victims' Rights at the Juvenile Level). As of 1996, only Arkansas, Nebraska, North Dakota, South Dakota and the District of Columbia do not allow the court to order restitution from juvenile offenders.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*; TEX. JUV. JUS. CODE ANN. § 57.002 (2) (West).
- 34 *National Victim Center Legislative Tracking Database Project*, §13. As of 1995, the constitutions of Alaska, Idaho and Missouri provide rights for victims of juvenile offenders; the constitutions of Arizona and Utah permit the legislature to extend the rights to juvenile proceedings. In addition, in November 1996, the constitutions of Oregon and South Carolina were amended to provide rights to victims at the juvenile level. OR. CONST., art. 1, § 1(1); S.C. CONST., art. 1, § 24(A)(1). Moreover, the constitution of Oklahoma was amended to authorize the legislature to extend the rights to juvenile proceedings. OKLA. CONST., art. 2, § 34(C) (amended 1996).
- 35 Bourque, B. and R. Cronin, *Helping Victims and Witnesses in the Juvenile Justice System: A Program Handbook*, Washington, D.C.: Office of Justice Programs, Office of Juvenile Justice and Delinquency Programs 1991.
- 36 Seymour, A. and S. English, *Report and Recommendations on Victims of Juvenile Crime*, American Correctional Association Victims Committee, 1994:17-18.
- 37 Coordinating Council on Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan - Report*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, March 1996.
- 38 National Victim Center, *1996 Victims' Rights Sourcebook*, §13.
- 39 August 1996, Keynote address, annual conference of the National Organization for Victim Assistance. Tulsa, Oklahoma.
- 40 Among victim groups and criminal justice and other allies endorsing a Victims' Rights Constitutional Amendment as of November, 1997, are: Association of Traumatic Stress Specialists, Concerns of Police Survivors (COPS), Mothers Against Drunk Driving, National Association of Crime Victim Compensation Boards, National Center for Missing and Exploited Children, National Coalition Against Sexual Assault, National Organization for Victim Assistance, National Victim Center, Neighbors Who Care, Parents of Murdered Children, Security on Campus, Victim Assistance Legal Organization, American Correctional Association, the Victims' Committee of the International Association of Chiefs of Police, the National Criminal Justice Association, and the National Governors Association. Victim groups and other national organizations that have expressed opposition to a federal crime victims' rights amendment include: the American Civil Liberties Union, Murder Victims Families for Reconciliation, the NOW Legal Defense and Education Fund, the National Clearinghouse for the Defense of Battered Women, National Network to End Domestic Violence, and the National Legal Aid and Defender Association. The Criminal Law Committee of the Judicial Conference of the United States and the Conference of Chief Justices have expressed concerns.
- 41 Beatty, D., S. Howley, and D. 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.
- 42 *Id.*

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- 43 *Id.*
- 44 *Id.*
- 45 GA. CODE ANN. § 16-5-93 (1993).
- 46 ARK. R. EVID. 616 (right to be present); ALA. R. EVID. 615 (exception to witness exclusion rule for victims); OR. R. EVID. 615 (same).
- 47 ARIZ. REV. STAT. ANN. § 13-4420; MO. CONST., Art. 1, § 32.
- 48 ALA. CODE § 15-14-54; ILL. COMP. STAT. ANN. § 725-120/4(5); S.D. CODIFIED LAWS § 23A-24-7.
- 49 ALA. CODE §§ 15-14-51 to -57 (victim has right to be present and to sit at prosecutor's table). Maryland has also attempted to extend the victim's right to attend to include "attendance" by the homicide victim through an "in life" photograph at the trial of the defendant. This extension is under consideration in the Maryland courts. See *Maryland v. Broberg*, No. 95-22, (Ct. App. Md.)
- 50 As of 1995, 29 states required the prosecutor to consult with the victim or obtain the victim's views prior to entering a plea agreement. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 51 By 1995, fourteen states required the prosecutor to consult with the victim prior to dismissing charges. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 52 Four states required victim consultation by the prosecutor regarding decision not to prosecute the case, as of 1995. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 53 Such disposition decisions include pretrial diversion, reduction of charges, and sentence recommendation. See National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 54 As of 1995, ten states specifically required a prosecutor to consult with a victim prior to trial, but other states gave victims a general right to consult the prosecutor. National Victim Center, *1996 Victims' Rights Sourcebook*, 135-37.
- 55 See e.g., FLA. STAT. ANN. § 960.001(1)(e)(1) (1996); HAW. REV. STAT. § 801D-4(1) (1996); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (discussing victims' rights at the juvenile level).
- 56 N.D. CENT. CODE § 12.1-34-02 (1996); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 5 (discussing victims' right to confer with the prosecutor).
- 57 NEB. REV. STAT. § 23-1201, § 29-120 (1996).
- 58 LA. REV. STAT. ANN. § 46:1844 (1996).
- 59 See e.g., ARIZ. REV. STAT. ANN. § 13-4423 (1996); DEL. CODE ANN. tit. 11, § 5106 (1996); IND. CODE ANN. § 35-35-3-2 (1996); See also National Victim Center, *1996 Victims' Rights Sourcebook*, § 5 (discussing victims' right to confer with the prosecutor).
- 60 See North Carolina Victim Assistance Network, *The Status of Victim Services & Rights in North Carolina*, North Carolina: North Carolina Victim Assistance Network, 1994:4.
- 61 See e.g., DEL. CODE ANN. tit. 10, § 940; ILL. COMP. STAT. ANN. § 725-5/110-4; KAN. STAT. ANN. § 22-2802.
- 62 MD. CODE ANN. art. 27, § 616 2(a-1) (1993).
- 63 Duggan, P., "Reward Program Targets Witnesses to D.C. Homicides," *Washington Post*, March 23, 1994.
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- 64 *E.g.*, ARIZ. REV. STAT. ANN. § 13-4331 (West 1991); ARK. CODE ANN. § 16-21-106(a)(5) (1983); N.Y. EXEC. § 642(2) (McKinney 1986); *See also* National Victim Center, *1996 Victims' Rights Sourcebook*, § 4 (discussing victims' right to protection from offender harm).
- 65 *E.g.*, COLO. REV. STAT. § 18-8-704 (1990); ILL. COMP. STAT. Ch. 720, § 5/32-44a (1993); KY. REV. STAT. ANN. § 524.05 (1986).
- 66 *E.g.*, ARIZ. REV. STAT. ANN. § 18-1-1001 (1991); D.C. CODE ANN. §§ 23-1321, 23-1329 (1981); N.Y. CRIM. PROC. § 530.13 (McKinney 1986).
- 67 *E.g.*, ARIZ. REV. STAT. ANN. § 13-4433 (1991); OR. REV. STAT. § 135.970(2) (1987). Oregon's 1996 constitutional amendment for victims' rights contains a similar provision. OR. CONST., art. I, § 1(d). It is not yet clear how the statutory and constitutional provisions will interact.
- 68 *E.g.*, ILL. COMP. STAT. Ch. 730, § 5/3-3-4(7) (1996); S.C. CODE ANN. § 24-21-710 (Law Co-op. 1995). *See also* National Victim Center, *1996 Victims' Rights Sourcebook*, §4 (discussing victims' right to protection from offender harm), §9, (as of 1995, a total of 43 states allow victims to be heard at parole hearings). National Victim Center ET AL., *National Victim Services Survey of Adult and Juvenile Corrections and Parole Agencies Final Report*, Arlington, VA: National Victim Center, September 1991:14.
- 69 *See* Smith, B., ET AL., *Improving Enforcement of Court-Ordered Restitution: Executive Summary*, American Bar Association, Washington, D.C.:1989:15.
- 70 President's Task Force on Victims of Crime, *Final Report*, 18, 34, 72 and 78-80.
- 71 National Victim Center, *1996 Victims' Rights Sourcebook*, § 11.
- 72 S.C. CODE ANN. § 16-3-1530 (1996); W.VA. CODE ANN. § 61-11A-4 (1996).
- 73 The Mandatory Victim Restitution Act, Title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (1996), 18 U.S.C. § 3663A (1996).
- 74 National Victim Center, *1996 Victims' Rights Sourcebook*, § 11 (discussing victims' right to restitution from the offender).
- 75 National Victim Center, *Legislative Database*, Arlington, VA: 1997.
- 76 *See* National Victim Center, *1996 Victims' Rights Sourcebook*, § 13 (Table 13-A).
- 77 *Id.*
- 78 As examples, see CONN. GEN. STAT. §52-572 (civil liability, limited to \$5,000); NEV. REV. STAT. § 41.470 (civil liability, limited to \$10,000); N.M. STAT. ANN. § 32A-4-26 (civil liability; limited to \$4,000), TEX. FAM. CODE ANN. §54.041 (restitution).
- 79 Seymour, A., *National Victim Services Survey of Adult and Juvenile Corrections and Parole Agencies: Crime Victims and Corrections: Implementing the Agenda for the 1990s*, Arlington, VA: U.S. Department of Justice, Office for Victims of Crime/National Victim Center, 1991.
- 80 Snyder, H. ET AL., *Juvenile Offenders and Victims: 1996 Update on Violence: Statistics Summary*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, February 1996:12 (report prepared by the National Center for Juvenile Justice, National Council of Juvenile and Family Court Judges).
- 81 *See* 18 U.S.C. §3624.
- 82 *See* National Victim Center, *1996 Victims' Rights Sourcebook*, § 8:205.

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- 83 42 U.S.C. § 3756.
- 84 Violence Against Women Improvements Act, 42 U.S.C. §14011.
- 85 ME. REV. STAT. ANN. tit. 5 §§ 19203 et. seq.
- 86 MICH. COMP. LAWS §333.5129.
- 87 OKLA. STAT. tit. 63 §§ 1-524.-525.
- 88 FLA. STAT. ANN. § 960.003
- 89 MINN. STAT. § 72A-29
- 90 MD. CODE ANN. Art. 27, § 776 (1993).
- 91 ARIZ. REV. STAT. ANN. § 13-4437 (West 1991).
- 92 *United States v. McVeigh*, 106 F.3d 325 (1997)
- 93 The concept of a victim ombudsman was first discussed in Dussich, J., "The Victim Ombudsman: A Proposal," in *Victimology: A New Focus*, Volume II, Society's Reactions to Victimization, Eds. I. Drapkin and E. Viano. Lexington, MA: Lexington Books, 1974.
- 94 South Carolina Victim Ombudsman Program, S.C. CODE ANN. § 16-3-1610.
- 95 COLO. REV. STAT. § 24.4.1-117.5(2)(a) (1996) Colorado Coordinating Committee.
- 96 COLO. REV. STAT. § 24-4.1-303(17) (1992).
- 97 Wisconsin Victim Resource Center: WISC. STAT. ANN. § 950.08.
- 98 See 18 U.S.C. §§3663, 366A; 42 U.S.C. §10606(b) (6).
- 99 Notice of Indian Entities Recognized and Eligible to Receive Services from the U.S. Bureau of Indian Affairs, 61 Fed. Reg. 58211 (1996). As of 1996, the Bureau of Indian Affairs (BIA) had officially recognized a total of 621 Indian entities, including tribes and Native Alaskan villages.
- 100 *United States v. Wheeler*; 435 U.S. 313 (1978); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
- 101 CAL. EDUC. CODE §§48918, 48918.5, as amended by 1996 Cal. Stat. Ch. 915 §4 (A.B. 692).
- 102 Pyle, A., "New Rights for Campus Victims," *Los Angeles Times*, Wednesday, October 2, 1996.
- 103 *The Student Right to Know and Campus Security Act of 1990*, Title II, P.L. 101-542 (1990) and 20 U.S.C. §1092(f)(1-6).
- 104 *Campus Sexual Assault Victims' Bill of Rights*, 20 U.S.C. §1092(f)(7) (1992).
- 105 See e.g., FLA. STAT. ANN. § 943.172 (1996) (training for law enforcement, probation, and other corrections officials); N.J. STAT. ANN. § 52:4B-47 (1996) (training for police, assistant prosecutors, county detectives, and investigators).
- 106 A how-to booklet and video on implementing victim impact panels or manuals for victim impact classes is available from Mothers Against Drunk Driving.
- 107 See False Claims Act, 31 U.S.C. §§ 37-31. A draft bill being developed by Senators Leahy and Kennedy in May of 1997 proposes using a portion of the money collected under the False Claims Act to fund victim services.
- 108 18 U.S.C. §1962.
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109 *Id.*

110 For example, see KY. REV. STAT. ANN. § 346.185.

111 For example, see WIS. STAT. ANN. § 973.045.

112 For example, see UTAH CODE ANN. § 63-63a-1.

113 For example, see COLO. REV. STAT. ANN. § 24-4.2-104.

114 For example, see IDAHO CODE § 39-5213.

115 For example, see MISS. CODE ANN. § 93-21-305.

116 For example, see ALA. CODE §§ 26-16-30 and 31.

117 MICH STAT. ANN. § 28.1287(909).