

THE 1996 VICTIMS' RIGHTS SOURCEBOOK:

A COMPILATION and COMPARISON of
VICTIMS' RIGHTS LAWS

Presented by



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Dear Colleague:

The National Victim Center is pleased to present its *1996 Victims' Rights Sourcebook: A Compilation and Comparison of Victims' Rights Legislation*.

For much of this century, crime victims were the forgotten element in our nation's criminal justice formula. Then in 1982, President Reagan established the President's Task Force on Victims of Crime to bring the problems of victims to the attention of the nation. Included in the Task Force's *Final Report* were a wide variety of recommendations to policy leaders to adopt laws that would establish and protect basic rights for crime victims. Legislators responded by passing thousands of victims' rights statutes in the years that followed. The publication of the *Victims' Rights Sourcebook* will provide a ready tool to access and compare the basic legal protections that exist for crime victims.

There is always a delay inherent in the production of such a directory. With statutes being added and amended annually, it is not possible for such a product to be up-to-the-minute. The statutes reflected in this *Sourcebook* are those in effect through 1995. Victim advocates and policy leaders have continued to work to improve the legal protections for crime victims, and readers are encouraged to check the actual statute for recent changes.

However, it is hoped that this project will be viewed, not as an end product, but as a starting place — a road map for where victims' rights could be further improved.

The *Sourcebook*, sponsored by the Department of Justice, Office for Victims of Crime, was produced through the use of the National Victim Center's legislative database, which enabled the legislative analysts to have ready access to all victim-related legislation in each of the targeted categories. The legislative database contains tens of thousands of statutes relating to the rights and interests of crime victims, and the use of more than 900 issue codes enables analysts to quickly identify all relevant laws on a given topic. Through the use of the database, the National Victim Center is able to respond to information requests from policy leaders and advocates, as well as the media and interested members of the general public. The public policy department is available to provide information and technical assistance on matters relating to the rights and interests of victims.

On behalf of the project staff, I would like to thank you, the advocates and policy leaders, for your commitment and dedication to improving the treatment and furthering the rights of crime victims. It is through your efforts that the laws reflected in this *Sourcebook* came to be adopted, and you are the ones who will be responsible for the further development of victims' rights.

Yours truly,



David Beatty,
Acting Executive Director
and Project Director

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DEDICATION

This manual is dedicated to the many crime victim advocates and legislators whose tireless efforts in the pursuit of equal justice for crime victims has resulted in the adoption of thousands of victims' rights statutes and 21 state victims' rights constitutional amendments nationwide. These dedicated people have helped to reshape the criminal justice system in ways that demonstrate fairness, respect and dignity for crime victims, by passing laws that guarantee protection of the rights and interests of victims. On behalf of the nation's millions of crime victims, we thank you.

This project was funded through Cooperative Agreement Number 95-VF-GX-K010, awarded to the National Victim Center by the Office for Victims of Crime (OVC), within the Office of Justice Programs, U.S. Department of Justice, which supports efforts to assist crime victims at the Federal, state and local levels, and administers the Victims of Crime Act (VOCA) and the Crime Victims Fund. Findings and conclusions of the research and any recommendations reported here are those of the researchers and do not necessarily reflect the official positions or policies of the U.S. Department of Justice and the Office for Victims of Crime.

Acknowledgments

The project staff wish to acknowledge the many people whose dedication and enthusiasm made this publication possible. Their support throughout the creation of this manual, from collecting and analyzing the statutes to computer formatting and editing, is greatly appreciated. Without their assistance, we could not have produced such a timely and informative resource that should assist legislators and crime victim advocates in their continuing efforts to produce better legal protections for the rights of crime victims. For their hard work and dedication to this project, we offer our grateful appreciation.

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SECTION 1

OVERVIEW, DEFINITIONS AND DISCLAIMERS

OVERVIEW

Since its inception, the crime victims' movement has struggled to secure rights and resources for our nation's victims. Though progress on these fronts has taken many forms, the most evident manifestation of rights for crime victims has emerged in the form of legislation. From a handful of simple advisory statutes passed more than three decades ago to the thousands of victim-related laws¹ that currently grace the code books in all 50 states, the movement's progress in the legislative arena has been nothing less than astonishing. Beyond their sheer numbers, such statutes have addressed a variety of victim issues and concerns. From notice of trial and parole to "Son of Sam" and video impact statements, the number of victims' rights categories covered by statutes is fast approaching the 1000 code mark.²

It is doubtful that even the members of the President's Task Force on Victims of Crime who in 1982 crafted the movement's first *de facto* policy agenda in their *Final Report* could have anticipated the extent to which their policy aspirations have been realized in a little less than a decade and a half.³

Such progress is a direct tribute to the substantial personal investment of crime victims and advocates who have struggled for years to obtain greater justice for all victims of crime.

In recent years those thousands of individual campaigns and campaigners have begun to join forces and merge policy agendas to form policy coalitions that rank among the most powerful forces currently reshaping the criminal justice landscape. No longer willing to settle for the uncertain protections afforded by statutes, these veteran advocates have turned their gaze to the seminal source and ultimate arbiter of all individual rights — the Constitution.

¹ The National Victim Center's Legislative Tracking Data Base Project has collected more than 27,000 statutes concerning victims' rights and related interests as passed by legislatures at the state and federal level.

² This represents the number of category codes utilized by the National Victim Center's Legislative Tracking Data Base Project.

³ President's Task Force on Victim's of Crime, *Final Report*, (1982).

Emboldened by their success in amending the constitutions of 21⁴ states to include basic rights for crime victims, advocates have not only dared to dream, but have actually begun the pursuit of their ultimate policy objective — a victims' rights amendment to the U.S. Constitution (**Editor's Note: See Addendum for Post-Election Update**).

Indeed, these recent initiatives are simply further proof of a human rights movement that is coming of age. As victim advocates continue to find their political footing and find their voice, they are also finding their place as a permanent partner in the public policy process that shapes our nation's criminal justice system.

The relative youth of the victims' rights movement virtually guarantees that the evolution of its public policy agenda will continue unabated. As such, this report is little more than a snapshot of a dynamic legislative movement that is constantly in a state of motion. Any picture that attempts to integrate the relative legislative progress of all 50 states must necessarily be multi-dimensional in nature. For some states this document paints a picture of where they are on the victim policy continuum. For others, it represents an image of where they've been. For advocates, it may suggest a vision of things to come.

But regardless of the relative position of its component parts, America's victims' rights movement has a clear direction — and that

direction is forward. In that sense, the analysis that follows may also serve as a road map to help guide the victims' rights movement on its way.

VICTIMS AND CRIMES INCLUDED IN THE VICTIMS' RIGHTS LAWS

In beginning an examination of the crime victims' rights laws, it is important to consider the definitions of "victim" and "crime" that are used in each state. Such differing definitions are one major reason that crime victims' rights are not uniformly applied across the 50 states. For example, in Louisiana, basic rights are afforded only to victims of felonies, while in Montana, victims of any violent offense, whether felony or misdemeanor, enjoy such rights. Still other states, such as Colorado, specifically list the offenses which trigger basic rights for the victims in question.

Not only are there differences in applicability between the states, there are often variations within a state, with certain rights restricted to a designated subset of crime victims. A state may provide basic rights to victims of all crimes generally, but limit specific rights, such as the right to notice of the pretrial release of the offender or the right to make an oral statement in court, to victims of violent offenses. For instance, in Iowa, the law providing for notification by the department of corrections or board of parole applies only to cases involving forcible felonies.⁵ In Oklahoma, the right to make a statement at sentencing applies only to

⁴ Eight more states currently have victim amendments pending voter ratification in November of 1996.

⁵ IOWA CODE ANN. §§ 910A.1, 910A.9, 910A.10.

victims of violent crime, and the right to notice of continuances applies only to felonies involving violent offenses or sex offenses.⁶ Criminal justice officials within a state may be unaware that victims are not uniformly covered under the victims' rights statutes of that state.

Table 1-A provides definitions for those victims and related crime categories which generally qualify for inclusion under victims' rights statutes. In those few states where no general definitions exist, specific definitions for a representative area of rights are noted separately. This chart does not include definitions that apply in cases of juvenile offenses. Those statutes are listed in another section of this publication.

EXPLANATIONS, CAVEATS AND DISCLAIMERS

Most of the statutes examined in this manual are current through 1995. However, there are some areas of the law, such as the bail laws, that are current only through 1994. Each section in this manual will specify the year through which the statutes are current. The constitutional amendments reflected here are current through May of 1996, when Nebraska voters ratified that state's amendment in their primary election.

While the project necessitated a "cutting off" point for state statutes, legislatures have continued to pass new laws and to amend previously passed laws. For example, in 1996 Vermont significantly expanded its

⁶ OKLA. STAT. ANN. tit. 19, § 215.33.

crime victims' bill of rights⁷, and Kansas broadened its restitution laws considerably to provide better collection and enforcement of those orders. Maryland passed an excellent provision requiring that victims receive notice of their rights. Eight states were slated to vote on state victims' rights constitutional amendments in November (**Editor's Note: See Addendum for Post-Election Update**).

It is important to remember while reading each section that the rights of victims of juveniles are treated separately and only in Section 13, Victims' Rights at the Juvenile Level.

Information is based on the project staff's interpretation of statutory language only, and does not take into consideration any regulations or policies established for implementation or court decisions that may impact a statute's scope or strength. Explanations regarding the vagaries of language are addressed in each section. It is important to read the overview of a legal issue in conjunction with the statutory charts in order to understand the limits inherent in attempting to quantify the specific rights provided. Since only certain elements of the laws analyzed were presented in the tables and discussed in the overviews, readers are encouraged to refer to the actual statutes themselves for further clarification.

⁷ S.B. 33 (1996).

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Alabama § 15-23-60	Felony involving physical injury, threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence.	Direct victim, or homicide survivor, or the family member or guardian of an incapacitated victim; or designated representative of victim ; DOES NOT APPLY if victim is a person in custody for an offense or is the accused.
Alaska § 12.55.185, § 12.61.900	Crime.	Direct victim; spouse or family member of a minor, incompetent, or incapacitated victim if not the perpetrator; if victim is dead, spouse or family member or other interested person designated, if not the perpetrator.
Arizona § 13-4401	Victim of felony or misdemeanor involving physical injury, threat of physical injury, or sexual offense.	Direct victim or homicide survivor, or family member of incapacitated person, or representative of victim. DOES NOT APPLY if victim is a person in custody for an offense or is the accused.
Arkansas § 16-21-106 ⁸	Crime.	Direct victim, homicide survivors.
California PC § 679.01	Misdemeanor or felony.	Direct victim (however, most rights apply also to homicide survivors and parent or guardian of minor victim).
Colorado § 24-4.1-302	Murder in 1st, 2nd; manslaughter, criminally negligent homicide, vehicular homicide, assault in 1st, 2nd or 3rd; vehicular assault; menacing; kidnaping in 1st, 2nd; sexual assault in 1st, 2nd, 3rd; sexual assault on child; sexual assault on child by one in position of trust; sexual assault on client by psychotherapist; robbery; aggravated robbery; aggravated robbery of controlled substances; incest, aggravated incest; child abuse; sexual exploitation of children; crimes against at risk adults or at-risk juveniles; any crime determined to include domestic violence; any criminal attempt or conspiracy for above.	Direct victim; homicide survivor; family member, significant other, or lawful representative of incapacitated person including minor victim.

⁸ This statute is not a list of rights, but a list of services the prosecutor is authorized to provide.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Connecticut § 54-201	Felony or misdemeanor involving personal injury.	Person who suffers personal injury or death.
Delaware tit. 11 § -9401	Sixty-six listed offenses, including various offenses against persons including vehicular assault, certain offenses involving property including arson and burglary, forgery and issuing a bad check; offenses against children and incompetents; stalking; and other offenses.	The person, organization, partnership, business, corporation, agency or governmental entity identified as the victim in a police report, criminal complaint or warrant, indictment or information; including a parent, guardian or custodian of a victim unable to meaningfully understand or participate in the legal process due to physical, psychological or mental impairment. Includes the listed relations of a deceased victim if the relation is not the defendant, co-defendant or conspirator; term specifically includes qualifying neighborhood or homeowners associations.
Florida § 960.001	Not specified for most rights - some notification rights limited to cases of homicide, sexual assault, attempted homicide or sexual assault, or domestic violence or stalking.	Victims, including homicide survivors.
Georgia § 17-17-3 § 17-17-4	Crimes against the person; sexual offense; burglary or arson; designated theft and armed robbery offenses; sexual exploitation of children, vehicular homicide; feticide by vehicle; or serious injury by vehicle.	Direct individual victim, or for deceased victim the survivor listed in the statute if the survivor is not the defendant or in custody for an offense; or the parent, guardian, or custodian of a minor or incapacitated person unless that parent, guardian or custodian is in custody for an offense or is the defendant.
Hawaii § 801D-2	Crime against the person.	Direct victim and surviving immediate family members of homicide victim.
Idaho § 19-5306	Felony or a misdemeanor involving physical injury, threat of physical injury, or a sexual offense.	Individual who suffers direct or threatened physical, emotional or financial harm.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Illinois ch. 725 § 120/3	Any felony in which force or threat of force was used against the victim; or offense involving sexual exploitation, sexual conduct or sexual penetration, domestic battery, violation of order of protection, stalking, or misdemeanor which results in death or great bodily harm to victim, or certain drunk driving offenses (check 9-3 of criminal code or 11-501 of vehicle code if violation resulted in personal injury or death; personal injury includes Type A injury as indicated on traffic accident report that requires immediate professional attention in doctor's office or hospital (includes severely bleeding wounds, distorted extremities, and injuries requiring the injured party to be carried from the scene).	Person physically injured as result of a violent crime or attempted crime; person who suffers injury to or loss of property as result of a violent crime; or a single representative family member of homicide victim or a victim who is physically or mentally incapable of exercising such rights unless such person is also the defendant or prisoner, or any person against whom a violent crime has been committed, or any person who suffered personal injury as a result of a violation of 11-501 of the Illinois Vehicle Code (625-5/11-501), or a similar provision of a local ordinance or section 9-3 of the criminal code (720-5/9-3).
Indiana (from victim notification chapter) § 35-33-12-1	Any offense against the person (chapt. 35-42), intimidation, harassment or stalking.	A person who has suffered direct harm as a result of the commission of the crime.
Iowa § 910A.1	Public offense, other than simple misdemeanor .	Victim who suffered physical, emotional or financial harm as a result of offense; also immediate family members of victim who dies or was rendered incompetent as a result of the offense or who was under 18 at the time of the offense.
Kansas § 74-7333	All crimes except for most local ordinances.	Person who suffers direct or threatened physical, emotional or financial harm.
Kentucky § 421.500	Homicide, robbery, rape, assault, sodomy, kidnaping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest.	Individual who suffers harm as a result of listed crimes; parent, guardian, custodian or court-appointed special advocate for minor or legally incapacitated victim; spouse or family member of deceased victim if that person is not the defendant.
Louisiana R.S. 46 § 1842	Felony.	Direct victim; family of homicide victim.
Maine tit. 15 § 6101	Domestic violence, sexual assault, and crimes in which the victim or family suffered serious physical trauma or serious financial loss.	Victims and families of victims.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Maryland Art. 27 § 760	Any crime.	Individual who suffers direct or threatened physical, emotional or financial harm as a result of a crime; includes family members of minor, incompetent, or homicide victim.
Massachusetts ch. 258B § 1	Any crime.	Any natural person who suffers direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of a crime and family members of such person if person is minor, incompetent, or deceased.
Michigan (There are 2 Bill of Rights in Michigan for Victims of Adult Offenders) § 28.1287(752)	Felony or crime punishable by imprisonment for more than one year.	Individual who suffers direct or threatened physical, emotional, or financial harm as a result of a crime; or listed family members of a deceased victim, or a parent, guardian or custodian of minor or mentally incapacitated victim .
Michigan § 28.1287 (811)	Serious misdemeanors, listed, including assault and battery; assault with infliction of serious injury; breaking and entering; enticing a child for immoral purposes; discharge of a firearm intentionally aimed at a person; discharge of an intentionally aimed firearm resulting in injury; leaving the scene of a personal injury accident; operating a vehicle while under the influence of or impaired by alcohol or controlled substance involving an accident resulting in injury to another's person; violation of similar local ordinances.	Individual who suffers direct or threatened physical, emotional, or financial harm as a result of a crime; or listed family members of a deceased victim, or a parent, guardian or custodian of minor or mentally incapacitated victim .
Minnesota § 611A.01	Crime resulting in bodily harm, or crime within the definition in section 609.02 subd. 1.	Natural person who incurs loss or harm as result of crime, including good faith effort to prevent crime; for purposes of restitution, also includes corporations that incur loss as result of crime; also includes surviving spouse or next of kin of deceased victim.
Mississippi § 99-36-3	Felony.	Person who is victim, or close relative of deceased victim, or guardian of victim who is minor or physically or mentally incompetent.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Missouri § 595.200	Any crime.	Victim who suffers direct or threatened physical, emotional or financial harm, or family member of a minor, incompetent or homicide victim.
Montana (from statute requiring notice to victims) § 46-24-203	Any felony or a misdemeanor offense involving actual, threatened, or potential bodily injury.	Direct victim, relative of minor victim, or relative of homicide victim.
Nebraska § 29-119 § 81-1848	Homicide; first or second degree sexual assault; first or second degree assault; sexual assault of child; first degree false imprisonment; robbery; or drunk driving with serious personal injury.	A person who, as a result of listed crime, has had a personal confrontation with the offender and shall also include a person who has suffered serious bodily injury as a result of a motor vehicle accident when the driver was charged with [driving while under the influence]. In the case of a homicide, victim shall mean at least one family representative who is not alleged perpetrator. In the case of sexual assault of child, victim shall mean child and parents, guardians, or legal representative of child but shall not include alleged perpetrator.
Nevada § 178.569	Crime.	Victim or relative of victim against whom a crime has been committed or who is killed or injured as direct result of crime.
New Hampshire § 21-M:8-k	Crime designated as felony or punishable by imprisonment for more than one year.	Person who suffers direct or threatened physical, emotional, psychological or financial harm as result of commission or attempted commission of a crime, and includes immediate family of minor, incompetent, or homicide victim.
New Jersey (there are 2 bills of rights for victims in NJ) § 39:50.10	Driving under the influence of drugs or alcohol.	Person who suffers personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result . In the event of a death, "victim" means the surviving spouse, a child or the next of kin.
New Jersey § 52:4B-39	Crime.	Person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as result of a crime committed against person; also includes nearest relative of homicide victim.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
New Mexico § 31-26-3	Arson resulting in bodily injury; aggravated arson; aggravated assault; aggravated battery; dangerous use of explosives; negligent use of deadly weapon; murder; voluntary manslaughter; involuntary manslaughter; kidnaping; criminal sexual penetration; criminal sexual contact of minor; homicide by vehicle; great bodily injury by vehicle; abandonment or abuse of child.	Individual against whom crime is committed, or family member of victim's representative where victim is minor, incompetent, or homicide victim.
New York EL § 646a	Not defined for most rights.	Not defined.
North Carolina § 15A-824 § 15A-825	Serious misdemeanor as determined in sole discretion of district attorney, or any felony.	Person against whom there is probable cause to believe crime occurred; family members of homicide victims.
North Dakota § 12.1-34-01	All felonies, most class A misdemeanors, corresponding violations of municipal ordinances; for some rights, must be a crime in which force or threat of force was used.	Natural person who has suffered direct or threatened physical, emotional or financial harm where there is probable cause to believe that harm has been caused by the commission of a criminal act; includes family members of minor, incompetent, incapacitated, or deceased person.
Ohio § 2930.01	Any felony or a violation of 2903.13, 2903.21, 2903.22, 2919.25 or 2921.04.	A person identified as a victim of a crime in a police report or in a complaint, indictment, or information charging the commission of a crime.
Oklahoma tit. 19 § 215.33	Not defined for most rights.	Victims and members of the immediate families of homicide victims.
Oregon (general def. for most victims' rights statutes) § 131.007	Crime.	Victim who has suffered financial, social, psychological or physical harm, family member in cases of abuse of corpse or homicide, legal guardian of minor victim, unless such person is defendant.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Pennsylvania 71 P.S. § 180-9.1	Crime under title 18 or under the controlled substance, drug, device and cosmetic act, and crimes involving intentional infliction of injury through the use of a motor vehicle; for some rights, personal injury crimes, meaning act, attempt or threat to commit misdemeanor or felony criminal homicide, assault, kidnaping, sexual offense, arson, robbery, victim and witness intimidation, or homicide by vehicle while driving under influence, or violation of domestic violence protective order.	Person against whom crime is being or has been perpetrated.
Rhode Island § 12-28-3 § 12-28-4.2	Criminal offenses, both felonies and misdemeanors.	Victims and immediate family members of homicide victims; immediate family member of victim who is physically incapacitated due to crime.
South Carolina § 16-3-1520	Crime.	Victim who suffers direct or threatened physical, emotional or financial harm as result of crime; family member of minor, incompetent, person incapacitated as a result of crime, or homicide victim.
South Dakota § 23A-28C-4	Crime of violence under 22-1-2(9), simple assault between family or household members defined under 25-10-1(2), violation of chapter 22-22, or driving under the influence vehicle accidents.	Direct subject of crime or, if victim does not survive the crime or is unable to comment, the members of the immediate family of the primary victim.
Tennessee § 40-38-103	Crime (additional rights for victims of violent crimes involving serious bodily injury or death of a relative).	Victims (appears to include homicide survivors as well).
Texas CCP art. 56.01	Sexual assault; kidnaping; aggravated robbery; crime involving bodily injury or death.	Victim, close relative of deceased victim, or guardian of a victim who is a minor or physically or mentally incompetent.

Table 1-A

GENERAL APPLICABILITY OF RIGHTS: DEFINITIONS
Current through 1995

State/Statute	Definition of Crime	Definition of Victim
Utah § 77-38-2 § 77-38-5 § 77-38-9	Felonies.	Direct victim or, in discretion of court, victim of related crime or act perpetrated or attempted, unless the person is the accused or appears to be criminally responsible for or involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan; does not include any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or person in custody for mental or psychological treatment; designated representative of victim, or of deceased or incapacitated victim, or minor victim; representative may not be the accused or a person responsible for or criminally involved in crime or related crime, or a person in custody of authorities, or person court deems inappropriate.
Vermont tit. 13 § 5301	Crime or attempted crime.	Person who sustains physical, emotional or financial injury or death .
Virginia § 19.2-11.01	Felony; assault and battery; stalking; sexual battery; attempted sexual battery; or driving while intoxicated.	Person who suffered physical, psychological, or economic harm as direct result of crime, or spouse or child of victim, or parent or legal guardian of minor victim, or spouse, parent or legal guardian of victim who is physically or mentally incapacitated or was victim of homicide.
Washington § 7.69.020	Felony, gross misdemeanor, or misdemeanor.	Direct victim or representative of victim, or survivor of a victim.
West Virginia § 61-11A-6	Crime.	Direct victim; one member of victim's immediate family for some rights.
Wisconsin § 950.02 § 950.04	Crime.	Direct victim, family members of homicide victims.
Wyoming § 1-40-202	Crime.	Individual who has suffered direct or threatened harm as a result of a crime or a family member who is minor or incompetent or a surviving family member of a homicide victim.

SECTION 2

CONSTITUTIONAL RIGHTS FOR CRIME VICTIMS

In 1982, as part of its *Final Report*, the President's Task Force on Victims of Crime recommended amending the U.S. Constitution to provide basic rights for crime victims, saying "an essential change must be undertaken; the fundamental rights of innocent citizens cannot adequately be preserved by any less decisive action." While serious efforts to amend the federal constitution were deferred until quite recently, states began to amend their own constitutions to provide such rights almost immediately.

The first state to adopt a constitutional amendment providing rights to crime victims was California, in 1982. While modest in scope, the Victims' Bill of Rights amendment provided California victims a right to restitution from the offender, and specifically recognized the importance of enacting "comprehensive provisions and laws ensuring a bill of rights for victims of crime." Four years later, Rhode Island adopted an amendment by constitutional convention which granted victims the right to be treated with dignity, respect, and sensitivity; to make a victim impact statement; and to receive restitution. Florida, Michigan, Texas and Washington state soon followed. By 1992, with the addition of Arizona, Colorado, Illinois, Kansas, Missouri, New Jersey and New Mexico, thirteen states had amended their constitutions.

To date, 21 states have provided crime victims' rights in their constitutions. Eight more states will present such amendments to the voters for ratification in November of 1996. (Editor's Note: See Addendum for Post-Election Update.) As all previously ratified amendments have had an average approval rating of 78%, the eight proposed amendments are expected to pass.

The snowballing passage of crime victims' rights amendments is a tribute to the years of effort by crime victims and advocates across the country to increase public awareness of the injustices suffered by victims and to change the position of the criminal justice system with regard to the interests of victims. Today, public and official support for constitutional rights for crime victims is growing.

Public support was demonstrated in a 1991 national public opinion poll sponsored by the National Victim Center — *America Speaks Out: Citizens Attitudes About Violence and Victimization*. That survey found that nine out of ten Americans (89%) would probably or definitely support an amendment to their state's constitution that would increase victims' rights protection.⁹

⁹ *America Speaks Out: Citizens' Attitudes About victims' Rights and Violence*. National Victim Center, April, 1991. Pp. 5 - 7.

Other state-specific studies have found similar support.¹⁰ Official support for constitutional rights for victims was provided in 1993 by the National Association of Attorneys General, which adopted a resolution in support of state action to sponsor constitutional amendments guaranteeing the rights of crime victims. The resolution urged members to actively support state constitutional amendments in addition to strong statutory rights.

The breadth and strength of the existing state constitutional amendments vary widely. The majority of state amendments give victims a constitutional right to be treated with fairness, dignity and respect, as well as the

¹⁰ A 1993 South Carolina survey found that over eight out of ten citizens of South Carolina (86%) would definitely or probably support an amendment to that state's constitution increasing the protection of crime victims' rights. *South Carolina Speaks Out: Attitudes About Crime and Victims' Rights*. SC Victim Assistance Network, SC State Office of Victim Assistance, Crime Victims Research and Treatment Center at the Medical University of South Carolina (1993). Also, in a 1994 North Carolina survey of violent crime victims, 89% of crime victim respondents indicated that they supported a constitutional amendment to ensure basic rights for victims. *The Status of Victim Services & Rights in North Carolina*. North Carolina Victim Assistance Network, Summer 1994.

rights to be informed, present and heard at important criminal justice proceedings. Approximately half give victims the right to notice of the release of the offender and to restitution from the offender. About one-third also include the rights to a speedy resolution of the case and reasonable protection from the accused. The specific rights included in each state's victims' rights amendment are set out in Table 2-A.

The state victims' rights constitutional amendments have generally taken one of two approaches: the short, broad version of the language, similar to that proposed by the President's Task Force; and the longer, detailed listing of rights. Colorado's amendment, for example, states simply that victims "have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process."¹¹ In contrast, Arizona's amendment lists 12 specific rights of crime victims.¹²

Half of the amendments are silent on the question of enforceability and, thus, are presumed to be as enforceable as any other constitutional right. Another third of the amendments state that violation of the rights shall not be a cause for civil damages, but do not preclude actions for injunctive relief. Many encourage their legislatures to provide enforcement mechanisms, but only Nebraska specifically states that there shall be no remedies other than those provided by the legislature. The varying approaches on the issue of enforceability are set out in Table 2-B. This table examines only the

¹¹ COLO. CONST. art. II, § 16a.

¹² ARIZ. CONST. art. II, § 2.1.

enforcement language of the amendments themselves; it does not consider existing statutes that provide for enforcement of rights. In most states, an amendment to the state constitution requires the approval of the legislature in at least two sessions, followed by ratification by the voters. Thus, the adoption of a state victims' rights constitutional amendment is a dramatic demonstration of a desire to balance the rights of crime victims with those of criminal defendants. However, as forcefully as those state's legislatures and citizenry have spoken about their support for crime victims' rights in approving such state amendments, victims' rights in those states are still secondary to the rights of criminal defendants, guaranteed by the U.S. Constitution. Until crime victims' rights are recognized in the same, supreme document in which the defendant's rights are housed, the will of the legislatures and citizenry in those states to provide equal justice for victims of crime will be thwarted.

In April of 1996, a federal constitutional amendment for crime victims was finally introduced in both houses of Congress. Drafted in close consultation with members of the National Victim Constitutional Amendment Network,¹³ the amendment would provide basic rights to every victim of

a violent felony in this country, including the right to be informed, present and heard at key criminal justice proceedings, the right to restitution, and the right to a speedy trial.¹⁴ States are already beginning to demonstrate their support. Within two weeks of the introduction of the federal amendment, the Alaska legislature had passed a resolution in support of the proposed federal amendment.¹⁵ Similar resolutions were introduced or are under consideration in numerous other states. **(Editor's Note: See Addendum for Updated Information.)**

Constitutional rights for crime victims represents the crowning achievement in the struggle for the legal rights for crime victims. It is an achievement made possible by the daily efforts of each and every crime victim advocate.

¹³ Members of the National Victim Constitutional Amendment Network (NVCAN) include representatives from national organizations, such as Mothers Against Drunk Driving, the National Organization for Victim Assistance, and the National Victim Center, as well as numerous state and local crime victim organizations and individual crime victim advocates.

¹⁴ SJR 52, sponsored by Senators Dianne Feinstein (D-CA) and Jon Kyl (R-AZ), and HJR 174, sponsored by Representative Henry Hyde (R-IL).

¹⁵ Alaska SJR 5C, sponsored by Senator Jim Donley.

Table 2-A

STATE CONSTITUTIONAL RIGHTS OF CRIME VICTIMS
Current through July 1996

State	Treated with Fairness and Respect	Notice of Proceedings	Notice of Release	Attend Proceedings	Heard at Proceedings	Confer with Prosecutor	Speedy Trial	Protected from Defendant	Right to Refuse Interview	Restitution and/or Compensation	Rights at Juvenile Level
Alabama Con. Am. 557		✓		✓	✓						
Alaska Art. 1, Sec. 24	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	✓
Arizona Art. 2, Sec. 2.1	✓	✓	✓	✓	✓	✓	✓	(✓)	✓	Rest.	*
California Art. I, Sec. 28										Rest.	
Colorado Art. II, Sec. 16a		✓	(✓)	✓	✓						
Florida Art. 1, Sec. 16	✓	✓		✓	✓						
Idaho Art. 1, Sec. 22	✓	✓	✓	✓	✓	✓	✓		✓	Rest.	✓

* Legislature Authorized to Extend Rights to Victims of Juveniles. (✓) Language of Amendment Unclear, Right Implied.

Table 2-A

STATE CONSTITUTIONAL RIGHTS OF CRIME VICTIMS
Current through July 1996

State	Treated with Fairness and Respect	Notice of Proceedings	Notice of Release	Attend Proceedings	Heard at Proceedings	Confer with Prosecutor	Speedy Trial	Protected from Defendant	Right to Refuse Interview	Restitution and/or Compensation	Rights at Juvenile Level
Illinois Art. 1, Sec 8.1	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	
Kansas Art. 15, Sec. 15		✓		✓	✓						
Maryland Art. 47	✓	✓		✓	✓						
Michigan Art. I, Sec. 24	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	
Missouri Art. 1, Sec. 32	✓	✓	✓	✓	✓		✓	✓		Rest.	
Nebraska Art. 1, Sec. 28		✓	✓	✓	✓						
New Jersey Art. I, Para. 22	✓			✓							

* Legislature Authorized to Extend Rights to Victims of Juveniles. (✓) Language of Amendment Unclear, Right Implied.

Table 2-A

STATE CONSTITUTIONAL RIGHTS OF CRIME VICTIMS
Current through July 1996

State	Treated with Fairness and Respect	Notice of Proceedings	Notice of Release	Attend Proceedings	Heard at Proceedings	Confer with Prosecutor	Speedy Trial	Protected from Defendant	Right to Refuse Interview	Restitution and/or Compensation	Rights at Juvenile Level
New Mexico Art. 2, Sec. 24	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	
Ohio Art. 1, Sec. 10a	✓	(✓)	(✓)	(✓)	(✓)			✓			
Rhode Island Art. 23	✓				✓					Rest. Comp.	
Texas Art. 1, Sec. 30	✓	✓	✓	✓				✓		Rest.	
Utah Art. 1, Sec. 28	✓	✓	✓	✓	✓		✓				*
Washington Art. 1, Sec. 35	✓	✓	✓	✓	✓						
Wisconsin Art. 1, Sec. 9m	✓	✓	✓	✓	✓	✓	✓	✓		Rest. Comp.	

Table 2-B

**ENFORCEMENT OF VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT
LANGUAGE OF THE AMENDMENT
Current through July 1996**

State	Enforceability Presumed	No Cause of Action for Money Damages	No Cause of Action, Generally	Legislature May Provide for Enforcement	Victim May Enforce Rights
Alabama	✓		✓	*	
Alaska	✓				
Arizona	✓			*	
California	✓				
Colorado	✓				
Florida	✓				
Idaho		✓		*	
Illinois				✓	
Kansas		✓		✓	
Maryland		✓			
Michigan				✓	

* Amendment states that legislature may enact laws to implement, preserve or protect constitutional rights, or that victim is entitled to "rights and remedies" provided by legislature, or that legislature may define and enforce section.

** Amendment states that legislature may reverse, modify, or supersede any judicial decision or rule arising from a cause of action brought pursuant to this section.

*** Amendment states that there are no remedies other than those specifically provided by legislature.

**** Amendment states that the provisions shall not take effect until the legislature enacts implementing laws.

***** Amendment states that legislature may provide that certain criminal justice officials are not liable for a failure or inability to provide a right enumerated by this section.

Table 2-B

**ENFORCEMENT OF VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT
LANGUAGE OF THE AMENDMENT
Current through July 1996**

State	Enforceability Presumed	No Cause of Action for Money Damages	No Cause of Action, Generally	Legislature May Provide for Enforcement	Victim May Enforce Rights
Missouri		✓	**	✓	
Nebraska				***	
New Jersey	✓				
New Mexico				****	
Ohio		✓			
Rhode Island	✓				
Texas		*****		*	✓
Utah		✓		*	
Washington	✓				
Wisconsin	✓			*	

* Amendment states that legislature may enact laws to implement, preserve or protect constitutional rights, or that victim is entitled to "rights and remedies" provided by legislature, or that legislature may define and enforce section.

** Amendment states that legislature may reverse, modify, or supersede any judicial decision or rule arising from a cause of action brought pursuant to this section.

*** Amendment states that there are no remedies other than those specifically provided by legislature.

**** Amendment states that the provisions shall not take effect until the legislature enacts implementing laws.

***** Amendment states that legislature may provide that certain criminal justice officials are not liable for a failure or inability to provide a right enumerated by this section.

SECTION 3

THE RIGHT TO NOTICE

INTRODUCTION

Perhaps the most fundamental right of a crime victim is the right to be kept informed by the criminal justice system. The rights and services that may be available to a crime victim are meaningless unless the victim knows they exist. For example, a victim's right to attend proceedings or to be heard at proceedings can have no effect unless the victim is notified in advance of those proceedings.

The right to be notified can be divided into two classifications: the right to general information which is of interest to all crime victims, and the right to be kept informed about proceedings and events relating to the offense against the victim.

GENERAL INFORMATION PROVIDED TO VICTIMS

The criminal justice system often provides much general information of interest to all victims. Such general information includes: notice of the availability of crime victim compensation; referrals to victim services, such as rape crisis centers, battered women's shelters, and general victim service agencies; information about the steps involved in a criminal prosecution; contact information for an individual within the criminal justice system; and notification of the victim's rights.

Information about a crime victim's legal rights is perhaps the most significant notice that can be provided. The right to notice of a victim's rights has been called the "threshold right," because it is the right that enables crime victims to exercise all other rights. Victims must first be informed that they have a "right to be notified of proceedings upon request" before they can request to be notified. Victims must first be informed that they have a "right to present a victim impact statement at sentencing" before they can prepare a statement. They must first be informed that they have a "right to attend the bail hearing" before they will make an effort to attend.

Not every state requires that victims be informed of their legal rights. Ten states and the District of Columbia have no provisions requiring that victims be informed of their rights. In about half of those states that do require such notification, the investigating law enforcement agency is charged with this duty. Seven states — Delaware, Georgia, Michigan, Minnesota, Ohio, Texas and Wyoming — provide for notice of rights at two different levels: by police, initially, and by the prosecutor after criminal proceedings have begun.

Table 3-A examines only the general notice of rights provisions. In addition to those listed, many states have extensive provisions

for notice of rights to particular classes of victims, most notably domestic violence victims. States may also have statutes requiring notice of the rights that apply to particular proceedings, such as rights at the time of sentencing or rights regarding the parole of the offender. Statutes reflected in this table are current through 1995.

NOTICE OF EVENTS AND PROCEEDINGS IN THE CRIMINAL JUSTICE PROCESS

The primary goal of the victims' rights movement has been to ensure that victims are treated with fairness, dignity and respect throughout the criminal justice system. One of the most obvious demonstrations of such treatment is notification to victims of significant events and proceedings during the course of the criminal justice process. Keeping victims informed throughout the criminal justice process is a recognition that victims are more than mere "pieces of evidence" in the state's case — that they as individuals have a real interest in the progress of the criminal case and the current status of the offender.

There are dozens of events or proceedings in the ordinary criminal justice process for which notice may be required by statute. The examination in Table 3-B focuses on the events or proceedings which have the most significance for the greatest number of crime victims, and which are addressed broadly across the states. Other important areas of notice not examined here include: notice of the grand jury hearing, notice of probation or parole revocation proceedings, notice of the transfer of a convicted offender to an out-of-

state prison facility, and notice of the death of the offender, in addition to many others.

Some of the notice requirements listed in Table 3-B have been more widely adopted than others. For example, nearly every state notifies victims of the trial date and time (42 states) and the sentencing hearing (46 states). Fewer notify victims of the offender's release on bail. Following conviction, most states notify victims of the offender's parole hearing (45 states) or parole release (46 states), but only a few notify victims of an offender's pardon or commutation of sentence (14 states).

While every state has addressed the crime victims' right to notice,¹⁶ the procedures for such notification, if addressed at all, vary widely. For example, with regard to a victim's right to notification of a defendant's bail release, some states require immediate notice by telephone.¹⁷ Others only provide victims "access" to information by giving

¹⁶ The District of Columbia statutes, however, only provide for crime victim notification of the right to make an impact statement at sentencing. D.C. CODE § 23-103a. There are no legal provisions requiring crime victim notification of events or proceedings.

¹⁷ GA. CODE ANN. § 17-17-7. In addition to notice of release, this statute also requires the prosecutor to notify the victim prior to the release proceeding, whenever possible, in effect providing the victim with two notices that release is imminent.

crime victims a telephone number to call to find out whether an arrested defendant has been released.¹⁸ Such differences may have a dramatic impact on the likelihood that victims will *actually* receive the notice in question. It is reasonable to assume that victims in the first instance will more often receive the advance notice that may be necessary for them to protect themselves than victims in the second instance, unless they are willing to assume the burdensome task of calling authorities every few days or even every few hours.

Many of the following provisions require notice only where victims have taken it upon themselves to request it. Again, this makes the information in Table 3-A, Notice of Legal Rights, all the more significant. If a victim does not know he or she has the right to request such notice, the notice provisions reflected in Table 3-B will have little, if any, effect.

Table 3-B incorporates all notice provisions applicable to crime victims generally - even those non-mandatory provisions which cannot properly be called "rights." Provisions that merely authorize or encourage notification of certain events or proceedings are included, as are statutes that require an agency to provide notice "if reasonably practicable," in addition to statutes that require an official to "make reasonable efforts" to provide notice.

As is normally the case with statutory interpretation, certain terms may have definitions that expand the ordinary reading

of the statute. For example, some states requiring release notification by the "custodial authority" include mental health facilities within the definition of "custodial authority."

On the other hand, many statutes leave crucial terms undefined. To illustrate, statutes often state that a victim is entitled to notice of "all court proceedings" in the case, yet they fail to define either "court" or "proceedings." Unless a more narrow definition was provided, such statutes are interpreted here to include notice of: all pretrial and trial proceedings, including the hearing at which a plea bargain is presented to the court; the sentencing hearing; postconviction hearings; and appellate proceedings. Again, states themselves might interpret the meaning of these phrases more narrowly than they are interpreted here. If the statute uses the phrase "significant stages" or "pertinent stages" it is deemed to include the pretrial release proceedings, the plea bargain acceptance hearing, the trial, the sentencing hearing, and appellate proceedings, but not posttrial relief proceedings.

Similarly, if a victim has a right to notice of the "final disposition" of the case, then the statute's language is construed to include notice that a case was settled by plea bargain, or that the case was dismissed, as well as the outcome of a trial and sentencing, unless the statute specifically states otherwise. However, notice of a "dispositional proceeding" has not been interpreted to include notice of a dismissal or "dropping" of the case.

¹⁸ As an example, see MICH. STAT. ANN. § 28.1257 (755).

A right to be “informed as to the status of the case” is not being interpreted here to include notice of proceedings, due simply to the fact that such language is too vague. Some jurisdictions might interpret such a provision as requiring victims to be notified at every change in the status of the case, including all proceedings and significant events that may occur. Others may interpret it to simply mean that on specific request, the victim will be told whether or not the case is still open. However, for purposes of this section, language which indicates that the victim is to be informed of “any change in the status of the case” is interpreted to include notice of dismissal of charges, appeal of the decision, and other such changes.

The term “notice of release” from custody is interpreted to include notice of final release and notice of parole release, since they represent the most common forms of release from incarceration and are consistent with the normal understanding of the phrase. It is not, however, interpreted to include notice of other conditional releases, such as furloughs and work release, unless specified by the statute. Again, it is important to remember that the states, in practice, may themselves interpret this term more broadly than an ordinary reading of the statute would otherwise imply. Statutes that give victims a right to notice of the release of the “defendant” or the “accused,” and do not otherwise restrict their application to postconviction releases or releases from prison, are deemed to include both pre- and postconviction releases.

There are some important areas of interplay between the right to notice of certain prosecutorial decisions (i.e., dismissal of the case, dropping of charges, and plea bargain agreements), and the right to consult with the

prosecutor. Statutes that merely require consultation, without specifying notice to the victim of the action taken following such consultation, are not included here. However, the reader may wish to also examine the provisions in Section 5, regarding the victim’s right to confer with the prosecutor for details concerning this right.

Most of the categories listed in Table 3-B are self-explanatory, but a few require clarification.

Canceled/Rescheduled Hearings

This category includes statutes that require that victims be notified of all canceled or rescheduled proceedings in addition to those statutes that require notice only where the victim had been specifically summoned or simply requested to appear at that proceeding.

Dismissal/Dropping of Case

As noted above, where the statute provides that a victim is to be notified of the outcome or the final disposition of a case, this is deemed to include notice of dismissal of the case. In addition, several states specifically provide that a victim is to be informed when a prosecutor declines to press charges, dismisses or simply drops a case.

Plea Bargain

The category “notice of a plea bargain” includes provisions that state that the victim is entitled to “notice of every proceeding” since plea bargains must be presented during a court proceeding. Statutes providing that the victim has the right to be notified of the outcome or final disposition of a case are also included in this category, as are statutes specifically providing that a victim is to be notified of any plea bargain.

Posttrial Relief Proceedings

Such proceedings include hearings on a request for a modification of sentence, and other postconviction proceedings before the trial court. If a state provides notice to a victim of "all court proceedings," that term is interpreted to include posttrial relief proceedings.

Appeals Process/Proceedings

The category "Appeals Process/Proceedings" includes statutes that require notice to the victim that an appeal has been filed, notice of the appellate proceedings, and/or notice of the results of an appeal. If a state provides notice of "all court proceedings" and the terms "court" and "proceedings" are not otherwise defined, the statute or constitutional provision is interpreted to include notice of the appellate proceedings.

Conditional Release from Prison

This category includes any and all conditional releases from prison excluding parole. Thus, it includes releases to a community corrections program, work releases, furloughs, and/or any other temporary or conditional releases.

Pardon/Commutation Hearing or Application Pardon/Commutation

This category includes two types of provisions: 1) those concerning the pardon of an offender or the exercise of executive clemency, after which an offender is released; and 2) those concerning the commutation of an offender's sentence, whereby an offender who has received a serious sentence (i.e., the death penalty) has that sentence reduced or commuted to a lesser sentence, (i.e., life imprisonment as per the previous example).

Release from Mental Institution

With respect to the right to notification of an offender's release from a mental facility, the category here serves as a "catch-all" for all such releases. Thus it includes those states that provide notice only where the offender was committed to the facility following conviction, as well as states that provide notice for both accused and convicted offenders, including those found not guilty by reason of insanity and those deemed incompetent to stand trial.

Table 3-B represents a categorization of the laws requiring crime victim notification of events and proceedings. As noted above, many statutes are ambiguous on certain points, and the creators of Table 3-B have used their best judgment to interpret the statutes' wording as it exists on its face. Again, criminal justice officials in a particular state may be interpreting a statute more or less broadly than has otherwise been interpreted here. An index of notification statutes follows Table 3-B. Statutes are current through 1995.

Table 3-A

INFORMING VICTIMS OF THEIR LEGAL RIGHTS
Current through 1995

State/ Statute	When Provided	Entity Providing	Form of Information
Alabama § 15-23-62	Within 72 hours after initial contact with law enforcement.	Law enforcement agency.	Form designed and produced for the appropriate governmental agency or office re. rights and a form to invoke these rights.
Arizona Const. Art. II, Sec. 2.1	Not specified.	Not specified.	Victims' constitutional rights.
Arizona § 13-4405	As soon after the detection of a criminal offense without interfering with an investigation.	Law enforcement agency investigating offense.	Not specified.
California PC § 679.02 PC § 13897.1	Not specified.	Local law enforcement.	Information prepared by victims' legal resource Center.
Colorado § 24-4.1-302 § 24-4.1-303	After initial contact between victim and law enforcement agency investigating, promptly.	Investigating law enforcement agency.	Statement of victims' rights.
Connecticut § 54-203	When victim applies for compensation; within 10 days after receipt of application.	Office of Victim Services within Judicial Departments.	Written list of victims' rights.
Delaware tit. 11 § 9410	At initial contact between victim and investigating law enforcement.	Law enforcement agency.	Explanation of victims' rights in writing.
Delaware tit. 11 § 9411	After prosecution commenced by attorney general, promptly.	Attorney general.	Victims' rights.
Florida § 960.001	At the crime scene, during the investigation and at the earliest possible time.	Law enforcement personnel.	Victims' rights information card or brochure.
Georgia § 17-17-6	Upon initial contact with victim.	All law enforcement and court personnel.	Written in plain language-Criminal Justice Coordinating Council shall develop and disseminate written information to law enforcement.

Table 3-A

**INFORMING VICTIMS OF THEIR LEGAL RIGHTS
Current through 1995**

State/ Statute	When Provided	Entity Providing	Form of Information
Georgia § 17-17-8	Upon initial contact with victim, promptly.	Prosecuting attorney.	Not specified.
Idaho § 19-5306	Upon filing of complaint or juvenile petition.	Prosecutor.	Not specified.
Illinois ch. 725 § 120/4	Initial contact by criminal justice system.	The appropriate authorities.	Unspecified, plus conspicuously posted in all court facilities.
Indiana § 33-14-10-5	Not specified.	Prosecutor or victim assistance program.	Not specified.
Iowa § 910A.2	Not specified.	County attorney.	In writing.
Kansas § 19-4808	Not specified.	Investigating law enforcement agency	Not specified.
Kentucky § 15.245	Not specified.	Prosecutors.	2 page victims' rights pamphlet prepared by attorney general .
Kentucky § 421.500	As soon as possible .	Law enforcement.	Not specified (the criminal justice process as it involves the participation of the victim).
Louisiana R.S. 46 § 1844	Not specified.	Appropriate law enforcement agency and local judicial authorities.	Crime victims' brochure prepared by the crime victims reparations board, supplemented as needed by district attorney with local victim witness information.
Maine tit. 15 § 6101	Not specified.	Prosecutors, whenever practicable.	Not specified (the rights in this section).
Maryland Const. Art. 47	Not specified.	Not specified.	Not specified (the rights established by this article).
Maryland Art. 27 § 761	Not specified.	Appropriate criminal justice agencies.	Not specified (States that victims to be informed of rights in these guidelines. However, many significant victims' rights, such as the right to attend and the right to speak at sentencing, are not contained in the guidelines but appear elsewhere in the code).
Massachusetts ch. 258B § 3 ch. 258B § 12	At the beginning of the criminal justice process.	Prosecutor.	Written material prepared by the board.

Table 3-A

**INFORMING VICTIMS OF THEIR LEGAL RIGHTS
Current through 1995**

State/ Statute	When Provided	Entity Providing	Form of Information
Michigan § 28.1287 (753)	Within 24 hours of receiving the report.	Investigating law enforcement agency.	Written information with phone number and address of prosecutor for information regarding rights.
Michigan § 28.1287 (756)	Not more than 7 days after arraignment, nor less than 24 hours before the preliminary examination.	Prosecutor.	Written.
Michigan § 28.1287 (813)	Within 24 hours of receiving the report.	Investigating law enforcement agency.	Written information with phone number and address of prosecutor for information regarding rights.
Minnesota § 611A.02	Initial contact with victim.	Peace officer.	Crime Victim and Witness Advisory Council to develop 2 model notices of rights.
	Within a reasonable time after offender is charged or petitioned.	City or county attorney's office.	Above notice of rights.
Missouri Const. Art. 1, Sec.2	Not specified.	Not specified.	Not specified.
Montana § 46-24-103 § 46-24-201	Not specified.	Local law enforcement.	Attorney General to prepare written notice.
New Hampshire § 21-M:8-b	Not specified.	Office of victim/witness assistance (and office to coord. with police and prosecutors in provision of info. to victims)	Not specified (statewide victim/witness rights program)
New Jersey (drunk driving victims) § 39:50.11	Not specified.	Not specified.	Information about the victim's role in the court process.
New Jersey § 52:4B-44	Not specified.	Not specified.	Information about the victim's and witness's role in the criminal justice process.

Table 3-A

**INFORMING VICTIMS OF THEIR LEGAL RIGHTS
Current through 1995**

State/ Statute	When Provided	Entity Providing	Form of Information
New Jersey § 52:4B-42	Not specified.	Victim and witness rights information program.	Detailed description.
New Mexico § 31-26-9	Within 7 working days after prosecutor files formal charges.	Prosecutor.	Copy of constitutional amendment and implementing legislation.
New York EL§ 646a	Earliest time possible.	Prosecutor/district attorney.	Informational pamphlet prepared by Division of Criminal Justice Services and Crime Victims Board.
Ohio § 2930.04	Promptly after initial contact between law enforcement and victim.	Investigating law enforcement agency.	Written: may be provided in the form of the pamphlet (109.4) or information card or other material under 2743.71.
Ohio § 2930.06	Promptly after prosecution has been commenced.	Prosecutor.	Summary of rights.
Oklahoma tit. 19 § 215.33	Not specified.	Victim-witness coordinator.	Not specified.
Pennsylvania 71 P.S. § 180-9.6	Within 24 hours of first contact with victim.	Law enforcement agency.	Form developed by Penn. Commission on Crime and Delinquency (uses term "services" but could be interpreted with § 180-9.4 to include rights).
Rhode Island § 12-28-10	Not specified.	Court system's victim services unit	Not specified.
South Dakota § 23A-28C-2	At commencement of criminal proceedings.	Prosecutor.	First class mail.
Tennessee § 40-38-103	On request.	Prosecutor's office.	Orally, in writing or by videotape.
Tennessee § 40-38-107	Not specified.	Prosecutor or victim-witness coordinator.	Booklet or other publication prepared by state treasury.
Texas CCP art. 56.03	Not specified.	Victim witness coordinator.	TX Crime Victims' Clearinghouse to develop victim information booklet, providing general explanation of criminal justice system.
Texas CCP art. 56.07	Not specified.	Law enforcement.	
Texas CCP art. 56.08	Not specified.	Prosecutor.	

Table 3-A

**INFORMING VICTIMS OF THEIR LEGAL RIGHTS
Current through 1995**

State/ Statute	When Provided	Entity Providing	Form of Information
Utah § 77-38-3	Within 7 days of filing felony charges.	Prosecutor.	In any reasonable manner, including telephone electronically, orally, letter or form.
Vermont tit. 13 § 5304	Not specified.	Victims assistance program.	Not specified (notified of specific rights - protection, restitution, heard at sentencing, and to request notice of release or escape, most of VT's victim rights).
Virginia § 19.2-11.01	Not specified.	Local crime victim and witness assistance program.	Not specified.
Washington § 7.69.030	At time of reporting of crime.	Law enforcement.	Written.
West Virginia § 61-11A-6	Not specified.	Arresting law enforcement agency .	The role of the victim in the criminal justice system, including what they can expect from the system.
Wisconsin § 950.08	Not specified.	Department of Justice.	Not specified ("informational program" on crime victims' rights).
Wyoming § 1-40-203	Without undue delay.	Law enforcement.	Not specified.
Wyoming § 1-40-204	Not specified.	Prosecutor.	In writing (rights in judicial process).

Table 3-B

NOTICE OF PROCEEDINGS AND EVENTS IN
THE CRIMINAL JUSTICE PROCESS
Current through 1995

Notice Category	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI
Canceled/Rescheduled Hearings	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓
Bail Hearing	✓	✓	✓			✓				✓	✓	
Bail Release	✓	✓	✓			✓	✓	✓		✓	✓	✓
Pretrial Release Hearing	✓	✓	✓			✓				✓	✓	
Pretrial Release	✓	✓	✓			✓	✓	✓		✓	✓	✓
Dismissal/Dropping of Case	✓		✓		✓	✓	✓			✓		✓
Plea Bargain	✓		✓		✓	✓	✓	✓		✓	✓	✓
Trial Dates/Times	✓	✓	✓			✓	✓	✓		✓	✓	✓
Sentencing Hearing	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓
Final Disposition/Sentence	✓	✓	✓		✓	✓		✓				✓
Earliest Possible Release/Parole Date			✓					✓				
Posttrial Relief Hearings	✓	✓	✓			✓	✓			✓	✓	
Appeals Process/Proceedings	✓		✓			✓		✓		✓	✓	
Conditional Release from Prison	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓
Parole Hearing	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Parole	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓
Pardon/Commutation Hearing or Application	✓	✓	✓				✓	✓			✓	
Pardon/Commutation	✓		✓				✓	✓				
Final Release	✓	✓	✓			✓	✓	✓		✓	✓	✓
Escape of Offender	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓
Recapture	✓		✓		✓						✓	
Release from Mental Institution	✓	✓	✓		✓	✓	✓			✓		

Table 3-B
NOTICE OF PROCEEDINGS AND EVENTS IN
THE CRIMINAL JUSTICE PROCESS
 Current through 1995

Notice Category	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN
Canceled/Rescheduled Hearings		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Bail Hearing	✓	✓	✓		✓				✓		✓	✓
Bail Release	✓	✓	✓	✓		✓	✓			✓	✓	✓
Pretrial Release Hearing		✓	✓						✓		✓	
Pretrial Release		✓	✓	✓		✓	✓			✓	✓	✓
Dismissal/Dropping of Case				✓	✓			✓	✓	✓	✓	✓
Plea Bargain	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓
Trial Dates/Times	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Sentencing Hearing	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Final Disposition/Sentence	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓
Earliest Possible Release/Parole Date		✓					✓				✓	
Posttrial Relief Hearings		✓			✓		✓		✓		✓	
Appeals Process/Proceedings	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Conditional Release from Prison		✓	✓	✓	✓			✓	✓	✓	✓	✓
Parole Hearing	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Parole	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Pardon/Commutation Hearing or			✓		✓		✓		✓		✓	✓
Pardon/Commutation									✓		✓	
Final Release	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓
Escape of Offender	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓
Recapture		✓					✓					✓
Release from Mental Institution		✓							✓	✓		✓

Table 3-B

NOTICE OF PROCEEDINGS AND EVENTS IN
THE CRIMINAL JUSTICE PROCESS
Current through 1995

Notice Category	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH
Canceled/Rescheduled Hearings	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓
Bail Hearing	✓	✓		✓		✓	✓	✓	✓		✓	
Bail Release		✓	✓		✓		✓	✓	✓		✓	✓
Pretrial Release Hearing	✓	✓		✓		✓		✓			✓	✓
Pretrial Release		✓	✓		✓		✓	✓	✓		✓	
Dismissal/Dropping of Case		✓		✓	✓	✓	✓		✓	✓		
Plea Bargain	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Trial Dates/Times	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
Sentencing Hearing	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Final Disposition/Sentence		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Earliest Possible Release/Parole Date		✓	✓	✓					✓			✓
Posttrial Relief Hearings	✓	✓	✓	✓		✓		✓			✓	✓
Appeals Process/Proceedings	✓	✓	✓	✓		✓	✓	✓				✓
Conditional Release from Prison		✓	✓	✓			✓		✓		✓	✓
Parole Hearing	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓
Parole	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Pardon/Commutation Hearing or		✓			✓		✓				✓	✓
Pardon/Commutation		✓	✓		✓		✓				✓	
Final Release		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Escape of Offender		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Recapture		✓	✓	✓			✓		✓			✓
Release from Mental Institution		✓		✓					✓		✓	✓

Table 3-B
**NOTICE OF PROCEEDINGS AND EVENTS IN
 THE CRIMINAL JUSTICE PROCESS**
 Current through 1995

Notice Category	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA
Canceled/Rescheduled Hearings	✓	✓		✓	✓	✓		✓		✓	✓	✓
Bail Hearing					✓	✓		✓	✓	✓	✓	✓
Bail Release				✓	✓	✓	✓	✓		✓	✓	
Pretrial Release Hearing					✓	✓		✓	✓	✓	✓	✓
Pretrial Release				✓		✓	✓			✓		
Dismissal/Dropping of Case				✓	✓					✓		✓
Plea Bargain	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓
Trial Dates/Times			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sentencing Hearing			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Final Disposition/Sentence			✓	✓	✓		✓	✓		✓		✓
Earliest Possible Release/Parole Date											✓	
Posttrial Relief Hearings					✓			✓	✓	✓	✓	✓
Appeals Process/Proceedings	✓				✓		✓	✓		✓	✓	✓
Conditional Release from Prison	✓		✓	✓	✓	✓	✓			✓	✓	✓
Parole Hearing	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Parole	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓
Pardon/Commutation Hearing or							✓					
Pardon/Commutation	✓		✓	✓								
Final Release	✓			✓	✓	✓		✓	✓	✓	✓	✓
Escape of Offender			✓	✓	✓	✓		✓	✓	✓	✓	✓
Recapture						✓						✓
Release from Mental Institution		✓	✓			✓				✓		✓

Table 3-B

NOTICE OF PROCEEDINGS AND EVENTS IN
THE CRIMINAL JUSTICE PROCESS
Current through 1995

Notice Category	WV	WI	WY	TOTAL
Canceled/Rescheduled Hearings	✓	✓	✓	41
Bail Hearing	✓	✓	✓	31
Bail Release	✓	✓	✓	35
Pretrial Release Hearing	✓	✓	✓	27
Pretrial Release	✓	✓	✓	31
Dismissal/Dropping of Case	✓	✓		26
Plea Bargain	✓	✓	✓	45
Trial Dates/Times	✓	✓	✓	42
Sentencing Hearing	✓	✓	✓	46
Final Disposition/Sentence	✓	✓	✓	36
Earliest Possible Release/Parole Date			✓	12
Posttrial Relief Hearings		✓	✓	28
Appeals Process/Proceedings		✓		32
Conditional Release from Prison	✓	✓	✓	39
Parole Hearing	✓	✓	✓	45
Parole	✓	✓	✓	46
Pardon/Commutation Hearing or Application		✓	✓	20
Pardon/Commutation				14
Final Release	✓	✓	✓	40
Escape of Offender	✓		✓	41
Recapture			✓	16
Release from Mental Institution		✓		22

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Alabama

Canceled/Rescheduled Hearings
§ 15-23-63
Bail Hearing
Const. Am. 557
§ 15-13-63 (unless initial appearance)
Bail Release
§ 15-23-75
Pretrial Release Hearing
Const. Am. 557
§ 15-23-63 (unless initial appearance)
Pretrial Release
§ 15-23-75
Dismissal/Dropping of Case
Const. Am. 557
§ 15-23-72
Plea Bargain
Const. Am 557
§ 15-23-63
§ 15-23-71
Trial Dates/Times
Const. Am. 557
§ 15-23-63
Sentencing Hearing
Const. Am. 557
§ 15-23-63
§ 15-23-72
Final Disposition/Sentence
§ 15-23-72
§ 15-23-75
Posttrial Relief Hearings
§ 15-23-75
Appeals Process/Proceedings
§ 15-23-75
Conditional Release
§ 15-18-114
Parole Hearing
§ 15-22-23
§ 15-23-79
Parole
§ 15-22-36
Pardon/Commutation Hearing or Application
§ 15-22-36
§ 15-23-79
Pardon/Commutation
§ 15-22-36
Final Release
§ 15-23-78
Escape of Offender
§ 15-23-75

Recapture
§ 15-23-75
Release from Mental Institution
§ 15-23-78

Alaska

Canceled/Rescheduled Hearings
§ 12.61.010
Bail Hearing
Const. Art. I, Sec. 24
Bail Release
Const. Art. I, Sec. 24
Pretrial Release Hearing
Const. Art. I, Sec. 24
Pretrial Release
Const. Art. I, Sec. 24
Plea Bargain
Const. Art. I, Sec. 24
Trial Dates/Times
Const. Art. I, Sec. 24
§ 12.61.010
Sentencing Hearing
Const. Art. I, Sec. 24
§ 12.61.010
Final Disposition/Sentence
§ 12.61.015
Posttrial Relief Hearings
Const. Art. I, Sec. 24
Conditional Release
§ 33.30.013
Parole Hearing
Const. Art. I, Sec. 24
§ 33.16.120
Parole
Const. Art. I, Sec. 24
§ 33.16.120
Pardon/Commutation Hearing or Application
§ 33.20.080
Final Release
Const. Art. I, Sec. 24
§ 33.30.013
Escape of Offender
Const. Art. I, Sec. 24
§ 33.30.013
Release from Mental Institution
§ 12.47.095

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Arizona

Canceled/Rescheduled Hearings
§ 13-4409

Bail Hearing
Const. Art. II, Sec. 2.1
§ 13-4405
§ 13-4409
§ 13-4412

Bail Release
Const. Art. II, Sec. 2.1
§ 13-4407

Pretrial Release Hearing
Const. Art. II, Sec. 2.1
§ 13-4405
§ 13-4409

Pretrial Release
Const. Art. II, Sec. 2.1
§ 13-4407

Dismissal/Dropping of Case
§ 13-4408
§ 13-4410

Plea Bargain
§ 13-4409
§ 13-4423

Trial Dates/Times
Const. Art. II, Sec. 2.1
§ 13-4409

Sentencing Hearing
Const. Art. II, Sec. 2.1
§ 13-4409
§ 13-4410

Final Disposition/Sentence
§ 13-4410
§ 13-4411

Earliest Possible Release/Parole Date
§ 13-4413

Posttrial Relief Hearings
§ 13-4411

Appeals Process/Proceedings
§ 13-4411

Conditional Release
§ 13-4414
§ 31-233

Parole Hearing
§ 13-4414
§ 31-411

Parole
Const. Art. II, Sec. 2.1
§ 13-4414
§ 31-411

Pardon/Commutation Hearing or Application
§ 13-4414
§ 31-402
§ 31-411

Pardon/Commutation
§ 13-4414
§ 31-411

Final Release
Const. Art. II, Sec. 2.1
§ 13-4413

Escape of Offender
Const. Art. II, Sec. 2.1
§ 13-4412

Recapture
§ 13-4412

Release from Mental Institution
§ 13-4416
§ 36-541.01

Arkansas

Canceled/Rescheduled Hearings
§ 16-21-106*

Sentencing Hearing
§ 16-97-102

Parole Hearing
§ 16-93-702

Escape of Offender
§ 12-29-114

*Arkansas Code § 16-21-106 doesn't list "rights" but merely authorizes the prosecutor to provide certain services, including notice of rescheduled proceedings.

California

Canceled/Rescheduled Hearings
PC § 679.02

Dismissal/Dropping of Case
PC § 679.02
PC § 11116.10

Plea Bargain
PC § 679.02

Sentencing Hearing
PC § 679.02

Final Disposition/Sentence
PC § 679.02
PC § 11116.10

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Parole Hearing
 PC § 679.02
 PC § 3043
Parole
 PC § 679.03
 PC § 3058.8
Escape of Offender
 PC § 679.02
 PC § 11155
Recapture
 PC § 11155
Release from Mental Institution
 PC § 11151

Colorado

Bail Hearing
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303
Bail Release
 § 24-4.1-302.5
Pretrial Release Hearing
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303
Pretrial Release
 § 24-4.1-302.5
Dismissal/Dropping of Case
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
Plea Bargain
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303
Trial Dates/Times
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303
Sentencing Hearing
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303

Final Disposition/Sentence
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
Posttrial Relief Hearings
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303
Appeals Process/Proceedings
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
 § 24-4.1-303
Conditional Release
 § 24-4.1-303
Parole Hearing
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
Parole
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
Final Release
 Const. Art. II, Sec. 16a
 § 24-4.1-302
 § 24-4.1-302.5
Escape of Offender
 § 24-4.1-302.5
Release from Mental Institution
 § 16-8-115
 § 24-4.1-302
 § 24-4.1-302.5

Connecticut

Bail Release
 § 51-286e
 § 54-203
Pretrial Release
 § 51-286e
 § 54-203
Dismissal/Dropping of Case
 § 54-203
 § 54-142c
Plea Bargain
 § 51-286e
Trial Dates/Times
 § 51-286e

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 § 54-91c
Posttrial Relief Hearings
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 § 54-230
Conditional Release
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Parole Hearing
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Pardon/Commutation
 § 54-230
Final Release
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 § 54-230
Release from Mental Institution
 § 17a-596
 § 54-56d

Delaware

Canceled/Rescheduled Hearings
 tit. 11 § 9411
Bail Release
 tit. 11 § 9406
Pretrial Release
 tit. 11 § 9406
Plea Bargain
 tit. 11 § 9407
Trial Dates/Times
 tit. 11 § 9407
 tit. 11 § 9411
Sentencing Hearing
 tit. 11 § 9407
 tit. 11 § 9411
Final Disposition/Sentence
 tit. 11 § 9411
Earliest Possible Release/Parole Date
 tit. 11 § 9413
Appeals Process/Proceedings
 tit. 11 § 9412
Conditional Release
 tit. 11 § 9413
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Parole
 tit. 11 § 9413
Pardon/Commutation Hearing or Application
 tit. 11 § 4361
Pardon/Commutation
 tit. 11 § 9416
Final Release
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Escape of Offender
 tit. 11 § 9413

DC

The District of Columbia has none of the statutory notice provisions examined in this section.

Florida

Canceled/Rescheduled Hearings
 § 960.001
Bail Hearing
 § 960.001
Bail Release
 § 960.001
Pretrial Release Hearing
 § 960.001
Pretrial Release
 § 960.001
Dismissal/Dropping of Case
 Const. Art. I, Sec. 16
Plea Bargain
 Const. Art. I, Sec. 16
 § 960.001
Trial Dates/Times
 Const. Art. I, Sec. 16
 § 960.001
Sentencing Hearing
 Const. Art. I, Sec. 16
 § 960.001
Posttrial Relief Hearings
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Appeals Process/Proceedings
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 § 944.605
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Parole Hearing
 § 944.605
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 § 960.001
Parole
 § 960.001
Final Release
 § 944.605
 § 947.177
 § 960.001
Escape of Offender
 § 960.001
Release from Mental Institution
 § 960.001

Georgia

Canceled/Rescheduled Hearings
 § 17-17-8
Bail Hearing
 § 17-17-5
 § 17-17-7
Bail Release
 § 17-17-5
 § 17-17-7
Pretrial Release Hearing
 § 17-17-5
 § 17-17-7
Pretrial Release
 § 17-17-5
 § 17-17-7
Plea Bargain
 § 17-17-8
Trial Dates/Times
 § 17-17-8
Sentencing Hearing
 § 17-17-8
Posttrial Relief Hearings
 § 17-17-8
Appeals Process/Proceedings
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 § 17-17-12
Conditional Release
 § 42-1-11
Parole Hearing
 § 17-17-13
Parole
 § 17-17-5
 § 17-17-7
Pardon/Commutation Hearing or Application
 § 17-17-13

Final Release
 § 42-1-11
Escape of Offender
 § 42-1-11
Recapture
 § 42-1-11

Hawaii

Canceled/Rescheduled Hearings
 § 801D-4
Bail Release
 § 801D-2
 § 801D-4
Pretrial Release
 § 801D-2
 § 801D-4
Dismissal/Dropping of Case
 § 801D-2
 § 801D-4
Plea Bargain
 § 801D-4
Trial Dates/Times
 § 801D-2
 § 801D-4
Sentencing Hearing
 § 706-604
 § 801D-2
 § 801D-4
Final Disposition/Sentence
 § 801D-2
 § 801D-4
Conditional Release
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 § 801D-4
Parole
 § 706-670.5
Final Release
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Escape of Offender
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 § 706-673

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 § 19-5306

Bail Release
 Const. Art. 1, Sec. 22
 § 19-5306

Pretrial Release Hearing
 Const. Art. 1, Sec. 22
 § 19-5306

Pretrial Release
 Const. Art. 1, Sec. 22
 § 19-5306

Plea Bargain
 Const. Art. 1, Sec. 22
 § 19-5303

Trial Dates/Times
 Const. Art. 1, Sec. 22
 § 19-5306

Sentencing Hearing
 Const. Art. 1, Sec. 22
 § 19-5306

Final Disposition/Sentence
 Const. Art. 1, Sec. 22
 § 19-5306

Appeals Process/Proceedings
 Const. Art 1, Sec. 22
 § 19-5306

Parole Hearing
 Const. Art. 1, Sec. 22
 § 19-5306

Parole
 Const. Art. 1, Sec. 22
 § 19-5306

Final Release
 Const. Art. 1, Sec. 22
 § 19-5306

Escape of Offender
 § 19-5306

Illinois

Canceled/Rescheduled Hearings
 ch. 725 § 120/4.5

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 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/3
 ch. 725 § 120/4
 ch. 725 § 120/4.5

Bail Release
 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/4
 ch. 725 § 120/4.5

Pretrial Release Hearing
 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/3
 ch. 725 § 120/4
 ch. 725 § 120/4.5

Pretrial Release
 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/4
 ch. 725 § 120/4.5

Plea Bargain
 ch. 725 § 120/4.5

Trial Dates/Times
 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/3
 ch. 725 § 120/4
 ch. 725 § 120/4.5

Sentencing Hearing
 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/3
 ch. 725 § 120/4
 ch. 725 § 120/4.5

Final Disposition/Sentence
 Const. Art. 1, Sec. 8.1
 ch. 725 § 120/4
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Earliest Possible Release/Parole Date
 ch. 725 § 120/4.5

Posttrial Relief Hearings
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Appeals Process/Proceedings
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Conditional Release
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Parole Hearing
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Parole
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 ch. 725 § 120/4
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Final Release
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Escape of Offender
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Indiana

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§ 33-14-10-5
Bail Release
§ 35-33-12-2
Pretrial Release Hearing
§ 33-14-10-5
Pretrial Release
§ 35-33-12-2
Plea Bargain
§ 33-14-10-5 (if presented to the court at
a scheduled proceeding)
Trial Dates/Times
§ 33-14-10-5
Sentencing Hearing
§ 33-14-10-5
§ 35-38-1-8.5
Appeals Process/Proceedings
§ 33-14-10-5
Conditional Release
§ 11-13-3-3
Parole Hearing
§ 11-13-3-3
Parole
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*Maryland's statutory bill of rights,
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*New York's Executive Law provisions, EL § 641 and EL § 646, do not provide "rights" but merely objectives of standards of treatment to be developed.

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*North Carolina's statutory bill of rights, § 15A-825, is merely advisory.

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*South Dakota Code § 22-1-11 permits the appointment of a victim or witness assistant who, if appointed, has certain duties such as notification of victims.

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*West Virginia Code § 61-11A-6 lists objectives to be considered, rather than rights.

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 § 950.05*
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 Const. Art. I, Sec. 9m
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 § 950.04
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 Const. Art. I, Sec. 9m
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 Const. Art. I, Sec. 9m
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 Dismissal/Dropping of Case
 Const. Art. I, Sec. 9m
 § 950.04
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 § 950.04
 Trial Dates/Times
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 § 950.05*
 Sentencing Hearing
 Const. Art. I, Sec. 9m
 § 950.05*
 Final Disposition/Sentence
 Const. Art. I, Sec. 9m
 § 950.04

Posttrial Relief Hearings
 Const. Art. I, Sec. 9m
 Appeals Process/Proceedings
 Const. Art. I, Sec. 9m
 Conditional Release
 § 301.046
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 § 303.068
 § 950.045
 Parole Hearing
 § 304.06
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 Const. Art. I, Sec. 9m
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 § 950.045
 Pardon/Commutation Hearing or Application
 § 304.09
 § 950.04
 Final Release
 Const. Art. I, Sec. 9m
 § 950.04
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 § 51.37

*Under Wisconsin Code § 950.05, counties are encouraged to provide court appearance and case progress notification services.

Wyoming

Canceled/Rescheduled Hearings
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* Under Wyoming Code § 7-13-402, the parole board may adopt rules to allow for such notice.

SECTION 3.1

COMMUNITY NOTIFICATION OF THE RELEASE OF SEX OFFENDERS

INTRODUCTION

Many victim advocates consider notice to be the gateway to virtually all the rights and protections of interest to crime victims. Indeed, notice is more than satisfaction of curiosity for crime victims; in some cases it can literally mean the difference between life and death.

Notice to crime victims takes various forms and serves many purposes. For example: notice of legal rights and remedies informs and educates victims who find themselves thrust into the criminal justice system; notice of court hearings and judicial proceedings promotes attendance and encourages participation by victims; notice of available services and assistance enables victims to obtain the emotional and financial support needed for their own recovery; and notice of the release of the offender from confinement affords the kind of advance warning that will provide some peace of mind for victims who can then act to protect themselves from future encounters with the offender. While few would dispute the benefit of such notification to victims themselves, a growing number of individuals are voicing public safety concerns as a justification for broadening notification of released sex offenders to include, not only criminal justice officials and those individuals at special risk, but also the members of the community at large where the offender will reside.

As headlines continue to focus on tragic cases of sexual offenders being released only to assault new victims, legislators, law enforcement, criminal justice officials, and the public are desperate for new and better solutions. With the passage of the *Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act*,¹⁹ state legislatures nationwide have been quick to respond by passing legislation to comply with the provisions of the new Federal Act. In 1995 alone, six states passed registration statutes for the first time, and at least fifteen others amended existing laws. With the signing of a bill in August 1996, Massachusetts became the 50th state to provide for the registration of sex offenders.²⁰

In addition to requiring states to establish registration procedures for sexually violent predators and offenders as well as offenders convicted of certain criminal offenses against minor victims, the Act authorizes the release of relevant information necessary to protect the public from those offenders required to register. Many states have already reacted to such mandates by incorporating community notification provisions into their sex offender registration legislation.

¹⁹ 42 U.S.C. § 14071.

²⁰ Nebraska and Vermont also enacted legislation in 1996.

To date, states have adopted two basic strategies in their attempts to protect the public from released sex offenders who might potentially re-offend: 1) actual notification of the presence of an offender in a community, and 2) public access to registration information. The first of these approaches provides for direct notice to individual citizens or communities by such means as the distribution of flyers, public display of posters and newspaper publication, while the latter places a burden on each citizen to protect him- or herself by seeking out registration information on each of his or her neighbors. A variety of techniques have been employed to implement these laws, and some states have combined elements of both approaches.

COMMUNITY NOTIFICATION OF THE RELEASE OF SEX OFFENDERS

By the end of 1995, seventeen states had passed laws which can be classified as true community notification statutes, whereby a designated criminal justice official, or in some cases, the offender, provides actual notice to a community or specified individual(s) at the time the sex offender is released from incarceration to live in their neighborhood, city or town. Those states are: Arizona, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Mississippi, Montana, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Tennessee, Texas and Washington. Of those, two states, Delaware and Louisiana, require notification of the release of sex offenders to the general public in all cases, although Delaware's statute only applies to child sex offenders. Arizona and Texas have

also made notification mandatory in certain types of cases. In both of those states, notice must be given to schools and community members if the victim of the sex offense was a minor. Arizona also requires the public to be notified of release in sexual assault cases which involved the use of a deadly weapon, dangerous instrument, or the intentional infliction of serious injury. All of the foregoing states, with the exception of Arizona, specifically require the notice to be published in the local newspaper, although other forms of notice may be used in addition to the newspaper publication. Louisiana requires offenders, as a condition of probation or parole, to notify one member of each residence and business in a certain radius from the offender's home, in addition to the community notification via newspaper announcement.

A number of these laws, including those enacted in Alaska, Kansas, Louisiana, New Jersey and New York, have been challenged in court with very different results. The court challenges are based on constitutional claims, including claims that they violate the offender's constitutional right to privacy or right to due process and that they amount to *ex post facto* laws (laws applied retroactively which inflict a greater punishment than the applicable law at the time the crime was committed), contrary to constitutional guarantees. From all indications, it appears likely that a decision by the Supreme Court will be necessary to determine the fate of these so-called "Megan's Laws."²¹

²¹ Community notification laws are often referred to as "Megan's Laws" in memory of seven year-old Megan Kanka who was the victim of a twice-convicted sex offender living in her New Jersey neighborhood.

Another group of states provides for more limited public notification, based primarily on the potential threat an offender poses to the community. Florida requires community notice of a sexual predator's release by newspaper publication, if it is determined at a court hearing that the sexual predator is likely to constitute a danger to society. An offender convicted of a sexually violent offense in Pennsylvania is assessed by the State Board to Assess Sexually Violent Predators. As in Florida, a hearing is held to determine whether the offender is a sexually violent predator prior to sentencing. If so, written notice of the offender's name, address, offense for which convicted, and designation as a "sexually violent predator," must be provided to neighbors within 72 hours, and to specified community and school officials within 7 days. Similarly, Oregon permits the agency supervising a convicted sex offender to classify the offender as a "predatory sex offender" and grants that agency authority to notify anyone it deems appropriate based on the offender's classification, including residential neighbors, churches, community parks, schools, convenience stores, businesses, and other places where children or other potential victims might frequent. Arizona also permits notification to schools, neighbors, community groups and prospective employers of the release of a sex offender who was convicted of a second or subsequent sexual assault of a spouse, sexual abuse of a minor under the age of fifteen, child molestation, or sexual exploitation of a minor.

Some states allow, but do not require, the release of information on a case-by-case basis as is necessary to protect the public from a specific offender. Those states include Iowa,

Mississippi, North Dakota, Tennessee and Washington. Montana also permits the release of relevant and necessary registration information as needed for public protection; however, a court order allowing the release of the information must first be obtained. In Connecticut, registration information may be disclosed to a specific individual, if the chief law enforcement official of the community finds disclosure necessary to protect that individual from a sex offender who is required to register. Similarly, Illinois authorizes discretionary disclosure of certain information concerning a registered child sex offender to any person likely to encounter the offender.

Massachusetts, New Jersey and New York have instituted tiered systems for notification based on the offender's risk of re-offense. In New Jersey, for instance, only law enforcement officials are notified if an offender is considered "low risk." Notice concerning "moderate risk offenders" is extended to include community organizations, such as schools, religious groups, and youth organizations. Offenders designated as "high risk" are deemed to warrant notification of not only law enforcement and community organizations, but also those community members, including individual citizens, who are likely to encounter the offender. The New Jersey law has been challenged at both the state and federal court level based on the premise that the law is "punitive," meaning that it imposes further punishment on offenders who have already served their time. Advocates of the law disagree, arguing that the intent of the

law is to protect the public.²² Unfortunately, the initial New Jersey case challenging "Megan's Law" on behalf of one offender, was filed before there had been a determination of that offender's risk of re-offending.²³ Since it was not established whether the offender would have been subject to public notification, the U.S. Court of Appeals for the Third Circuit decided that notification was not an issue in the case. Other challenges to New Jersey's law have been filed, and until the notification issue is finally decided, the future of public notification laws such as this remains uncertain.

Although New York's law is similar to New Jersey's, in that sex offenders are designated as being of "high," "moderate," and "low" risk, based on their predicted dangerousness, two other elements differ. First, instead of automatically notifying the same classes of individuals or groups in every case based on risk level, New York provides for an independent determination in each case as to which individuals or groups merit notice upon the release of moderate and high risk offenders. Secondly, registration information regarding high risk offenders, classified as "sexually violent predators," is available to

the public in a list distributed to local law enforcement agencies and through a "900" phone line which members of the general public may call to inquire as to whether a specific individual is registered. The statute combines discretionary notice of release to the public with public access to registration information instead of mandatory notification to specified populations in every case. Despite New York's attempt to individualize community notification for each case, the law has not avoided all legal obstacles. A federal judge in New York ruled on September 24, 1996, that the notification provisions of that state's law constituted an additional punishment on offenders convicted prior to the law's effective date and prohibited officials from releasing the names and addresses of those offenders.

In addition to the seventeen states already discussed, four states, Georgia, Indiana, Maryland and Nevada, authorize offender release notification to community officials. With the exception of Maryland, all of those states, along with Arizona, Illinois, Louisiana, New Jersey, Oregon, Pennsylvania and Texas, specifically authorize that notice be given to schools, at least in cases of offenders who committed crimes against minors.

Maryland grants discretion to local law enforcement to notify any organization that works with children or youth, as well as community and religious organizations, upon a determination that such notice is necessary to protect the public interest. Community and religious groups, parks and recreational areas, child care facilities and other organizations providing services to children may also be included among those to be notified in Arizona, Illinois, Indiana,

²² Several states, including Arizona, Florida and Pennsylvania, include the legislative intent in the statutory language of their registration/community notification laws.

²³ *Artway v. Attorney General of N.J.*, 876 F.Supp. 666 (D.N.J. 1995), *rer'd on other grounds*, 81 F. 3d 1235 (3d Cir. 1996).

Louisiana, New Jersey, Oregon and Pennsylvania. Arizona, in particular, permits notification of prospective employers.

PUBLIC ACCESS TO SEX OFFENDER REGISTRATION INFORMATION

In addition to those states which permit notice to neighbors and community organizations concerning a sex offender residing in their midst, a number of other states provide access to sex offender registration information on a specified and limited basis.

While sex offender registration information has traditionally been provided only to law enforcement and certain other criminal justice officials, as of 1995, fifteen states permitted public access to that information. Those states are: Alaska, California, Colorado, Georgia, Idaho, Illinois (limited to registration information pertaining to child sex offenders), Iowa, Kansas, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota and Texas. Several states have established specific guidelines and detailed procedures for obtaining registration information. For example, California and New York use a "900" phone line which can be called by members of the public for information regarding a particular offender. These states also provide for a list of registered offenders which is distributed to local law enforcement and is otherwise, open to public inspection. Alaska's Department of Public Safety maintains a central registry of sex offenders from which public disclosure of certain

information is permitted. Sheriffs in Georgia are required to maintain a roster of offenders registered in their county which is also available for public inspection. Massachusetts' registration law, which was passed in 1996, has extended access to offender information in a rather unique way. Not only can an individual request information concerning a specific offender, he or she can inquire as to whether any sex offenders live or work on a certain street, or within a one-mile radius of a specific address. Requesters must be eighteen years of age or older, make the request in person, provide proper identification, and complete an inquiry form which includes their name, address, and a statement that the information is being requested for self-protection or to protect a child or other person in their care and custody.

In eleven states, California, Colorado, Idaho, Illinois, Iowa, Maryland, North Carolina, New York, Oregon, Pennsylvania and Texas, registration information may be obtained upon request. Laws in Kansas, North Dakota and South Dakota simply state that registration records and information are public records. In a number of other states, while public access is denied, registration information may be disclosed to community officials, schools, and/or organizations working with children. For example, Nevada's sex offender registration statute contains provisions for the release of information pertaining to child sex offenders to school boards which may pass the information along to teachers if necessary to protect the public. Indiana, North Carolina, Oklahoma and Virginia will provide registry information to schools, child care facilities, state agencies or offices licensing or screening individuals who work with

children, and other organizations providing services to children. Still other states, including Connecticut, Delaware, Indiana, Iowa, South Dakota and Virginia allow employers to inquire whether an individual is registered when screening potential employees for positions involving direct contact with children. While many other states have laws concerning criminal history background checks for individuals working with children, these states specifically permit the release of sex offender registration information to employers as part of their registration law.

Seventeen states still prohibit any public access to registration information. Those states are: Alabama, Arkansas, Hawaii, Kentucky, Maine, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, Ohio, Rhode Island, South Carolina, Utah, West Virginia, Wisconsin, and Wyoming.

FUTURE CONSIDERATIONS

On May 17, 1996, President Clinton signed a bill which amends the Violent Crime Control and Law Enforcement Act of 1994 to **require** the release of information concerning a registered offender necessary for public protection. The bill, called "Megan's Law" in memory of seven year-old Megan Kanka who was the victim of a twice-convicted sex offender living in her New Jersey neighborhood, enjoyed broad bipartisan support within Congress, passing by a vote of 418 to 0 in the House and by unanimous consent in the Senate.

The intent of the amendment is to "...guarantee appropriate dissemination of information so that parents, school officials

and community groups can responsibly use the information in order to protect their children."²⁴ The means by which that notification is accomplished, however, is left up to each individual state. While the states discussed have already attempted to make information concerning sex offenders available in some way to members of the community in which those offenders reside, a goal of "Megan's Law" is to establish a community notification standard for all fifty states. Time will tell how our state legislators will meet that challenge in the days and months to come.

While registration of sex offenders is a key component in the plan to protect the public, it serves as only a partial solution since registration provisions, up until now, have not been enforceable across state lines. Since we live in a mobile society, offenders are likely to move. Community notification can only work if the entity responsible for providing notice is aware of the offender's presence. President Clinton's announcement on August 24, 1996, concerning the establishment of a national computer registry of sex offenders is the federal government's latest effort to prevent such offenders from moving from state to state undetected. According to the President, "The national registry sends a simple message to those who would prey on our children — the law will

²⁴ Testimony of Congressman Dick Zimmer, House Subcommittee on Crime, March 7, 1996.

follow you wherever you go."²⁵ The goal of the program is to tie state offender databases into a single system. \$25 million has been allocated to assist states in setting up or improving their sex offender registries. An estimated 250,000 offenders will be tracked through the national system.

CONCLUSION

Perhaps the need for community notification legislation can be summarized best by the stated legislative intent in Pennsylvania's sex offender registration law as follows:

(a) Legislative findings. — It is hereby determined and declared as a matter of legislative finding:

(1) If the public is provided adequate notice and information about sexually violent predators and certain other offenders, the community can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to their children.

(2) These sexually violent predators pose a high risk of engaging in

further offenses even after being released from incarceration or commitments and that protection of the public from this type of offender is a paramount governmental interest.

(3) The penal and mental health components of our justice system are largely hidden from public view and lack of information from either may result in failure of both systems to meet this paramount concern of public safety.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sexually violent predators have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks to public safety.

(5) Persons found to have committed such an offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) Release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

²⁵ *WASHINGTON POST*, August 25, 1996, p. A16, quoting President Clinton's statement on his Saturday, August 24, 1996, radio broadcast.

(b) Declaration of policy. — It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. It is further declared to be the policy of this Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and shall not be construed as punitive.²⁶

Until effective treatment for sex offenders can be found or until we can put a policeman on every street corner, it makes sense to give communities the information they need to take the minimum steps necessary to protect themselves by avoiding such predators. By enacting community notification provisions, state and federal legislators are off to a good start in making informed citizens, protected citizens.

²⁶ 42 PA. CONS. STAT. ANN. § 9791.

APPENDICES

Although there are some similarities in the provisions of community notification statutes, the legislatures have included a variety of unique methods of implementing the notice or information release requirements. In many instances, states have provided for both notification and access to information. The following appendices provide a limited comparison of the laws that are currently in effect. The information is based strictly on the statutory language and does not reflect any additional guidelines or regulations which have been developed in conjunction with the implementation of these laws.

APPENDIX A

CURRENT COMMUNITY NOTIFICATION STATUTES — A COMPARISON

1. Party Responsible for Providing Notification

AZ

Chief law enforcement officer of community of offender's intended residence or sheriff of county if no local law enforcement agency.

CT

Chief of police or resident state trooper.

DE

Department of Corrections to provide notice prior to release from confinement.

FL

Sheriff of county or chief of police of municipality where sexual predator temporarily or permanently resides.

GA

Offender pursuant to court order.

IL

Department of State Police or law enforcement agency with jurisdiction.

IN

Indiana criminal justice institute.

IA

Department of Public Safety or a criminal justice agency with case - specific authorization.

LA

Offender to give notice as court - ordered condition of probation or parole.

MD

Local law enforcement agency and county superintendent of schools.

MS

Law enforcement agencies.

MT

Department of Corrections and Human Services.

NV

Sheriff.

NJ

Chief law enforcement officer of municipality of offender's residence. If none, then Superintendent of State Police.

NY

Law enforcement.

ND

Law enforcement.

OR

State Board of Parole and Post Prison Supervision, Department of Corrections, or a community corrections agency supervising offender upon determination that offender is a predatory sex offender.

PA

Chief law enforcement officer of municipality where sexually violent predator resides.

TN

Tennessee Bureau of Investigation or local law enforcement agency.

TX

Local law enforcement authority.

WA

Public agencies and officials or Department of Corrections.

2. Parties to be Notified

AZ

Community.

CT

Specific individual in need of protection from a sex offender required to register.

DE

General public.

FL

Community, if offender determined by court to be a sexual predator posing threat to society.

GA

Public school officials.

IL

Department of Children and Family Services, public and private school officials, and child care facilities. Discretionary disclosure to any person likely to encounter the offender.

IN

Schools, state agencies and departments licensing and screening individuals who work with children, and licensed or registered child care facilities.

IA

General public on a case by case basis when necessary to protect from a specific offender.

LA

Direct notice to people living within certain radius of offender and superintendent of school district of offender's residence. General public through newspaper publication. In parole cases, victim or victim's parent or guardian by parole board. When victim under 18, notice to park, playground and recreational area superintendents.

MD

Victim, witnesses testifying against offender, and others specified in writing by state's attorney. School principals, community organizations, religious organizations and any other organization that relates to children or youth if notice is necessary to protect the public interest.

MS

Public, when necessary for public protection.

MT

Public, when court orders release of information for public protection.

NV

Board of trustees of county school district where offender to reside if victim was under the age of 18 and any teacher or educational personnel when determined reasonably necessary for public protection.

NJ

Dependent on degree of risk of re-offending. Low risk – notice to law enforcement. Moderate risk – notice to community organizations (schools, religious and youth) and law enforcement. High risk – notice to law enforcement, community organizations, and members of community likely to encounter the offender.

NY

Dependent on degree of risk of re-offending. Low risk – notice to law enforcement. High and moderate risk – discretionary disclosure to entities working with potential vulnerable

populations as determined by offender's crime; entities receiving notice may further disseminate at their discretion.

ND

Public, upon determination that registered offender is a public risk and disclosure necessary for protection.

OR

Discretionary on part of notifying agencies. May include offender's family or sponsor, residential neighbors, churches, parks, schools, convenience stores, businesses, and other places frequented by children or other potential victims. Information concerning predatory sex offender available to any person upon request, unless such release would interfere with offender's treatment.

PA

Neighbors of sexually violent predators, directors of county children and youth services, licensed day care centers and preschools, and presidents of each college or university within 1,000 feet of predator's residence.

TN

Public, when necessary to protect from specific offender required to register.

TX

General public and public school superintendent if victim under age 17.

WA

Other agency employees, officials, and the general public as necessary for public safety.

3. Information to be released

AZ

Release of offender. Otherwise, not specified. Guidelines regarding contents of notice to be established by community notification guidelines committee. Registration information to include all names by which offender is known, address, photo, and fingerprints.

CT

Name, aliases, address, social security number, inmate number, offense, date and place of conviction, probation or sentence termination date, description, including photo and fingerprints.

DE

Name, release address, crime committed, and statement that victim was a child.

FL

Name, description, photo, county or municipality of residence, offense, circumstances surrounding conviction, and age of victim.

GA

Name, address, offense and date of parole.

IL

Name, address and offense or adjudication as sexually dangerous person or child sex offender.

IN

Not specified, except that offender's home address may **not** be included. Registration information includes name, alias, birth date, sex, race, height,

weight, eye color, social security number, driver's license number, home address, offense for which convicted, date of conviction, and sentence imposed.

IA

Relevant information necessary to protect the public. Potentially any registration information which includes name, social security number, current address, phone number, fingerprints, and photo.

LA

Name, address and crime committed. If victim under 18, notice, including photo, to park, playground, and recreational area superintendents.

MD

Victim, witnesses, and others specified by state's attorney to receive full name, address, social security number, recent photo, and description of crime. Others to receive notice of registration statement. Not clear if notice only informs that registration statement has been filed or if it contains all information in statement, including name, address, place of employment, offense, conviction date, jurisdiction of conviction, aliases, social security number, photo, and fingerprints.

MS

Relevant and necessary information.

MT

Name, relevant and necessary information pursuant to court order for release.

NV

Name, aliases, physical description, offense(s), place offense committed, place of conviction, name under which convicted, name and location of hospital and/or penal institution where committed, residence, length of residency, length of expected continued residency, and how long expected to remain in county and state.

NJ

Not specified. May be included in Attorney General's guidelines.

NY

For moderate risk offenders: relevant information, including approximate address based on zip code, photo, offense, method of commission, type of victim targeted, and special condition of release. For high risk offenders: exact address and above – listed relevant information.

ND

Not specified. Relevant and necessary information.

OR

May include name, address, physical description, type of vehicle driven, conditions of probation, parole or conditional release, description of potential targeted victims and method of offense, photo, and probation or parole officer's name and phone number.

PA

Name, address, offense, and statement of offender's designation as a sexually violent predator.

TN

Not specified. Relevant information necessary to protect the public.

TX

Age, gender, description of offense, municipality, street name and zip code of intended residence to be included in the notice by publication. School superintendent to receive any information determined to be necessary to protect the public, except offender's social security number, driver's license number, and phone number, and victim identifying information.

WA

Not specified. Relevant and necessary information as required for public protection.

4. Notification Procedures–Method and Time Requirements

AZ

Chief law enforcement officer of community in which offender to reside to be notified 3 months prior to offender's release. Officer to notify community within 45 days of receipt of notice. Method of notification not specified. Guidelines to be established by the community notification guidelines committee.

CT

Method of notification not specified.

DE

Notice of release to be published twice in newspaper of general circulation not more than 30 days prior to release from confinement, or within 10 days of sentencing if offender directly sentenced to probation. Offender to reimburse Department for costs of notice.

FL

Notice of release in newspaper of general circulation in county of sexual predator's residence once a week for two consecutive weeks.

GA

Notice and required information to be provided within 10 days of setting up residency. Method of notification not specified.

IL

Department of State Police to maintain Statewide Child Sex Offender Database, and develop lists of offenders and facilities/schools eligible to receive notice so that information can be disseminated in a timely manner. Method of notification not specified.

IN

Paper copy of offender registry to be sent each time registry is updated along with following notice. "A person whose name appears on this registry has been convicted of a sex offense against a child. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer." Registry shall also be made available on computer disk.

IA

Method of notification not specified.

LA

Written notice by mail to neighbors in designated area. Notice also by publication in official journal of parish and as otherwise ordered by the court (signs, handbills, bumper stickers, flyers, labeled clothing).

MD

Written notification to victim, witnesses, others specified by state's attorney, school superintendents. School superintendents are responsible for notifying principals in writing. Specified organizations notified at discretion of local law enforcement according to established procedures concerning circumstances and manner for notification.

MS

Method of notification not specified. Attorney General to issue guidelines concerning notification.

MT

Court must be petitioned for order allowing release of information to protect the public. Method of notification not specified.

NV

Method of notification not specified. School trustees to release data as necessary to teachers and educational personnel. Further release of information by teachers and school personnel only with prior approval by board of trustees.

NJ

Method of notification not specified. Attorney General to establish guidelines. Means of notification to be determined by prosecutor consulting with law enforcement.

NY

Method of notification not specified. Board of examiners of sex offenders to develop guidelines and procedures to assess risk of repeat offense by offender and threat to public safety. Board to make recommendation regarding appropriate level of notification 60 days prior to offender's release. Sentencing court to make its determination of level of notification needed within 30 days of release of offender. Victim's impact statement shall be considered by both the Board and the court.

ND

Determination that registered offender is a risk to the public. Method of notification not specified.

OR

Method of notification to be determined by notifying agency.

PA

Procedures for designation of offender as sexually violent predator. Written notification to neighbors within 72 hours of receipt of release information by law enforcement and within 7 days to other entities entitled to notice. Notice to neighbors may be given verbally to comply with time requirements. State Police to maintain registry of offenders and develop guidelines and regulations for neighbor notification of current address of offender.

TN

Method of notification not specified.

TX

Notification to the public by newspaper publication. Method of notice to school superintendent not specified; written notification implied.

WA

Method of notification not specified. Appears to be at discretion of notifying party.

5. Enforcement Mechanisms

AZ

Persons providing or failing to provide information not civilly or criminally liable unless wanton or wilful violation.

CT

Violation of registration provisions by offender is a class A misdemeanor.

DE

Notification is ordered by sentencing court.

FL

Notification is ordered by court upon finding that sexual predator poses a threat to the public and community notification is necessary to protect public safety.

GA

Failure to comply or giving of false information is a misdemeanor and a parole violation, if applicable.

IL

Immunity from liability in any civil or criminal action for persons providing or failing to provide information.

IN

None specified for failure to send copy of registry. Failure to register is a Class A misdemeanor, a Class D felony if offender has prior unrelated offense under section.

IA

Criminal justice agencies and employees immune from liability for acts or omissions resulting from good faith effort to comply.

LA

None specified. May be court ordered condition of probation or parole.

MD

Public officials, employees, and agencies immune from civil liability for damages unless acting with gross negligence or in bad faith.

MS

Public officials, employees, and agencies immune from civil liability for damages unless acting with gross negligence or in bad faith.

MT

Notification is ordered by court upon finding that release of information is necessary for public protection.

NV

Violation of registration provisions by offender is a misdemeanor.

NJ

Limited exception to immunity from civil or criminal action for willful or wanton failure to provide relevant information.

NY

No civil or criminal liability for discretionary decision to release information or for failure to release information unless acting with gross negligence or in bad faith.

ND

Law enforcement agencies, officials and employees not civilly or criminally liable for disclosing information.

OR

None specified.

PA

Immunity for good faith conduct by State Police, local law enforcement, district attorneys, school superintendents, teachers and employees, directors and employees of county youth agencies, college or university presidents, Board of Probation and Parole, and directors of licensed day care centers and preschools.

TN

Immunity for good faith actions, omissions and conduct by officers and employees of Tennessee Bureau of Investigation, local law enforcement, and probation, parole and other public officers.

TX

Department, penal institution and law enforcement authority immune from liability for damages for release of public information concerning registered offender.

WA

None specified.

6. Special Restrictions

AZ

Community notification guidelines committee to establish procedures concerning the contents of notification including the extent and number of schools and neighbors to be notified.

CT

Unauthorized disclosure is a class C misdemeanor.

DE

Notification provisions limited to child sex offenders or offenders convicted of a violent felony against a victim under the age of 16.

FL

Notification limited to sexual predators determined to pose a threat to the public.

GA

Notification provisions limited to child sex offenders.

IL

Notification provisions limited to child sex offenders.

IN

None noted.

IA

Victim identifying information not to be included in registration information.

MD

Notification limited to child sex offenders. Notification to community organization is at discretion of local law enforcement. Applicable to juvenile offenders who have been twice adjudicated delinquent for a sex offense or attempted sex offense. No civil or criminal liability for good faith failure of police or public employee to provide registration information.

MS

Public notification at the discretion of law enforcement agency. No cause of action for failure to release information.

MT

None noted.

NV

Notice provisions limited to cases involving victims under the age of 18.

NY

Persons using released information in violation of the law shall be subject to additional fine of \$500 to \$1,000. Attorney general, district attorney, or aggrieved party may petition for preventive relief against individuals misusing information.

ND

None noted.

PA

Sexually violent predators to remain on lifetime parole unless court determination that offender is no longer sexually violent predator. Mandatory monthly counseling for predators.

TN

Notification at the discretion of the Tennessee Bureau of Investigation or local law enforcement.

TX

Notification limited to cases involving victims under the age of 17. Victim identifying information not to be released. Offender may petition for injunctive relief to restrain local law enforcement from publishing notice of release in the newspaper. Court may order if offender proves by a preponderance of the evidence that publication places his or her health and well – being in immediate danger.

APPENDIX B

**CURRENT ACCESS TO
REGISTRATION INFORMATION
STATUTES – A COMPARISON**

**1. Party Responsible for Providing
Access to Registration Information**

AK

Department of Public Safety.

CA

Department of Justice to maintain "900" line and develop subdirectory of registered offenders. Subdirectory to be distributed to county sheriffs and police departments.

CO

Law enforcement.

CT

Chief of police or resident state trooper.

DE

State Superintendent at Delaware State Police and/or Department of Justice.

GA

County sheriff.

ID

Idaho Department of law enforcement

IL

Law enforcement.

IN

Indiana Criminal Justice Institute.

IA

Department of Public Safety, criminal justice agency with case - specific authority from the Department or sheriff.

KS

Sheriff's office.

MD

Local law enforcement agency.

NH

Offender must consent.

NY

Division of Criminal Justice Services to maintain subdirectory for distribution to local law enforcement.

NC

Sheriff.

ND

Law enforcement.

OK

Local law enforcement agency.

OR

Agency supervising offender.

PA

Chief law enforcement officer of the police department of the municipality where offender lives.

SD

Local law enforcement agencies.

TX

Local law enforcement authority.

VA

Department of State Police.

2. Parties to be Granted Access to Registration Information

AK

Public.

CA

Public.

CO

Any person residing in jurisdiction of offender's residence if necessary for public protection; persons outside jurisdiction when need to know is demonstrated.

CT

Governmental agencies conducting background checks; specific individual if necessary to protect that individual from registered offender.

DE

Employers or potential employers.

GA

Public.

ID

Any person requesting information in writing who provides name, birth date and social security number of offender.

IL

Public upon written request. Limited to child sex offenders.

IN

Schools, registered child care facilities, state licensing agencies, and other entities providing services to children upon request.

IA

Criminal justice agencies for law enforcement purposes, government agencies conducting criminal background investigations, and individual member of general public concerning specific offender upon written request.

KS

Public.

MD

Any person upon written request.

NH

Potentially anyone since access dependent upon offender's consent.

NY

Public upon request.

NC

Public; any group, entity, organization, or school working with children, the disabled or elderly upon written request.

ND

Nonregistration information to public upon request.

OK

Public and private elementary schools within offender's jurisdiction, licensed child care facilities, state agencies licensing and offices screening individuals who work with children, and other entities providing services to children upon request.

OR

Victim. Any other person upon request.

PA

Public upon request.

SD

Public.

TX

Any individual upon request.

VA

Public and private schools, child welfare agencies, and family day - care homes upon request.

3. Information to be Released

AK

Name, address, photo, place of employment, date of birth, offense, date of conviction, place and court of conviction, and length of sentence.

CA

Crime requiring registration.

CO

Basic identification information including photo, and history of convictions requiring registration.

CT

Not specified; disclosure as deemed necessary to protect a specific person. Registration information includes name, aliases, address, social security number, inmate number, crime for which convicted, date and place of conviction, probation or sentence termination date, and description with photo and fingerprints.

DE

Information as to whether person's name appears on registration list.

GA

Name and address.

ID

Name, aliases, offenses committed, place of commission, where found or pled guilty, and name at time of conviction.

IL

Name, address, offense, and adjudication as a sexually dangerous person.

IN

Not specified, except that home address to be excluded from copies of registry provided to child care facilities and other entities providing services to children that request the registry. Other registration information includes full name, alias, date of birth, sex, race, height, weight, eye color, social security number, driver's license number, description of offense, date of conviction, and sentence imposed.

IA

Not specified; relevant information that is necessary to protect the public. Registration information includes name, social security number, current address, phone number, fingerprints and photographs.

KS

Name, date of birth, offense(s), date of conviction, city or county of conviction, photo, fingerprints, and social security number.

MD

Copy of registration statement which includes name, address, place of employment, offense, conviction date, jurisdiction of conviction, aliases, social security number, photo, and fingerprints.

NH

Dependent upon extent of offender's consent to release.

NY

Relevant information provided via "900" phone line according to risk: moderate risk - information includes approximate address based on zip code, photo, and background information such as crime of conviction, modus of operation, type of victim targeted and special conditions imposed; high risk - information includes same as for moderate risk except exact address may be given. Subdirectory to contain name, exact address, photo, physical description, age, distinctive markings and background information, including crime of conviction, modus of operation, type of victim targeted, and special conditions imposed.

NC

Whether the individual has registered as a sex offender, date of conviction, and offenses to be provided to requester in writing. Other registration information, including full name, aliases, date of birth, sex, race, height, weight, eye color, hair color, driver's license number, home address, offense, date of conviction, sentence imposed, photo, and fingerprints is public record available for public inspection.

ND

Nonregistration information, including name, last known, address, offense, date of order imposing sentence, and disposition.

OK

Not specified. Registration information includes name, aliases, birth date, sex, race, height, weight, eye color, social security number, driver's license number, home address, offense, date of conviction and sentence imposed.

OR

Any information determined to be appropriate, including but not limited to name, address, physical description, type of vehicle driven, conditions or restrictions on release, description of primary and secondary targeted victims, method of offense, current photo, and name or phone number of probation or parole officer. Any other additional information available may be provided if the offender is a predatory sex offender who is neglecting to take treatment or to participate in rehabilitation.

PA

Name, address, offense, and designation as a sexually violent predator.

SD

Name, aliases, description, photo, fingerprints, residence, length of time at residence and time expected to remain at residence.

TX

Information contained in central database, including full name, aliases, date of birth, sex, race, height, weight, eye color, hair color, type of offense, age of victim, date of conviction, and punishment received.

VA

Not specified.

4. Access Procedures

AK

Central registry of sex offenders to be maintained by Department of Public Safety. Regulations to be adopted, including fee for information requests not to exceed \$10.00.

CA

Members of general public may call "900" line to inquire whether specific individual is registered.

CO

Individual requesting information must provide proper identification or proof of residence and demonstrate a need to know. To determine whether need to know has been demonstrated, law enforcement agency shall consider the nature and extent of the presence of requesting individual or immediate family in agency's jurisdiction.

CT

Not specified.

DE

Employer or potential employer may inquire as to whether an individual is on the registration list upon showing satisfactory proof of plans to employ a specific person in a sensitive area dealing with children.

GA

Register of all offenders providing registration information to be maintained in the sheriff's office of each county which shall be open to public inspection.

ID

Specified information provided to any person upon a written request which includes the offender's name, date of birth, and social security number.

IL

Information concerning offenders registered in their jurisdictions to be made available for public inspection in the headquarters of every municipal police department or sheriff. Availability for public inspection shall be according to procedures established by each individual department and sheriff and upon request by any individual in writing, in person, or by telephone.

IN

Other entities providing services to children not specified to automatically receive copy of registry may request a copy.

IA

Individual must request information concerning specific offender in writing, including name, address, reason for request, and offender's name and address.

KS

Registration statements and information open to public inspection in sheriff's office pursuant to provisions of the Kansas open records act.

MD

Submission of written request to local law enforcement agency which includes requester's name, address and reason for requesting the information. Department of Public Safety and Correctional Services to maintain central registry of child sex offenders and conduct public awareness and education programs to inform members of the general public of accessibility of child sex offender information.

NH

Obtain written consent of offender.

NY

Information available to the public upon written request in sexually violent predator subdirectory in local police departments. Purpose for request must be stated. Public access concerning registration of specific offender via "900" line - caller must provide certain characteristics about offender to obtain information.

NC

Individual requesting information must provide offender's name, sex, physical description and any other relevant information known. Sheriff to verify registration of offender in writing. Photo of offender displayed upon request. Any person may obtain copy of an offender's registration form, except photo, upon payment of costs of duplication. Copy of entire registry may be provided upon request to any entity working with children, disabled persons or the elderly. Duplicating and mailing costs may be charged when appropriate.

ND

Disclosure of non - registration information upon request at no cost.

OK

Department of Corrections to provide each municipal police department and county sheriff's department with list of offenders registered and living in their respective jurisdictions which shall be made available to those entities entitled to access.

OR

Information is available to any person upon request. Victim shall be given access to sex offender information via toll - free telephone line operational during normal working hours. Victim shall be given registry identification number of the offender needed to access information at any time upon request and verification of identification.

PA

Information available upon request.

SD

Registration records and lists are public records as provided in chapter 1-27.

TX

Individual must request information in writing and pay fees to cover administrative costs.

VA

Release of information upon request.

5. Special Restrictions

AK

Some information contained in central registry is confidential and not subject to public disclosure.

CA

No disclosure of offender's address or criminal history except for crimes requiring registration.

CO

Forms completed by offenders required to register are confidential and not open to public inspection with specified exceptions.

CT

Unauthorized disclosure is a class C misdemeanor.

DE

Access limited to inquiries from employers and potential employers filling positions involving children.

GA

Limited to child sex offenders.

ID

Person requesting information must provide offender's name, birth date and social security number.

IL

Release of information limited to registration information pertaining to child sex offenders.

IN

Offender's home address to be excluded from copies of registry provided to child care facilities and other entities providing services to children that request the registry.

IA

Victim identifying information not to be included in registration information. Record of individuals requesting registration information to be maintained by sheriff.

KS

None noted.

MD

Limited to child sex offenders. Law enforcement agency to maintain records of all written requests for information.

NH

No public access to information unless written consent granted by offender.

NY

Information identifying victim by name, birth date, address or relation to offender to be excluded from subdirectory. Requests for access to subdirectory to be maintained by local police departments.

NC

Photo of offender may be displayed but no copy may be made or released.

ND

Release of information upon request by member of public limited to nonregistration information.

OK

Offender's home address to be deleted from registry made available to entities entitled to access.

OR

Access to information limited to supervised predatory sex offenders. Release of information may be restricted if it would substantially interfere with the offender's treatment or rehabilitation. Lists of registered sex offenders and their addresses may **not** be released to the public.

PA

Disclosure of information revealing victim's name, identity or residence prohibited.

SD

Victim identifying information is confidential and release of name or identifying information of victim except to law enforcement is prohibited.

TX

Information that would identify the victim of the offense is not public information. Offender's photo, social security number, driver's license number, numeric street address and phone number not to be disclosed to public.

VA

Registration information to be used only for administration of criminal justice or screening of employees or volunteers. Unauthorized dissemination is a Class 1 misdemeanor.

Table 3.1-A

COMMUNITY NOTIFICATION/ACCESS TO SEX OFFENDER REGISTRATION INFORMATION CHECKLIST
 Current through 1995

Type of Notice	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Community Notification to General Public		✓					✓												✓							
Limited Public Notification Dependent upon Need to Protect		✓					✓			✓				✓		✓										✓
Limited Notification to Other than CJS Officials		✓					✓				✓			✓					✓		✓					
Public Access to Registration Information		✓									✓		✓	✓		✓					✓					
Limited Public Access Dependent upon Need to Protect																										
Limited Access by Other than CJS Officials								✓																		
No Access or Notification Outside CJS Officials	✓											✓						✓		✓			✓		✓	✓
No Applicable Statute									✓													✓				

Table 3.1-A

COMMUNITY NOTIFICATION/ACCESS TO SEX OFFENDER REGISTRATION INFORMATION - CHECKLIST
 Reflects status of laws as of 1995

Type of Notice	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	TOTAL
Community Notification to General Public													✓													4
Limited Public Notification Dependent upon Need to Protect	✓				✓		✓		✓			✓	✓				✓					✓				14
Limited Notification to Other than CJS Officials			✓		✓		✓					✓	✓													12
Public Access to Registration Information							✓	✓	✓			✓	✓				✓	✓								15
Limited Public Access Dependent upon Need to Protect																										1
Limited Access by Other than CJS Officials							✓				✓										✓					5
No Access Outside CJS Officials				27	✓		✓			✓			✓	✓							✓		✓	✓	✓	17
No Applicable Statute		✓																			✓					4

²⁷ New Hampshire permits the release of information only with the consent of the offender.

Table 3.1-B

**COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995**

State/Statute	Details of Provision
Alabama §§ 13A-II-200--203	No public access to registration information.
Alaska § 18.65.087	Central registry of sex offenders to be maintained by Department of Public Safety. Public disclosure of offender's name, address, photo, and place of employment.
Arizona § 13-3825	Notification of release to the community in which the offender intends to live, if appropriate pursuant to guidelines established by the community notification guidelines committee. Guidelines shall provide for levels of notification based on the offense as follows: Mandatory notification to schools and neighbors of offender's pending release into the community, at least 45 days prior to the release, if offender convicted of sexual conduct with a minor under 15, sexual assault involving the use of a deadly weapon, dangerous instrument, or the intentional infliction of serious injury, or continuous sexual abuse of a child. Community groups and prospective employers may also be notified. Discretionary notification to schools, neighbors, community groups, and prospective employers if offender convicted of second or subsequent sexual assault of spouse, sexual abuse of victim under 15, molestation of a child, commercial sexual exploitation of a minor, or sexual exploitation of a minor.
Arkansas §§ 12-12-901--909	No public access to registration information. Registration information specifically not subject to provisions of Arkansas Freedom of Information Act.
California PC § 290.4	Public access through "900" phone line which members of general public may call to inquire whether specific individual is listed. Caller should have a reasonable suspicion that a child is at risk and be able to provide certain identifying information about the offender. Subdirectory of sexual habitual offenders deemed to be a threat to public safety to be maintained by the Department of Justice. The subdirectory shall be distributed to county sheriffs and police departments for public inspection. An individual may be required to express an articulable purpose in order to obtain access. No disclosure of offender's address or criminal history except for crimes for which he or she was required to register. Information identifying victim by name, birth date, address, or relation to the registrant to be excluded.
Colorado § 18-3-412.5	When necessary for public protection, law enforcement may release registration information to any person residing in jurisdiction of offender's residence. Information disclosed to those outside jurisdiction when necessary for public protection and need to know is demonstrated.

Table 3.1-B
COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995

State/Statute	Details of Provision
Connecticut § 54-102r	Registration information is confidential but may be released to governmental agencies conducting background checks or to a specific individual if disclosure determined to be necessary by chief of police or resident state trooper to protect that individual from a sex offender required to register.
Delaware tit. 11 § 4336	Community notification of release of offender convicted of a sexual offense or violent felony against a minor under 16 via newspaper publication. Employer or potential employer who shows satisfactory proof that he or she plans to employ a particular person in a sensitive area dealing with children may inquire as to whether such person's name is on the registration list.
District of Columbia	No community notification or sex offender registration statute enacted as of 1995.
Florida § 775.225	Community notification of release of sex offender via newspaper publication if hearing determines sexual predator poses a threat to society.
Georgia § 42-9-44.1	Notification of release of offender to public school officials. Roster of registered offenders to be maintained in each county which is open to public inspection.
Hawaii § 707-743	No public access to registration information. Inspection limited to chief of police, head of law enforcement agency, and their designees.
Idaho § 18-8309 § 9-340	Disclosure of offender's name, aliases, offenses committed, place of commission, where found or pled guilty, and name at time of conviction to any person upon written request. Requestor must provide offender's name, date of birth and social security number.

Table 3.1-B

**COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995**

State/Statute	Details of Provision
<p>Illinois ch. 750 §§ 152/101--999 ch. 730 § 150/9</p>	<p>Disclosure of name, address, and offense or adjudication as sexually dangerous person of child sex offender to Department of Children and Family Services, school boards of public school districts and administrative officer of non-public schools in city, municipality, township, or police district where offender resides, and child care facilities. Rules to develop a list of child sex offenders and of child care facilities and schools eligible to receive registration information shall be established to facilitate timely dissemination of information. Department of State Police and any law enforcement agency with jurisdiction have discretion to disclose above information to any person likely to encounter the offender. Registration information pertaining to registered child sex offenders to be maintained by the appropriate law enforcement agency and available for public inspection upon written request. Registration information concerning offenders other than child sex offenders subject to the Child Sex Offender Community Notification Law shall not be open to public inspection.</p>
<p>Indiana § 5-2-12-11</p>	<p>Access to registration information by entities working with children. Sex offender registry available on computer disk. Paper copy of registry distributed to schools, registered child care facilities, state licensing agencies, and other entities providing services to children upon request.</p>
<p>Iowa § 692A.13</p>	<p>Case specific authorization to release relevant information as necessary to protect public from specific offender. Disclosure of registration information pertaining to specific offender to individual member of general public upon written request, including name, address, and reason for request. List of those requesting information to be maintained. Information may be disclosed to criminal justice agencies for law enforcement purposes and to government agencies conducting criminal background investigations.</p>
<p>Kansas § 22-4909</p>	<p>Registration information open to public inspection in sheriff's office subject to open records act.</p>
<p>Kentucky § 17.510</p>	<p>No public access to registration information.</p>

Table 3.1-B

COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995

State/Statute	Details of Provision
<p>Louisiana CCrP art. 895 R.S. §§ 15:542, 15:574.4</p>	<p>Sex offenders subject to registration provisions required to give notice by mail of crime, name, and address to at least one person in every residence and business within 1 mile radius in rural area and 3 square block in urban area of offender's residence, and to superintendent of school district who shall notify the principal of each school he or she thinks should be notified. Additional community notification via newspaper publication. Court or parole board required to order such notification as a condition of probation or parole in all cases when victim under the age of 18. In such cases, notice shall also be given to park, playground and recreational area superintendents and shall include recent photo of offender. Board may order any other form of notice appropriate, including signs, handbill, bumper stickers, or labeled clothing.</p>
<p>Maine tit. 34-A § 11004</p>	<p>No public access to registration information.</p>
<p>Maryland Art. 27 § 692B</p>	<p>Local law enforcement may notify community and religious organizations as well as any other organization that works with children or youth of a registration statement if it determines such notice to be necessary to protect the public interest. Procedures for, circumstances under and manner in which such notification to be provided is at the discretion of the local law enforcement agency.</p>
<p>Massachusetts</p>	<p>No community notification or sex offender registration statute enacted as of 1995. Bill pending.</p>
<p>Michigan § 4.475(10)</p>	<p>No public access to registration information. Individual whose registration is revealed in violation of these provisions has a civil cause of action against the party responsible for treble damages.</p>
<p>Minnesota § 243.166</p>	<p>No public access to registration information.</p>
<p>Mississippi § 45-33-17</p>	<p>Law enforcement agencies authorized to release relevant and necessary information regarding sex offenders to the public when necessary for public protection.</p>
<p>Missouri § 566.617</p>	<p>No public access to registration information.</p>

Table 3.1-B

**COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995**

State/Statute	Details of Provision
Montana § 46-23-508	Name of registered sex offender is public criminal justice information. Prior to release of a sex offender, the department of corrections and human services may petition the court for an order allowing the release of relevant and necessary registration information regarding the offender needed to protect the public.
Nebraska	No community notification or sex offender registration statute enacted as of 1995.
Nevada § 207.155	If victim of sex offense under the age of 18, sheriff shall provide registration information to board of trustees of county school district of offender's residence. The board may release such information to any teacher or other licensed educational personnel if reasonably necessary for public protection.
New Hampshire § 632-A:17	No public access to registration information unless written consent granted by offender.
New Jersey §§ 2C:7-1, et seq.	Law enforcement agencies authorized to release relevant and necessary information regarding sex offenders as is necessary for public protection. Community notification of the release of sex offender depends on risk of re-offending by offender. Low risk offenders, notice to law enforcement; moderate risk offenders, add notice to community organizations, including schools, religious, and youth organizations; high risk offenders, add notice to public likely to encounter offender.
New Mexico § 29-11A-6	No public access to registration information.

Table 3.1-B

**COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995**

State/Statute	Details of Provision
<p>New York CL §§ 168-1-168-q</p>	<p>Board of examiners of sex offenders to evaluate sex offender's risk of re-offending. Low risk offenders given level one designation - notice limited to law enforcement. Moderate risk offender given level two designation - law enforcement may disseminate relevant information, including approximate address based on offender's zip code, photo, offense, method of crime commission, type of victim targeted, and special conditions to any entity dealing with potential vulnerable populations as determined on the basis of the offender's crime; entities receiving information may disclose information at their discretion. High risk offenders designated as sexually violent predators - law enforcement may disseminate offender's exact address along with above-listed relevant information, to entities working with potential vulnerable populations determined on the basis of the offender's crime; entities receiving information may disclose information at their discretion, and registration information shall be made available to the public upon request in sexually violent predator subdirectory maintained by division of criminal justice services and distributed to local law enforcement agencies. Request for access must be in writing and include purpose for requesting information. Public access through "900" phone line which members of general public may call to inquire whether specific individual is listed. Information identifying victim by name, birth date, address or relation to the sex offender to be excluded from subdirectory.</p>
<p>North Carolina § 14-208.9</p>	<p>Individual may obtain registration information from the sheriff by providing the offender's name, sex, physical description, and any other known relevant information. Registration information and registry is a public record open for public inspection. Any person can obtain a copy of an offender's registration form, except for the offender's photo, upon payment of the costs to copy the form. Upon request, the sheriff may display the offender's photo, but no copy of the photo may be released. A copy of the entire registry may be provided to any group, entity, organization or school working with children, the disabled or elderly upon written request.</p>
<p>North Dakota § 12-1-32-15</p>	<p>Relevant and necessary information may be disclosed to the public if law enforcement agency determines that registered offender is a risk to the public and disclosure is necessary for public protection. Nonregistration information concerning a registered offender, including name, last known address, offense, date of order imposing sentence, and disposition, if known, may be disclosed to the public upon request at no cost.</p>
<p>Ohio § 2950.08</p>	<p>No public access to registration information.</p>
<p>Oklahoma tit. 57 § 584</p>	<p>Sex offender registry is available to public and private elementary schools within jurisdiction of offender's residence, licensed child care facilities, state agencies licensing individuals to work with children, state offices screening individuals who work with children, and other entities that provide services to children upon request. The offender's home address shall be deleted.</p>

Table 3.1-B

**COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995**

State/Statute	Details of Provision
<p>Oregon §§ 181.585 - 587</p>	<p>An agency supervising a sex offender which determines that the offender is a predatory sex offender shall notify anyone the agency deems appropriate that the offender is a predatory sex offender. The agency shall consider notifying the offender's family or sponsor, residential neighbors, churches, community parks, schools, convenience stores, businesses, other places where children or other potential victims may frequent, and any prior victim, and may use any method of notification determined to be appropriate. Information which may be disseminated includes offender's name, address, physical description, type of vehicle known to drive, conditions or restrictions imposed on release, description of primary and secondary victim targets, method of offense, current photo, and name or phone number of parole or probation officer. Such information may be made available to any other person upon request unless it is determined that the release of information would substantially interfere with the offender's treatment or rehabilitation.</p>
<p>Pennsylvania § 42-9794 § 42-9798</p>	<p>Each offender convicted of a sexually violent offense to be assessed by State Board to Assess Sexually Violent Predators and a hearing held to determine whether the offender is a sexually violent predator prior to sentencing. Chief law enforcement officer of municipality where sexually violent predator to provide written notice of the predator's name, address, offense for which convicted, and statement of offender's designation as a sexually violent predator to neighbors of the predator, director of county children and youth services agency, superintendent of school districts and equivalent for private and parochial schools, directors of licensed day care centers and preschools, and presidents of each college or university within 1,000 feet of predator's residence. Notice to neighbors to be provided within 72 hours after receipt of release information by law enforcement officer and may be given verbally to meet time requirement. All others to be notified within 7 days. Registration information specified to be available to general public upon request. No information revealing victim's name, identity or residence shall be included.</p>
<p>Rhode Island § 11-37-16</p>	<p>No public access to registration information.</p>
<p>South Carolina §23-3-410</p>	<p>No public access to registration information.</p>
<p>South Dakota § 22-22-40 § 1-27-1</p>	<p>Registration records and information are public records pursuant to chapter 1-27.</p>
<p>Tennessee § 40-39-106</p>	<p>Tennessee Bureau of Investigation or local law enforcement agency may release relevant information necessary to protect the public concerning a specific sexual offender required to register.</p>

Table 3.1-B

**COMMUNITY NOTIFICATION AND
ACCESS TO SEX OFFENDER REGISTRATION INFORMATION
Current through 1995**

State/Statute	Details of Provision
<p>Texas C.S. art. 6252-13c.1</p>	<p>Community notification via newspaper publication and notice to superintendent of public schools if victim under the age of 17. Registration information contained in central database is public information, with the exception of offender's photo, social security number, driver's license number, street address and phone number. Information may be released to any individual who requests such information in writing and pays fee to cover administrative costs.</p>
<p>Utah § 77-27-21.5</p>	<p>No public access to registration information.</p>
<p>Vermont</p>	<p>No community notification or sex offender registration statute enacted as of 1995.</p>
<p>Virginia § 19.2-390.1</p>	<p>Release of Sex Offender Registry information upon request to public and private schools, child welfare agencies, and family day-care homes.</p>
<p>Washington § 4.24.550 § 9.94A.153 § 71.09.120</p>	<p>Public agencies authorized to release relevant and necessary information regarding sex offenders to the public when necessary for public protection. A good faith effort to notify the public and residents at least 14 days prior to offender's release to be made.</p>
<p>West Virginia § 61-8F-5</p>	<p>No public access to registration information.</p>
<p>Wisconsin § 175.45</p>	<p>No public access to registration information.</p>
<p>Wyoming § 7-19-303</p>	<p>No public access to registration information.</p>

SECTION 4

THE RIGHT TO PROTECTION FROM OFFENDER HARM

INTRODUCTION

In recent years, reports from the media and law enforcement officials suggest that intimidation of victims and witnesses is on the rise. In addition, the proliferation of youth gangs appears to directly correlate to a dramatic rise in acts of intimidation as well as acts of violence against those victims and witnesses who testify against fellow gang members. Legislators and advocates have recognized the relationship between measures to enhance a victim's feelings of security and greater willingness of crime victims to cooperate with criminal justice officials and criminal prosecutions. Therefore, legislatures have begun to craft legislation to protect crime victims who face such terrorism.

Measures to protect crime victims take varying forms. Many states grant victims a right to protection from the offender, or they provide information regarding the protective measures available. Other approaches include amendment of bail - provisions, providing separate or secure waiting areas in court, and various measures to protect victims from abuse through the discovery process.

RIGHT TO PROTECTION

Fully half of the states give crime victims a right to be reasonably protected from the offender during the criminal justice process.

In at least eight states,²⁸ this right is guaranteed by the state constitution. Twenty-seven states require that victims receive information about the protection available to them or the measures to take in the event of intimidation by the defendant. A majority of states (38) give victims one or both of those rights.

BAIL RESTRICTIONS

In 1982, the President's Task Force noted that "The imbalance between the legitimate and necessary interest of the victim in protection and the interest of the accused in procedural safeguards is most apparent in the area of bail." The Task Force recommended several amendments to bail laws, including allowing courts to deny bail to those found to present a danger to the community and to require defendants to refrain from criminal activity as a mandatory condition of bail release.²⁹

²⁸ Arizona's Constitution gives crime victims the right "to be free from intimidation, harassment, or abuse, throughout the criminal justice process." Ariz. Const., Art. II, Sec. 2.1.

²⁹ President's Task Force on Victim's of Crime, *Final Report*, (1982) p. 22.

Historically, judges could only deny bail in non-capital cases, if they were convinced that the defendant would likely flee otherwise. Today, over a dozen states allow a judge to deny bail in non-capital cases for reasons of general public safety or the safety of specifically identified individuals such as victims and/or witnesses. Without such authority, judges are powerless to prevent such further violence.

In addition to permitting the denial of bail, states are enabling judges to place other restrictions on release. Several states have amended their bail laws to require or permit the courts to enter "no contact" orders as a condition of release. Contact with a victim in violation of the order may be punishable as a separate offense or result in revocation of bail release. At least 17 states permit or require the entry of such orders as a condition of release in cases where there is a risk of victim or witness intimidation. Granting courts this authority is particularly warranted in cases where offenders have threatened the victim in the past.

SEPARATE/SECURE WAITING AREAS IN COURT

In calling for the judicial system to establish separate waiting areas for prosecution and defense witnesses, the President's Task Force on Victims of Crime noted that requiring crime victims to sit and wait with the defendant and the defendant's witnesses is, at the very least, "an awkward and disturbing human encounter; at the worst, it becomes the breeding ground for threats, intimidation and violence."³⁰

Over 30 states now have statutes requiring or urging the creation of separate and/or secure waiting areas for victims and prosecution witnesses. In general, these statutes have significant caveats, such as, "subject to available resources." Some concerned judges have complained that such clauses provide an excuse for state and local legislatures not to reject funding requests for improvements to court facilities designed specifically to address such safety concerns. State legislatures should reevaluate whether the desire to trim budgets truly justifies requiring crime victims to undergo the ordeal of spending long waiting time in an intimidating atmosphere.

³⁰ President's Task Force on Victims of Crime, *Final Report*. (1982) p. 75.

OTHER PROVISIONS

Frequently, victims find they are subject to a form of legalized harassment and intimidation by unscrupulous defense attorneys as part of the criminal justice process. In response, states are beginning to place restrictions on the defense team's ability to contact the victim. Several states give victims the right to refuse an interview by the defense. Other states give judges the authority to enter a no contact order, independent of pretrial release conditions.

In addition to the categories of legal provisions included on the following chart, the majority of states have also defined specific offenses of intimidation of or retaliation against victims or witnesses. Such laws take many forms — one provision in California specifically prohibits a prisoner convicted of sexual assault from telling other prisoners to intimidate the victim. Any convicted sex offender in the California prison system who knowingly reveals the name and address of any witness or victim to any other prisoner, with the intent that the other prisoner will intimidate or harass the witness or victim, is guilty of a misdemeanor offense.³¹

There are also numerous provisions specific to domestic violence and stalking victims — two groups of victims who have generally suffered a pattern of intimidation, and who are recognized to be in particular continuing danger from their offenders. The provisions in the following chart relate only to those laws that apply to victims of crime,

generally, or to sexual assault victims since such provisions are rare.

The provisions reflected in Table 4-A are current through 1995 victims' rights laws (i.e., provisions within crime victims' statutory bills of rights or constitutional amendments) and the 1994 bail law provisions.

³¹ CAL. PENAL CODE § 136.7.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Alabama § 15-23-62		✓					
Alabama § 15-23-68						✓	
Alabama §15-23-70							Victim may refuse interview by defense.
Alaska Const. Art. 1, Sec. 24	✓						
Alaska § 12.61.010	✓	✓					
Alaska § 12.61.120							Limitation on defense attorney contact.
Arizona Const. Art. II, Sec. 2.1	✓						Victim has right to refuse interview or other defense discovery request.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Arizona § 13-3961			✓				
Arizona § 13-4431						✓	
Arizona § 13-4432		✓					
Arizona § 13-4433							Victim has the right to refuse defense interview.
Arizona Rule 39	✓						
Arkansas § 16-21-106						✓	Prosecutor may assist victim in obtaining protection.
California Const. Art. I, Sec. 12, PC § 1275			✓				

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
California PC § 136.2, PC § 1054							Court may enter no contact order.
California PC § 686.2							Court may order removal of spectator who is intimidating witnesses.
California PC § 1270.1							Court may consider threats to victim in setting bail.
California PC § 13835.5							Funding for victim services, including assistance in applying for restraining order.
California PC § 13897.2		Statewide resource center to provide.					

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
California PC § 31003							Violent offenders not to be paroled to place within 35 miles of victim's residence.
Colorado § 16-4-101			✓				
Colorado § 16-4-105			✓				
Colorado § 18-1-1001				✓			
Colorado § 18-8-708							Civil cause of action for intimidation or retaliation against any victim or witness.
Colorado § 24-4.1- 302.5		✓				✓	

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Colorado § 24-4.1- 303						✓	
Colorado § 24-4.2-105							Grants for protective services, including court waiting areas.
Connecticut § 54-64a			✓		✓		
District of Columbia § 23-1321			✓		✓		
District of Columbia § 23-1322			✓				
Delaware tit. 10 § 940					✓		Court may also order no contact if defendant NOT released on bail.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Delaware tit. 11 § 2107							Court may order no contact if defendant NOT released on bail.
Delaware tit. 11 § 2108					✓		
Delaware tit. 11 § 3535							After finding of intimidation, court may issue protective order or order law enforcement protection.
Delaware tit. 11 § 3537					✓		
Delaware tit. 11 § 9406		✓				✓	
Delaware tit. 11 § 9411		✓					

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Delaware SCCR 42.1	✓						
Florida § 903.046			✓				
Florida § 907.041			✓				
Florida § 914.24							Court may enter temporary restraining order to prevent harassment of victim.
Florida § 960.001		✓				✓	Victim may have advocate present during depositions.
Georgia § 17-6-1			✓				
Hawaii § 706-624							Mandatory no contact order is condition of probation.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Hawaii § 801D-4	✓					✓	
Hawaii § 804-7.1			✓				
Idaho Const. Art. 1, Sec. 22, § 19-5306							Victim may refuse interview or ex parte contact by defense unless request is authorized by law.
Illinois Const. Art. 1, Sec. 8.1	✓						
Illinois ch. 725 § 5/110-4			✓				

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Illinois ch. 725 § 5/110-5 ch. 725 § 5/110-10					✓		
Illinois ch. 725 § 5/110-6.1			✓				
Illinois ch. 725 § 120/4.5 ch. 725 § 120/5						✓	
Indiana § 33-14-10-6							Prosecutor shall move to revoke bond if victim intimidated.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Indiana § 35-32-3-1					(✓)		Victim to receive copy of any protective order issued as condition of pretrial release, pretrial diversion, or probation.
Indiana § 35-33-8-5							Court may revoke bail for threat or intimidation of victim or witness.
Indiana § 35-37-4-11						✓	
Indiana § 35-38-2-2.3							No contact - discretionary condition of probation.
Iowa § 910A.11							Court may issue temporary restraining order to protect victim or witness.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Kansas § 21-3834							Court may issue protective/no contact order.
Kansas § 22-2802					(✓)		
Kansas § 74-7333	(✓)						
Kentucky § 15.245		✓					Victim to be notified re. whether he or she must talk to defense attorney, and under what conditions.
Kentucky § 421.500		✓					
Louisiana R.S. § 46:1844		✓				✓	
Maine tit. 15 § 1003			consider safety in setting bail				

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Maine tit. 15 § 1026				✓			
Maryland § 27-761	✓	✓				✓	
Massachusetts ch. 258B § 3		✓				✓	Victim has the right to submit to or decline defense interview (except if served by lawful process) and to impose reasonable conditions on the conduct of the interview.
Michigan § 28.1287 (755), § 28.1287 (815) and § 28.1287 (813a)							Victim or prosecutor may move for revocation of bond.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Michigan §28.1287 (756) § 28.1287 (816)		✓					
Michigan §28.1287 (757) § 28.1287 (787)						✓	
Michigan Const. Art. I, Sec. 24	✓						
Minnesota § 611A.034						✓	
Mississippi § 99-36-5	✓						
Missouri Const. Art. 1, Sec. 32	✓		✓		✓		

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Missouri § 491.600							Court may issue no contact order for victims.
Missouri § 491.640							May provide protection/safe housing.
Missouri § 595.209	✓					✓	
Montana § 46-9-106, § 46-9-108					(✓)		
Montana § 46-9-109			✓				
Montana § 46-24-202		✓					
Nebraska § 81-1848	✓	✓				✓	

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Nevada § 33.015							Court may issue restraining order for victim.
Nevada § 178.5692							Sheriff to protect on request.
Nevada § 178.5696						✓	
New Hampshire § 21-M:8-k	✓					✓	
New Hampshire § 597:2					✓		Pretrial release order to include language re. crime of intimidation of witnesses.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
New Jersey § 2C:28-5.1							Court may issue protective order to protect victim, witness, or witness's family from intimidation, harassment, or retaliation.
New Jersey § 39:4-50.11						✓ Drunk driving cases.	
New Jersey § 52:4B-36	✓					✓	
New Jersey § 52:4B-44		✓				✓	Escort in court for intimidated victims or witnesses.
New Mexico Const. Art. II, Sec. 24	✓						
New York CPL § 530.13					✓		

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
New York EL § 625-a		✓					
New York EL § 641		✓					
New York EL § 642						✓	
New York EL § 646		✓					
New York EL § 647						✓	
New York EL § 835							Witness protection program.
North Carolina § 15A-825		✓				✓	
North Carolina § 15A-534					(✓)		
North Carolina § 15A-804							Protective custody.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
North Carolina § 15A-1031			✓				
North Carolina § 15A-1034							Court may control access to courtroom to protect those attending.
North Dakota § 12.1-34-02						✓	Victim notice of enforcement of release conditions.
North Dakota § 12.1-34-04						✓	Court escort, protective services.
Ohio Const. Art. I, Sec. 10a	✓						
Ohio § 109.42 § 2930.04		✓					

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Ohio § 2930.10						✓	
Ohio § 2945.04							Court may issue protective order, may direct police protection.
Oklahoma Const. Art. 2, Sec. 9			✓				
Oklahoma tit. 19 § 215.33	✓						
Oklahoma tit. 22 § 40.1		✓ (sexual assault victims only)					
Oregon § 135.970				✓			Limitation on interviews by defense.
Pennsylvania § 18-4954							Court may enter protective order.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Pennsylvania § 18-4956					(✓)		Mandatory condition of bail release that no intimidation of or retaliation against victim or witness.
Pennsylvania 71 P.S. § 180-9.4		✓				✓	
Pennsylvania RCP 4013				✓			
Rhode Island § 11-32-6							Court may enter a protective order, may order police protection.
Rhode Island § 11-32-7				✓			
Rhode Island § 12-28-3	✓	✓				✓	

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Rhode Island § 12-30-3 § 12-30-4							Witness protection re. organized crime.
South Carolina § 16-3-1530						✓	When threat of damaging intimidation cannot be avoided, law enf. shall take measures to protect victim or witness, including-but not limited to-transportation.
South Dakota § 23A-28C-1	✓						
South Dakota § 23A-43-4					(✓)		
Tennessee § 40-38-102	✓					✓	

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Texas Const. Art. I, Sec. 30; CCP art. 56.02	✓					✓	
Texas CCP art. 17.15					✓		
Texas CCP art. 56.08		✓					
Utah Const. Art. I, Sec. 28	(✓)						Right to be free from harassment and abuse throughout the criminal justice process.
Utah § 77-37-3		✓				✓	
Utah Rule 4-601	✓					✓	

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM

Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Vermont tit. 13 § 5304	✓	✓					
Vermont tit. 13 § 7575					(✓)		
Virginia § 19.2-11.01		✓				✓	
Washington § 7.69.030	✓	✓				✓	
West Virginia § 61-11A-6		✓				✓	
West Virginia § 62-1C-17a					(Sex offense or child abuse)		
Wisconsin Const. Art. I, Sec. 9m	✓						
Wisconsin § 950.05							Counties are encouraged to provide protection services.

(✓) Right Is Implied.

Table 4-A

RIGHT TO PROTECTION FROM OFFENDER HARM
 Information current through 1995 bills of rights and 1994 bail laws.

State/ Statute	General Right to Protection	Victim to Be Informed of Protection Available	Judge May Deny Bail for Safety Reasons	No Contact with Victim must Be Condition of Bail Release	No Contact with Victim May Be Condition of Bail Release	Separate/ Secure Waiting Area in Court Encouraged	Other
Wisconsin § 950.08		✓					Toll free hotline to include information and assistance in securing protection.
Wyoming § 1-40-203	✓	✓					
Wyoming § 1-40-204		✓					
Wyoming § 1-40-205		✓				✓	

(✓) Right Is Implied.

SECTION 5

THE RIGHT TO CONFER WITH THE PROSECUTOR

INTRODUCTION

Perhaps the most frustrating experience crime victims can face in the criminal justice system is that moment when they discover that their criminal case is over before it has really begun. Indeed, most crime victims are forced to deal with this frustration, since the vast majority of criminal cases are resolved by pre-trial diversion or plea bargain. Since victims are often the last to learn of such key decisions, they rarely have the opportunity to have input in their formulation. The President's Task Force on Victims of Crime addressed this issue in its *Final Report* published in December 1982, by recommending consultation with the victim during the various stages of the prosecution as one of the objectives included in its proposed guidelines for fair treatment of crime victims and witnesses. Whether it involves the reduction of charges to a lesser offense, dismissal of the case, consideration of pre-trial diversion or entry into a plea agreement, giving the victim an opportunity to offer his or her views and concerns not only assists the prosecutor in formulating an appropriate disposition, it also supports the fundamental premise that victims be treated with fairness, dignity and respect.

The very definition of the term "consultation" anticipates an interactive dialogue between two parties. Its usage by the Task Force reflects an intention that victims be provided

with more than just information concerning developments in their cases; it instead encourages prosecutors to actively solicit and consider victims' input before taking dispositive action. Many, but not all states, have attempted to address this issue by adopting statutory provisions mandating meaningful interaction through consultation in accordance with this broader Task Force objective. For example, several states have adopted laws requiring the prosecutor to obtain the views of the victim before a disposition is final and even go so far as to require the prosecutor to certify to the court that he or she has complied with the consultation mandate. However, almost as many states have chosen to limit the prosecutor's responsibilities to informing, notifying, or advising a victim of the action to be taken. Laws in some states require consultation but do not specify what measures are necessary for implementation. A number of other states require prosecutors to make only "reasonable efforts" to confer. It should be noted, however, that in no state has the right to confer been equated to the right to direct the prosecution of the case or veto prosecutorial decisions.

CONSULTATION REGARDING PLEA AGREEMENTS

Since a majority of criminal cases are resolved through negotiated plea agreements, consultation in the plea bargaining process is of great importance to crime victims. Even the general public seems to understand the importance of this fundamental right.³²

An excellent articulation of the significance of crime victim consultation was voiced by the California Legislature, when it amended its Victims' Bill of Rights in 1995 to provide victims the right to notification of a plea bargain. The first section of the bill read as follows:

The Legislature finds and declares all of the following:

- (a) Victims of crime and their families are not formally notified when criminal prosecutions are resolved before trial through "plea bargains."
- (b) Victims of crime and their families have a right to know if a court intends to dispose of a prosecution through the method of plea bargaining.

³² In a 1991 survey of public opinion, a majority of respondents, 72%, said that it is "very important" for a victim to have an opportunity to discuss the case with the prosecutor during any plea bargaining process. National Victim Center, *America Speaks Out: Citizens' Attitudes About Victims' Rights and Violence*, (1991). P. 5.

- (c) The lack of notification to victims and their families adds to a perception that they lack representation and participation in the criminal justice system.
- (d) The right of victims of crime to notification can be compatible with the continuing vital need to protect a defendant's rights to due process.
- (e) Nearly 90 percent of all felony cases in California are disposed of before trial through plea bargains.
- (f) Therefore, it is the intent of the Legislature to require a district attorney's office to notify a victim of a violent felony, as defined..., or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge. The district attorney's office shall also notify the victim of any felony of a pretrial disposition upon the victim's request. If it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the district attorney's office or the county probation department shall notify the victim as soon as possible.³³

³³ Section 1 of Stats. 1995, c. 411 (S.B. 221).

Today, 39 states provide victims with some level of consultation about a negotiated plea agreement. However, as reflected in the following table, the extent of participation permitted victims varies widely from state to state. In addition, Alaska, New Mexico and Wisconsin afford victims a general constitutional right to confer, but do not elaborate on specific procedures for consultation in a negotiated plea arrangement.

Consultation with Court Certification

Not only have most state legislatures given crime victims a right to consultation concerning plea bargains, several have also attempted to ensure compliance with such laws through certification. Nine states currently require some type of certification of compliance to the court or confirming statement for the record.³⁴ In Alabama and Arizona, a court may not accept a plea agreement unless the prosecutor advises that he or she has made reasonable efforts to confer with the victim in the case prior to requesting the plea. In addition, the victim must also be given notice of the plea proceeding, the right to be present, and, in Arizona, the right to be heard. Arizona prosecutors must also inform the court of the victim's position on the plea agreement, if known. Victims in Indiana must be informed by prosecutors of the entry into plea discussions, the contents of any plea recommendation, and of their right to be present and heard at the plea proceeding. As in Alabama and Arizona, Indiana courts may

³⁴ Alabama, Arizona, Delaware, Indiana, Nebraska, Ohio, South Dakota, Utah, and Washington.

not consider the plea recommendation without certification by the prosecutor that the victim has been offered the opportunity to review and express opinions concerning the recommendation and of compliance with notice requirements.

In Washington, prosecutors are required to make reasonable efforts to inform the victim of the nature and reasons for a plea agreement, as well as to obtain any objections or comments concerning the agreement that the victim might have. The court must be informed on the record whether any victim has objected or commented on the proposal. South Dakota prosecutors are also required to disclose the victim's comments on the record. In Ohio, the court is to note on the record any failure of the prosecutor to confer with the victim and the reasons for that failure.

Prosecutors in Delaware must state on the record that the victim has been notified of a plea agreement to a reduced charge, and the plea discussed prior to entry. If notice is not reasonably possible, the prosecutor must state what steps were taken to inform the victim. Similarly, in Utah, at the time a plea is entered, the prosecutor is required to represent to the court in writing that the victim has been contacted and the agreement explained, before the court may accept the plea. In neither of these states is the prosecutor explicitly required to ascertain the views of the victim concerning the agreement, although the use of the term "discussed" in Delaware implies a greater possibility for input by the victim than the "explaining" of the plea provided for in Utah. Nebraska requires the county attorney to consult or make a good faith effort to consult the victim regarding the contents and reasons

for the plea and to record consultation efforts in his or her file. It is unclear whether in this context "consult" includes obtaining the victim's views, as the language of the statute implies simple notification since consultation is limited to the contents and reasons for the agreement.

Prosecutor to Obtain Views of Victim

In addition to the nine states previously discussed, fourteen states specifically provide for the victim's input in some manner concerning a plea agreement or negotiation.³⁵ Prosecutors in Florida, Georgia, Louisiana, Michigan, Montana, New York and West Virginia must consult to obtain the views of victims. Victims in Connecticut have the right to present a statement of their losses, injuries and wishes to the prosecutor and the court prior to acceptance of a guilty plea pursuant to an agreement whereby the offender will plead to a reduced charge. A State's Attorney in Illinois shall, where practical, consult with the victim and consider a written impact statement, if one has been prepared, before entering into a plea agreement. In New Jersey, victims have the right to an explanation concerning the terms of and reasons for a negotiated plea agreement before it is accepted by the court. Additionally, New Jersey victims have the right to be assisted with the preparation and submission of a written impact statement to the prosecutor outlining the impact of the crime and any sentencing recommendations

they feel are appropriate. Pennsylvania victims have the right to submit prior comment concerning a change of plea and must be notified of that opportunity by the prosecutor's office. Victims in Rhode Island have a right to be given the opportunity to prepare a written impact statement for insertion in the case file by the prosecutor. The statement is to be submitted for court review, or the victim given a chance to address the court before the plea is accepted.

Minnesota requires prosecutors to make a reasonable and good faith effort to inform victims of the contents of a plea recommendation and of their right to attend sentencing and express written or oral objections to the agreement. If a victim is not present, the prosecutor is to bring any known objections of the victim to the attention of the court. Similarly, prosecutors in Maine are required to advise victims of the details of any plea agreement and inform the court of the victim's position on the plea. One additional state, Massachusetts, does not address plea bargaining but does require prosecutors to confer with victims to the greatest extent possible and inform the court of a victim's position on a proposed sentencing recommendation, if known. While Kansas only requires prosecutors to inform victims of the nature of a plea agreement, victims are given general rights to have their views and concerns ascertained throughout the criminal justice process as well as to have those views and concerns brought to the court's attention when personal interests of the victim are affected.

³⁵ Connecticut, Florida, Georgia, Illinois, Louisiana, Maine, Michigan, Minnesota, Montana, New Jersey, New York, Pennsylvania, Rhode Island, and West Virginia.

General Requirement to Consult

Statutes in five states, Colorado, Hawaii, Kentucky, Missouri and New Hampshire, simply require prosecutors to consult or confer with victims concerning plea bargaining or negotiated plea agreements. Additionally, Idaho law and its constitution state that the victim shall be given the opportunity to "communicate" with the prosecutor and be advised of a proposed plea agreement. Victims in Alaska and Wisconsin have also been afforded constitutional rights to confer; however, no additional legislation has been enacted directly applying that right to plea bargaining. The same holds true for victims in New Mexico who are given the right to confer both in that state's constitutional amendment and victims' bill of rights; however, no procedural guidelines are given in either to effect implementation. North Dakota provides victims the right to have the prosecutor consult in order to explain the details of a potential plea or verdict in non-technical language.

Consultation Limited to Notification

California, Oklahoma and Tennessee laws provide only for informing, advising or notifying victims of a plea bargain or agreement prior to entry. Although Texas victims have a constitutional right to confer with a representative of the prosecutor's office, prosecutors are only specifically required, *as far as reasonably practical*, to give notice to victims of plea agreements. Victims in South Carolina have the general right to discuss their cases with prosecutors, but need only be *informed* of plea bargain offers. Similarly, in Wyoming, victims are granted a general right to discuss their cases, however, prosecutors are only required to

inform victims that the potential for a negotiated plea agreement exists. If an agreement is reached, Wyoming law then grants victims the right to be advised of the existence of the agreement prior to sentencing, including its essential terms and the reasons for the agreement. Finally, Mississippi and North Carolina merely inform victims of the procedures and potential for plea bargaining but have no provisions making information concerning the terms of a negotiated agreement available in an individual case.

CONSULTATION AT OTHER STAGES OF PROSECUTION

In addition to plea agreements, victims have often been granted rights to confer in connection with other case dispositions, including pre-trial diversion (14 states), dismissal of the case or charges (14 states), reduction of charges to a lesser offense (8 states), and sentencing alternatives (14 states).

In four states, prosecutors are to consult with victims in deciding whether to prosecute.³⁶ Victims in six states are consulted to obtain their views concerning the pre-trial release of the offender.³⁷ Ten states mandate some level of consultation prior to trial and, in Michigan, prior to jury selection.³⁸

³⁶ Arizona, Kansas, New Jersey and Washington.

³⁷ Florida, Georgia, Kentucky, Montana, New York and West Virginia.

³⁸ Alabama, Alaska, Arizona, Colorado, Louisiana, Massachusetts, Michigan,

A handful of states have extended this right to such other actions or stages as death penalty determinations (Colorado); postconviction release (Georgia); case verdict (Illinois and North Dakota); and hearings, including bail and probation revocation (Missouri). Many of the differences found from state to state in the application of a victim's right to confer regarding a plea bargain also are found when the right is exercised at other stages.

While many states may give victims the right to confer or require consultation, seventeen states have chosen to impose only the "reasonable efforts to confer standard" on prosecutors.³⁹ Victims in fourteen states must request, at least in some instances, that they be consulted by prosecutors in order to be afforded their right to confer.⁴⁰ A distinction should also be noted between states that give victims the right to consult — leaving it up to the victim to initiate contact with the prosecutor — and those that directly impose the responsibility to consult on the prosecutor. More states seem to fall into the latter, preferred category. Only one state,

New York, North Carolina, and Ohio.

³⁹ Alabama, Alaska, Arizona, Colorado, Delaware, Georgia, Illinois, Maine, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, South Dakota, Tennessee, Texas, and Washington.

⁴⁰ Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Louisiana, Michigan, Missouri, Pennsylvania, Rhode Island, Tennessee, Texas, and Utah.

Louisiana, permits a victim to retain his or her own attorney to confer with the prosecutor.

GENERAL CONSTITUTIONAL RIGHT

The victim's right to confer has been given constitutional protection in eight states: Alaska, Arizona, Idaho, Illinois, Michigan, New Mexico, Texas and Wisconsin. In seven of these states, the right is stated generally. Arizona's provision requires consultation prior to trial or any disposition in a case.

Most of these states have enacted some legislation outlining how a victim's right to confer should apply to particular dispositions as authorized by the language of the amendment. It is unclear whether victims in those states whose legislatures have acted to further define this right are then limited to exercising their right to confer in those situations specified by state statute. That would appear to be the case in Alaska, Illinois and Michigan. The constitutional amendments in those states provide for the rights outlined as provided by law, indicating that further legislative action is necessary to give life to constitutional rights guaranteed in those states. Arizona and Idaho, however, authorize their legislatures to enact laws defining, implementing, and preserving the rights guaranteed in those states' amendments. Idaho even permits victims' constitutional rights to be expanded by such laws. In those states, the passage of legislation seems to enhance the general right to confer which stands on its own. The victim's right to confer is less certain in the state of Wisconsin. Even though its victims'

rights constitutional amendment provides that victims shall be entitled to rights and remedies as provided by the legislature and requires that statutes be created pursuant to the amendment to include, among other things, the right to confer. Wisconsin's legislature has yet to enact any applicable laws. It is uncertain whether the right to confer will be available to victims in that state until implementing laws are passed.

New Mexico's constitutional amendment is equally uncertain on this point. Although the amendment explicitly states that, "[t]he provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment," the exact same general right to confer language used in the amendment is repeated in the state's victims' bill of rights. No other legislation has been passed to expand upon or further define the practical implications of this constitutional right.

CONCLUSION

There are numerous misperceptions regarding the right to confer both on the part of victims and criminal justice officials. Some victims may mistakenly believe that the right to confer gives them the right to veto a decision to plea bargain or dismiss the case. Similarly, some prosecutors fear that mandatory consultation may interfere with their prosecutorial discretion. In fact, neither is true — no state has extended or interpreted a victim's right to confer to be a victim's right to control the case. Such laws merely provide victims an opportunity to be heard — a voice, not a veto.

Education appears to be the key to avoiding such misperceptions. Explaining to a victim at the outset of the case the workings of the criminal justice process, and the considerations that might lead to a plea bargain in the case, can go a long way toward preventing later misunderstandings and avoiding disappointment from unrealistic expectations. The use of victim/witness coordinators in prosecutors' offices, who can assist the victim in understanding up front the nature and limitations to his or her rights, is key in maximizing the benefit a victim receives from participation through consultation.

Prosecutor education and familiarity with the workings of consultation laws are also important to their smooth implementation. In fact, put into practice, complaints from prosecutors are rare, even in states with the strictest compliance requirements. One Arizona prosecutor, who serves as the liaison between prosecutors and the victim-witness program in her county, confided that in her experience, of those prosecutors who are initially leery of conferring with victims, very few continue to object or complain once they have actually had a chance to engage in the consultation process.

A victim's right to confer with the prosecutor is essential to establishing *real* victim participation in the criminal justice process. Moreover, it is a significant fulfillment of the system's responsibility to treat the victim with fairness, dignity and respect.

Table 5-A

RIGHT TO CONFER WITH PROSECUTOR - CHECKLIST*
Current through 1995

C = Consult, Confer Generally N = Notify, Inform, Advise, Explain V = Obtain Views of Victim

Type of Provision	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Confer - Plea Agreement	V		V		N	C	V	C	V	V	V	C	C	V	V	N	C	V	V	V			V	V	N	C
Confer - Sentence	✓		✓						✓	✓	✓								✓	✓		✓				✓
Confer - Pretrial Release									✓	✓	✓						✓									
Confer - Pretrial Diversion	✓		✓		✓	✓	✓	✓	✓	✓	✓						✓	✓					✓			
Confer - Dismissal	✓		✓			✓	✓	✓									✓	✓				✓				
Confer - Reduced Charge	✓					✓	✓	✓																		
Confer - Decision to Prosecute			✓														✓									
Confer - Prior to Trial	✓	✓	✓			✓													✓			✓				
Confer - Case Disposition	✓		✓			✓			✓		✓						✓	✓					✓			
Confer - Communicate												✓	✓	✓												
Confer - Const. Right		✓										✓	✓	✓									✓			
Confer - Generally		✓											✓	✓			✓						✓			
Confer - Other*											✓			✓								✓				✓
Confer = Notification	✓		✓		✓		✓	✓					✓	✓	✓	✓	✓							✓	✓	✓

* Checklist should be read in conjunction with statute table (Table 5-B) for clarity. In some instances, the requirement to obtain views of victim applies to case disposition other than plea agreement.

Table 5-A

RIGHT TO CONFER WITH PROSECUTOR - CHECKLIST*
Current through 1995

C=Consult, Confer Generally

N=Notify, Inform, Advise, Explain

V=Obtain Views of Victim

Type of Provision	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Confer = Obtaining Views	✓		✓				✓			✓	✓			✓	✓		✓		✓	✓		✓	✓	✓		
Upon Victim's Request		✓	✓		✓		✓					✓		✓					✓				✓			✓
Court Certification	✓		✓					✓							✓											
Reasonable Effort to Confer	✓	✓	✓			✓		✓			✓			✓						✓				✓		
Victim Retention of Attorney																			✓							

* Checklist should be read in conjunction with statute table (Table 5-B) for clarity. In some instances, the requirement to obtain views of victim applies to case disposition other than plea agreement.

Table 5-A

RIGHT TO CONFER WITH PROSECUTOR - CHECKLIST*
Current through 1995

C=Consult, Confer Generally

N=Notify, Inform, Advise, Explain

V=Obtain Views of Victim

TYPE OF PROVISION	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Confer - Plea Agreement	V	C		C	V		V	N	C	C	N		V	V	N	V	N	N	N			V	V		N
Confer - Sentence					✓		✓									✓									
Confer - Pretrial Release	✓						✓																✓		
Confer - Pretrial Diversion	✓									✓													✓		
Confer - Dismissal	✓						✓			✓									✓				✓		
Confer - Reduced Charge										✓			✓						✓						
Confer - Decision to Prosecute					✓																				
Confer - Prior to Trial							✓			✓															
Confer - Case Disposition	✓				✓		✓																✓		
Confer - Communicate																									
Confer - Const. Right																								✓	
Confer - Generally															✓									✓	✓
Confer - Other								✓																	
Confer = Notification		✓						✓		✓					✓				✓						✓

* Checklist should be read in conjunction with statute table (Table 5-B) for clarity. In some instances, the requirement to obtain views of victim applies to case disposition other than plea agreement.

Table 5-A

RIGHT TO CONFER WITH PROSECUTOR - CHECKLIST*
Current through 1995

C = Consult, Confer Generally N = Notify, Inform, Advise, Explain V = Obtain Views of Victim

TYPE OF PROVISION	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
Confer = Obtaining Views	✓				✓		✓					✓	✓	✓		✓						✓	✓		
Upon Victim's Request													✓	✓			✓	✓	✓						
Court Certification		✓								✓						✓			✓			✓			
Reasonable Effort to Confer		✓		✓				✓		✓						✓	✓	✓				✓			
Victim Retention of Attorney																									

* Checklist should be read in conjunction with statute table (Table 5-B) for clarity. In some instances, the requirement to obtain views of victim applies to case disposition other than plea agreement.

Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Alabama § 15-23-64	Prior to final case disposition: nol pros (dismissal); reduction of charge; sentence recommendation; PT diversion; prior to trial.	PR shall confer and obtain V's views.	
Alabama § 15-23-65	Prior to commencement of trial.	PR shall confer with V.	Any info received by V concerning substance of case is confidential.
Alabama § 15-23-66			Rights of V do not include authority to direct prosecution of case.
Alabama § 15-23-71	Plea agreement.	CT shall not accept plea unless advised by PR that "reasonable efforts" to confer made prior to requesting negotiated plea giving V notice of plea proceeding, incl. offense, date, terms, and right to be present. PR to certify compliance with notice requirements to his or her best knowledge.	
Alaska Const. Art. I, Sec. 24	Constitutional right to confer with PR. Applicable in all phases of criminal justice process.		
Alaska § 12.61.015	Prior to trial regarding: V's testimony. *Applicable to felony and domestic violence assault offenses.	PR shall make "reasonable effort" to confer.	V must request.

CT=Court D=Defendant LE=Law Enforcement PR=Prosecutor PT=Pretrial V=Victim W=Witness

Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Arizona Const. Art. II, Sec. 2.1	Constitutional right to confer with PR after crime charged prior to trial or any disposition.		V's exercise of right not grounds for dismissal or setting aside conviction or sentence.
Arizona § 13-4408	Decision not to prosecute.	PR shall give V notice of procedures to invoke right to confer under § 13-4419 within 7 days of charging of offense and serving or arresting D. PR shall notify V with reasons for declining to proceed prior to finalizing decision.	V must request.
Arizona § 13-4419	Case disposition: decision not to prosecute; dismissal; plea or sentence negotiations; PT diversion; prior to trial.	PR shall confer and obtain V's views.	V must request. Right to confer does not include authority to direct prosecution of case.
Arizona § 13-4423	Plea agreement.	CT shall not accept plea agreement unless PR advises "reasonable efforts" to confer made prior to requesting negotiated plea giving V notice of plea proceeding, right to be present and heard. PR to inform CT of V's position on plea if known, and certify compliance with notice requirements to his or her best knowledge.	

CT=Court

D=Defendant

LE=Law Enforcement

PR=Prosecutor

PT=Pretrial

V=Victim

W=Witness

Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
California PC § 679.02	Notice of pending PT disposition prior to entry of change of plea. Applicable to violent felonies and homicide cases.	If notification prior to entry of change of plea is not possible, V shall be notified "as soon as possible." Notice by any reasonable means available.	V may request notice of PT disposition.
Colorado § 24-4.1-302.5	Prior to any disposition; prior to trial.	V shall have right to consult with PR after crime charged.	
Colorado § 24-4.1-303	Reduction of charges; negotiated pleas; diversion; dismissal; death penalty; or other disposition.	PR shall consult "where practicable" after crime charged unless inconsistent with requirements of the investigation.	Failure to comply does not invalidate any decision, agreement, or disposition, or restrict authority of PR.
Connecticut § 54-91c	Plea agreement: reduction of charges; negotiated sentence.	Prior to acceptance of plea or sentence, PR shall advise V who has informed of wishes to make statement of date, time and place of sentencing or proceeding for entry of plea. V shall be permitted to make statement on record or submit in writing concerning injuries and losses. Written statement shall be filed and made part of CT's record.	V must request and submit stamped, self-addressed postcard for notice.
Connecticut § 54-203	Prior to acceptance by CT of guilty or nolo plea pursuant to agreement.	V shall have right to present statement of losses, injuries and wishes to PR and CT.	Limited to agreements where D pleading to lesser offense than originally charged.
Delaware tit. 11 § 5106	Plea agreement to reduced charge. Applicable in felony cases in which plea to lesser than original most serious offense accepted.	PR shall state on record that V notified and plea discussed prior to entry. If notice not "reasonably possible," PR to state steps taken to inform V.	Violation not a basis for setting aside plea or other relief.

CT=Court D=Defendant LE=Law Enforcement PR=Prosecutor PT=Pretrial V=Victim W=Witness

Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
<p>Delaware tit. 11 § 9405</p>	<p>Prior to amending charge; dismissing charge; agreeing to negotiated plea; PT diversion.</p>	<p>PR shall confer with V.</p>	<p>Failure of Attorney General to confer does not affect validity of agreement or amendment; dismissal, plea, PT diversion or other disposition.</p>
<p>Florida § 960.001</p>	<p>Case disposition: PT release; plea agreements; PT diversion; sentencing. Applicable in criminal felony cases involving physical or emotional injury.</p>	<p>V shall be consulted by PR to obtain views.</p>	
<p>Georgia § 17-17-7</p>	<p>PT release.</p>	<p>"Whenever possible," PR shall offer V opportunity to express opinion.</p>	
<p>Georgia § 17-17-11</p>	<p>Case disposition: plea or sentence negotiations; PT diversion; postconviction diversion.</p>	<p>PR shall offer V opportunity to express opinion and views.</p>	
<p>Hawaii § 801D-4</p>	<p>Plea bargaining. Applicable only in felony cases.</p>	<p>V shall be consulted and advised by PR.</p>	<p>V must request in writing.</p>
<p>Idaho Const. Art. I, Sec. 22</p>	<p>Not specified. Constitutional right to communicate with PR.</p>		<p>Violation of right does not authorize dismissal, voiding finding or plea of guilty, or appellate relief nor create cause of action for money damages.</p>

CT=Court D=Defendant LE=Law Enforcement PR=Prosecutor PT=Pretrial Y=Victim W=Witness

Table S-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Idaho § 19-5306	Prior to entering into plea agreement. Applicable to criminal offenses, involving violence, sex crimes, or crimes against children.	V shall be given opportunity to communicate with PR and be advised of proposed agreement.	
Illinois Const. Art. I, Sec. 8.1	Not specified. Constitutional right to communicate with PR.		Not to be construed as basis for vacating conviction or appellate relief.
Illinois ch. 725 § 120/4	Not specified. General right to communicate with PR.	V shall have right to communicate with PR.	
Illinois ch. 725 § 120/4.5	Plea; verdict.	PR shall explain details in non-technical language.	V must request in writing.
Illinois ch. 725 § 120/4.5	Prior to offering plea bargain or entering into plea agreement negotiations.	PR shall "where practical" consult with V. Written victim impact statement to be considered if prepared before entering agreement.	V must request in writing.
Indiana § 35-35-3-2	Plea recommendation. Applicable only in felony cases.	PR must inform V of entry into plea discussions, contents of recommendation prior to filing, and right to be present and heard. CT may not consider recommendation without compliance by PR.	

CT=Court

D=Defendant

LE=Law Enforcement

PR=Prosecutor

PT=Pretrial

V=Victim

W=Witness

Table 5-B

RIGHT TO CONFERR WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Indiana §§ 35-35-3-5, 6	Plea recommendation.	PR must certify that V offered opportunity to review and express opinion of recommendation to PR and CT.	If more than three Vs, PR only required to complete certification procedures with the three Vs considered to have suffered the most.
Kansas § 22-3436	Prior to dismissal or declining to prosecute; nature of plea agreement.	PR shall inform.	
Kansas § 74-7333	Throughout criminal process; when appropriate and consistent with criminal law and procedure.	V shall have right to have views and concerns ascertained, and when personal interests of V affected, to have those views and concerns brought to CT's attention.	
Kentucky § 421.500	Case disposition: dismissal; PT release; negotiated plea; PT diversion. Applicable to Vs of crimes classified as criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary, sexual abuse, wanton endangerment, criminal abuse or incest.	V shall be consulted by PR.	
Louisiana R.S. § 46:1844	Case disposition: dismissal; plea bargain; or trial. Sentencing alternatives: incarceration; probation; community service; restitution.	V shall be consulted by PR to obtain views. V has right to retain counsel to confer on V's behalf.	V must request.

CT=Court D=Defendant LE=Law Enforcement PR=Prosecutor PT=Pretrial V=Victim W=Witness

Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Maine tit. 15 § 812	Negotiated plea. Applicable in murder cases, Class A, B, or C crimes, offenses against the person, sex offenses and kidnapping cases.	Prior to submission of plea to CT, PR shall advise V of details of agreement.	
Maine tit. 520 § 6101	Plea agreement; sentencing. Applicable to domestic violence, sexual assault, and crimes causing serious physical trauma or financial loss.	"Whenever practicable," PR shall make "good faith effort" to inform V of right to be advised of plea agreement prior to submission, and to inform CT of V's position on plea or sentence.	
Massachusetts ch. 258B § 3	Prior to: trial; hearing on motion to obtain confidential records; nolle prosequi or other case termination; submission to CT of proposed sentencing recommendation.	V shall have right to confer with PR to "greatest extent possible," and subject to appropriation and to available resources. PR shall inform CT of V's position on sentence, if known.	Right to confer does not include authority to direct prosecution of case.
Michigan Const. Art. I, Sec. 24	Not specified. Constitutional right to confer with PR.		
Michigan § 28.1287(756)	Case disposition: dismissal; plea or sentence negotiations; PT diversion.	PR shall offer V opportunity to consult and obtain V's views.	
Michigan § 28.1287(760)	Prior to jury selection and trial.	PR shall confer with V.	V must request.

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Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Michigan § 28.1287(816)	Case disposition: dismissal; plea or sentence negotiations; PT diversion. Applicable to serious misdemeanors only if plea not entered at arraignment.	PR shall offer opportunity to consult and obtain V's views before finalizing negotiations.	
Minnesota § 611A.03	Prior to entry of factual basis for plea, plea agreement recommendation.	PR shall make a "reasonable and good faith effort" to inform V of contents of recommendation, right to attend sentencing and express oral or written objection to the agreement. If V not present, PR shall inform CT of V's objections, if known.	If multiple Vs, PR satisfies notice requirements by notifying three Vs determined to have suffered the most.
Minnesota § 611A.031	Prior to referral to PT diversion program in lieu of prosecution. Applicable to such offenses as murder, assault and other crimes against the person, robbery, kidnapping, false imprisonment, sex offenses, and tampering with a witness.	PR shall make "every reasonable effort" to notify and seek input.	
Mississippi § 99-36-5	General procedures in guilty plea negotiations.	V entitled to right to be informed by PR.	Limited to procedural guidelines not specific terms in individual case.
Missouri § 595.209	Bail hearings; guilty pleas; pleas under chapter 552; hearings; sentencing; probation revocation hearings.	V shall have right to confer and be informed by PR, unless CT determines interests of justice require otherwise.	Applicable in criminal cases. Right automatically afforded to V of dangerous felonies; to other Vs and witnesses upon written request.

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Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Montana § 46-24-104	Prior to case disposition: dismissal; PT release; plea negotiations; PT diversion. Applicable in felony and misdemeanor offenses involving actual, threatened or potential bodily injury.	"As soon as possible" PR shall consult to obtain views of V.	
Nebraska § 23-1201	Prior to reaching plea agreement. Applicable offenses include homicide, sex offenses, assault, false imprisonment, and robbery.	PR shall consult or make "good faith effort" to consult V regarding contents and reasons for plea. Consultation or efforts to be recorded in PR's file.	
Nebraska § 29-120	Prior to reaching plea agreement. Applicable offenses include homicide, sex offenses, assault, false imprisonment, and robbery.	PR shall consult or make "good faith effort" to consult with V regarding content and reason for agreement.	
New Hampshire § 21-M:8-k	Case disposition, including plea bargaining.	V entitled to right to confer and be consulted to the "extent it can be reasonably guaranteed" and is not inconsistent with rights of the accused.	Not to be construed as creating cause of action against state, county or municipality agencies or employees.
New Jersey § 52:4B-44	V has written input prior to final decision regarding filing of formal charges.	V to be assisted in submitting written statement to PR about impact of crime.	

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Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
<p>New Jersey § 52:4B-44</p>	<p>V has written input prior to acceptance of negotiated plea agreement.</p>	<p>V to be assisted: in submitting written impact statement to PR about impact of crime and sentence recommendation; and in securing explanation of terms and reasons for agreement.</p>	<p>Provisions of amendment shall not take effect until legislature enacts laws to implement.</p>
<p>New Mexico Const., Art. II, Sec. 2</p>	<p>Constitutional right to confer with PR. Applicable to Vs of arson resulting in bodily injury, aggravated assault and battery, dangerous use of explosives, negligent use of a deadly weapon, murder and manslaughter, kidnapping, sex offenses, bodily injury by vehicle, and child abandonment or abuse.</p>	<p>V shall have right to confer with PR.</p>	<p>V's rts contingent on complying with § 31-26-5 (reporting offense within five days of occurrence or discovery of offense; providing PR with name, address, and phone number; cooperating with LE and PR).</p>
<p>New Mexico § 31-26-4</p>	<p>Not specified. General right to confer. Rights and duties take effect when D formally charged until final disposition.</p>	<p>V shall have right to confer with PR.</p>	<p>V's rts contingent on complying with § 31-26-5 (reporting offense within five days of occurrence or discovery of offense; providing PR with name, address, and phone number; cooperating with LE and PR).</p>

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Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
New York EL § 642	Case disposition: dismissal; guilty plea; trial; PT release; sentencing alternatives. Applicable to violent felony, felony involving physical injury or property loss exceeding \$250, and felony involving larceny against the person.	V should be consulted by PR to obtain views.	Failure to comply not cause for delaying proceedings or invalidating order or conviction.
North Carolina § 15A-825	Prior to trial regarding plea bargaining procedures.	"To extent reasonably possible and subject to available resources" PR should make "reasonable effort" to assure V provided info regarding procedures and possibility of plea bargain recommendation.	Limited to procedural guidelines not specific terms in individual case.
North Dakota § 12.1-34-02	Plea agreement or verdict.	V must be afforded right to have PR consult and explain details of potential plea or verdict in nontechnical language when applicable.	
Ohio § 2930.06	Prior to: granting PT diversion; amendment or dismissal of indictment, information, or complaint; agreeing to negotiated plea; trial.	PR shall "to extent practicable" confer with V. CT to note on record failure to confer and reasons for failure.	Non-compliance does not invalidate any agreement or disposition.
Oklahoma tit. 19 § 215.33	Plea bargain.	PR shall inform V of services available to inform of plea bargain and have victim impact statement filed with judgment and sentence.	

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Table 5-B

RIGHT TO CONFEE WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Oregon § 135.886	PT diversion. Does not apply in cases of driving under the influence of intoxicants.	PR shall consider recommendations of V.	
Pennsylvania 71 P.S. § 180-9.3	Reduction or dropping of charge; change of plea. Applicable to personal injury crimes, burglaries, and driving under the influence offenses involving personal injury.	V has right to submit prior comment.	
Pennsylvania 71 P.S. § 180-9.7	Reduction or dropping of charge; change of plea. Applicable to personal injury crimes and dui offenses.	PR's office shall provide notice of opportunity to submit prior comment.	V must request.
Rhode Island § 12-28-3	Plea negotiation.	V shall have right to opportunity to make written impact statement for insertion in case file by PR. Statement to be submitted for CT review prior to plea acceptance.	Right available to Vs filing timely report and cooperating with investigation and PR efforts.
Rhode Island § 12-28-4.1	Plea negotiation.	Prior to submission of sentencing recommendation and CT acceptance, V, given opportunity to address CT regarding impact of offense.	V must request.
South Carolina § 16-3-1530	Discuss case; plea bargain.	V has right to discuss case with PR and be informed of plea bargain offers.	

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Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
South Dakota § 23A-28C-1	Plea bargaining; sentencing bargaining.	V has right to offer written input as to whether agreement should be entered into.	
South Dakota §§ 23A-7-8--9	Plea agreement. Applicable to crime of violence and sexual offenses.	PR shall make "reasonable effort" to provide opportunity for V to comment on terms. PR shall disclose on record comments of V.	Failure of V to exercise right not grounds for CT to set aside, reverse or remand conviction.
Tennessee § 40-38-103	Plea bargain discussion and agreement.	"Whenever possible" V shall have right to be advised and informed of agreement prior to entry of plea.	V must request. Applicable to violent crimes, involving death of family member or serious bodily injury.
Texas Const. Art. I, Sec. 30	Not specified. Constitutional right to confer with representative of PR's office.		
Texas CCP art. 56.08	Plea agreement.	"As far as reasonably practical", PR shall give notice of agreement.	V must request.
Utah Rule 4-601	Plea agreement: dismissal or reduction of charges.	At time of plea entry, PR shall represent to CT in writing or on the record that the V has been contacted and agreement explained prior to CT acceptance.	V must request.
Washington § 9.94A.080	Plea agreement: reduction of charges; decision not to prosecute. Applicable to crimes against persons defined in § 9.94A.440.	PR shall make "reasonable efforts" to inform V of nature and reasons for agreement, including charges not to be filed and obtain objections or comments of V.	

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Table 5-B

RIGHT TO CONFER WITH PROSECUTOR
Current through 1995

State/Statute	Applicability of Right to Confer	Compliance Standards	Special Limitations
Washington § 9.94A.090	Plea agreement.	PR shall inform CT on record whether any V has objected to or commented on agreement.	
Washington § 9.94A.440	Decision not to prosecute; pre-filing of charges.	PR "encouraged" to notify V "when practical" of decision not to prosecute and may discuss selection or disposition of charges with V prior to filing. Pre-filing discussions should be considered prior to entry of agreement with D.	
West Virginia § 61-11A-6	Case disposition: dismissal; PT release; plea negotiations; PT diversion. Applicable to "serious crimes."	PR shall consult V to obtain views.	
Wisconsin Const. Art. I, Sec. 9m	Not specified. Constitutional right to confer with PR.		Not a basis for vacating conviction or appellate relief.
Wyoming § 1-40-204	Plea negotiations and plea agreement; case.	V shall be informed in writing by PR of right to be advised of potential for plea and prior to sentencing, of existence, essentials of and reasons for agreement. V has right to discuss case with PR.	

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SECTION 6

THE RIGHT TO PROMPT RETURN OF VICTIMS' PROPERTY

INTRODUCTION

A victim of crime may suffer the loss of property in two ways: theft and evidential seizure. Even if property is not stolen during the commission of a crime, law enforcement officers and prosecutors may seize personal property of victims needed as evidence during the course of an investigation and prosecution of a case. The loss of property, in and of itself, is not always the most traumatizing aspect for victims; rather, it is the consequential loss of security that is often most devastating. As victims struggle to regain control over their lives, the empty space where a personal item used to be is a daily reminder of their victimization and may become an obstacle to the victim's efforts to regain a sense of personal security.

PROMPT OR EXPEDITIOUS RETURN

All fifty states and the District of Columbia have passed laws outlining procedures for the return of stolen or personal property seized for evidentiary purposes in subsequent criminal proceedings. While a majority of such laws granting crime victims the right to the prompt or expeditious return of such property are a relatively new phenomena, a number of states have had detailed procedural laws concerning the return of

property held by law enforcement agencies, prosecutors and courts on the books for some time.

In most states, property may be returned to its owner when it is no longer needed for evidentiary purposes in a criminal prosecution. Since this often means the victim is deprived of his or her property for months or even years while the case is appealed or retried, some states have attempted to impose specific time requirements for the return of property. However, these time limits are not always absolute. Even in those states which provide for the return of property within a certain number of days after the occurrence of a specified action in the case (usually the final disposition), it is often with the proviso that the property no longer be needed as evidence.

Twenty-one states have attempted to address the issue of prompt return of property *still needed as evidence* by authorizing the substitution of a photograph of the item or a reproduction of the actual item.⁴¹ The use of

⁴¹ Alabama, Alaska, Arizona, Colorado, Florida (court may order), Illinois, Indiana, Kansas, Kentucky, Maryland, Minnesota, Nevada, New

photos is implied under Michigan law. In Maryland, property is to be returned to a victim when there are other means available to satisfy the evidentiary requirement for prosecution. A properly authenticated photograph or other substitute is as admissible in evidence as is the original item in most of these states. South Carolina has even legislated for its State Victim-Witness Program to assist in developing guidelines to encourage judges to give special weight to a victim's interest in the speedy return of his or her property prior to trial when ruling on the admissibility of substituting photos.

SPECIAL CONSIDERATIONS FOR VICTIMS

Victims in at least eight states must first specifically request the return of their property.⁴² In three of those states, Alabama, Arizona and Missouri, reasonable efforts to return the property shall be made as soon as possible, or the law enforcement agency responsible for the return must inform the requesting victim of the reasons for the delay. In six additional states, the owner of the property must apply or file a motion with the court to obtain the return of

Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, and Washington.

⁴² Alabama, Arizona, Colorado, Connecticut, Hawaii, Maryland, Missouri (for crimes other than dangerous felonies), and Nevada.

his or her property.⁴³ The court must then enter an order entitling the owner to recovery of the property. In several other states, the prosecutor or Attorney General must request or approve the release of property.

In most states, satisfactory proof of ownership must be provided before property can be released. If ownership is in dispute, the offender, the person with custody of the property at the time of seizure, and other interested parties must be given notice of their opportunity to attend a hearing to determine ownership. At least three states, California, Hawaii and Kentucky, require the owner of the property to pay the reasonable expenses necessary to preserve the property. Victims in Kentucky, however, may be entitled to a judgment and execution against the offender for such maintenance expenses. Arizona law specifically prohibits imposing charges on the owner of the property.

Property that is unclaimed is often sold at public auction after a set period of time which varies from state to state. Generally, the owner of the property is entitled to recover the property prior to the sale. In Arkansas, the proceeds from the sale of unclaimed property is held in a separate account for three months. A person who can establish his or her ownership of the property at the time of the sale is entitled to be paid the amount received at the sale, less expenses.

⁴³ California, Kentucky, Montana, New Jersey, North Carolina, and Oklahoma.

CONCLUSION

Most states are attempting to insure the expeditious return of personal property to crime victims by granting victims specific rights and by establishing policies and procedures for prompt return. Some states, such as California, Oregon, Pennsylvania, Rhode Island, Wisconsin and Wyoming, are going even further by requiring or encouraging victim and witness programs to provide services assisting victims in securing the return of their property. States should continue this trend as they search for innovative ways to expedite property return.

Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
 Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Alabama § 11-47-116	Owner of property may redeem at any time prior to sale upon payment of reasonable expenses of taking and storage of property and pro rata cost of publication of sale.				Procedures for sale at public auction of abandoned and stolen property.
Alabama § 15-23-77		LE shall make reasonable efforts to return property as soon as possible, or inform V of reasons return delayed.		Yes.	Prior to admission into evidence, written approval by PR or Attorney General required.
Alabama § 15-23-77		CT may order return if photo can be substituted.	Yes, after admission into evidence.		After admission into evidence, PR or Attorney General may request release.
Alaska § 12.36.010 -- § 12.36.090	LE shall return stolen property not photographed upon proof of ownership within 60 days of final disposition of case.	LE may return property upon proof of ownership if photos are used as evidence.	Yes.		Applicable in criminal proceeding or children's CT proceeding for wrongful taking of property. Procedures for disposing of unclaimed property outlined.

CT=Court

D=Defendant

LE=Law Enforcement

PR= Prosecutor

V=Victim

W=Witness

Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
 Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Alaska § 12.80.050			Photos of wrongfully taken or damaged property are competent evidence and are admissible to same extent as actual property		Applicable in criminal proceeding or children's CT proceeding for wrongful taking of property. Procedures for photographing property outlined.
Arkansas § 5-5-101	All seized property shall be returned to rightful owner or possessor.				Unclaimed seized property to be sold at public auction after advertisement. Proceeds to be held for 3 months in separate account. Any person establishing ownership at time of sale shall be paid sale price less expenses.
Arkansas § 16-21-106		PR may provide services to V and W assuring the expeditious return of stolen or personal property			Property returned when no longer needed as evidence, except contraband.
Arkansas § 16-80-103	Property obtained by larceny, robbery, or burglary shall be restored to owner. No sale divests owner of right to property.				Person losing property has cause of action against felon and person who is found in possession of property. Procedures for handling property outlined.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Arizona § 13-3941	Upon satisfactory proof of ownership, order to deliver property shall be entered, entitling owner to demand and receive stolen property.				Property returned unless required as evidence. No charge to be imposed on owner of property. Procedures for handling stolen property outlined.
Arizona § 13-4429		LE shall make reasonable efforts to return property as soon as possible, or inform V of reasons return delayed. CT may order return if photo can be substituted.	Yes, after admission into evidence.	Yes.	Consultation with PR required.
California PC § 679.02	V has statutory right to expeditious return of stolen or embezzled property.				Return only when property no longer needed as evidence.
California PC § 1408	Stolen property not in custody of magistrate to be ordered returned to owner upon proof of ownership after notice to possessor of property and hearing.			Owner must apply for property return.	Property delivered upon payment by owner of expenses incurred in preserving property. Procedures for handling stolen property outlined.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
California PC § 1410		Trial CT hearing criminal case may order that stolen property be restored to owner showing proof of title after notice to person from whom custody taken and others as required.		Owner must apply for property return.	
California PC § 1417.5	60 days after final determination of criminal action or proceeding CT shall order release of exhibits not prejudicing the state to owner.			Owner or person entitled to possession must apply for property return.	Procedures for disposing of exhibits in clerk's possession introduced in a criminal action.
California PC § 13835.5				Yes.	V\W assistance centers to provide assistance in obtaining return of V's property held by LE.
California PC § 13897.2					Statewide resource center to assist callers in overcoming problems, including return of property.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Colorado § 13-25-130		LE may return unlawfully obtained property if photos, videos, or films retained, ownership proved, declaration of ownership signed, notice provided to D and receipt obtained from owner upon delivery.	Photos, videotapes, of films of property are competent evidence if admissible under governing laws. Such substitutes admissible if satisfactorily identified and authenticated.		Procedures for utilizing photos, videotapes or films of property as evidence outlined.
Colorado § 24-4.1-302.5	V has right to promptly receive property held by PR or LE.				Property returned unless evidentiary reasons for retention.
Colorado § 24-4.1-303	PR or LE to return property within 5 working days.			Yes.	Property returned when no longer needed for evidentiary purposes, unless contraband or subject to forfeiture.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Connecticut § 54-36a	CT shall order return of seized stolen property within 30 days of filing return request by owner, unless CT orders retention for good cause. CT to order return of other seized property, except drugs or contraband, at final disposition of criminal action or as soon as practicable, or if no action, upon motion of PR, within 6 months of proper claim.			Written notice to owner regarding stolen property within 10 days of seizure to including request form. Owner may request return by filing form with LE.	Procedures for handling property seized in connection with criminal case, including stolen property and unclaimed property, outlined.
Connecticut § 54-203	V has right to have property seized by LE returned.				Subject to provisions of §54-36a.
Delaware tit. 11 § 9408	Agency holding property shall promptly return property to V.				Property returned when no longer needed for evidentiary purposes, unless contraband or subject to forfeiture.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
 Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
District of Columbia § 4-156 § 4-157		No property feloniously obtained or the proceeds of a crime shall be delivered if required to be held under § 4-159 or within 1 year of receipt unless PR certifies property not needed as evidence.			Procedures for determining ownership of stolen property outlined.
Florida § 960.001	LE and PR to promptly return property.		CT may order use of photo.		Property returned unless compelling LE reason for retention.
Georgia § 17-5-54	When final judgment entered in criminal case any personal property used as evidence shall be returned to its rightful owner.				Procedures for handling unclaimed property outlined. Records tracking handling of property including efforts to locate owner shall be maintained.
Hawaii §§ 52D-12, 13	Stolen property in custody of LE shall be delivered to owner upon proof of ownership.				Owner must pay reasonable expenses incurred in preserving property to secure its return. No delivery of property if CT orders retention.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Hawaii § 801D-4	V has right to have stolen or other personal property expeditiously returned, if feasible within 10 days of taking with certain exceptions.			Yes, in writing.	Property returned when no longer needed as evidence.
Idaho § 19-5306	V shall be assured expeditious return of stolen or other personal property by LE.				Property returned when no longer needed as evidence. Applies to V of criminal or juvenile offense.
Illinois ch. 725 § 5/115-9	LE shall return unlawfully obtained property if photo retained, receipt for property obtained from owner, PR provides written request for return, and property may be lawfully possessed by owner.		Photo may be received as competent evidence of unlawfully obtained or controlled property if it demonstrates nature of property and is admissible under rules of law.		Applies only in prosecution for theft crimes, including robbery, armed robbery, and residential burglary. D may file motion for retention of property as evidence within 30 days of indictment.
Illinois ch. 725 § 120/4.5	PR shall assist in having stolen or other personal property held by LE returned as expeditiously as possible.				Property returned pursuant to Ch. 725 § 5/115-9.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Illinois ch. 765 §§ 1030/0.01 et seq.	LE shall make reasonable effort to identify and notify owner and shall return property upon provision of proof of ownership and payment of expenses of custody. Property may be recovered any time prior to sale at public auction.				LE Disposition of Property Act applies to all personal property believed to have been stolen or illegally possessed, except property seized during a search and returned under Ch. 725 §§ 5/108-11, 12 or 114/12. Procedures for sale of unclaimed property outlined.
Indiana § 35-33-5-5	Property seized by LE which may be lawfully possessed shall be returned to rightful owner following final disposition. If property entered into evidence, disposal by CT order.	Property obtained unlawfully may be returned to owner before trial pursuant to § 35-43-4-4(h).	Photo demonstrating nature of property and adequate description must be obtained to preserve record on appeal. Photo and description shall be admissible if case retried.		Procedures for locating owner and for public sale of property outlined. Certified records of disposition of property to be maintained.

CT=Court

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PR= Prosecutor

V=Victim

W=Witness

Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
 Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Indiana § 35-43-4-4		LE may return unlawfully obtained property held as evidence to owner if: photos demonstrating nature retained; receipt obtained from owner; PR has not requested LE to decline requests for return; and property may be lawfully possessed by owner.			
Kansas § 60-472		Upon filing of photo and description, LE or CT holding property as evidence may return property to owner.	Photos of property wrongfully taken may be deemed competent evidence and admissible in prosecution for crime involving taking of property.		Procedures for photographing property for evidentiary purposes outlined.
Kentucky § 421.500	LE and PRs shall promptly return V's property unless there is compelling reason for retention.		Yes. Photos shall be received by CT as competent evidence pursuant to § 422.350.		

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Kentucky § 431.210				Person claiming ownership of stolen property may file motion for return if D fails to appear for trial. Motion to be continued for 30 days before final action entered.	Procedures for notice and hearing on motion to return property outlined. Claimant owner shall pay costs of proceedings but may have judgment and execution against D.
Louisiana R.S. § 46:1844	All judicial and LE agencies shall expeditiously return stolen or personal property to V.				Property return when no longer needed as evidence.
Maryland Art. 27 § 761	V should be advised of right to have stolen or other property promptly returned and have property promptly returned by LE unless compelling LE reason for retention.		Unspecified. Property to be returned when means available to satisfy evidentiary requirement for prosecution.	Yes, written request for return of property	

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Massachusetts ch. 258B § 3		To greatest extent possible and subject to appropriation and available resources, V shall be afforded right to have property stolen or taken for evidence returned by CT, PR or LE within 10 days or as expeditiously as possible			Property returned when no longer needed for LE or prosecution purposes, except contraband, property subject to evidence analysis, and property whose ownership is in dispute.
Michigan § 28.1287(754)	LE investigating crime shall promptly return property taken during investigation belonging to V, except contraband and property whose ownership is disputed.		Implied.		Retention as evidence of any weapon used to commit crime and other property if PR certifies need to retain in lieu of photo or other means of memorializing property
Michigan § 28.1287(783)	LE investigating crime shall promptly return property taken during investigation belonging to V, except contraband and property whose ownership is disputed.		Implied.		Retention as evidence of any weapon used to commit crime and other property if PR certifies need to retain in lieu of photo or other means of memorializing property.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Michigan § 28.1287(814)	LE investigating crime shall promptly return property taken during investigation belonging to V, except contraband and property whose ownership is disputed.		Implied.		Retention as evidence of any weapon used to commit crime and other property if PR certifies need to retain in lieu of photo or other means of memorializing property.
Minnesota § 609.523		LE may return unlawfully obtained property to owner if appropriate photos retained, proof of ownership provided, declaration of ownership signed, and receipt obtained from owner.	Photos of unlawfully obtained property are competent evidence if admissible under law, and when satisfactorily identified are as admissible as property itself.		Procedures for creating record of property outlined. Recovered property valued over \$150 to be retained by owner after return for 14 days to allow examination by D's attorney.
Missouri § 595.209	PR or LE with possession shall return V's property within 5 working days or provide written explanation why property can't be returned.			Right automatically afforded to V of dangerous felonies; upon written request for all other crimes.	Property returned when no longer needed for evidentiary reasons, unless contraband, subject to forfeiture, or retained pending appeal.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Montana §§ 46-5-311 et seq.	CT shall order return of property, except contraband, if right to possession established, property not needed as evidence, or if needed, arrangements can be made for its return or if all proceedings where evidence needed are complete.			Person claiming right to possession of property seized as evidence may apply to judge for return.	Procedures for notice and hearing on right to possession outlined. Notice of seizure and receipt for evidence seized must be given to person from whom property seized at time of taking.
Montana § 46-24-206	LE or PR shall promptly return V's property unless compelling LE reason for retention.				
Nebraska § 81-1848	V has right to have stolen or personal property expeditiously returned, if feasible within 10 days of taking.				Property returned when no longer needed as evidence except weapons, currency, contraband, property subject to evidentiary analysis or ownership disputed.
Nevada § 52.385				PR may return property in absence of request from owner.	Procedures for photographing property for admissibility as evidence outlined.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Nevada § 178.5696	CT or LE with custody of stolen or personal property to return property expeditiously.			V desiring list of property in custody must request in writing.	Property returned when no longer needed as evidence CT or LE with custody shall make a list describing property available to V upon request.
New Hampshire § 21-M:8-k	V entitled to right to prompt return of property to extent right can be reasonably guaranteed and is not inconsistent with rights of D.				Property returned when no longer needed as evidence.
New Jersey §§ 2C:65-1--4		LE may release stolen property to owner upon proof of ownership and identity. LE not prohibited from immediately returning property if ownership not disputed. CT may order return of property, except documentary exhibits after final determination.	LE to make and retain complete photo record of property which may be entered as evidence if properly authenticated.	After final determination in case, person claiming ownership to apply for return.	Procedures for logging in property, and release before and after final disposition in case, including determining ownership, outlined. Property unclaimed within 6 months of final determination to be transferred for public sale.
New Jersey § 52:4B-44		Office of V/W Advocacy and PR required to provide services expediting return of property		Yes.	Property returned when no longer needed as evidence.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
New Mexico Const. Art. II, Sec. 24	V shall have constitutional right to promptly receive property held as evidence by LE or PR unless compelling reasons to retain.				Applicable to Vs of arson resulting in bodily injury, aggravated assault and battery, dangerous use of explosives, negligent use of a deadly weapon, murder and manslaughter, kidnapping, sex offenses, bodily injury by vehicle, and child abandonment or abuse. Only state to provide for property return in language of constitutional amendment.
New Mexico § 29-1-14				V shall be entitled to serve notice of intent to claim ownership of personal property on entity with custody.	Procedures for handling unclaimed personal property in possession of LE outlined. True owner of property sold at public auction divested of right or claim to property. Section shall not apply to property for which notice of intent to claim filed by V.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
 Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
New Mexico § 31-26-4	V shall have right to promptly receive property held by LE or PR unless compelling evidentiary reasons for retention.				V's rights contingent on complying with § 31-26-5 (reporting offense within 5 days; providing PR with name, address, and phone number; cooperating with LE and PR)
New York EL § 642	LE and PR shall promptly return property held as evidence unless compelling reason for retention as proof at trial.				
New York EL § 647	CT shall assist and expedite return of property held as evidence unless compelling reason for retention as proof at trial.				

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
New York PL § 450.10	Property shall be released upon proof of ownership within 15 days of receipt by D of notice of request for return, or upon examination and photo-graphing of property, whichever occurs first unless CT orders retention for good cause or extension is granted. Motor vehicle or other property necessary for health or welfare of any person may be released within 48 hours upon finding by CT that immediate release is required.	Stolen motor vehicle in custody of LE or PR may be released expeditiously to registered owner without notice to D after taking of evidentiary photos. If property has not been delivered to owner, trial CT may order restoration to owner upon proof of ownership.	Upon receipt of request for return, diligent effort to be made by PR and D's attorney to examine, test, photo-graph or reproduce property. Procedures for photographing motor vehicle specified.	Return of property must be requested for return prior to or during the criminal proceeding. PR must apply when immediate release of property such as perishables and motor vehicles is necessary.	Procedures for release of stolen property, including motor vehicles, outlined. Owner may be required to pay for necessary expenses incurred in preservation of property. Noncompliance with provisions of section which CT is convinced has caused undue prejudice to D may cause CT to prohibit introduction of property, photos, or testimony about property into evidence.
North Carolina § 15-11.1		PR may release seized property if no longer necessary as evidence in criminal case upon presentation of evidence of ownership. CT has discretion to order release upon refusal by PR.	Photos, identification, or analyses made of property may be introduced at trial if substitute evidence won't prejudice rights of D.	Lawful owner must apply to PR for property return. If PR refuses to release property then may apply to CT.	Procedures for determining lawful owner and disposing of unclaimed seized property outlined.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
North Carolina § 15A-825		To extent reasonably possible subject to available resources, reasonable effort should be made by LE, PR, judicial, and correctional employees to assure V has stolen or personal property expeditiously returned, if feasible within a reasonable period of time of being recovered.	Property should be photographed before being returned.		Property returned when no longer needed as evidence, and when return will not impede investigation or prosecution, except for weapons, currency, contraband, property being analyzed as evidence or whose ownership is disputed.
North Dakota § 12.1-34-02	V must be afforded right to have stolen or personal property taken for evidence returned by CT, PR or LE within 10 days of taking, or as expeditiously as possible.				Property returned when no longer needed for LE, prosecution or defense purposes, except contraband, property being analyzed as evidence or whose ownership is disputed. D to be notified of intent to return property and CT may order retention upon good cause showing that property contains evidence of D's innocence.
North Dakota § 12.1-34-04					PR is responsible for securing expedited return of property services for V.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Ohio § 2930.11	Investigating LE shall promptly return any property taken during investigation to V.		Photos may be taken for use as evidence.		Property to be retained upon certification by PR of need to retain in lieu of photo or other evidentiary substitute. If ownership disputed, retention until dispute resolved. D may file motion for retention if property needed for defense. CT shall weigh V's need for property against D's claimed need for evidence to make timely ruling.
Ohio § 2933.41		LE shall make a reasonable effort to locate persons entitled to custody of property, notify them of when and where property may be claimed, and to return property at earliest possible time.			Procedures for disposition of property held by LE outlined. Record of property no longer needed as evidence open to public inspection.
Oklahoma tit. 19 § 215.33		PR to inform V of services to have all stolen or personal property expeditiously returned by LE, if feasible.			Property returned when no longer needed as evidence, except weapons, currency, contraband, property being analyzed as evidence, or whose ownership is disputed.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Oklahoma tit. 22 § 305.2	Property shall be returned to owner after verification of title and signing of declaration of ownership to be retained by LE.		As consideration for deferred prosecution agreement, D shall agree to photo record of property to be admissible as evidence.		Return of property shall be without prejudice to state or other person with claim against property.
Oklahoma tit. 22 §§ 1321, 1322		Intent of legislature that stolen property held in criminal action be returned to owner without unnecessary delay. If property needed as evidence, return pursuant to § 22-1327. If not needed, return upon proof of ownership. Order of return by magistrate entitles owner to demand and receive property within 10 days.		Owner of property may make application for property return.	LE to make good faith effort to locate owner and notify of property within 15 days of determining ownership. Procedures for application, notice and hearing on property return outlined. Owner may be required to pay reasonable expenses incurred in preserving property.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
 Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Oklahoma tit. 22 § 1327	6 months from time conviction becomes final or if no con-viction, any time after final judgment, CT shall enter order stating what exhibits may be released and transferred for public sale. Owner may obtain order of property return from CT any time prior to transfer.	The CT may order the return of exhibits after notice and hearing prior to final disposition in case.	PR shall photograph or number exhibits and return within 10 days of CT order. Addi-tional 10 days may be ordered for good cause shown. Photo or marked exhibited may be presented in future actions.	V may apply to CT any time prior to final disposition of action for return of exhibits, including documentary exhibits.	Procedures for disposition of exhibits held in criminal action outlined.
Oregon § 142.020	Magistrate examining charge against D or trial court shall order return of stolen property upon proof of ownership and payment of preservation expenses.				
Oregon § 147.227					To receive funding a comprehensive V assistance program must substantially accomplish assisting Vs in recovering damaged or stolen property.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Pennsylvania 71 P.S. § 180-9.3	V has right to be restored, to extent possible, to pre-crime economic status through expeditious return of property seized as evidence.				Property returned when PR determines no longer needed for prosecution of case.
Pennsylvania 71 P.S. § 180-9.4					Technical assistance and grants to be made to PR and other criminal justice agencies providing services for the expedited return of V's personal property held for prosecution purposes by LE.
Rhode Island § 11-41-15		Clerk or person in charge of storage of stolen property may return property to owner upon proof of ownership, notice to and opportunity for person from whom property taken to voice objections, and receipt of declaration of ownership.	Photo record must be made in order for property to be returned. Photo shall be allowed as evidence in any CT in the state.		Procedures for logging in stolen property and hearing objections from person from whom property taken outlined.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Rhode Island § 12-28-3	V shall have right to have stolen or personal property expeditiously returned by LE.				Property returned when no longer needed as evidence. Right available only to V who makes timely report of crime and cooperates in prosecution and investigation.
Rhode Island § 12-28-10					V's services unit shall be responsible for assisting Vs in exercising rights, including assistance in seeking property return.
South Carolina § 16-3-1410			State V/W Program to assist in developing guidelines for judges to give special weight to V's interest in speedy return of property before trial in ruling on admissibility of photos.		

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
South Carolina § 16-3-1530		To extent reasonably possible and subject to available resources, V to be afforded right to have recovered or taken personal property returned as expeditiously as possible.	Photos to be used as evidence whenever possible.		Property returned except for contraband, property being analyzed as evidence, property whose ownership is disputed, or property needed for LE or PR purposes.
South Dakota § 23A-37-14	Property of V seized as evidence shall be photographed and returned to V within 30 days of completion of forensic analysis unless PR deems retention essential to prosecution.		Property of V seized as evidence shall be photographed by LE. Photos are admissible as evidence in criminal proceeding.		
Tennessee § 40-38-106	V shall have right to recover property in custody of CT or LE as soon as is reasonably possible.				Limited to V of crime involving offense against property.
Texas CCP art. 56.02	V entitled to prompt return of property held as evidence by LE or PR				Property returned when no longer needed as evidence.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Utah §§ 77-24-1 -- 5	PR to notify owner in writing when aware that custodial property not needed as evidence. Written authorization entitling owner to receive property given upon proof of ownership and lawfulness of possession.	Custodial property received in evidence to be retained until direct appeals and retrials are final, unless PR declines to authorize return.			Procedures for sale of unclaimed property outlined.
Utah § 77-37-3	Vs and Ws have right to have any personal property returned pursuant to §§ 77-24-1-5. Criminal justice agencies shall expeditiously return property.				Property returned when no longer needed for CT, LE, or PR purposes.
Vermont tit. 13 § 2506	Property stolen in robbery shall be restored to owner upon conviction of D.				
Vermont tit. 13 § 5304		V advocate shall provide V with assistance in obtaining return of property from LE.			
Virginia § 19.2-11.01		V shall be assisted in having property held as evidence by LE returned promptly.			Property returned pursuant to §§ 19.2-270.1 and 270.2.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Washington § 7.69.030		Reasonable efforts to ensure V has right to have stolen or personal property expeditiously returned by LE or CT, when feasible within 10 days of taking.	When feasible, photos should be taken.		Property returned when no longer needed as evidence, except weapons, currency, contraband, property being analyzed as evidence, or whose ownership is disputed.
West Virginia § 57-5-11		CT has discretion to order disposal of any exhibit or article offered as evidence remaining in CT's custody for 30 days after time for appeal. Known owner shall be notified and property returned if desired.			
West Virginia § 61-11A-6		LE should promptly return property held as evidence to V unless compelling reason for retention.			
Wisconsin § 950.04	V has right to have stolen or personal property returned expeditiously by LE, if feasible within 10 days of taking.				Property returned when no longer needed as evidence, except weapons, currency, contraband, property being analyzed as evidence, and whose ownership is disputed.

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Table 6-A

RIGHT TO PROMPT RETURN OF PROPERTY
Current through 1995

State/ Statute	Mandatory Return	Return Enforcement	Photo Replacement	Victim Request	Special Provisions
Wisconsin § 950.05					Counties encouraged to provide V and W with expedited return of property services.
Wyoming § 1-40-118					Crime V assistance programs to provide services to Vs including assisting Vs in recovering damaged or stolen property.
Wyoming § 1-40-203	V shall have the right to prompt return of property seized as evidence.				Property returned as provided in § 1-40-208.
Wyoming § 1-40-208	V has right to have any personal property promptly returned.				Property returned, except contraband, if does not interfere with prosecution. Criminal justice agencies to work together to expedite property return. PR shall promptly notify LE when evidence no longer needed.

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SECTION 7

PAYMENT FOR FORENSIC EXAMS OF SEXUAL ASSAULT VICTIMS

INTRODUCTION

One of the most troubling criminal justice system policies experienced by crime victims in recent years has been the practice of requiring victims of sexual assault, who have already suffered tremendous indignities, to bear the costs of the evidentiary medical exam related to the crime. There has been a pervasive policy of charging sexual assault victims with the costs of the initial forensic examination even though it is performed primarily to gather evidence for purposes of prosecution. In effect, victims were asked to help bear the cost of prosecuting their attackers, while the costs of the attackers' legal defense were often borne by the state.

PAYMENT SOURCES FOR SEXUAL ASSAULT FORENSIC EXAMS

Today, most states have a compensation program that will reimburse victims for the costs of their medical treatment, which may include examinations for evidence gathering purposes. However, according to the National Association of Crime Victim Compensation Boards, "most [compensation] programs currently are not the primary reimbursement source for these exams."⁴⁴ In

⁴⁴ *Crime Victim Compensation Quarterly*, No. 1, 1995, p. 10.

the past few years, an increasing number of states have enacted legislation specifically providing for alternative payment sources, including compensation programs, to cover the costs of forensic exams. As of 1995, at least thirty-six states have passed such laws.

Statutory Designation of Alternative Payment Source

A number of states place responsibility for payment on the county in which the sexual offense occurred⁴⁵ or on the entity requesting that the victim have the examination performed — most often the investigating law enforcement agency⁴⁶ or the prosecuting attorney. Payment responsibility in other states is based upon the type of facility performing the exam — for example, public versus private. In other cases the location of the facility is the determining factor. The compensation programs in nine states are specifically designated as the entity

⁴⁵ Arizona, California, Minnesota, Mississippi, Nevada, Ohio and South Dakota.

⁴⁶ California, Idaho, Oregon, Texas and Wyoming.

responsible for payment.⁴⁷ Three states, Vermont, Virginia and Washington, simply designate the state as the responsible party, although Vermont's law permits payment by the state from the victim's compensation fund. In the remaining states, other governmental agencies or departments have been charged with this responsibility.⁴⁸

Even though many legislatures have passed laws requiring the state, through a designated payment source, to assume payment of a sexual assault victim's forensic medical examination, such payment is often contingent on certain conditions being met. In Delaware, Illinois, Maine, Mississippi, Missouri, New Hampshire and Pennsylvania, the designated source is only required to pay when the costs can not be recouped through insurance or other third-party coverage. Of those states, only New Hampshire has sought

to protect the victim's privacy during the insurance billing process by including special provisions for confidentiality in its statutory language. Florida law requires written certification by the referring law enforcement agency that the exam is a necessary part of its criminal investigation, and that the claimant be the victim in the case. In Mississippi and Oklahoma, a victim's application for reimbursement must be approved by the district attorney with jurisdiction over the prosecution in order for payment to be obtained. Contingencies for payment in several states such as Arkansas, Indiana, North Carolina, South Carolina and South Dakota involve the victim's reporting of the crime to law enforcement within a specified time and/or cooperation with investigation efforts. Virginia requires that only designated providers perform the exam.

While all the states discussed in this overview have indicated their support for the premise that victims of sexual assault should not be responsible for covering the costs of medical procedures necessary to gather evidence, they vary as to the victim's responsibilities in obtaining payment. In at least six states that provide for an alternative payment source, including California, Connecticut, Florida, Minnesota, Nevada and Washington, the victim may not be charged directly or indirectly for the cost of the exam. New Hampshire's law is even more specific, providing that "[t]he bill for the medical examination of a sexual assault victim shall not be sent or given to the victim or the family of the victim."⁴⁹ A few states provide for the direct billing by and subsequent payment to the medical care

⁴⁷ Arkansas, Delaware, Iowa, New York, Oklahoma, Pennsylvania, South Carolina, Utah and Vermont.

⁴⁸ Connecticut (Division of Criminal Justice), Florida (Crime Victims' Services Office), Illinois (Department of Public Health), Indiana (Victim Services Division of Criminal Justice Institute), Kentucky (Office of Attorney General), Missouri (Department of Health), New Hampshire (Department of Justice), New Mexico (Administrator of Mental Health Division of the Department of Health), North Carolina (Assistance Program for Victims of Rape and Sex Offenses), and West Virginia (Prosecuting Attorneys' Institute).

⁴⁹ N.H. REV. STAT. ANN. § 21-M:8-c.

provider. In Mississippi, New York, Oklahoma and Utah, a sexual assault victim must apply for reimbursement. It should be noted, however, that in all of those states except New York, payment is the responsibility of the state's compensation program. Under the rules of compensation programs in several other states, including Pennsylvania, the health care provider conducting the exam is responsible for filing its own claim directly with the entity responsible for making payment.

Some state laws impose a maximum payment amount for medical expenses covered in the performance of a forensic exam. Florida and Oklahoma allow up to \$150 in payment for the exam, although Oklahoma will pay an additional \$25 for medication provided on a one-time basis to treat the victim's immediate trauma. In Pennsylvania and North Carolina, payments of up to \$500 are authorized; however, in North Carolina, this amount must also include immediate, short-term medical expenses, ambulance services, and mental health treatment. Pennsylvania, like Oklahoma, provides for an additional amount to be paid for medications.

While other states' statutes do not mention such a cap, many limit payment to "reasonable" costs. Kentucky and Mississippi provide for payment of "usual and customary" charges. In Kentucky, "usual and customary" is established by an approved schedule, while Mississippi makes a determination based upon the amount normally charged for such services in the area. A number of other states have chosen not to limit the amount that can be paid for such expenses.

Some laws, in states such as Illinois, go beyond payment for the forensic exam, covering such items as: all emergency treatment, follow-up testing, ambulance service, and/or treatment for venereal disease or pregnancy. Conversely, a number of states specify *exclusions* for such payments. Idaho, Montana, Oregon, Texas and West Virginia exclude treatment for the victim's injuries. Texas will, however, pay for costs related to the testimony of a health care professional pertaining to the results of the forensic exam. Arkansas does not cover treatment for emotional trauma or ambulance services. While testing for sexually transmitted disease is paid for in Delaware, Illinois, Iowa, Kentucky and South Carolina, it is not covered in West Virginia. While West Virginia does not provide payment for pregnancy testing, South Carolina will pay for medication for pregnancy prevention if the victim so desires. Maryland requires payment for up to five hours for professional assessment of a child sexual abuse victim. Although treatment costs, pregnancy and disease testing, counseling, and other related services are often not included as part of the payment for forensic exams, the compensation programs in many states do cover such items. Victims should be encouraged to explore the payment options available through the compensation programs in their states.

Payment by Compensation Programs⁵⁰

As previously mentioned, compensation programs in nearly all states provide at a minimum for payment of forensic sexual assault exams. This overview and the table which follows highlight only those states which include *specific* provisions for the awarding of compensation for the costs of forensic exams and tests. In most other states, it is presumed that such claims are included under the generic term "medical expenses." Pennsylvania classifies exams conducted for evidentiary purposes as out-of-pocket losses under its compensation laws. In some states, Delaware and Wyoming for example, compensation is available only if the costs are not covered in whole or in part through insurance or another source.

While the entity providing the examination services may be permitted or required to submit its claims directly to the compensation program for payment, as in Delaware, Pennsylvania and South Carolina, some states which have delegated payment responsibility to their compensation program require the victim to apply for the award. This is the case in New York, Oklahoma and Utah. Unfortunately, compensation is

awarded only after the filing and processing of a claim which may take months, and often is subject to the availability of programs funds. Payment may also be dependent upon compliance with the requirements for establishing general eligibility for an award of compensation. Often, certain conditions must be met, such as timely reporting of the offense to law enforcement. Eligibility for payment of exam costs may be contingent upon a prior request from investigating police officers or the prosecuting attorney that the victim be examined.

Restitution by Offender

States may require an offender to pay the costs of medical treatment, testing and other expenses as part of restitution. Laws in five states, Delaware, Florida, Mississippi, South Dakota and West Virginia, specifically contain provisions holding the offender accountable for payment. Delaware fines each offender convicted of a sex offense \$50 for each misdemeanor and \$100 for each felony to be used to reimburse the Compensation Fund for awards for forensic medical exams. The other four states provide for court ordered reimbursement to the party who is out-of-pocket for the costs of the exam which could be the victim, compensation program, law enforcement agency, or county, among others. Florida's law even extends this requirement to juvenile offenders.

Restitution, however, is awarded only after a conviction, and payment, if made at all, may not be made for years thereafter.

⁵⁰ For a more in-depth discussion of the role of compensation programs in paying for forensic sexual assault examinations, see the *Crime Victim Compensation Quarterly*, Number 1, 1995. This article also addresses requirements for payment programs outlined in the Violence Against Women Act, and the effect of that legislation on state compensation programs.

VIOLENCE AGAINST WOMEN ACT PROVISIONS

With the passage of the Violence Against Women Act ("VAWA") in 1994, states, Indian tribal governments and units of local government who wish to qualify for grants under the Act to combat violent crimes against women *must* assume responsibility for the "full out-of-pocket cost of forensic medical exams" for victims of sexual assault.⁵¹ Three options for compliance are offered: 1) the entity can itself provide forensic exams to victims free of charge; 2) the entity can arrange for victims to obtain exams from another source at no charge to the victims; or 3) the entity can reimburse victims for the cost of such exams. If the third option is utilized, certain conditions must be met. First, reimbursement must cover the full cost of the exam without the application of a deductible or limitation on the amount paid. Secondly, victims must be given at least one year from the date of the exam to apply for reimbursement. Thirdly, payment must be made by the applicable governmental entity within 90 days after receipt of written notification of the victim's incurred expense. Finally, the reimbursing entity must provide information to all victims, including those who speak little or no English, at the time the exam is conducted as to the procedures for obtaining reimbursement.

Despite the imposition of this precondition for grant eligibility, it should be noted that the grants are not intended to be used for the

⁵¹ Violence Against Women Act, 42 U.S.C. § 3796gg - 4 (1994).

payment of forensic exams. Instead, the available funding is earmarked for a variety of other valuable services, for example, "...personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution and adjudication of persons committing violent crimes against women."⁵² Since most compensation programs are willing to pay for forensic sexual assault exams, even if not specifically designated to do so, eligibility requirements for these grants may already be met in most states.

VAWA, however, does not require that compensation programs be the designated payment source, although there may be some financial benefits to states under the Victims of Crime Act of 1984 ("VOCA") provisions that may encourage states to choose such programs as their primary source of payment for exams. "[S]tates can benefit by including rape exam costs in a compensation programs's certified state payout, thereby receiving a 40% reimbursement through VOCA. If the state pays for the exams from an entity other than the compensation program, the 40% VOCA payback is not available."⁵³ While the 90 day turnaround time for reimbursement to a victim may be a consideration for a state in determining the most appropriate entity to handle repayment, the provisions of VAWA do not require a state to sacrifice eligibility criteria such as report filing, and cooperation in the investigation and prosecution by the victim.

⁵² Violence Against Women Act, 42 U.S.C. § 3796gg (b) (1994).

⁵³ *Crime Victim Compensation Quarterly*, *supra* note 1, at 10.

Some states may be reluctant to place this payment burden on compensation programs designed primarily to assist victims with the financial losses and hardships that they have been forced to bear as a result of their victimization. Requiring compensation programs to allocate funding for an exam performed strictly to gather evidence may be seen as diverting the intended focus of such programs from helping to make victims whole toward helping to finance the investigation of the case. Both Oklahoma and South Carolina set a limit to the amount of compensation funds expended for this purpose.

CONCLUSION

Given the wide divergence of payment schemes across the country, there is clearly a need to address ways in which exam expenses can be better determined and paid. The VAWA provisions are an acknowledgment of the injustice done to sexual assault victims when they are required to bear personal financial burden of their own victimization. Its passage should promote more uniform coverage of forensic costs for these victims in every state.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim		Reimbursement by Offender	Special Restrictions and Provisions
		yes	no		
Arizona § 13-1414	County in which crime occurred.			Not specified.	Payment for any medical expenses arising out of the need to secure evidence.
Arkansas §§ 12-12-401 -- 405; § 20-9-303	Arkansas Crime Victims Reparations Board.			Not specified for victims treated at medical facilities but reimbursement for exams available to such facilities. Victims treated at University of Arkansas Medical Sciences Campus exempted from payment if offense is reported to law enforcement and victim seeks treatment within 48 hours of crime.	Payment for "appropriate emergency medical-legal examinations" with emphasis on collection of evidence for prosecution. Treatment of emotional trauma and ambulance services not included. Reimbursement to medical facilities for reasonable costs of services provided. Reparations Board may develop standards, including determination of reasonable costs and cost ceiling for each claim. Adult victims may not be required to report the offense in order to receive medical treatment and evidence to be collected only with victim's permission; however, not clear if victim treated at medical facility other than the University who chooses not to file a report or have evidence collected may be charged for the exam.
California PC § 13823.95	Local governmental agency within whose jurisdiction crime committed.		✓		Bills for exam costs to be submitted to law enforcement agency requesting the exam.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
 Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Colorado § 18-3-407.5	Referring or requesting law enforcement agency.			Not specified.		Applicable to any direct cost associated with the collection of forensic evidence.
Connecticut § 19a-112a	Division of criminal justice.		✓			
Delaware tit. 11 § 9019	Victim Compensation Fund.		✓		Each offender convicted of sexual offense shall pay additional fine of \$50 for each misdemeanor offense and \$100 for each felony to be used to reimburse Compensation Fund for forensic medical exam payments.	Hospitals and health care professionals must first seek reimbursement from victim's insurance carrier. If no insurance available or if full costs not covered, then reimbursement from Compensation Fund. Victim shall not be required to file application with Compensation Board. Payment to cover costs of physician's fees, including treatment for prevention of venereal disease which may involve one follow-up visit; emergency department expenses; and laboratory expenses.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
 Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Florida § 960.28	Crime Victims Services Office of the department of legal affairs.		✓		Mandatory court-ordered restitution to Crimes Compensation Trust Fund for initial exam costs by each offender, incl. juveniles. Order enforceable as civil judgment.	Victims' Services Office shall pay medical expenses for victim who reports crime to law enforcement whether or not victim has health or disability insurance. Payment not to be made for initial exam unless law enforcement certifies in writing that exam is needed for investigation of the offense and claimant is the alleged victim. Reimbursement amount not to exceed \$150 and shall be considered as payment in full.
Idaho § 19-5303	Law enforcement agency directing victim to obtain exam.			Not specified.		Payment limited to cost of exam not including medical treatment of victim.
Illinois ch. 305 § 5/5-5						Illinois Department of Health to determine the rate of reimbursement for medical treatment of sexual assault victims, including exams and laboratory tests to discover evidence.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
<p>Illinois ch. 410 §§ 70/5 -- 7</p>	<p>Department of Public Health.</p>			<p>No charge to victim who is ineligible for services under IL Public Aid Code and who has no insurance.</p>		<p>Payment to cover emergency services as ordered by the attending physician and consented to by the victim, including medical exam and laboratory tests ensuring health of victim or for use as evidence; provision of information and testing concerning pregnancy, disease resulting from the offense, and treatment; medication deemed appropriate; and appropriate counseling.</p>
<p>Indiana § 5-2-6.1-39</p>	<p>Appropriate local govt. agency if not covered under chapter 16-21-8. If treatment provided by county or city hospital, county pays; if by private hospital, county where crime committed pays.</p>		<p>✓</p>			<p>Payment only for costs incurred by hospital or other emergency medical facility not covered under chapter 16-21-8.</p>

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim		Reimbursement by Offender	Special Restrictions and Provisions
		yes	no		
Indiana §§ 16-21-8-1 -- 6	Victim services division of Indiana Criminal Justice Institute.		✓		Payment to cover emergency hospital services as ordered by the attending physician and consented to by the victim, including appropriate medical care, procedures for acquiring adequate evidence for prosecution of the offense, records of results of any exams or test, and counseling for the victim. Compensation not awarded unless crime reported to law enforcement within 48 hours of occurrence and victim/claimant cooperates to solve the crime, unless compelling reason for failure to report or cooperate is found.
Iowa § 709.11 § 912.14	Victim compensation fund.			Not specified.	Payment for exam and treatment to prevent venereal disease.
Kentucky § 216B.400	Office of the Attorney General.		✓		Payment for basic emergency room treatment and evidence gathering services, and tests for venereal disease. Exam to be performed upon request of law enforcement or prosecutor with the consent of the victim. Reimbursement shall be at the state's reasonable, usual and customary charges according to approved schedule.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
 Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Maine tit. 30-A § 287	Office of the District Attorney of county in which crime occurred.			Not specified.		Payment only if no insurance or other third party coverage, and upon receipt of all reports and records pertaining to the exam by the office, if such documents have been requested.
Maryland HG § 15-127	The Department of Health and Mental Hygiene.		✓			Payment for physical exam to gather evidence, treatment and follow-up testing for up to 90 days from initial exam, and up to 5 hours of professional time for assessment of victim of child sexual abuse.
Minnesota § 609.35	County in which offense committed.		✓			Payment of "reasonable costs" of the exam. Duty of insurance carrier to pay is not limited under this section.
Minnesota § 611A.21						Commissioner of corrections to establish community-based program to provide services for payment of medical exams and treatment costs for which victim is not otherwise reimbursed or compensated.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim		Reimbursement by Offender	Special Restrictions and Provisions
		yes	no		
Mississippi § 99-37-25	County in which offense occurred.	✓			Victim must submit application approved by district attorney with jurisdiction over the prosecution to obtain payment. Payment limited to customary and usual charges for such services in the area. Reduction of payment to victim for insurance or other reimbursement received. If victim has not already paid, reimbursement to be made directly to medical provider.
Missouri § 191.225	Department of health.			Not specified, but see special restrictions for victim responsibilities in obtaining payment.	Payment for costs not covered by insurance if victim or victim's guardian gives written consent for the exam, exam report is made on approved form, and exam report is filed by the victim with the prosecuting attorney of county in which crime occurred. Payment limited to "reasonable" charges billed to department.
Montana § 46-15-411	Local law enforcement agency within whose jurisdiction offense occurred.			Not specified.	Payment when exam directed by law enforcement agency and evidence obtained is used in investigation or prosecution of case. Payment does not cover treatment for injuries.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
 Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Nevada § 449.244	County in which offense committed or county authorizing treatment.		✓			Payment for forensic exam and initial emergency care of victim to be charged to county where offense committed. Costs for treatment, not to exceed \$1,000, which has been approved by a board of county commissioner to be charged to county authorizing such treatment.
New Hampshire § 21-M:8-c	Department of justice.		✓			Payment upon submission of appropriate documentation and to extent costs are not covered by insurance or other third party. Privacy of victim to be protected as much as possible in third party billing process.
New Mexico § 29-11-7	Administrator of the mental health division of the department of health.	✓		Three options for providing of exams See special restrictions.		Administrator may provide free exams, arrange for victims to obtain free exams, or reimburse victims for cost of exam. Reimbursement to victim must cover full cost of exam with no deductible or limit on amount, be made within 90 days of receipt by administration of written notice that expenses have been incurred, and all victims are provided info at time exam on how to obtain reimbursement. [Note: Specifically tracks Violence Against Women Act provisions.]

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim		Reimbursement by Offender	Special Restrictions and Provisions
		yes	no		
New York EL § 631	Compensation Board.	✓			Payment is subject to compliance with general eligibility requirements for receiving compensation awards.
North Carolina §§ 143B-480.1 -- 480.3	Assistance Program for Victims of Rape and Sex Offenses.			Not specified, but reimbursement provisions limited to those providing services. Appears to be potential for billing of victim since judicial review is available to victim whose claim for medical expenses is denied.	Maximum assistance amount is \$500 and includes immediate, short-term medical expenses, ambulance services, and mental health services as well as forensic exams. No payment unless offense reported to law enforcement within 72 hours unless good cause for failure to report is established.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
 Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Ohio § 2907.28	Appropriate local government. County, if cost incurred by county facility; municipal corporation, if cost incurred by municipal facility; municipal corporation in which crime occurred, if cost incurred by private facility, unless area unincorporated then payment by county. If crime committed in more than one place, costs to be shared.			Not specified, but costs of exam to be "charged to" appropriate local government.		
Oklahoma tit. 22 § 40.1						Victim to be informed of right to free medical exam to procure evidence by law enforcement officer interviewing the victim during preliminary investigation.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim		Reimbursement by Offender	Special Restrictions and Provisions
		yes	no		
Oklahoma tit. 21 §142.20	Crime Victims Compensation Board from the Sexual Assault Examination Fund.	✓			Payment only upon submission of claim by the victim approved by the District Attorney and limited to \$150 for the exam and \$25 for medications provided on a one-time basis for the immediate trauma of the victim.
Oregon § 147.375	Law enforcement agency investigating offense.		✓		Agency must request victim's participation in exam. Payment not to include costs of treatment for injuries.
Pennsylvania § 42-1726.1	Insurance.		✓		If insurance is unavailable, reimbursement may be sought under 71 P.S. § 180-7.9.
Pennsylvania 71 P.S. § 180-7, § 180-7.9	Crime Victim's Compensation Board.	✓			Expenses for physical exam and materials used to obtain evidence considered out-of-pocket loss under compensation provisions. Hospital or health care provider may submit claim for cost of exam, if cost not covered by insurance, upon approval of district attorney with jurisdiction over investigation or prosecution of the crime. Payment may not exceed \$500 for exam and \$100 for medications directly related to crime. Victim need not be an applicant for any other compensation.

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Rhode Island § 23-17-26	Not specified.			Not specified.		Performance of exam may not be delayed for purpose of prior discussion of source of payment for exam unless delay will not impose material risk to victim's health.
South Carolina § 16-3-1560	South Carolina Crime Victim's Compensation Fund.			No cost to victim as long as report of crime filed with law enforcement.		Payment for routine medico-legal exam, treatment for venereal disease, and medication for pregnancy prevention if indicated and desired. Health care provider may file claim for reimbursement directly with compensation fund. \$100 deductible waived for award eligibility. Procedures for facilities to follow to insure privacy of victim to be utilized and all information needed to submit claim to be obtained at time of exam, if possible. If projected reimbursements exceed funds appropriated for this purpose, reimbursement amounts will be reduced in a ratio of available funds to total projected claims.
South Dakota § 22-22-26	County where offense occurred.			No cost to victim as long as offense reported to the state.	Offender to reimburse county if convicted.	

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
Texas CCP arts. 56.06, 56.07	Law enforcement agency requesting exam of victim for use in investigation or prosecution.			Not specified.		Payment may include costs related to testimony of health care professional regarding results of exam but not costs of treatment for injuries. Victim to be provided written notice of payment for exams at time of initial contact with investigating law enforcement agency, or as soon as possible thereafter.
Utah § 63-63-2, § 63-63-14	Crime Victims' Reparations Board.	✓				Payment contingent upon meeting general eligibility requirements for receipt of compensation award.
Vermont tit. 32 § 1407	The state. Payment may be made from victims' compensation fund.			Not specified.		Payment made when exam requested by law enforcement or prosecutor, and when victim obtains exam prior to receiving such a request. Victim may obtain results of exam at his or her own expense.
Virginia § 19.2-165.1	Commonwealth.			Not specified.		Payment as long as exam performed by physician or facility specifically designated by Commonwealth attorney. If no prior designation, payment may be made upon authorization of Commonwealth attorney within 48 hours of exam.
Washington § 7.68.170	The state.		✓			

Table 7-A

PAYMENT FOR SEXUAL ASSAULT FORENSIC EXAMS
Current through 1995

State/Statute	Party Responsible for Payment	Billing of Victim			Reimbursement by Offender	Special Restrictions and Provisions
		yes	no	other		
West Virginia §§ 61-8B-15 -- 18	West Virginia prosecuting attorneys institute from the Forensic Medical Examination Fund.			No collection from victim if costs qualify for payment from forensic medical examination fund.		Payment to licensed medical facility for reasonable, customary and usual costs of exam if exam conducted within 72 hours of offense. No payment for specified nonforensic procedures such as treatment of injuries, pregnancy testing, and testing for sexually transmitted diseases. Facility must apply for payment within 90 days of the exam by submitting statement of charges to prosecutor for certification that exam conducted as part of the investigation. Within 60 days of receipt, prosecutor to forward statement of charges and certification to institute for payment.
Wyoming § 6-2-309	Investigating law enforcement agency. Wyoming crime victims compensation commission shall pay any costs not covered by law enforcement agency.	✓			Convicted offender to be ordered to reimburse costs to law enforcement agency or compensation program.	Payment of investigation costs, including cost of gathering evidence pursuant to seal assault evidence kit and any other exam authorized in the investigation or prosecution of the crime. Payment from compensation commission subject to general eligibility requirements. Victim to be informed of rights under this section.

SECTION 8

HIV TESTING OF SEX OFFENDERS

Nearly every state has enacted a law to give sexual assault victims access to information about the HIV status of their offenders.⁵⁴ The Florida legislature set out the reasoning behind these statutes, stating that:

[A] victim ... is entitled to know at the earliest possible opportunity whether the [offender] has tested positive for [HIV]. The Legislature finds that to deny victims access to HIV test results causes unnecessary mental anguish in persons who have already suffered trauma. The Legislature further finds that since medical science now recognizes that early diagnosis is a critical factor in the treatment of HIV infection, both the victim and the person charged with or alleged by petition for delinquency to have committed the offense benefit from prompt disclosure of HIV test results.⁵⁵

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.⁵⁶ Of those, 16 make testing mandatory preconviction, and 33 require postconviction testing.⁵⁷ Six states make both pre- and postconviction testing mandatory. Twenty-six (26) states have a mandatory testing law that applies to juvenile offenders.

Some states mandate both preconviction and postconviction testing, or make testing at one point discretionary and the other mandatory. In about half of the states, the victim must request that the offender be tested.⁵⁸ In some

⁵⁴ A federal funding incentive passed in 1990 encouraged states to adopt HIV testing for convicted sex offenders and notify victims of the results.
42 U.S.C. § 3756.

⁵⁵ FLA. STAT. § 960.003(1).

⁵⁶ For purposes of this discussion, the term "mandatory" shall include laws that require a judge to issue an order for testing if certain conditions are met. Conditions may include request or petition by the victim, a finding of significant exposure or risk of transmission, and refusal on the part of the defendant to be tested voluntarily. If a statute merely permits a judge to order testing under given circumstances, that law will be considered discretionary.

⁵⁷ In addition to those 33, Rhode Island requires all offenders sentenced to imprisonment to be tested.

⁵⁸ Victims must initiate the process to order testing in 19 of the states that have mandatory testing, and in another 5 states in regard to discretionary testing.

states the victim petitions directly; in others, the prosecutor files a petition at the request of the victim. Under many of the statutes requiring testing, there must be a showing of significant exposure of the victim to the bodily fluids of the offender. Most of the laws mandating the testing of offenders prior to conviction require a finding of probable cause that the defendant committed the offense, and that the circumstances of the offense resulted in significant exposure of the victim to the semen or other bodily fluids of the offender, placing the victim at risk of transmission of HIV.

Even though a state does not have a law specifically directed toward the testing of sex offenders, it may have a law permitting an individual to seek a court order for disclosure of confidential HIV information, where the individual can demonstrate a compelling need for access to the information. For example, Vermont has such a provision.⁵⁹

Most states that require testing of an offender also require disclosure of the results to the victim. In nearly every state that allows disclosure of the test results to the victim, the information is disclosed to the parents or guardian of a minor victim, and often is to be disclosed to the guardian of an incompetent adult victim. The law may permit the victim to disclose the matter to his or her spouse or sexual partner, or to his or her physician or counselor. Alaska states that the information shall be confidential, but may be used by the victim in any subsequent civil action. Mississippi requires that the victim and the victim's spouse be notified of the results.

⁵⁹ VT. STAT. ANN. tit. 12, § 1705.

States may limit the further disclosure of the defendant's test results. For example, New York prohibits disclosure of the results to the court.⁶⁰ In North Dakota, intentional unauthorized disclosure resulting in bodily or psychological harm to the test subject is a class C felony.⁶¹

Laws may provide for counseling of the victim, but these vary. For instance, in California and Iowa victims are required to be counseled regarding the transmission of HIV and the nature and reliability of the test before a hearing can be held on the ordering of such a test. Such a requirement lessens the possibility that a victim will have unrealistic expectations about the nature of the test results. States may require that test results only be disclosed to a victim by a trained health professional or counselor. In other states, a victim is to be notified of the results of the test by a criminal justice official, and then may be referred to counseling on request. Counseling generally includes referral to health care and support services as appropriate.

Many of the laws specify the agency that shall pay for HIV testing and counseling, which may include HIV testing of the victim. This is often the health department, but may be the compensation board or another governmental branch. In several states, the defendant may be required to reimburse the state for the costs of testing and counseling.

⁶⁰ N.Y. CRIM. PROC. LAW § 390.15;
N.Y. FAM. CT. ACT § 347.1.

⁶¹ N.D. CENT. CODE § 23-07.7-02.

At the Federal level, the 1994 Federal Crime Act gave sexual assault victims the right to apply for an order requiring the HIV testing of the defendant charged with a sexual offense. Under that law, testing shall be ordered where: the court finds probable cause that the defendant committed the offense; the test is requested by the victim after appropriate counseling; and the court finds that the information is necessary for the health of the victim and that the offense created a risk of transmission of the disease. If the initial test is negative, the court may order follow-up testing and counseling at 6 months and one year after the initial test, at the request of the victim. The victim shall be entitled to the results of such a test, but disclosure of any results must be accompanied by "appropriate counseling." The Act also provides for payment for two tests for the victim during the 12 months following the offense and for accompanying counseling regarding the accuracy of the tests and the risk of HIV transmission to the victim as a result of the assault.⁶²

The law requiring HIV testing continues to change. For example, New York proposed extending its testing statute to pretrial testing for a range of offenses where victims come into contact with the bodily fluids of the offender.⁶³

As scientific and popular understanding of HIV continue to improve, refinements to the law are certain to follow.

Table 8-A summarizes the statutes providing for HIV testing of sex offenders, adult and juvenile. The statutes are current through the 1995 legislative session.

⁶² Violence Against Women Improvements Act, 42 U.S.C. § 14011.

⁶³ "Legislation Would Allow Judges to Order H.I.V. Tests for Suspects: Pataki Says Crime Victims Have the Right to Know," New York Times, Jan. 12, 1996, p. B1.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Alabama § 22-11A-17	Mandatory.				Results to State Health Officer or designee; at victim's request, State Health Dept. releases results to victim.	State Health Dept. shall provide counseling to victim re. disease and testing.		Testing of all persons sentenced to jail or imprisoned at least 30 days.
Alaska § 18.15.300; § 18.15.310		Mandatory.	✓	✓	Positive results to victim.	Test results to include disclaimer re. limitations on test accuracy. If test is positive, department shall provide counseling and referrals.	If offender tests positive.	
Arkansas § 16-82-101	Mandatory.	Discretionary (but court must document reasons for failure to order).	✓	At conviction.	Results of any tests to victim.	Victim shall, on request, receive appropriate counseling and referrals.	On request.	
Arizona § 13-1415	Mandatory.	Mandatory.	✓	✓	Dept. of Health Services to notify victim.	Dept. of Health Services counsels victim re. results of test.		

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
California PC § 1202.1	Mandatory.		✓		On request.	Victim referred to local health officer for counseling re. risk of transmission, limits of test, and assistance in determining whether to request results.		

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
California PC § 1524.1		Discretionary	✓	✓	Local health officer discloses test results to victim; positive result must be confirmed before disclosed .	Prosecutor must refer victim to local health officer for prerequisite counseling re. extent to which crime may have put victim at risk for HIV, and benefits and limitations of test, to help victim determine whether to request testing; no positive test to be reported to victim without also providing or offering professional counseling .		
Colorado § 18-3-415		Mandatory.	✓		Results to court or court's designee, who shall disclose to victim who requests results.			

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Connecticut § 19a-112b						Dept. of Public Health shall provide sexual assault victims counseling re. HIV and AIDS, and provide referrals.	Dept. of Public Health shall provide sexual assault victims HIV-related testing.	
Connecticut § 19a-112c								Agencies to develop educational materials for sexual assault victims re. HIV and sexual violence, available testing options, risk re-duction information, and referrals and information re. crisis centers and HIV testing sites.
Connecticut § 54-102a		Discretionary.		✓	Results may be disclosed to victim.			
Connecticut § 54-102b	Mandatory.		✓	✓	Results to victim.			

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Delaware tit. 10 §§ 1075 et seq.		Mandatory.		✓	Div. of Public Health to notify victim.	If test positive, Div. of Public Health shall provide counseling and referrals to victim.		
Florida § 951.27		Discretionary.			On request of victim, results of test on inmate arrested for sexual assault to be disclosed. Detention facility notifies Dept. of Health and Rehab. Services, which notifies victim.			Each county and municipal detention facility to have written procedures establishing conditions under which inmate to be tested.
Florida § 960.003	Mandatory (if for some reason no earlier test).	mandatory	✓	✓	Results disclosed to victim on request, under direction of Dept. of Health and Rehab. Services...	At time results are disclosed, there shall be immediate opportunity for face-to-face counseling.		If results requested for pretrial testing, or for first test after conviction while in prison, that request shall be considered a standing request for the results of any test performed within the following year.

Table 8-A
HIV TESTING OF SEX OFFENDERS
 Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Georgia § 17-10-15	Mandatory.	Discretionary.		Victim must request for pretrial testing.	Positive results reported to Dept. of Human Resources, which notifies victim.	Dept. of Human Resources to provide necessary counseling.		
Idaho § 39-604		Mandatory.	✓		Results released to court, court informs victim.	If offender tests positive, victim entitled to counseling re. HIV, HIV testing, and referrals. Court shall make victim aware of the services available.		
Illinois ch. 705 § 405/5-23	Mandatory.		✓		Results to judge, revealed to victim on request.	Judge shall provide information on availability of counseling at Dept. of Public Health facilities.	Judge shall provide information on availability of testing at Dept. of Public Health facilities.	Only victims of juvenile offenders.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Illinois ch. 720 § 5/12- 18		Unclear - prosecutor must seek court order for testing; whether court required to grant order is not addressed.		✓	Results in a sealed envelope to victim.			
Illinois ch. 730 § 5/5-5-3	Mandatory.				Results to judge; revealed to victim on request.	Judge shall provide information on availability of counseling at Dept. of Public Health facilities, and shall direct State's Attorney to provide information to victim when possible.	Judge shall pro- vide information on availability of testing at Dept. of Public Health facilities; and shall direct State's Attorney to provide information to victim when possible.	
Indiana §§ 35-38-1- 10.5,35-38-1- 10.6	Mandatory				Results to victim.			

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Iowa §§ 709B.1 - 709B.3	Mandatory.		✓		Results of any test or retest to victim counselor, who shall disclose results to victim.	Prior to hearing re. ordering of HIV test, victim shall be referred to counseling re. nature, reliability and significance of test. Victim also to receive referrals.		If first test is negative, then court shall order periodic retesting of offender if physician certifies that due to period after HIV infection during which person may test negative, additional testing is necessary to determine whether offender was infected at time of assault.
Kansas § 22-2913	Mandatory.			✓	Victim shall designate health care provider to receive results on victim's behalf.	Counseling shall be provided to victim at victim's option by secretary of health and environment.	Secretary of health and environment shall provide testing at victim's option.	If offender test is negative, offender retested after 6 months.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Kentucky § 510.320	Mandatory.				Results made available by Cabinet for Human Resources to victim.	If HIV test is positive, Cabinet for Human Resources shall provide counseling to victim re. disease, and also provide referrals.		
Kentucky § 635.110	Mandatory.		✓		Results revealed to victim.	Cabinet for Human Resources to provide counseling re. HIV and referrals to victim.		Juvenile offenders only.
Louisiana CCrP § 499		Mandatory.			Court may reveal results to victim, in its discretion.			
Louisiana R.S. § 15-535	Mandatory.				Any positive or negative result shall be reported to victim.			

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Maine tit. 5 §§ 19203 et seq.	Mandatory.			✓	Results to victim advocate, who shall disclose to victim.	Results may not be disclosed to victim until victim has received counseling regarding nature, reliability and significance of HIV test and has been offered referrals.		
Maryland Art. 27, § 765	Mandatory.	Discretionary, if individual is charged with sex offense within one year after commission of crime.	✓	✓	Local health officer shall notify victim of test results.	Local health officer or designee shall provide pretest and posttest counseling to victim; positive results shall not be disclosed without also providing, offering, or arranging for counseling.		

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Michigan § 14.15 (5129)	Mandatory.		✓		If victim consents, court provides testing agency with victim information. After the test, agency shall immediately provide results to victim.	After test, person or agency administering test shall immediately refer victim for appropriate counseling.		
Minnesota § 611A.19	Mandatory.		✓	✓ or consent.	Results available on request to victim; results must be disclosed by trained health professional.	Health professional disclosing results must be trained to provide counseling re. HIV.		
Mississippi § 43-21-623	Mandatory.		✓	✓	Results of any positive test reported to victim.	State Department of Health shall provide counseling and referral to victim where offender tests positive, at victim's request.		Victims of juveniles only.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Mississippi § 99-19-201 § 99-19-203	Mandatory (includes those given suspended sentence).				Results of any positive test reported to victim and victim's spouse.	State Department of Health shall provide counseling and referrals to victim where offender tests positive.	Dept. of health may pay for victim testing where offender tests positive; payment may be made for 2 tests per year for 5 years after the assault.	
Missouri § 191.226								

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Missouri § 191.659	Mandatory (all offenders delivered to dept. of corrections and released from correctional facility, unless offender was tested after trial).				Department shall inform victim of any confirmed positive results of HIV test on offender within the custody of the department.			
Missouri § 191.663	Mandatory.		✓		Victim has right of access to results; also, victim to be notified of any confirmed positive results.			
Montana § 46-18-256	Mandatory.		✓	✓	County attorney notifies victim of results.	On request, regarding HIV and HIV testing.		

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Nebraska § 29-2290	Mandatory.		✓	✓	Dept. of Correctional Services shall make results available to victim; notifies Dept. of Health, which notifies victim.	Dept. of Health shall make available to the victim counseling re. HIV and referrals.	Dept. of Health shall make HIV testing available to victim.	
Nevada § 441.320		Mandatory.			Results of test available to victim.			
New Hampshire § 632-A:10-b	Mandatory.		✓		Results disclosed to office of victim/witness assistance, which is authorized to disclose results to victim. Victim may be notified whether or not he or she requested notice.	State shall provide counseling re. HIV, and provide referrals.	State shall provide HIV testing for victim.	
New Jersey § 2A:4A-43.1	Mandatory.		✓					Juveniles only.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
New Jersey § 2C:43-2.2	Mandatory.	Mandatory.	✓	✓	Results reported to Office of Victim- Witness Advocacy; office shall notify victim or make appropriate arrangements for victim to be notified.	Office of Victim- Witness Advocacy shall provide the victim with appropriate counseling, referral for counseling and other referrals.		
New Jersey § 52:4B-44						Office of Victim- Witness Advocacy and each prosecutor's office shall on request advise and counsel, or refer victim for advice and counseling re. medical testing.	Office of Victim- Witness Advocacy shall assist victims in obtaining appropriate testing.	Office of Victim- Witness Advocacy and each prosecutor's office shall on request advise victim in applying for compensation for testing and counseling.
New Mexico § 24-2B-5.1	Mandatory.		✓ (apparently)	✓	Results disclosed to victim.	If test result is positive, victim shall be provided counseling.		

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
New York CPL § 390.15	Mandatory.		✓	✓	Results disclosed to victim .	Application for order for testing must state that victim/applicant was offered counseling and has been advised of the limitations of the test, the risk of transmission, and the need for the victim/applicant to be tested.		Results may not be disclosed to the court.
New York FCA § 347.1	Mandatory.			✓	Results disclosed to victim.	Application for order for testing must state that victim/applicant was offered counseling and has been advised of the limitations of the test, the risk of transmission, and the need for the victim/applicant to be tested.		Results may not be disclosed to the court.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
North Carolina § 15A-534.3		Mandatory.						
North Carolina § 130A-143					results available on court order.			
North Dakota §§ 23-07.7-01 et seq.		Mandatory.	✓	✓	Results to the requesting victim's physician.			Test results to include disclaimer that test does not determine HIV infection or exposure with absolute accuracy, and that anyone receiving the test result should continue to monitor their own health and consult physician as appropriate.
Ohio § 2151.14	Mandatory.		✓		The arresting authority, court or probation officer shall immediately notify the victim if the juvenile has a communicable disease.			Juvenile sex offenders only.

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Ohio § 2907.27		Mandatory.			Court shall inform victim that test was performed and that victim has right to receive results on request.			If first test is negative, and charge remains pending or defendant was convicted, court shall order retesting 3 and 6 months after the original test.
Oklahoma tit. 63 § 1-524 tit. 63 § 1-525		Mandatory.			Victim shall be notified of positive results on request.	Testing shall be accompanied by pretest and posttest counseling; include information re. disease and the location of testing and counseling facilities.	If offender tests positive, State Department of Health shall provide testing to victim.	
Oregon § 135.139	Mandatory.			✓	Victim to designate physician to receive results.	If test positive, victim counseled on request.		If first test is negative, court may order retest at 6 months.
Pennsylvania § 35-521.8		Discretionary testing for venereal disease.						

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Pennsylvania § 35-7608					Court may issue order allowing access to HIV information on compelling need.			
Rhode Island § 42-56-37	Mandatory for person sentenced to imprisonment.							
South Carolina § 16-3-740 § 16-15-255	Mandatory, for sex offenders; discretionary for other offenders where victim exposed to bodily fluids of offender.		✓		Solicitor notified of results, solicitor notifies victim.	If tests indicate exposure, Dept. of Health and Environmental Control shall provide counseling re. disease and referrals.	If tests indicate exposure, Dept. of Health and Environmental Control shall test victim on request.	
South Dakota §§ 23A-35B-1 to 23A-35B-5		Discretionary.	✓	✓	Victim to be notified of test results by physician designated by victim to receive the information.	Victim may request that department of health provide counseling and referrals.	Victim may request testing by dept. of health.	
Tennessee § 39-13-521		Mandatory.			Test results shall be immediately reported to the victim by the lab.			

Table 8-A

HIV TESTING OF SEX OFFENDERS
Current through 1995

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Texas CCP Art. 21.31		Discretionary.		At request of victim or on court's own motion.	Victim shall be notified of results.			
Utah §§ 76-5-501 et seq.	Mandatory.		✓	✓	On agreement by the local health department and the Department of Health, results of offender's test shall be sent to local department who shall disclose results to victim.	Victim who requests mandatory HIV testing of offender shall be provided counseling and referrals by Dept. of Health.		
Utah § 78-3a-55	Discretionary.		✓	✓				Juvenile only.
Virginia § 18.2-62	Discretionary (in addition to any test done upon arrest).	Mandatory.	Testing post- adjudication for juveniles.	Prosecutor may request test after consultatio n with victim.	Dept. of Health authorized to notify any victim of result.	Dept. of Health shall offer appropriate counseling.		

Table 8-A

HIV TESTING OF SEX OFFENDERS
(statutes current through 1995)

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Washington § 70.24.105					On request of victim, disclosure of positive or negative test results of offender. Prosecutor shall notify victim of right to disclosure.	Disclosure shall be accompanied by counseling, including information on follow-up testing.		
Washington § 70.24.340	Mandatory.							
West Virginia § 16-3C-1 et seq.	Mandatory.					Prosecutor responsible for informing victim at earliest possible stage that HIV- related counseling is available. Pre- and posttest counseling shall be made available where victim tested.	Testing of victim is voluntary; prosecutor to notify victim that testing is available.	If offender test is negative, court may order further testing on motion by state.

Table 8-A

HIV TESTING OF SEX OFFENDERS
(statutes current through 1995)

State/ Statute	Testing upon Conviction (Mand./Disc.)	Preconviction Testing (Mand./Disc.)	Includes Juvenile Offenders	Victim Must Request	Victim Notified of Test Results	Counseling Provided to Victim	Testing of Victim	Other
Wisconsin § 146.025					Victim or victim's health care professional may have access to test results.			
Wisconsin § 968.38	Mandatory.	Mandatory.		On request of prosecutor.	To victim and victim's physician.			
Wyoming § 7-1-109	Mandatory.	Discretionary.	✓	✓	Health officer to notify victim.			

SECTION 9

THE RIGHT TO BE HEARD IN THE CRIMINAL JUSTICE PROCESS

INTRODUCTION

One of the most significant means of according respect to crime victims is by granting them the right to be heard during critical criminal justice proceedings that affect their interests. Such participation is the primary means by which victims play a proactive role in the criminal justice process. When a crime victim is allowed to speak at the sentencing hearing, or to submit information regarding the impact of the offense on the victim and the victim's family, there is an acknowledgment by the criminal justice system of the personal nature of the crime and of the harm suffered.

THE RIGHT TO BE HEARD AT SENTENCING

Generally, states now recognize that victim input has a proper place in the sentencing process. As the Supreme Court reaffirmed in *Payne v. Tennessee*, "[J]ustice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained til it is narrowed to a filament. We are to keep the balance true." (quoting Justice Cardozo in *Snyder v. Massachusettes*, 54 S. Ct. 330,338 (1934)).⁶⁵

⁶⁵ The Court also quoted the Supreme Court of Tennessee in the underlying

As of 1995, every state allows victim impact evidence at sentencing, either through input into the presentence report or through presentation of a written or oral statement at the sentencing hearing — indeed, most states allow both forms. The majority of those states also require the court to consider the victim's statement in sentencing.

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

decision. "It is an affront to the civilized members of the human race to say that at sentencing ... a parade of witnesses may praise the background, character and good deeds of Defendant ... without limitation as to relevancy, but nothing may be said that bears upon the character of, or the harm imposed, upon the victims." *Payne v. Tennessee*, 111 S. Ct.2597, 2609, quoting Supreme Court of Tennessee, 791 S.W.2d 10, at 19 (1990).

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

In general, victim impact statements may be given by the victim, homicide survivors, or the parent or guardian of a minor victim. Many states also authorize statements by a representative or family member of a victim who is physically incapacitated, however some limit such representative's statements to cases where the incapacitation was the direct result of the crime. Several states also allow a judge to limit the number of victims who may make oral statements in a given case.

Victim impact evidence, at least at the sentencing level, can often be subjected to cross-examination and rebuttal. Some states have attempted to limit the potential for harassment by restricting any cross-examination. For example, New York requires the defendant to present written questions to the court, which the court may, if it chooses, put to the victim.⁶³ The defendant retains the right to present any evidence in rebuttal.

THE RIGHT TO INPUT AT THE PAROLE HEARING

States also generally provide for victim input into the parole release decision. Forty-three states allow victims to present a written or

⁶³ N.Y. CRIM. PROC. LAW § 380.50. If the court declines to ask the victim any of the submitted questions, it must state its reasons on the record.

oral statement to the parole board for consideration at the parole hearing. A few states specifically authorize the use of audio or videotaped statements at the parole hearing (e.g., California, see Table 9-B). Since many states are now passing legislation which specifically creates new victim assistance or coordinator positions at the parole level, it is likely that victim involvement through impact statements at parole will not only become more common but also more effective.⁶⁴

Many states allow a victim to submit information in confidence to the parole board. Written statements in some states are not disclosed to the offender; victims may be allowed to testify outside of the presence of the offender or meet individually with a member of the parole board. However, this nondisclosure has been challenged in courts. A case challenging the constitutionality of such nondisclosure is currently pending in the U.S. Fifth Circuit Court of Appeals.⁶⁵

⁶⁴ OHIO REV. CODE ANN. § 5120.60; PA. STAT. ANN. tit. 71, §§ 2301, *et seq.* Pennsylvania specifies that its victim advocate position shall be filled by a person "who, by reason of training and experience, is qualified to represent the interests of individual crime victims before the board ... [and] have at least six years of professional experience in victim advocacy, social work or related areas." PENN. STAT. ANN. § 71-2303.

⁶⁵ Johnson v. Rodriguez, U.S. Ct. of App., 5th Cir., No. 95-50879.

THE RIGHT TO BE HEARD AT OTHER PROCEEDINGS

In contrast to victim input at sentencing and parole hearings, most victims have no right to be heard at other important stages of the criminal justice process. Fewer than half of the states provide victims a right to be heard at the acceptance of a plea bargain or at pardon proceedings, and only about one-fifth permit victim input into the pretrial release decision.

As more states grant judges the ability to deny or restrict pretrial release based on the risk the offender poses to the victim or the community, input from the victim is likely to be viewed as a critical part of the release determination process. More often than not, it is the victim who best understands the danger the offender poses to the community at large and specifically to the victim and/or the victim's family. Moreover, input from the victim can be vital in determining the appropriate conditions to be imposed on any pretrial release.

More states are also granting victims the right to be heard regarding the acceptance of a plea bargain. The victim possesses singular knowledge of the violence of the crime, an important factor in ruling on the appropriateness of a plea bargain. It is important to note however, that such laws afford victims a voice, not a veto, in the plea bargain process.

The following Tables, 9A and 9-B, look ONLY at laws providing victims a right to be heard by the court or by a criminal justice body considering the release of the offender. They do NOT include consultation with the prosecutor. They also do not address the

right to be heard in juvenile proceedings. Both of these topics are addressed in other sections of this publication. The statutes shown are current through 1995. (See Section 5, The Right to Confer with the Prosecutor, and Section 13, Victims' Rights at the Juvenile Level.)

Table 9-A

RIGHT TO BE HEARD - CHECKLIST
Current through 1995

Category	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	MD	
PRETRIAL OR BAIL RELEASE HEARINGS		✓	✓							(✓)			✓								
PLEA BARGAIN			✓		✓					(✓)	✓		✓								
PRESENTENCE REPORT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SENTENCING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PAROLE HEARING	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	(✓)	✓	✓	✓	✓
PARDON/COMMUTATION/CLEMENCY PROCEEDING	✓	✓	✓	✓	✓	✓	✓	✓			✓					✓					✓

(✓) - Right Is Implied by Language of Statute.

1. If no presentence report.
2. Disposition of charges. Only
3. AFTER sentence handed down.
4. Total includes those states where right is implied in the statute.

Table 9-A

RIGHT TO BE HEARD - CHECKLIST
Current through 1995

CATEGORY	ME	MA	MB	MO	MN	MS	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI
PRETRIAL OR BAIL RELEASE HEARINGS				✓									✓							
PLEA BARGAIN				✓			✓				✓		✓					✓		✓
PRESENTENCE REPORT			✓	✓	✓	✓	✓	✓	✓	✓	✓		✓					✓	✓	✓
SENTENCING	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PAROLE HEARING		✓	✓	✓	✓		✓	✓	✓	✓	✓		✓					✓	✓	✓
PARDON/COMMUTATION/CLEMENCY PROCEEDING					✓															✓

(✓) - Right Is Implied by Language of Statute.

1. If no presentence report.
2. Disposition of charges: Only
3. AFTER sentence handed down.
4. Total includes those states where right is implied in the statute.

Table 9-A

RIGHT TO BE HEARD - CHECKLIST
Current through 1995

Category	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	TL ⁴
PRETRIAL OR BAIL RELEASE HEARINGS	✓	✓			✓			✓				11
PLEA BARGAIN		✓		✓	✓ ²							16
PRESENTENCE REPORT	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	44
SENTENCING	✓	✓	✓	✓ ³	✓	✓	✓ ¹	✓	✓	✓	✓	50
PAROLE HEARING	✓	✓	✓	✓	✓		✓	✓		✓	✓	43
PARDON/COMMUTATION/CLEMENCY PROCEEDING		✓								✓		16

(✓) - Right Is Implied by Language of Statute.

1. If no presentence report.
2. Disposition of charges. Only
3. AFTER sentence handed down.
4. Total includes those states where right is implied in the statute.

Table 9-B

VICTIMS' RIGHT TO BE HEARD
Current through 1995

State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Alabama Const. Am. 557	At all crucial stages of criminal proceedings.		Mandatory "when authorized."	Not specified.		To the extent the right does not interfere with the constitutional rights of the accused.
Alabama § 15-18-67, § 15-18-69	Restitution hearing.	Not specified.	Mandatory.	Not specified.	Information on restitution, objections to amount or manner of restitution ordered.	
Alabama § 15-23-73	Presentence report.	Violent felonies, or domestic violence.	Mandatory.	Written or oral.	Impact statement.	Info. given to probation officer who prepares report.
Alabama § 15-23-74	Presentencing, sentencing, or restitution proceeding.	Violent felonies, or domestic violence.	Mandatory.	Written or oral, at discretion of victim.	Evidence, impact statement, or information.	
Alabama § 15-23-79	Parole hearing, pardon hearing.		Mandatory.	Oral.		
Alabama Rules of Crim. Pro. 26.3, 26.5	Presentence report.		Discretionary.	Written.	Victim impact.	

Table 9-B

VICTIMS' RIGHT TO BE HEARD
Current through 1995

State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Alaska Const. Art. 1, Sec. 24	At sentencing, before or after conviction, and at proceeding where accused's release is considered.		Mandatory.	Not specified.		
Alaska § 12.55.022	Presentence report.	Felonies.	Mandatory.	Written.	Impact, need for restitution.	Probation officer prepares.
Alaska § 12.55.023	Sentencing hearing.	Not specified.	Mandatory.	Written or oral.	Information victim believes is relevant to sentencing.	Court may limit the number of victims who make oral statements.
Alaska § 12.55.025	Sentence report.	Felony or sentence of imprisonment of 90+ days.	Mandatory.	Written.	Impact, need for restitution, other required information.	
Alaska § 12.55.088	Motion to modify or reduce sentence.	Not specified, although there are additional rights for victims of a crime against a person or 1st deg. arson.	Mandatory and court shall consider statements in ruling.	Written and, if a hearing is held, oral.	Comments re. motion.	Court may limit the number of victims who may give oral statements.
Alaska § 12.61.010	Presentence report.	Felonies.	Mandatory.	Written or oral.		
Alaska § 12.61.010 § 12.61.015	Sentencing hearing.	See § 12.55.185.	Mandatory.	Written or oral.	Impact, need for restitution, rec. sentence.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Alaska § 33.16.120	Parole hearings.		Mandatory and board shall consider statement.	Written or oral.	Comment on proposed action.	
Alaska § 33.20.080	Application for executive clemency.		Mandatory if requested by victim.	Written.	Comment on application.	
Alaska § 33.30.111	Consideration for prerelease furlough.		Mandatory if requested by victim.	Written.	Comment.	
Arizona Const. Art. II, Sec. 2.1 (4)(9)	Post-arrest release proceeding, proceeding re. plea bargain, sentencing, post-conviction release hearing.		Mandatory.	Not specified.		
Arizona § 12-253	Aggravation or mitigation proceeding, presentence report.		Mandatory.	Oral at agg./mitig. proceeding.	Impact.	
Arizona § 13-702	Aggravation or mitigation proceeding.		Mandatory and must be considered by court.	Oral.	Evidence or opinions re. crime and restitution.	
Arizona § 13-4401 § 13-4428	All proceedings under 13-4401 et seq.	Felony or violent misdemeanor.		Written, oral, audiotape or videotape, in victim's discretion (unless victim is in custody for crim. offense, then written only).		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Arizona § 13-4414	Post-conviction release (parole, work furlough, community supervision, home arrest, or other permanent, conditional or temporary discharge from prison or jail or from confinement in a local jail or secure mental health facility).		Mandatory.	Not specified.		
Arizona § 13-4421	Initial appearance.		Mandatory.			
Arizona § 13-4422	Any proceeding in which the court considers the post-arrest release, or conditions of release.		Mandatory.			
Arizona § 13-4423	Plea bargain hearing.		Mandatory.			
Arizona § 13-4424	Presentence report.		Mandatory.	Written or oral.	Impact.	
Arizona § 13-4426	Aggravation, mitigation, presentencing or sentencing proceedings.		Mandatory.		Evidence into or opinions concerning offense, defendant, sentence, or need for restitution.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Arizona § 13-4427	Probation revocation disposition hearing, or other probation termination hearing, or modification of probation if modification will substantially affect the person's contact with or safety of victim, or if modification involves restitution or incarceration status.		Mandatory.			
Arizona § 31-402	Pardon/commutation hearing.	Felonies prior to 1/1/94.	Mandatory.	Not specified.		
Arizona § 31-411	Parole hearing, commutation, absolute discharge		Mandatory.	Written.	Opinion re. release.	
Arizona Rule 27.10	Probation revocation or termination proceeding, or proceeding re. probation modification that will affect contact with or safety of victim, restitution or incarceration status.		Mandatory.	Not specified.		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Arkansas § 5-65-109	Presentence report.	Drunk driving.	Mandatory.	Written or oral.	"Statement".	
Arkansas § 16-93-702	Parole hearing	Capital murder, class Y, Class A or Class B felony.	Mandatory.	Not specified.	Recommendations re. parole.	
Arkansas § 16-97-102	Sentencing following plea or court trial.		Mandatory.	Not specified.	"Be heard".	
Arkansas § 16-97-103	Sentencing.		Mandatory.	Not specified.	Victim impact evidence or statement.	
Arkansas § 16-93-204	Clemency hearings.	Capital murder, Class Y, Class A or Class B felonies.	Mandatory.	Written or oral.	Recommendations.	
California PC § 679.02	Sentencing proceedings.	Misdemeanor or felony.	Mandatory.	Not specified.	Express views.	
California PC § 1170	Sentencing.		Mandatory and court may consider statements.	Written.	Statements in aggravation or mitigation to dispute fact in record or the probation officer's report, or present additional facts.	

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California PC § 1191.1	Sentencing.	Any crime.	Mandatory and court shall consider victim's views.	Not specified (oral implied).	Views concerning the crime, the person responsible, and the need for restitution.	
California PC § 1191.15	Sentencing.	Any crime.	Discretionary.	Written or audio or videotaped statement .	Views of crime, person responsible, need for restitution.	
California PC § 1203	Probation report.	Felony.	Discretionary.	Written statement .	Victim's comments re. offense.	
California PC § 3043	Parole.		Mandatory and board shall consider victim's views.	Not specified (oral implied).	Views concerning crime and person responsible.	
California PC § 3043.2	Parole.		Discretionary.	Written, audio or videotape in lieu of appearing, or prosecutor may express views of victim.		
California PC § 3043.5	Parole hearing.		Mandatory and board shall review information.	Written.	Statement of views in support of or opposition to parole.	

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Colorado Const. Art. II, Sec. 16a	All critical stages of the criminal justice process, when relevant, as the term "critical stages" is defined by Legislature.		Mandatory.	Not specified.		
Colorado § 16-11-102	Presentence report.	Misdemeanor or felony.	Mandatory.	Written, prepared by DA.		
Colorado § 16-11-601	Sentencing.	Any crime.	Mandatory and court must consider.	Not specified (oral implied).	Views re. crime, defendant, need for restitution and sentence.	
Colorado § 17-2-214	Parole hearing.		Mandatory.	Not specified.	Views re. crime, offender, whether defendant should be released on parole, and conditions of parole.	
Colorado § 24-4.1-302.5	Proceeding re. bond reduction or modification, acceptance of negotiated plea, or sentencing.	Listed violent offenses, including domestic violence or crimes against at-risk or elderly victims or juveniles.	Mandatory.			303 (14.5) Court shall inquire whether victim is present and wishes to address court.
Colorado § 24-4.1-302.5	Sentencing hearing.		Mandatory.	Written or oral.	Inform prosecutor or court of harm sustained.	

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Colorado § 24-4.1-302.5 (cont.)	Reconsideration of sentence, parole hearing or commutation.		Mandatory.	Written or oral.		
Colorado § 24-4.1-302.5	Referral of defendant to community corrections facility or program.		Mandatory.	Written.	Statement.	Statement included with any referral by dept. of corrections or court.
Colorado § 24-4.1-303	Presentence report.		Mandatory.			
	Sentencing hearing.		Mandatory.	Oral.	Opinion re. sentence.	
Connecticut § 18-27a	Pardon proceedings.		Mandatory.	Written or oral.	Statement re. possible commutation, release or pardon	
Connecticut § 54-91a	Presentence investigation.			Preparation by probation officer.	Attitude of victim or complainant, including any damages suffered by victim.	
Connecticut § 54-91c	Plea acceptance and sentencing hearing.	Class A, B or C felony or sexual assault in third degree.	Mandatory.	Oral or written.	Facts of case and extent of loss or injury.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Connecticut § 54-126a	Parole hearing.	Class A, B, or C felony or certain Class D felonies.	Mandatory.	Oral or written.	Re. whether defendant should be released on parole or nature of terms or conditions to be imposed on such release.	
Connecticut § 54-203	Acceptance of plea agreement.		Mandatory.	Written implied.	Statement of impact and wishes.	
	Parole.		Mandatory.	Oral.	Statement whether defendant should be released and terms and conditions to be imposed.	
Connecticut P. A. 91-389(8)	Pardon hearing.	Class A, B or C felony, plus listed other offenses.	Mandatory.	Written or oral.		
Delaware tit. 11 § 4331	Presentence investigation.	Felony or misdemeanor resulting in physical injury or death.		Prepared by probation officer.		
Delaware tit. 11 § 4350	Parole hearing.			Written unless board permits otherwise, oral only for homicide survivors.	Statement re. application for parole.	
Delaware tit. 11 § 4361	Pardon hearing.	Felony.	Mandatory.	Oral.		

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Delaware tit. 11 § 9415	Presentence report.		Presentence officer shall make reasonable effort to confer with victim.	Information included in report.		
	Presentence report.		Mandatory.		VIS under section 4331.	
Delaware FCCR Rule 32	Sentencing.		Mandatory if victim present.	Oral.		
District of Columbia § 23-103a	Presentence report.	Crime of violence.	Mandatory and court must consider.	Written.	Impact statement.	
District of Columbia Rule 32	Sentencing.	Crime of violence.	Mandatory.	Written.	Victim impact statement.	
Florida Const. Art. I, Sec. 16	All critical stages of criminal proceedings.		Mandatory when relevant.	Oral.		To extent does not interfere with rights of accused.
Florida § 921.141	Sentencing in capital cases, including death penalty.	Capital cases.	Mandatory.	Evidence presented by prosecutor.	Victim's uniqueness, and loss to community.	
Florida § 921.143	Sentencing.	Conviction of felony, or pleaded guilty or nolo contendere to any offense.	Mandatory.	Written or oral.		

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Florida § 921.231	Presentence report.	Any case where defendant found guilty.	Mandatory on request of court (preparation of report).	Written, prepared by Dept. of Corrections.	Extent of victim's loss or injury.	
Florida § 947.06	Parole hearing.		Mandatory	Oral or written.	Views re. grant, denial or revoking of parole.	
Florida § 947.146 (6)	Control release.		Discretionary - authority has power to provide for victim input.			
Florida § 947.146(9)	Control release.			Victim impact statement.		Statement shall be included in records for examination.
Florida § 960.001		All crucial stages when relevant.		Mandatory.	Not specified.	
Georgia § 17-10-1.1	Predisposition, plea bargaining, sentencing, or determination of restitution.	Except in cases in which life imprisonment or death must be imposed, felony or misdemeanor resulting in serious physical injury or death.		Written.	VIS, impact of offense.	VIS attached to file for consideration of judge or prosecutor.

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Georgia § 17-10-1.2	Sentencing hearing.	Except in cases in which life imprisonment or death must be imposed, felony or misdemeanor resulting in serious physical injury or death.	Discretionary.	Oral.	Nature of the offense, harm to victim and family.	
Georgia § 17-17-13	Sentencing hearing.	Death penalty may be imposed.	Discretionary.	Oral.	Nature of offense, harm to victim and family.	
Georgia § 42-9-46	Parole, executive clemency.		Mandatory.	Written.	Objections to possible action.	
Hawaii § 706.602	Parole hearing.					
Hawaii § 706.604	Presentence report.			Court personnel make report.	Information re. harm.	
Idaho Const. Art. II, Sec. 16a	Sentencing in circuit court.			Not specified (oral implied).	Dispositions of offender.	
	All criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant.		Mandatory, unless manifest injustice would result.	Not specified.		

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Idaho § 19-5304	Presentence report.		Mandatory.	Presentence report to include (written).	Statement of economic loss.	
Idaho § 19-5306	Proceedings considering plea of guilty, sentencing, incarceration or release.	Felony or misdemeanor involving physical injury, threat of physical injury, or sexual offense.	Mandatory unless manifest injustice would result.			
	Presentence report.		Mandatory.	Presentence investigator to include in report.	Statement of impact of offense on victim.	
Idaho Rule 32	Presentence report.		Mandatory, where relevant to sentencing decision.	Written.	Victim's version of criminal act and circumstances.	
Illinois Const. Art. 1, Sec. 8.1	Sentencing.		Mandatory.	Not specified.		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Illinois ch. 725 § 120/3		Violent crime or attempt that results in personal injury or property loss or damage, or any violent crime or drunk driving, violent crime is a felony involving force or threat of force, or sex offense, or domestic violence, or violation of protective order, or stalking, or drunk driving resulting in personal injury or death.				
Illinois ch. 725 § 120/4	Sentencing.		Mandatory.	Oral (implied) .	Statement.	
Illinois ch. 725 § 120/6	Sentencing (unless parties have agreed on specific sentence).	Same.	Mandatory if victim is present in courtroom, and court shall consider the statement in sentencing.	Oral - must first be prepared in writing through the prosecutor's office.	Impact of offense.	
Illinois ch. 725 § 120/6 (cont.)	Any time during proceedings, presented to office of state's attorney.	Same.	Mandatory.	Written.	Victim impact statement.	

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Illinois ch. 725 § 5/110-5	Bail or pretrial release.	Same.	Mandatory and court shall consider in determining amount of bail or conditions of release.	Written.	Statement of victim or representative by state of impact of offense and victim's concern with future contact with defendant if released.	
Illinois ch. 730 § 5/3-3-4	Parole hearing.	Same.	Mandatory.	Written, video, or other electronic means, or oral.	Position of victim regarding issues considered at parole.	
Illinois ch. 730 § 5/5-3-2	Presentence report.	Felony.	Mandatory.		Effect on victim, and any compensatory benefit sentencing alternatives would confer on victim.	
Illinois ch. 730 § 5/5-4-1	Sentencing hearing.	Violent crime or drunk driving, except death penalty.	Mandatory.	Oral - must first be prepared in writing through prosecutor's office.	Statement re. impact and evidence in aggravation or mitigation.	
Illinois ch. 730 § 105/10	Parole hearing.		Mandatory.	Oral, written, video or other electronic means.	Statement, also, on victim's request, state's attorney to forward copy of trial victim impact statement.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Illinois ch. 730 § 105/35	Parole.		Mandatory.	Written.	Victim impact statement.	
Indiana § 11-9-2-2	Parole hearing.	Violent crime.	Mandatory.	Oral.	Not specified.	
Indiana § 11-13-3-3	Parole hearing.	Felony.	Mandatory.	Not specified.	Attitude of victim or victim's family.	
Indiana § 35-35-3-2 § 35-35-3-3	Plea bargain.	Felony.	Mandatory.	Oral or written.		
Indiana § 35-35-3-5	Sentencing.	Felony or misdemeanor.	Mandatory.	Oral or written.	Statement concerning crime and sentence.	
Indiana § 35-35-3-6	Sentencing.					If more than 3 victims, prosecutor may choose the one that suffered the most.
Indiana § 35-38-1-8	Sentencing.	Felony or misdemeanor.	Not specified (oral implied).	Statement re. crime and sentence.		
Indiana § 35-38-1-8.5 § 35-38-1-9	Presentence report .	Except for death penalty cases.	Mandatory.	Written or oral.	Impact, written statements of victim.	

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Indiana § 35-38-1-12	Sentencing.		Mandatory.	Oral.	Statement re. crime and sentence.	
Iowa § 901.3	Presentence investigation.		When court orders presentence investigation.	Written.	Harm to victim and family, and VIS completed by victim.	
Iowa § 910A.5	Presentence investigation report, or to court at sentencing.	Public offense other than misdemeanor.	Mandatory.	Written.	Itemize economic loss, identify physical injury, change in victim's personal welfare or familial relationships, describe any request for psychological services, and contain other info. re. offense.	
Iowa § 910A.10	Parole hearing.	Violent crime.	Mandatory.	Written or oral.	Opinion re. release of offender.	
Iowa § 910A.10A	Pardon, reprieve or commutation.	Violent crime.	Mandatory.	Written.	Opinion re. application.	
Kansas Const. Art. 15, Sec. 15	Sentencing or other time deemed appropriate by court.	As defined by law.	Mandatory.	Not specified.	"Heard".	To the extent these rights do not interfere with the rights of the defendant.

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Kansas § 8-1019	Sentence.	Drug- or alcohol-related offenses resulting in bodily injury or death.	Mandatory.	Not specified.	Impact of offense.	
Kansas § 12-4415	Diversion.	Alcohol-related offense.	Mandatory.	Not specified.	Recommendations.	
Kansas § 12-4516	Expungement hearing.	Violation of city ordinance involving alcohol-related conviction and vehicular homicide.	Mandatory.	Oral.	Relevant information re. petitioner.	
Kansas § 21-4604	Presentence report.	Felony, misdemeanor.	Mandatory for felony, discretionary for misdemeanor.		Attitude of victim, impact and need for restitution.	
Kansas § 22-3424	Sentencing.		Mandatory.	Oral.	"Address the court".	
Kansas § 22-3717	Departure by judge from presumptive postrelease period.		Mandatory.	Written.	Impact.	[Judge is to consider VIS if he or she departs from the presumptive postrelease period].

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Kansas § 74-7333	Throughout process [including victim to be notified of public comment session for parole].	Crime.	Discretionary.	Not specified.	Views and concerns of victims.	When appropriate and consistent with criminal law and procedure.
Kansas § 74-7335 [implied]	Parole.					Victim notified of right to be present at public comment session re. parole release.
Kentucky § 421.520	Presentence report or direct to court if no report.	Listed violent and sexual offenses, plus 1st or 2nd degree burglary.	Mandatory, and court shall consider.	Written.	Impact, need for restitution, any compensation received and recommendations for sentence.	
Kentucky § 421.530	Parole hearing.	Same.	Mandatory and board shall consider.	Written.	Long-term consequences of crime, including harm, whether victim received compensation, and may include other things as well.	

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Kentucky § 439.340	Parole hearing.		Mandatory and board shall consider.	Written or oral.		Comments shall be retained in offender's permanent parole file and be considered at any subsequent parole hearings; persons may elect to make presentation outside presence of prisoner; hearing shall be open but victim can request it be closed for personal safety, and board shall then close the hearing.
Louisiana CCrP art. 875	Presentence report.	Offense involving victim.	Mandatory.	Written.	Factual information as to whether victim or family suffered harm.	If defendant sentenced to imprisonment, copy of presentence report forwarded to division of probation and parole.
Louisiana R.S. § 46:1844	Disposition or sentencing.	Felony.	Mandatory	Written or oral.	Impact.	Upon joint motion of defendant and prosecutor, court may hear victim statement, or either party's statement in camera.

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Louisiana R.S. § 46:1844 (cont.)		Felony that is crime of violence or sexual offense.	Mandatory.	Make statement or present information.	Information re. sentence.	
	Pardon or parole hearing.	Felonies	Mandatory.	Written or oral.	Impact.	
Maine tit. 15 § 6101	Sentencing	Domestic violence, sexual assault, and crimes in which victim or family suffered serious physical trauma or serious financial loss.				
Maine tit. 17-A § 1257	Sentencing.	Crime.	Mandatory and court shall consider in sentencing.	Written or oral.	Statement.	
Maryland Const. Art. 47	All criminal justice proceedings as implemented and defined by law.		Mandatory "if practicable".	Not specified.	Not specified.	
Maryland Art. 27 § 643D		Crime resulting in serious physical injury or death.	Discretionary - on request of prosecutor and in discretion of judge.	Oral.	Not specified.	Victim also has right not to address court, and may not be coerced.

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Maryland Art. 27 § 761	Sentencing.	Crime causing direct or threatened physical, emotional or financial harm.	Discretionary - on request of prosecutor and in discretion of judge.	Written or oral.	Not specified.	
	Parole or other temporary leave or provisional release.	Same.	Mandatory on request.	Written.	Not specified.	
Maryland Art. 31B § 10	Work release and leave of absence of mentally ill offender committed to state institution.		Mandatory.	Written.	Comment on proposed release or leave.	
Maryland Art. 41 § 124	Presentence report.	Felony, or misdemeanor causing serious physical injury or death.	Mandatory.		Impact, request for psychological services.	
Maryland Art. 41 § 4-504	Parole release hearing.	Violent crime resulting in physical injury or death.	Mandatory.	Written.	Victim may submit written request for Div. of Parole and Probation to complete an updated VIS, recommendation re. release, request that offender be prohibited from contacting victim as condition of parole, victim may request a meeting with a commission member.	

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Maryland Art. 41 § 4-609	Presentence report.	Felony causing harm to victim, or misdemeanor causing serious physical injury or death to victim.	Mandatory if a presentence investigation is ordered, and such invest. must be ordered in any case where the death penalty or life imprisonment without possibility of parole is requested; discretionary prep. by State's Attorney if no investigation ordered.	Written.	Impact of offense, request for psychological services by victim of family.	
Massachusetts ch. 127 § 133A	Parole.			Written or oral.	Recommendations regarding parole.	
Massachusetts ch. 258B § 3	Sentencing or disposition.	Crime, where victim suffers direct or threatened physical, emotional or financial harm.	Mandatory.	Written or oral.	Impact and recommendation of sentence.	
	Any other time deemed appropriate by the court.		Discretionary.			
	Parole.		Mandatory.	Written.		

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Massachusetts ch. 279 § 4B	Sentencing.	Felony or crime against person or crime where physical injury results; not in death penalty cases.	Mandatory.	Written or oral.	Impact and recommended sentence.	Prosecutor shall also file a VIS as part of the presentence report.
Michigan Const. Art. I, Sec. 24	Sentencing.		Mandatory.	Not specified.	Not specified.	
Michigan § 28.1144	Presentence report.	Felony or if the court directs a misdemeanor.	Mandatory if victim requests.	Written.	VIS.	
Michigan § 28.1287 (763)	Presentence report.	Felony.	Mandatory.	Written or oral input into report.	Impact - recommended sentence.	
Michigan § 28.1287(765)	Sentencing.	Felony.	Mandatory.	Oral.		
Michigan § 28.1287 (771)	Parole hearing.	Felony.	Mandatory.	Written or oral.		
Michigan § 28.1287 (823) § 28.1287 (824)	Presentence report	Serious misdemeanor.			Impact - recommended sentence.	
Michigan § 28.1287(825)	Sentence.	Serious misdemeanor.	Mandatory if no presentence report, and court must consider.	Oral.		

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Minnesota § 243.05	Parole.	Homicide, other offenses.	Mandatory for homicide survivors, discretionary for victims of other offenses.			
Minnesota § 609.115	Presentence investigation.	Felony, misdemeanor, gross misdemeanor.	Mandatory for felony, discretionary otherwise.	Written.	Same information as under section 611A.037[1].	
Minnesota § 611A.037	Presentence report.	Crime resulting in bodily harm or crime under section 609.02.	Mandatory.	Written.	Harm caused, victim opinion re. sentence and objections to proposed disposition.	
Minnesota § 611A.038	Sentencing.	Same.	Mandatory.	Oral or written, victim's option.	Impact, opinion re. sentence.	
Minnesota § 638.04	Pardon proceeding.		Mandatory.	Oral or written.	VIS and recommendations re. pardon.	
Mississippi § 99-15-113	Pretrial intervention program.	Not a drug offense or violent crime.	Mandatory.	Written.	Comment on whether offender should be allowed to participate in pretrial intervention program.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Mississippi § 99-19-155 § 99-19-157 § 99-19-159	Presentence report or sentencing.	Felony.	Mandatory as part of presentence report if court orders report, otherwise mandatory at sentencing; court shall consider.	Written for presentence report, written or oral at sentencing.	Impact on victim and family, circumstances of crime and manner in which committed.	
Mississippi § 99-20-9	Admittance to community restitution program.		Mandatory.	Written.	Opinion whether offender should be allowed to participate in program.	
Mississippi § 99-36-5	Sentencing.	Felony.	Mandatory.	Not specified.	Not specified.	
Missouri Const. Art. I, Sec. 32	Bail hearings, guilty pleas, sentencings, probation revocation hearings, parole hearings.		Mandatory.			
Missouri § 217.762	Presentence report.	Felony with harm to victim.	Mandatory as part of presentence report, unless court orders otherwise; discretionary if no presentence report ordered.		Impact, request for psychological services by victim or family, other information required by court.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Missouri § 557.026	Presentence report.	Felony, misdemeanor, when jury enters finding of guilty and assesses punishment.	Mandatory when felony and probation officer is available to court, unless waived by defendant; discretionary if misdemeanor.		Statement of the offense and any injury or econ. harm.	
Missouri § 557.041	Sentencing or plea bargain.	Defendant initially charged with felony (acceptance of plea bargain); felony (sentencing).	Mandatory.	Written or oral.	Facts of case and injury or econ. harm.	
Missouri § 595.209	Bail hearings, guilty pleas, pleas under Chapter 552, sentencing, probation revocation hearings, parole hearings.	Crime resulting in direct or threatened physical, emotional or financial harm.	Unless in the determination of the court the interests of justice require otherwise.			
Montana § 46-18-112	Presentence report.	Whenever presentence investigation is required.	Mandatory.	Written or oral input.	Impact, including pecuniary loss.	
Montana § 46-18-115	Sentencing or disposition on plea.	Not limited.	Mandatory and court shall consider.	Written or oral, victim's option.	Effects, circumstances of crime, victim's opinion re. sentence.	
Montana § 46-18-246	Restitution modification hearing.		Mandatory.	Not specified.	Not specified.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Montana § 46-23-202	Parole hearing.			Not specified.		
Montana § 46-24-203	Presentence report, sentencing.	Felony, misdemeanor involving actual, threatened or potential bodily injury.		Written or oral.		
Montana § 46-24-212	Parole hearing.					
Nebraska § 29-2261	Presentence report.	Felonies.	Mandatory.	Written or oral.		
Nebraska § 81-1848	Parole hearing.		Mandatory and board must consider.	Written or oral.		
Nevada § 176.015	Sentencing.		Mandatory.	Oral.	Views re. crime and offender, impact and need for restitution.	Statement may be made by victim, counsel or personal representative.
Nevada § 176.145	Presentence report.	Felony, gross misdemeanor.	Extent of information is discretionary.	Written.	Impact.	
Nevada § 213.130	Parole.		Mandatory.	Written or oral.	Not specified.	Application for parole must not be considered until after victim noti- fied of hearing and given opportunity for input.

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
New Hampshire § 21-M:8-k	Presentence report.	Crime or attempted crime resulting in direct or threatened physical, emotional, psychological or financial harm.	Mandatory, to the extent it can be reasonably guaranteed and is not inconsistent with rights of accused.	"Input".	Impact.	
	Sentencing or prior to plea bargain agreement.	Same.	Same.	Written or oral.		
	Parole hearing.	Same.	Same.	Written or oral.		
New Hampshire § 651:4-a	Sentencing or suspension or reduction of sentence hearings.	Capital, first or second degree murder; attempted murder; manslaughter; aggravated felonious sexual assault; first degree assault; or negligent homicide due to influence or alcohol or drugs.	Mandatory and judge may consider statements in sentencing.	Oral.	Views concerning offense, person responsible, and need for restitution.	
New Hampshire § 651-A:11-a	Parole.		Mandatory.	Oral.	Express views of offense and offender.	
New Jersey § 2C:44-6	Presentence report.		Presentence report mandatory when required by rules of court, discretionary otherwise.	Written.	Impact.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
New Jersey § 30:4-123.54	Parole hearing, parole report.		Discretionary		Impact.	
New Jersey § 30:4-123.54	Preparole report.	Crime of first or second degree.	Unclear.	Written.	Impact statement.	
New Jersey § 30:4-123.55	Parole hearing.	Crime of first or second degree or murder.	Mandatory if the hearing officer determines that there is a reasonable basis for denying parole in the parole report, inmate's statement, or other written information.	Oral or written.		If victim does not want to testify at hearing, may choose to give testimony to a senior hearing officer who shall prepare a report of the testimony for presentation at the hearing.
New Jersey § 39:4-50.11	Sentencing.	Drunk driving.	Mandatory.	Oral or written.	Impact.	
New Jersey § 52:4B-36	Sentencing.	Crime resulting in personal, physical or psychological injury or death or loss of or injury to property.	Mandatory.	Oral.	Impact.	
New Mexico §§ 31-26-4 and Const. Art. II, Sec. 24	Sentencing and postsentencing court hearings.	Listed violent offenses.	Mandatory.	Not specified - "make a statement".	Statement.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
New York CPL § 380.50	Sentencing.	Felony.	Mandatory.	Oral.	Statement with regard to any matter relevant to sentencing.	
New York CPL § 390.20	Presentence report.	Felony and may be in some misdemeanors.	Mandatory inclusion unless determination that VIS is irrelevant to disposition.	Prepared by prosecutor with input from victim.	Victim's version of offense, impact, victim's views re. disposition.	If report waived by both parties, VIS may be provided to court.
New York CPL § 440.50	Parole.		Mandatory.	Written and/or meeting with member of parole board.	Impact statement.	
New York EL § 259-i	Parole hearing.		Mandatory.	Written.		
New York EL § 647	Sentencing, plea agreement, and, as appropriate, pretrial release and sentencing alternatives.	Violent felony, felony involving physical injury to victim, felony involving property loss > \$250, and other listed crimes.	Court shall consider views.		Views.	
North Carolina § 15A-825	"For consideration by the court".	Serious misdemeanor, felony.	Discretionary "to extent reasonably possible and subject to available resources shall make reasonable effort".	Have VIS prepared.		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
North Dakota § 12.1-34-02	Presentence report or, if no report, to court.	Felony, most class A misdemeanors.	Mandatory.	Written.	Impact, opinion re. restitution recommended sentence.	
	Sentencing.	Felony, most class A misdemeanors if crime involved force or threat of force.	Discretionary	Oral.		
	Parole or pardon.	Felony, most class A misdemeanors.	Mandatory.	Written.		
	Same.	Felony, most class A misdemeanors if crime involved force or threat of force.	Discretionary.	Oral.		
Ohio § 2929.12	In determining minimum term of imprisonment, in determining whether to impose fine and amount of fine.	Felonies for which indefinite term of imprisonment is imposed, felonies.	Mandatory and court shall consider.	Written.	Victim impact statement.	
Ohio § 2929.19	Sentencing.		Mandatory and court shall consider.			
Ohio § 2929.20	Judicial release of convicted person.	Certain felonies.	Mandatory and court shall consider.	Written or oral.	Victim impact statement, or statement.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Ohio § 2930.13	Presentence report.	Felony or other listed crimes.	Mandatory.	Oral or written.	Impact, opinion re. restitution, recommended sentence.	
Ohio § 2930.14	Sentencing.	Felony or other listed crimes.	Mandatory and court shall consider.	Oral or written or both.		
Ohio § 2930.16 § 2967.12	Pardon or parole.		Mandatory and board shall consider.	Written.		
Ohio § 2930.17	Shock probation.	Felony or other listed crimes.	Mandatory and court shall consider.	Written or oral, court's discretion.	Effects of crime, manner of crime, and opinion re. release.	
Ohio § 2947.05 (will be repealed)	Sentencing.		Mandatory.	Not specified (oral implied).	Statement re. sentence	
Ohio § 2947.051	Sentence.	Felony.	Court shall consider victim impact statement.	Written - preparation of victim impact statement.	Impact.	
Ohio § 2951.03	Presentence report.	Felony (prior to probation).	Mandatory.	Written.	Victim impact statement.	
Ohio § 2967.03	Pardon, commutation.			Written.	Statement.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Ohio § 2967.03 § 5149.101	Parole board - full hearing.	If full hearing granted on petition.	Mandatory.	Written or oral.		
Ohio § 2967.26	Furlough for employment, education, etc.		Mandatory and department shall consider.	Written.	Impact of release.	
Oklahoma tit. 19 § 215.33					Victim impact statement.	Right to have VIS filed with sentence and judgment.
Oklahoma tit. 21 § 701.10	Sentencing.	Murder in first degree.	Discretionary.			State may introduce evidence about victim and impact.
Oklahoma tit. 22 § 305.1	Deferred prosecution.		Mandatory.		Opinions.	
Oklahoma tit. 22 § 982	Presentence investigation report.	Felony, unless death sentence may be imposed.	Mandatory.	Written.	Statement re. offense and financial damages.	
Oklahoma tit. 22 § 984.1	Sentencing.		Mandatory.	Written or oral.	Impact.	
	Presentence report.		Mandatory.		Victim impact statement.	
	Plea bargain.		Mandatory and court shall consider.	Written.	VIS.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Oklahoma tit. 22 § 984.1 (cont.)	Parole or preparole conditional supervision program.		Shall consider any VIS from sentencing.	Written.	VIS.	
Oklahoma tit. 57 § 332.2	Parole.		Mandatory.	Oral.		Board may limit # of persons attending.
Oregon § 135.886	Pretrial diversion.	Crimes other than drunk driving under 813.010.	Mandatory.		Recommendation of victim.	
Oregon § 137.013	Sentencing		Mandatory.	Oral.	Views re. crime and offender, impact, need for restitution.	
Oregon § 137.530	Presentence report.		Mandatory, when presentence report made.	Written or orally given to probation officer preparing report.	Impact.	
Oregon § 144.120	Parole hearing.		Mandatory.	Written or oral.	Views re. crime and offender.	
Oregon § 163.150	Sentencing.	Aggravated murder.	Discretionary.	Not specified.	Victim impact evidence relating to personal characteristics of victim or impact of crime on victim's family.	
Pennsylvania § 61-331.19	Parole hearing.		Mandatory.	Written or oral.		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Pennsylvania § 61-331.22a	Parole hearing.		Mandatory.	Written or oral.	Impact, and views re. release.	
Pennsylvania 71 P.S. § 180- 9.3	Sentencing.	Any crime.	Mandatory and shall be considered.	Written.	Impact.	
	Parole, pardon, furlough, work release, community treatment center placement.	Personal injury crimes where offender sentenced to state correctional facility.	Mandatory.	Not specified - prior comment.	Prior comment.	
Pennsylvania 71 P.S. § 180- 9.8	Parole, pardon, furlough, work release, community treatment center placement.		Mandatory and shall be considered.	Written or oral.	Prior comment.	
Rhode Island Const. Art.23	Sentencing.		Mandatory.	Oral.	Written.	
Rhode Island § 21-28-3	Presentence report.		Mandatory.	Written.	Victim impact statement.	
	Sentencing after trial.		Mandatory.	Oral.		
	Acceptance of plea.		Mandatory.	Written.	Impact.	
	Parole consideration.		Mandatory.	Written.	Impact.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Rhode Island § 12-28-4	Sentencing after trial.	Felony causing personal injury or loss of property.	Mandatory.	Oral.	Impact.	
Rhode Island § 12-28-4.1	Acceptance of plea bargain.	Crime causing personal injury or loss of property.	Mandatory.	Oral.	Impact.	
Rhode Island § 12-28-4.3	Pretrial conference.	Misdemeanor cases causing personal injury or loss of property.	Mandatory.	Oral.	Impact.	
Rhode Island § 12-28-6	Parole.		Mandatory.	Oral.	Impact.	
South Carolina § 16-3-1530	Bail release.		Mandatory.		Recommendation.	
South Carolina § 16-3-1550	Sentencing or disposition and parole hearing.	Crimes within jurisdiction of General Sessions court, excluding crimes for which death penalty is sought.	Mandatory.	Oral or written, victim's option.		
South Carolina § 24-13-1330	Shock incarceration.		Mandatory.		Victim's views.	
South Carolina § 24-13-1570	Home detention.		Mandatory.	Oral or written.	Comment re. home detention.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
South Carolina § 24-21-520	Presentence report.	Crime with max. penalty of 3-15 yr imprisonment or class D, E, or F felony or class A misdemeanor (judge may require report in other cases).	Mandatory.	Written.	Input from victim.	
South Carolina § 24-22-90	Enrollment in offender management system.		Mandatory.	Written or oral.	For or against release.	
South Dakota § 23A-27-1.1	Sentencing.		Mandatory.	Oral.	Impact, opinion re. sentence.	
South Dakota § 23A-27-1.2	Sentence reduction hearing.		Mandatory.	Oral.	Impact and opinion re. reduction.	
South Dakota § 23A-27A-1	Death penalty sentencing.		Mandatory.	Oral.	Impact.	
South Dakota § 23A-28C-1	Bail or bond hearings.	Crime of violence, domestic violence or drunk driving.	Mandatory.	Oral.	Whether offender represents danger to victim or community if released.	
	Plea bargain, sentence bargain agreements.		Mandatory.	Written.	Whether agreements should be entered into.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
South Dakota § 23A-28C-1 (cont.)	Sentencing.		Mandatory.	Written or oral.	Impact statement, recommendation re. restitution and sentence.	
	Parole hearings, commutation of sentence.		Mandatory.	Written.		
	Sentencing - death penalty cases.		Mandatory.	Oral.	Info. re. victim and impact.	
South Dakota § 24-15-3	Parole.		Mandatory.	Oral.	Opinion re. parole.	
Tennessee § 40-25-207	Presentence report.		Mandatory.	Written.	Statement by victim re. sentencing.	
Tennessee § 40-28-504	Parole board.		Board authorized to accept.	Written.	Victim impact statement.	
Tennessee § 40-28-505	Parole.	If inmate sentenced to 2 or more years.		Written.	Victim impact statement.	
Tennessee § 40-35-207	Presentence report.		Discretionary.	Written.	Loss caused by crime.	
Tennessee § 40-35-209	Sentencing.		Discretionary.	Oral.		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Tennessee § 40-38-103	Parole hearings.		Whenever possible.	Oral or written.	Impact, or speak.	
Tennessee § 40-38-103 (cont.)	Sentencing.		Whenever possible.	Oral or written.	Impact.	
Tennessee § 40-38-202	Sentencing.		Mandatory and judge shall consider.	Written implied.	Impact and information re. crime.	
Tennessee § 40-38-205	Presentence report.	Felony.	Mandatory.	Written.	Impact.	
Texas CCP art. 26.13	Plea bargain.		Mandatory.	Written.	Victim impact statement.	
Texas CCP art. 42.03	Following sentencing.		Mandatory.	Oral.	Views of offense, definition and impact.	Statement only after sentencing.
Texas CCP art. 42.18	Parole hearing.		Mandatory if hearing held, and board must consider.	Written.	Victim statements and victim impact statement.	
Texas CCP art. 56.02	Presentence report.		Mandatory.	Written or oral.	Impact.	
	Parole.		Mandatory.	Provide information for file and participate in parole process.		

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Texas CCP art. 56.03	Sentencing.		Mandatory and court shall consider.	Written.	Victim impact statement.	
Texas CCP art. 56.03 (cont.)	Parole hearings.		Mandatory.	Written .	Victim impact statement.	
Utah Const. Art. I, Sec. 28	Important criminal justice hearings related to the victim.	Felonies and other crimes as provided by legislature.	Mandatory.	Not specified.	Not specified.	
Utah § 64-13-20	Presentence reports.	Felonies and in misdemeanors causing bodily harm or death to victim.	Mandatory.	Written.	Impact.	
Utah § 76-3-207	Sentencing.	Capital felonies.	Discretionary.		Victim and impact.	
Utah § 77-18-1	Presentence report.		If presentence report, mandatory.	Written.	Victim impact statement.	
Utah § 77-27-9.5	Parole hearing, parole revocation hearing, or rehearing.		Mandatory.	Written or oral.	Views re. decisions to be made.	

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Utah § 77-38-4	Court arraignment, court proceeding re. disposition of charges or delay of scheduled trial date, court proceeding re. pretrial release (except initial appearances), sentencing or disposition; initial appearance.		Arraignment- if practical; initial appearance on request to judge; everything else mandatory.	At victim's discretion, oral, written, audio or videotaped or direct or indirect information for presentence report.	Initial appearance, views re. pretrial release; court may limit any victim's statement to matters that are relevant to the proceeding.	Court may limit # of in court oral statements if there are more than 5 victims.
Vermont tit. 13 § 7006	Sentencing.		Mandatory and court shall consider.	Oral.	Views re. crime, offender, and need for restitution.	
Vermont tit. 28 § 204	Presentence report.	Any crime.	Mandatory where presentence report ordered.	Written or oral.	Comments.	
Vermont VtCrP 32	Sentencing.	Felony.	Mandatory on request of victim who attends hearing.	Oral.	Statement re. crime, offender and need for rest..	
Virginia § 19.2-11.01 § 19.2-299.1	Presentence report, or, if no report, then victim impact statement alone with consent of victim.	All offenses, other than capital murder.	Mandatory - may be considered by court.	Written.	Victim impact statement.	
Virginia § 19.2-264.5	Presentence report.	Death penalty cases.	Mandatory.	Written.	Impact.	

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State/Statute	Stage in Process	Crimes Applicable	Mandatory/ Discretionary	Form (Written, Oral, Not Specified)	Contents (Views, Opinions, Impact)	Other
Virginia § 19.2-299	Parole.	Mandatory.	Written.	Impact and opinion re. release.		
Virginia § 53.1-155	Parole hearing.		Mandatory and board shall consider.	Evidence, oral or written testimony re. impact of release.	Impact.	
Washington Const. Art. 1, Sec. 35	Sentencing and any release proceeding.		Mandatory.	Not specified.	Statement.	
Washington § 7.69.030	Presentence reports and included in convicted offender's files.	Felony, gross misdemeanor, misdemeanor.	Mandatory.	Written.	Impact.	
	Sentencing.	Felony.	Mandatory.	Oral.	Statement.	
Washington § 9.94A.110	Sentencing.		Mandatory.	Oral or written.	Impact and arguments re. sentence.	
Washington § 9.94A.120	Sentencing to treatment.	Sex offenses.	Mandatory.		Victim's opinion re sentence of treatment.	
West Virginia § 61-11A-2	Sentencing.	Felony.	Mandatory.	Oral or written.	Facts of case, impact.	
West Virginia § 61-11A-3	Presentence report.	Felony or misdemeanor.	Mandatory where presentence report, discretionary otherwise, court must consider.	Written.	Victim impact statement.	

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Wisconsin Const. Art 1, Sec. 9m	Disposition.		Mandatory.	Oral.		
Wisconsin § 304.06	Parole.		Mandatory.	Written or oral.		
Wisconsin § 304.09 § 304.10	Pardon.					
Wisconsin § 950.04	To have court provided.	Felony.	Mandatory and court shall consider.	Not specified.	Impact.	
Wisconsin § 950.045	Parole, pardon.		Mandatory.	Pardon - written, parole - written or oral.		
Wisconsin § 972.14	Sentencing.	Felony.	Mandatory.	Written or oral.	Statement re. sentence.	
Wisconsin § 972.15	Presentence report.		Mandatory for report preparer to contact victim, discretionary inclusion of info in report.		Impact.	
Wyoming § 1-40-203	Presentence report, sentencing.	Felony.	Mandatory.			

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Wyoming § 7-13-103	Investigation report prior to probation or suspended sentence.	Felony, misdemeanor.	Mandatory for felony, discretionary for misdemeanor.		Impact and statements from victim.	Report follows defendant if sentenced to department of corrections.
Wyoming § 7-13-402	Parole hearing.		Reasonable opportunity.	Written.	Comments re. parole.	
Wyoming § 7-21-102	Sentencing, presentence report.	Felony.		Written or oral.	Including impact and recommended sentence.	
Wyoming § 7-21-103	Sentencing or modification of sentence.	Felony.	Mandatory and court shall consider.	Oral.		
	Presentence report.	Felony.	Mandatory and court shall consider.	Written or oral input.		

SECTION 10

THE RIGHT TO ATTEND THE TRIAL

The right of crime victims to attend the trial of their offender is one of the most important in the eyes of victims, and also one of the most elusive. Most individuals who find themselves involuntarily thrust into the criminal justice system when they are violently victimized are shocked to discover that they will be excluded from the trial of the offender — the only criminal proceeding that offers them an opportunity for justice.

As part of its recommendations for the judiciary, the President's Task Force on Victims of Crime stated that "Judges should allow the victim and a member of the victim's family to attend the trial, even if identified as witnesses, absent a compelling need to the contrary." In making that recommendation, the Task Force provided that victims and survivors, "no less than the defendant, have a legitimate interest in the fair adjudication of the case, and should therefore, as an exception to the general rule providing for the exclusion of witnesses, be permitted to be present for the entire trial."⁶⁶

At present, 34 states have given victims the "right to attend" the trial, specifically, or criminal proceedings generally. Many phrase this in terms of the right to attend "those proceedings at which a defendant has the right be present." In half of those states, this right has been guaranteed by an

amendment to the constitution. However, in most instances, the right to attend is significantly limited by the language of the statutes or amendment allowing for the exclusion or sequestration of victims who are to be called as witnesses. As a result, what was to be a right guaranteed by law has proven to be something less than concrete for most victims of violent crime.

Under the Rules of Evidence in most states,⁶⁷ witnesses may be excluded, or sequestered, from the trial. This rule was designed to prevent witnesses from fabricating their testimony or making inaccurate statements based on the testimony of other witnesses in the case. The defendant, as a party to the action, is exempt from exclusion. Victims, however, do not have the legal status as a "party" to the proceedings, and are usually not exempt from this rule. The wording of the rule on sequestration of witnesses varies from state to state, but often *requires* the court to exclude witnesses at the request of a party. The Federal Rules of Evidence and the Virginia right to attend law are examples of laws that mandate exclusion of witnesses. In contrast, many other states give a trial judge the discretion to exclude the victim as a witness, but do not require exclusion.

A few states, including Alabama, Arkansas and Florida, have specifically provided that the rule regarding exclusion of witnesses

⁶⁶ President's Task Force on Victims of Crime: *Final Report* (1982). P. 80.

⁶⁷ Generally, Rule of Evidence 615.

does **not** apply to victims. Other states have taken a hybrid approach, whereby the victim has right to attend only **AFTER** the victim has testified, as in Louisiana, Maryland, South Dakota and Washington. Washington's law specifies that while a victim may be excluded until after testifying, the victim has the right to be scheduled as early in the proceedings as possible. In Louisiana, where a victim chooses to exercise his or her right to attend the trial after testifying, he or she may not then be recalled to the stand for rebuttal if necessary. Thus, victims may be put in the position of **EITHER** exercising their right to attend the trial and risk jeopardizing the prosecution by losing the opportunity to counter defense testimony, or waiving their right to attend altogether. Placing victims in such a "no win" situation has led many advocates and policy leaders to seek legislative changes to address such vexing circumstances.

Overall, the majority of states that purport to give victims the right to attend the trial also give the judge discretion to exclude the victim, either as a witness or to preserve the defendant's right to a fair trial generally. The defendant's right to a fair trial is guaranteed by the U.S. Constitution, the highest law of the United States, while the victim's right to attend is merely a matter of state law. Thus, when faced with a decision which involves the balancing of the two rights, judges typically defer to the defendant's constitutional right and exclude the victim.

Significantly, victims and their advocates have reported widespread misuse of the sequestration rule by defense attorneys. In an attempt to rid the courtroom of anyone who may draw the sympathy of the jury,

defense counsel often place the victim and/or the victim's family members on the witness list, with no real intention of calling them, for the sole purpose of having them excluded from the courtroom. Such tactics are frequently used against homicide survivors, who often have very little knowledge relating to the facts of the case, but whose mere presence, it is assumed, might influence the jury.

In 1995, California added a law clarifying the victim's right to attend, specifically addressing the decision-making process a judge should invoke when ruling on a motion to exclude the victim. Under those provisions, the defense attorney must demonstrate "a substantial probability that overriding interests will be prejudiced by the presence of the victim." The statute then lists such "overriding interests" which include the defendant's right to a fair trial. Before any exclusion may be ordered, the court is required to: consider reasonable alternatives to exclusion of the victim; narrowly tailor any exclusion; and hold a hearing on exclusion at which the victim has the right to be heard. The mandatory nature of this right to attend is moderated with regard to the rule of sequestration; however, an order sequestering a victim under the evidence code "shall be consistent with the objectives" of the provisions in this statute, "to allow the victim to be present, whenever possible, at all proceedings."⁶⁸ This approach retains some judicial discretion while requiring judges to permit victims the greatest access possible.

⁶⁸ CAL. PENAL CODE § 1102.6.

Critics of victim sequestration contend that the practice serves no legitimate purpose. While defense counsel may argue that victims would tailor their testimony after hearing other witnesses, critics respond that the ability to cross-examine the victim should provide an adequate safeguard. In addition, during the course of the criminal justice process, the victim has generally provided numerous statements of the facts of the case. Any attempt by a victim on the stand to change his or her story could not only be challenged by a defense attorney but could subject the victim/witness to criminal charges of perjury.

In Utah, a recent case pitted a victim's right to attend trial, guaranteed by the state constitution and law, against the defendant's constitutional right to a fair trial. Lawyers for the defendant appealed his conviction on the grounds that allowing the victim to remain in the courtroom gave her the opportunity to alter her testimony in response to what she heard from other witnesses. They also argued that her presence in the courtroom was prejudicial and might have influenced the jury. The Utah Court of Appeals upheld the trial court's ruling,⁶⁹ but this same battle will likely be fought in other states.

The issue of the crime victims' right to attend demonstrates how limited the progress of victims' rights has been in the last decade. A simple look at the numbers might lead one to believe that the right to attend has generally been given to crime victims. However, those who are exposed to the

system's treatment of crime victims every day know that the reality is far different. The battle to give crime victims a right to attend proceedings is one which must still be fought.

Table 10-A examines the laws providing victims a right to attend the trial, or the right generally to attend all proceedings. The laws are current through 1995.

⁶⁹ *State v. Beltran-Felix*, 922 P.2d 30, 34 (Utah Ct. App., 1996).

Table 10-A

**CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995**

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
Alabama Const. Am. 557	All crucial stages of proceedings .	Victims.	To extent does not interfere with constitutional rights of defendant.
Alabama §§ 15-14-50 et seq.	In any court trial or hearing; may also be seated at counsel table.	Victims.	Judge may remove victim for same causes in same manner as defendant may be excluded or removed.
Alabama § 15-23-67	All criminal proceedings.	Victim, survivor of homicide or kin of person incapacitated (unless person is in custody or is the accused).	
Alaska Const. Art. 2, Sec. 24	All proceedings where accused has right to be present.	Victim.	
Alaska § 12.61.015	Sentencing hearing.	Victim.	
Alaska § 33.16.120	Parole hearing.		
Arizona Const. Art. II, Sec. 2.1 § 13-4420	All criminal proceedings where defendant, prosecutor, and general public are entitled to be present.	Victim, or if victim is killed or incapacitated, victim's family member or other lawful representative, except if the person is in custody or is the accused.	
Arizona RCP Rule 39	All criminal proceedings.		

Table 10-A
CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
<p>Arizona RCP Rule 9.3</p>		<p>Witness.</p>	<p>Once a witness has testified, he or she shall be allowed to remain in courtroom unless otherwise ordered by judge; witness may be excluded during opening statements and testimony of other witnesses.</p>
<p>Arkansas Rule of Evid. 616</p>	<p>Any hearing, deposition or trial of a criminal offense.</p>	<p>Victim, or if minor, parents or custodian.</p>	
<p>California PC § 868</p>	<p>During examination.</p>	<p>Member of victim's family.</p>	<p>Prosecutor must make motion for family to be present; court shall grant motion unless magistrate finds exclusion is necessary to protect defendant's right to fair and impartial trial or unless information provided by defendant or noticed by court establishes reasonable likelihood that family's attendance poses risk of affecting the testimony of the victim or other witnesses.</p>

Table 10-A

**CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995**

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
California PC § 1102.6	All criminal proceedings where defendant, prosecutor, and general public are entitled to be present.	Victim and one person of his or her choosing (court may permit more); if victim unable to attend, 2 people designated by victim (court may allow more); if victim deceased, 2 family members (court may allow more).	Victim may be excluded as witness under Evid. 777 when subpoenaed, but order of exclusion shall be consistent with this section and allow victim to be present whenever possible. There are detailed criteria for when victim may be excluded. Movant must demonstrate that there is a substantial probability that overriding interests will be prejudiced by presence of victim. "Overriding interests" are defined and include defendant's right to a fair trial, court's interest in maintaining order, protection of witnesses from harassment, protection of sexual assault victims from trauma and embarrassment. Court must consider reasonable alternatives to excluding victim. Victim must be heard at any hearing regarding exclusion, and court must make specific factual findings that support exclusion limitations on victim's presence.
Colorado Const. Art. II, Sec. 16a	All critical stages of criminal justice process.	Victim, or designee, legal guardian, or surviving family member of deceased victim.	

Table 10-A
CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
<p>Colorado § 24-4.1-302, § 24-4.1-302.5</p>	<p>Filing of charges, preliminary hearing, bond reduction or modification hearing, arraignment, hearing on motion re. evidentiary matters or pre-plea or post-plea relief; disposition of complaint or charges, trial, sentencing hearing, appellate review, modification of sentence, probation revocation hearing, parole hearing, parole revocation hearing.</p>	<p>Victim (unless victim is an offender), or if deceased or incapacitated, family member, significant other or lawful representative.</p>	<p>Unless court or district attorney determines exclusion is necessary to preserve defendant's right to a fair trial or confidentiality of the juvenile process.</p>
<p>Colorado § 24-4.1-303</p>	<p>All critical stages (see above), including trial.</p>	<p>Victim or individual designated by victim if victim present, court at victim's request may permit the presence of a support person.</p>	<p>Unless court or district attorney determines exclusion is necessary to preserve defendant's right to a fair trial or confidentiality of the juvenile process.</p>
<p>Connecticut § 54-85c</p>	<p>Trial or any proceeding concerning prosecution.</p>	<p>Homicide victim representative or survivors.</p>	<p>Unless judge specifically finds such person should be excluded, there must be a hearing on the matter prior to exclusion.</p>
<p>Delaware tit. 11 § 3512</p>	<p>All stages of a criminal proceeding, even if called upon to testify.</p>	<p>Victim or victim's immediate family.</p>	<p>Unless good cause can be shown by defendant to exclude.</p>
<p>Delaware tit. 11 § 9407</p>	<p>Court proceeding, other than grand jury, where defendant has right to be present.</p>	<p>Victim or individual designated by victim and one support person; also survivors of deceased victim, and parent, guardian, or custodian of one unable to meaningfully understand or participate in the legal proceeding.</p>	<p>Unless defendant can show good cause to exclude victim, court may exclude support person if necessary to preserve defendant's right to a fair trial.</p>

Table 10-A

**CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995**

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
Florida Const. Art. 1, S. 16(b) § 960.001	All crucial stages of criminal proceeding.	Victim who is not incarcerated, including homicide survivors.	To extent this right does not interfere with constitutional rights of accused.
Florida § 90.616	A court proceeding.	Victim, victim's next of kin, parent or guardian of minor victim, or lawful representative of victim.	Unless, on motion, court determines person's presence to be prejudicial.
Georgia § 24-9-61.1	Courtroom proceeding.	Victim.	Victim's ability to be present is solely in the discretion of the judge.
Idaho Const. Art. 1, Sec. 22	All criminal justice proceedings.	Victims.	
Idaho § 19-5306	All criminal justice proceedings.	Victim, family of homicide survivors, families of minor or incapacitated victim; court may designate a family member in such cases.	
Illinois Const. Art. 1, Sec. 8.1 and ch. 725 § 120/4	Trial and all other court proceedings on same basis as accused.	Victim, rep. of homicide victim or spouse, parent, child or sibling of physically or mentally incapable victim unless such person is the defendant or a prisoner. (Code also provides victim may have an advocate or other support person present)	Unless victim is to testify and court determines that victim's testimony would be materially affected if the victim hears other testimony at trial; support person- subject to rules of evidence.
Illinois ch. 725 § 120/4.5	All court proceedings.	Support person for victim.	Subject to the rules of evidence.

Table 10-A
CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
Indiana §§ 5-14-2-1	Court proceedings, except jury deliberations, omnibus hearings, and proceedings specifically closed by statute.	General public.	Hearing required prior to exclusion - court retains power to exclude witnesses, relieve overcrowding, protect order and decorum of courtroom and preclude those whose presence constitutes a direct threat to the safety of spectators, parties or witnesses; if court excludes general public, any member of the excluded public can appeal.
Indiana § 33-14-10-5	All public stages of process.	Victim.	Unless court enters order prohibiting attendance.
Indiana § 35-34-2-4	Grand jury proceedings.	Any witness prosecutor requests to be present.	Does not apply to deliberations and other listed parts of proceeding.
Iowa § 910A.20	Law enforcement investigations, pretrial court hearings, trial and sentencing proceedings, and proceedings relating to preparation of presentence report in which victim is present, and other proceedings.	Victim counselor present at request of victim.	This section does not affect court's power to regulate conduct of discovery under court rules or to preside over and control the conduct of hearings or trials.
Kansas Const. Art. 15, Sec. 15, § 74-7335	Public hearings, as defined by law.	Victims of crime.	To extent right does not interfere with constitutional rights of accused.
Louisiana R.S. § 46:1844	Any hearing or trial pertaining to offense.	Victim and victim's family.	Court may sequester on motion if it determines person's presence to be prejudicial - see Art. 615 of Evid..

Table 10-A

**CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995**

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
Louisiana CE § 615	Court proceedings.	Victim.	On motion of prosecutor, court may not exclude victim; however, court shall require that victim testify before he or she can remain in the courtroom, and court shall prohibit prosecution from recalling the victim as witness later. Victim may not sit at counsel table.
Maryland Const. Art. 47	Criminal justice proceedings.	Victims.	If practicable, and as implemented by law.
Maryland Art. 27, § 620	Trial.	Victim or representative of a deceased or disabled victim.	Victim must have testified already. Representative is one subpoenaed or who has testified. Judge may sequester on request of party ONLY after a finding of good cause. Judge may remove victim or representative for same causes and in same manner as for defendant.
Massachusetts ch. 258B § 3	All court proceedings.	Victim, family member of minor, incapacitated or deceased victim.	Unless victim or family member is to testify and the court determines that the person's testimony would be materially affected by hearing other testimony at the trial or orders the person excluded during certain other testimony.
Michigan Const. Art. 1, Sec. 24	Trial and all other court proceedings accused has right to attend.	Crime victims.	

Table 10-A
CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
 Current through 1995

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
Michigan § 28.1287(761) § 28.1287(821)	Trial.	Victim.	If victim going to be called as witness, court may order victim sequestered until victim first testifies.
Mississippi § 99-36-5	All public court proceedings.	Victim, guardian or a victim or close relative of deceased victim.	Consistent with the rules of evidence.
Missouri Const. Art. 1, Sec. 32	All criminal justice proceedings at which the defendant has such right.	Victim.	
Missouri § 595.209	All criminal justice proceedings at which the defendant has such a right.	Victim, family members of a minor, incompetent or homicide victim.	
Montana § 46-11-1-1	Pretrial proceedings.	Victim; if victim present, court shall permit support person to be present.	Court may determine exclusion of victim or support person is necessary to protect defendant's right to fair trial; victim may also be excluded if necessary to protect safety of victim.
New Hampshire § 21-M:8-k	Trial and all other court proceedings the accused has the right to attend.	Victim, immediate family of minor or incompetent victim, or immediate family of homicide victim.	To extent not inconsistent with constitutional or statutory rights of the accused.
New Jersey Const. Art. 1, P. 22	Public judicial proceedings.	Victim, and spouse, parent, legal guardian, grandparent, child or sibling of deceased victim in homicide case.	Unless properly sequestered prior to completing testimony as witness.
New Mexico Const. Art. 1, Sec. 24	All public court proceedings the accused has the right to attend.	Victim or victim's representative.	
New Mexico § 31-26-4	All court proceedings the accused has the right to attend.	Victim, family or representative of minor, incompetent, or homicide victim.	

Table 10-A

**CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995**

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
North Carolina §15A-825	Trial.	Victim, family members of homicide victims.	Subject to the right of the court to sequester witnesses; also statute urges criminal justice system officials to make a reasonable effort to assure this and other rights.
North Dakota § 12.1-34-02	Trial.	Victim, family of minor, incompetent, incapacitated or deceased victim.	Except as provided by Rule of Evid. 615.
Ohio § 2930.09	Whenever defendant is present, during any critical stage conducted on the record, other than grand jury proceeding.	Victim, family or other representative of minor, incapacitated, incompetent, or deceased victim, or other representative authorized by victim; support person at victim's request.	Unless court determines that exclusion of victim or support person is necessary to protect defendant's right to a fair trial.
Oklahoma tit. 12 § 2615	Criminal proceedings.	Victim or a representative, parent or other relatives.	State must make motion to bar exclusion of victim witness - court may find exclusion to be in the interests of justice.
Oregon § 40.385	Trial.	Victim.	Witnesses may be sequestered, but there is an exception for victims.
South Carolina § 16-3-1530	All hearings or proceedings involving case.	Victim or witness.	Unless there is a judicial determination to restrict attendance.
South Dakota § 23A-28C-1	All scheduled phases of trial or hearings.	Victim, or if victim deceased or unable to comment, victim's immediate family.	Unless judge orders otherwise, or presiding circuit judge sets contrary policy.
Texas Const. Art. 1, Sec. 30	Public court proceedings.	Victim.	Unless victim is to testify and court determines that victim's testimony would be materially affected if victim hears other testimony at trial.

Table 10-A
CRIME VICTIMS' RIGHT TO ATTEND TRIAL
AND GENERAL RIGHT TO ATTEND PROCEEDINGS
Current through 1995

State/Statute	Proceedings	Person to Whom Right Applies	Limitation
Texas CCP art. 56.02	All public court proceedings relating to offense.	Victim, guardian of victim, or close relative of deceased victim.	Subject to approval of the judge.
Utah Rule of Evid. 615	Criminal trial.	Adult victim where prosecutor agrees with victim's request.	Court may exclude or excuse victim who becomes disruptive.
Utah Const. Art. 1, Sec. 28	Important criminal justice hearings.	Victim, in person or through lawful representative.	
Virginia § 19.2-11.1 § 19.2-265.01	Trial and related proceedings, including proceedings after appeal, where defendant's presence is permitted.	Victim, adult chosen by minor victim plus or in lieu of minor's parent or guardian; spouse or child of victim; spouse, parent or guardian of physically or mentally incapacitated or homicide victim (unless such other person is the perpetrator).	Court shall exclude any person the state or defendant identifies as a material witness.
Washington Const. Art. 2, Sec. 35	Trial and other court proceedings defendant has the right to attend.	Victim of felony, representative of deceased, incompetent, minor or unavailable victim.	Subject to judge's discretion and same rules of procedure that govern the defendant's rights.
Washington § 7.69.030	Trial.	Victim and survivors.	Only applies after victim testifies; victim has right to be scheduled to testify as early as possible.
Wisconsin Const. Art. 1, Sec. 9m	Court proceedings.	Victim.	Unless court finds sequestration is necessary to a fair trial.
Wyoming § 1-40-206	All trial proceedings which may be attended by defendant.	Victim (including family members of minor, incompetent, or homicide victim), victim's designee, or both.	

SECTION 11

THE RIGHT TO RESTITUTION FROM THE OFFENDER

INTRODUCTION

In 1982, the President's Task Force on Victims of Crime called for mandatory restitution in all criminal cases, unless the presiding judge could offer compelling reasons to the contrary.⁷⁰ As the Task Force noted, "The concept of personal accountability for the consequences of one's conduct, and the allied notion that the person who causes the damage should bear the cost, is at the heart of civil law. It should be no less true in criminal law."⁷¹

Studies indicate that restitution is one of the most significant factors influencing victims' satisfaction with the criminal justice process.⁷² Although restitution has always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable

degree of justice. Restitution laws every year are revised by legislatures, to broaden the scope of restitution, and to promote and improve its ordering and collection.

Restitution statutes are extensive. With the exception of the tables provided, concerning the mandatory nature of restitution orders and the civil enforcement of such orders, this summary will not attempt to discuss the laws of every state but will instead provide examples of statutory approaches.

LOSSES COVERED

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

⁷⁰ President's Task Force on Victims of Crime, *Final Report*, Dec. 1982, p. 18, 34, 72, 78-80.

⁷¹ *Id.*, p. 79.

⁷² See Smith, Barbara E., Robert C. Davis and Susan W. Hillenbrand, *Improving Enforcement of Court-Ordered Restitution: Executive Summary*. American Bar Association 1989, p. 5.

victims can seek restitution as well.⁷³ Definitions for compensable losses under state restitution laws have also expanded to include psychological treatment, sexual assault exams, HIV testing, occupational/rehabilitative therapy, lost profits, moving and meal expenses, case-related travel expenses, and burial expenses.

WHERE RESTITUTION REQUIRED

More states are making restitution mandatory as part of a criminal sentence. Aside from the direct benefits to crime victims and society that come from restoring the victims' financial losses, there is a growing recognition that holding offenders directly accountable to their victims as part of a sentence has a rehabilitative effect on the offenders themselves. In a recent revision to its restitution laws, the California Legislature noted that "Restitution is recognized to have a rehabilitative effect on criminals ... [and] Restitution is recognized as a deterrent to future criminality."⁷⁴

Currently, 29 states require a court to order restitution to the victim or to state on the record the reasons for failing to order restitution. In 12 of those states, restitution is mandatory, while in another seven, a court may only decline to order restitution where there are compelling or extraordinary circumstances. Six states couch their restitution statutes as mandatory (i.e., "the court shall order restitution") but allow such broad exceptions that the "right" to restitution is really in the discretion of the court. Those six states do not require the court to provide the reasons for failing to order restitution.

Some statutes are self-conflicting — part of the statute will set out an absolute requirement of restitution and another will provide for procedures where restitution is not ordered.⁷⁵ In a few states, restitution orders are optional; however, the court is required to make a finding of the victim's damages and to enter a civil judgment for that amount.⁷⁶ Similarly, in Minnesota, if the court grants only partial restitution, it is to set out the full amount of restitution that may be docketed as a civil judgment.⁷⁷ In Rhode Island, the judge is required to enter a judgment of civil liability at sentencing. The victim must then bring an action to prove damages.⁷⁸

⁷³ For example, in Michigan, domestic violence shelters and other victim service organizations are eligible for restitution. The law provides for the ordering of restitution "for the costs of services provided, to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution ... include, but are not limited to, shelter, food, clothing, and transportation." MICH. STAT. ANN. §§ 28.1287(766) and 28.1287(826). See also ALASKA STAT. § 12.55.045.

⁷⁴ California AB 3169 [Stats. 1994, c. 1106].

⁷⁵ As examples, see Minnesota and Utah, as reflected in Table 11-A.

⁷⁶ ARK. STAT. ANN. § 5-4-205.

⁷⁷ MINN. STAT. ANN. § 611.04.

⁷⁸ R.I. GEN. LAWS § 12-28-5. In addition, the court has discretion to order restitution. R.I. GEN. LAWS § 12-19-32.

Table 11-A shows the language of each state's restitution statute.

PROMOTING THE ORDERING OF RESTITUTION

One reason judges have given for failing to order restitution is a lack of information regarding the victim's loss or the offender's ability to pay. To facilitate the ordering of restitution, courts should have before them at the time of sentencing sufficient information to enable them to make a determination on the proper amount of a restitution order.

In many states, detailed information about the victim's financial loss is part of the victim impact statement. For example, in Idaho, the presentence report is to include "a full statement of economic loss suffered by the victim or victims of the defendant's crime."⁷⁹ In Montana, the court is to order the probation officer, restitution officer, or other designated person to include information about the victim's loss and defendant's ability pay in the presentence report.⁸⁰ The documentation regarding the victim's loss contained in the presentence report can be submitted by the victim or by the compensation board if the board has paid compensation to the victim. Probation officers and victim/witness coordinators should be trained to assist victims in compiling information about the financial harm caused by the offense. They should also receive training on the types of expenses recoverable.

⁷⁹ IDAHO CODE § 19-5304.

⁸⁰ MONT. CODE ANN. § 46-18-242.

One important step states can take to improve the ordering of restitution is to inform victims early in the process of the right to restitution from the offender. With that knowledge, a victim can begin accumulating receipts and other evidence of financial loss, and will be in a better position to prove damages at the time of sentencing.

Judges should also have information about the offender's financial assets or future ability to pay. This, too, can be part of the presentence report.⁸¹ California has some "county financial evaluation officers", and the law provides that in any court where such an officer is available, the court may order the offender to appear before such officer for a financial evaluation of the defendant's ability to pay restitution.⁸² Having this information at the time of sentencing can give judges the confidence to order restitution or to set a payment schedule.

Where courts fail to order restitution, states may consider the adoption of enforcement mechanisms. For example, Maryland permits a victim to appeal a judge's order regarding restitution.⁸³

⁸¹ See, for example, MICH. STAT. ANN. § 28.1287(766); MINN. STAT. ANN. § 611A.045; MONT. CODE ANN. § 46-18-242.

⁸² This provision appears to be restricted to cases where the defendant could be sentenced to probation. CAL. PENAL CODE § 1203.

⁸³ MD. CODE ANN. CJP § 12-303.1.

IMPROVING THE RATES OF COLLECTION

The availability of information regarding the offender's assets can also help in enforcing restitution orders. New Jersey's law provides that information from the presentence report concerning the defendant's financial resources is to be made available on request to the compensation board or to any officer authorized to collect payment on an assessment, restitution or fine.⁸⁴

In some states, the offender's financial resources are investigated following the entry of a restitution order. In Minnesota, an offender who is ordered to pay more than \$500 in restitution is to file an affidavit of financial disclosure with the correctional agency investigating the offender's financial resources.⁸⁵

For the efficient collection of restitution, orders and payments must be tracked, and those officials charged with enforcing restitution need the motivation to carry out their responsibilities. States are trying to improve both of these aspects through the imposition of administrative fees on restitution orders. For example, in Washington, individualized monthly billings and weekly notice of payments by offenders are provided by the county clerk to the department of corrections.⁸⁶

In Massachusetts, the victim has the right to

receive a copy of the schedule of restitution payments and the name and telephone number of the official responsible for supervising payments.⁸⁷ In Minnesota, the court administrator is to keep records of the amount of restitution ordered, any change made to the amount ordered, and the amount actually paid. The administrator is to forward the data collected to the state court administrator, who shall compile the data and make it available to the supreme court and legislature upon request.⁸⁸ New Jersey charges a \$1 transaction fee for restitution payments, to be used to develop computerized tracking.⁸⁹

It can also be important for an official to be charged with monitoring the offender's compliance and reporting any failure to pay restitution to the court. In New York, the administering entity is responsible for reporting to the court the offender's failure to comply with the restitution order.⁹⁰ In Michigan, where restitution is a condition of probation, the probation officer is to verify the offender's compliance with the restitution order at least 60 days prior to the end of the period of probation, and report to the court if the offender is not current in the payments.

The court may then take action to ensure compliance.⁹¹

⁸⁴ N.J. STAT. ANN. § 2C:44-6.

⁸⁵ MINN. STAT. ANN. § 611.04[1b]

⁸⁶ WASH. REV. CODE ANN. § 9.94A.145.

⁸⁷ MASS. GEN. LAWS ANN. ch. 258B, § 3(o).

⁸⁸ MINN. STAT. ANN. § 611A.04[2].

⁸⁹ N.J. STAT. ANN. §§ 2C:46-1, 1.1

⁹⁰ N.Y. CRIM. PROC. LAW § 420.10.

⁹¹ MICH. STAT. ANN.. §§ 28.1287(766), 28.1287(826).

Many officials charged with collection of restitution have complained that they are already overburdened, and cannot take on the additional task of monitoring and enforcing restitution without additional resources. To alleviate the additional costs such activities impose on those officials and agencies, states are beginning to charge offenders an administrative or collection fee, or to allow the use of private collection agencies. For example, Arizona charges an \$8 fee for offenders paying in installments.⁹² Wisconsin imposes a 5% surcharge on the offender for administrative costs related to collection of restitution, costs, attorneys fees, fines, and related costs.⁹³

In Alabama, district attorneys may establish a "restitution recovery division." The court may transfer any order to pay victims' restitution, court costs, or other court imposed payments which is in default to a D.A.'s restitution recovery division, and must at the time of transfer assess an additional collection fee of 30%. The D.A.'s office keeps 75% of that collection fee recovered, with the remaining 25% transferred to the court. The D.A. and court are also authorized to contract with private entities for collection.⁹⁴

A 1996 Kansas provision allows a victim to use an outside agency approved by the Attorney General to collect restitution. The agency may receive a fee not to exceed 33% of the amount collected. However, unlike

⁹² ARIZ. REV. STAT. ANN. § 12-116.

⁹³ WIS. STAT. ANN. § 973.20(11).

⁹⁴ ALA. CODE §§ 12-17-225 et seq.

Alabama, this fee is deducted from the amount collected and is not in addition to the restitution or other amounts ordered. Thus, the crime victim award is potentially reduced by one-third. Moreover, if the victim later brought a civil action and won, the amounts previously collected would be set off against the civil judgment, including that 1/3 of the restitution award which the victim never received. The decision whether to use the services of this outside collection agency to collect the restitution rests with the victim.⁹⁵

An increasing number of states require payment of restitution from prison work program wages.⁹⁶ Some states, such as Arizona and Kansas, require that any payment by the state to the defendant, including tax refunds, shall be paid first to satisfy restitution.⁹⁷ In New Mexico where a prisoner recovers from a claim against the state, any money paid to satisfy the claim is to be first applied to restitution orders.⁹⁸

Most states make restitution, where ordered by the court at sentencing, a condition of probation or parole. Offenders who willfully fail to pay risk being held in contempt,⁹⁹ or having their parole or probation extended or revoked. In some states, authorities are

⁹⁵ KS Chapter 195, Sec. 1 (1996).

⁹⁶ As examples, see ARIZ. REV. STAT. ANN. § 31-254; MONT. CODE ANN. § 46-18-244.

⁹⁷ ARIZ. REV. STAT. ANN. § 13-804(J); KAN. STAT. ANN. §§ 75-6201 et seq.

⁹⁸ N.M. STAT. ANN. § 41-4-16.1.

⁹⁹ IOWA CODE §§ 910.4, 910.5.

entitled to seize offenders' financial assets and property through garnishment and attachment to satisfy restitution orders. A majority of states allow restitution orders to be enforced as civil judgments at the time of the order or at the end of an offender's supervisory period. (See Table 11-B).

States are experimenting with other enforcement mechanisms, as well. In Massachusetts, the court may issue a default warrant for a defendant's failure to pay restitution, court costs, or other court ordered sums. The court is to order an additional assessment in those cases of \$50, which may be waived by the court on a finding of good cause. The person may be discharged on payment of the amount owed plus the assessment.¹⁰⁰ In Oregon, the court may report a default in the payment of restitution to the consumer reporting agency.¹⁰¹ In Florida, the court is to issue an income deduction order at the time it orders restitution.¹⁰² Alabama also provides for income withholding orders.¹⁰³ In Colorado, the department or agency supervising collection of restitution as part of a plea bargain or as a condition of probation or deferred sentence can impose a bad check charge.¹⁰⁴ In Delaware, the court may hold an offender's driver's license as security for

payment of restitution or other costs or assessments. If the offender fails to pay as ordered, the driver's license is suspended.¹⁰⁵

RESTITUTION WHERE THE VICTIM CAN'T BE FOUND

If the victim can't be located, restitution money can be applied to other designated funds, like the general victim services fund¹⁰⁶ or the general fund.¹⁰⁷ Rhode Island also provides that the interest that accrues by the restitution account is to be deposited in the violent crime indemnity fund.

CONCLUSION

Strengthening restitution statutes should be a priority for states. Judges must be encouraged to order full restitution; probation and parole officials must be motivated and have the means to administer restitution collection, and both must play an active role in enforcing orders when offenders refuse to pay.

The laws reflected in the following tables are current through 1995.

¹⁰⁰ MASS. GEN. LAWS ANN. ch. 276, §§ 31, 32.

¹⁰¹ OR. REV. STAT. § 161.685.

¹⁰² FLA. STAT. ANN. § 775.089.

¹⁰³ ALA. CODE § 15-18-143.

¹⁰⁴ COLO. REV. STAT. §§ 16-7-304, 16-7-404 and 16-11-204.5.

¹⁰⁵ DEL. CODE ANN. tit. 11, § 4104.

¹⁰⁶ NEB. REV. STAT. § 28.90.30.

¹⁰⁷ R.I. GEN. LAWS § 12-19-34.

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION IS MANDATORY – COURT MUST ORDER AND/OR VICTIM HAS A STRONG CONSTITUTIONAL RIGHT TO RESTITUTION	
State/Statute	Details of Provision
Alabama § 15-18-67	In every case in which the defendant is convicted of a crime resulting in pecuniary damages or loss to victim, court must hold restitution hearing and order restitution.
Alaska Const. Art. 2, Sec. 24	Victims have a constitutional "right to restitution from the accused," "as provided by law." Implementing legislation has not yet been adopted. (Previously existing statute gives court discretion to order restitution. § 12.55.045)
Arizona Const. Art. II, Sec. 21 § 13-603	Victims have constitutional right "to receive prompt restitution from the person or persons convicted of the criminal conduct." "If person is convicted of an offense, the court shall require the convicted person to make restitution...in the full amount of the economic loss."
California Const. Art I, Sec. 28 PC §§ 1202.4, 1203.04	Constitution provides that "restitution shall be ordered from convicted offender in every case." Statutes also require court to order restitution.
Delaware tit. 11 § 4204	"Wherever a victim of crime suffers a monetary loss as a result of the defendant's criminal conduct, the sentencing court shall impose as a special condition of the sentence that the defendant make payment of restitution to the victim in such amount as to make the victim whole, insofar as possible, for the loss sustained."

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION IS MANDATORY - COURT MUST ORDER AND/OR VICTIM HAS A STRONG CONSTITUTIONAL RIGHT TO RESTITUTION	
State/Statute	Details of Provision
Florida § 775.089 § 921.187	<p>"[I]n addition to any punishment, the court shall order the defendant to make restitution to the victim for: damage or loss caused directly or indirectly by the defendant's offense; and damage or loss related to the defendant's criminal episode, unless it finds clear and compelling reasons not to order such restitution... If the court does not order restitution, or orders restitution of only a portion of the damages ... it shall state on the record in detail the reasons therefore."</p> <p>"The court shall require an offender to make restitution subject to section 775.089, unless the court finds clear and compelling reasons not to order restitution as provided in that section."</p>
Idaho Const. Art. 1, Sec. 22 § 19-5304	<p>Victims have a constitutional right "to restitution, as provided by law."</p> <p>"Unless the court determines that an order of restitution would be inappropriate or unworkable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim." The court must state its reasons on the record if it fails to order restitution. The immediate inability of the defendant to pay shall not be, in and of itself, a reason to not order restitution.</p>
Iowa § 910.2	<p>"In all criminal cases except simple misdemeanors...the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities.</p>

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION IS MANDATORY – COURT MUST ORDER AND/OR VICTIM HAS A STRONG CONSTITUTIONAL RIGHT TO RESTITUTION	
State/Statute	Details of Provision
Kansas § 21-4603d § 21-4610	<p>For crimes committed on or after July 1, 1993, in addition to or in lieu of other penalties, "the court shall order the defendant to pay restitution ... unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor."</p> <p>Also, restitution is a mandatory condition of probation, suspension of sentence or assignment to a community correctional services program, unless the court finds compelling circumstance which would render a plan of restitution unworkable. [See also Kansas code § 8-1019, below.]</p>
Missouri Const. Art. I, Sec. 32 § 595.209	<p>Crime victims have the constitutional "right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law" as provided by law.</p> <p>The statute provided victims are to be informed of the right to restitution.</p>
New Mexico Const. Art. 2, Sec. 24 § 31-26-4	<p>Constitution provides victims have "the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury" as provided by law. Statute provides the same.</p>
Pennsylvania § 18-1106	<p>"The court shall order full restitution ... regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss."</p>
South Carolina § 16-3-1530	<p>Mandatory unless court finds compelling and substantial reasons not to order (need not state reasons on record).</p>

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.
Current through 1995*

RESTITUTION IS MANDATORY - COURT MUST ORDER AND/OR VICTIM HAS A STRONG CONSTITUTIONAL RIGHT TO RESTITUTION	
State/Statute	Details of Provision
* Texas Const. Art. 1, Sec. 30	Victims have a constitutional "right to restitution" on request. The statute conflicts with this unambiguous constitutional right, stating that court shall give its reasons for failing to order restitution, CCP Art. 42.037.
Virginia § 19.2-305.1	Convicted offenders "shall make at least partial restitution for any property damage or loss caused by the crime or for actual medical expenses incurred by the victims as a result of the crime."
Washington § 9.94A.142	"Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record." Restitution shall also be ordered if any offender agrees to pay restitution as part of a plea agreement to a victim of an offense which is not prosecuted pursuant to a plea agreement.
Wisconsin Const. Art. I, Sec. 9m § 973.20	Under the constitution, the legislature must create a statute to provide a right to restitution. "When imposing sentence or ordering probation for any crime, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim ... unless the court finds substantial reason not to do so and states the reason on the record."

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION MANDATORY UNLESS COURT PROVIDES REASONS ON RECORD FOR FAILURE TO ORDER RESTITUTION - DOES NOT REQUIRE "EXTRAORDINARY AND COMPELLING" CIRCUMSTANCES	
State/Statute	Details of Provision
Maine tit. 17-A § 1323	"The Court Shall, Whenever Practicable, Inquire of a Prosecutor, Police Officer of Victim with Respect to the Extent of the Victim's Financial Loss, and Shall Order Restitution Where Appropriate." If the Court Does Not Impose Restitution, it Shall State in Open Court or in Writing the Reasons for Not Imposing Restitution.
Michigan Const. Art. I, Sec. 24 § 28.1287(766) § 28.1287(826)	Victims have a constitutional right to restitution as provided by law. "If the court does not order restitution, or orders only partial restitution ... the court shall state on the record the reasons for that action."
* Minnesota § 611.04	Statute internally conflicting - "a victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding" and "the court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented."
New York PL § 60.27	Where the district attorney advises the court that the victim seeks restitution and presents information about the victim's losses or damage and the amount of restitution sought, "the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution" or reparation to the victim. If the court does not order restitution or reparation, the court shall clearly states its reasons on the record.

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION MANDATORY UNLESS COURT PROVIDES REASONS ON RECORD FOR FAILURE TO ORDER RESTITUTION - DOES NOT REQUIRE "EXTRAORDINARY AND COMPELLING" CIRCUMSTANCES	
State/Statute	Details of Provision
North Dakota § 12.1-32-08	"The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution."
South Dakota § 23A-28C-1	Victim has a right to restitution on request, "whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it."
West Virginia § 61-11A-4	"The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical as set forth in this article." The court shall state on the record its reasons for failing to order restitution.

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION "MANDATORY," WITH VERY BROAD EXCEPTIONS	
State/Statute	Details of Provision
Connecticut § 53a-28	Court shall order restitution "if it determines that financial restitution is appropriate." The statute lists some factors the court shall consider in making that determination, but includes "other circumstances that the court determines makes [sic] restitution appropriate or inappropriate."
*Montana § 46-18-201 § 46-18-241	Statute (46-18-201) internally conflicting. In addition to other penalties, "if the court finds that the victim has sustained a pecuniary loss, the court shall require payment of restitution to the victim ...if the court determines that the defendant is unable to pay restitution, then it may impose ... community service." "A sentencing court shall require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense" but statute also provides "if the court finds that, because of circumstances beyond the offender's control, the offender is not and will not be able to pay any restitution during the period of state supervision, the court may order the offender to perform community service commensurate with the amount of restitution that would have been imposed."
Nevada § 176.033	"If a sentence of imprisonment is required or permitted by statute, the court shall ... if restitution is appropriate, set an amount of restitution for each victim." Mandatory if appropriate or if practicable.
New Jersey § 2C:44-2	"The court shall sentence a defendant to pay restitution in addition to a sentence of imprisonment or probation that may be imposed" if the victim suffered a loss and "the defendant is able to pay or, given a fair opportunity, will be able to pay restitution."

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION "MANDATORY," WITH VERY BROAD EXCEPTIONS	
State/Statute	Details of Provision
Oklahoma tit. 22 § 991a-10	"The court shall at the time of sentencing ... provide restitution to the victim ... if the defendant agrees to pay such restitution or, in the opinion of the court, he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family."
Wyoming § 7-9-103	"The court shall require restitution by a defendant if it determines [or] finds that the defendant has or will have an ability to pay or that a reasonable probability exists that the defendant will have an ability to pay."

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.
Current through 1995*

RESTITUTION NOT MANDATORY, BUT COURT MUST PROVIDE REASONS ON RECORD FOR FAILURE TO ORDER RESTITUTION	
State/Statute	Details of Provision
Maryland Art. 27 § 640	On conviction, the court may order restitution. "A victim is presumed to have a right to restitution ... if" the victim or the state requests restitution, the court is presented with evidence of the victim's loss, and the defendant has the ability to pay. A court need not order restitution if it finds good cause to establish extenuating circumstances as to why an order of restitution is inappropriate. If restitution was requested and the court fails to order it, it must state its reasons on the record.
Mississippi § 99-37-3	The court may order restitution in addition to any other sentence. "If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination."

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

RESTITUTION NOT MANDATORY, BUT COURT MUST PROVIDE REASONS ON RECORD FOR FAILURE TO ORDER RESTITUTION	
State/Statute	Details of Provision
Utah § 76-3-201	<p>"When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, that court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement." Statute goes on to list factors the court is to consider in determining whether restitution is "appropriate." "If the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record." The statute also provides that "the court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim."</p>
Vermont tit. 13 § 7043	<p>"Restitution shall be considered in every case in which a victim of a crime has suffered a material loss of has incurred medical expenses." "When restitution is not ordered, the court shall set forth on the record its reasons for not ordering restitution."</p>

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

ORDER OF RESTITUTION IS IN COURT'S DISCRETION	
State/Statute	Details of Provision
Arkansas § 5-4-104 § 5-4-205	<p>The trial court may sentence a person convicted of an offense other than capital murder or treason to make restitution.</p> <p>In addition, the sentencing authority shall make a determination of actual economic loss caused by the crime - the amount may be decided by agreement between a defendant and the victim represented by the prosecutor. The court shall enter a judgment against the defendant for this amount.</p>
Colorado § 24-4.1-302.5	<p>Victims of crime have "the right to have the court determine the amount, if any, of restitution to be paid to a victim by any person convicted of a crime against such victim."</p>
District of Columbia §16-711	<p>In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.</p>
Georgia § 17-14-3	<p>Authorizes the judge of any court of competent jurisdiction, the State board of pardons and paroles, and the department of corrections to order an adult offender to make restitution as a condition of any relief ordered.</p>
Hawaii § 706-605	<p>Court may sentence a convicted defendant to one or more listed dispositions, including "to make restitution in an amount the defendant can afford to pay."</p>
Illinois Const. Art. I, Sec. 8.1 703 ILCS § 5/5-5-6	<p>Victims have a constitutional right to restitution "as provided by law." Statute makes restitution mandatory only for violent crimes against the elderly; for all other victims, the court is to determine whether restitution is appropriate.</p>

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

ORDER OF RESTITUTION IS IN COURT'S DISCRETION	
State/Statute	Details of Provision
Indiana § 35-50-5-3	In sentencing a person for a felony or misdemeanor, the court may order the person to make restitution to the victim.
Kansas § 8-1019	Sentence for drug or alcohol-related vehicular offense resulting in personal injury, death, or property damage may include restitution as a condition of probation or parole.
Kentucky	Kentucky appears to have no statute authorizing the ordering of restitution in criminal cases except as a condition of probation or conditional discharge (§533.030), home incarceration (§532.220), community corrections (§197.700 et seq.), or for damage or loss of property (§431.200).
Louisiana	Louisiana appears to have no statute authorizing the ordering of restitution except as a condition of probation or parole. Condition of parole, mandatory for property loss/damage, discretionary for other loss. (15 R.S. 574.4) Restitution to victim or compensation program mandatory as condition of probation - appears to be mandatory requirement of parole as well. "If the defendant is found guilty and placed on probation, the court or parole board shall, as a condition of probation or parole, require the defendant to pay restitution ..." (46 R.S. 1844(M))
Massachusetts ch. 258B § 3	Victims have the right "to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim's losses."

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

ORDER OF RESTITUTION IS IN COURT'S DISCRETION	
State/Statute	Details of Provision
Nebraska § 29-2280	"A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted." Also, with defendant's agreement, to victims of uncharged offense or dismissed offense pursuant to plea bargain.
New Hampshire § 21-M:8-k § 651:63	Victims have the "right to restitution, as granted under RSA 651:62-67." "An offender may be sentenced to make restitution."
North Carolina § 15A-1021 § 15B-24	"Pursuant to a court's power to require restitution as a condition of probation, parole or work release privileges, a court may require a defendant to pay restitution to a victim." 15A-1021, restitution may be part of a plea bargain.
Ohio § 2929.11 § 2929.21	Penalties for felonies (except murder or aggravated murder) or misdemeanors may include restitution.
Oregon §137.106	"In addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim."
Rhode Island Const. Art. 1, Sec. 23 § 12-28-5	Constitution states that victims are "entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime." The statute provides that the court enters a judgment of civil liability at sentencing, and victim then brings an action for damages. § 12-19-32 Also, the court has discretion to order restitution.

Table 11-A

RESTITUTION: NATURE OF RIGHT

** States so marked have conflicting statutory language and have been categorized according to the best judgment of project staff.*

Current through 1995

ORDER OF RESTITUTION IS IN COURT'S DISCRETION	
State/Statute	Details of Provision
Tennessee § 39-11-118 § 40-35-104 § 40-35-304	"It is a part of the punishment for any offense committed in this state that the person committing such offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) and 40-35-304."

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Alabama § 12-17-225.6	Restitution orders shall be considered civil judgments which can be recorded and enforced in the manner provided by law.	
Alabama § 15-8-144	Attachment of assets.	
Alabama § 15-18-78	Enforceable as civil judgment.	
Alabama § 15-18-143	Garnishment of wages, including for accumulated arrearage.	
Alabama Rule 26.11	Garnishment of wages.	
Alaska § 09.38.065	Restitution debt enforceable against exempt property.	
Alaska § 12.55.025	Enforceable as a lien.	
Alaska § 12.55.051	Enforceable as civil judgment.	
Arkansas § 5-4-205	Enforceable as civil money judgment.	
Arizona § 12-1571	Writ of garnishment issued by clerk or magistrate.	
Arizona § 13-804	Restitution order creates restitution lien in favor of victim.	

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Arizona § 13-805	Court retains jurisdiction over payments with judgments enforceable and renewable as civil judgment.	
Arizona § 13-806	Enforceable as lien against real, personal or other identified property.	
Arizona § 13-810	Court may enter a garnishment order to collect restitution.	✓
Arizona § 13-812	Court may issue writ of criminal garnishment for any restitution.	✓
California Govt. § 13967.2	Court to enter income deduction order at time of restitution order (statute refers to restitution ordered pursuant to 2 former code sections, no longer in force on issue of restitution).	
California PC § 1203	Restitution ordered as condition of probation still owing at end of probationary period enforceable as civil judgment.	✓
California PC § 1214	Restitution ordered (if defendant received certain due process rights) is civil judgment enforceable as any money judgment; victim given certified copy of order on request.	
Colorado § 16-11-101.5	Enforceable as civil judgment; non-dischargeable in bankruptcy.	
Colorado § 17-24-119	Garnishment of percentage of prisoner's work release wages.	

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Colorado § 18-6.5-106	Enforcement of certain restitution orders as civil judgment.	
Delaware tit. 11 § 4101	Transfer of order to civil docket.	✓
Delaware tit. 11 § 4104	Assignment of certain periodic sum; i.e., up to 1/3 of total earnings.	
Florida § 775.089	Enforceable as civil judgment.	
	Income deduction order.	
Georgia § 17-14-13	Enforceable by execution as a civil judgment.	
Georgia § 42-8-34.2	Arrearage of restitution ordered as condition of probation collectable as civil judgment.	✓
Hawaii § 353-22	Garnishment, levy or attachment.	
Hawaii § 706-644	Execution may be levied for past due amounts.	✓
Idaho § 19-5305	45 days after entry of order, recorded as civil judgment and collectable as civil judgment.	
Illinois ch. 730 § 5/5-5-6	Attachment and sale of property.	
	Order is a civil lien.	
Illinois ch. 735 § 5/4-101	Attachment against property of certain serious offenders.	

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Indiana § 35-50-5-3	Same effect as a civil judgment.	
Iowa § 910.4	Court shall enter civil judgment for restitution owing on expiration of probation.	
Iowa § 910.5	Court shall enter civil judgment for restitution owing on expiration of sentence or parole.	
Iowa § 910.7A	Enforceable as civil judgment, attaches to property, enforceable and expires as liens from civil judgment.	
Kansas §§ 60-4301 et seq.	Restitution judgment is to be recorded in same manner as civil judgment; enforceable as civil judgment.	
Kentucky § 431.200	Petition for enforcement by execution or other process (this relates only to property offenses).	
Louisiana CCrP Art. 895.1	An order to pay restitution as a condition of probation is a civil judgment in favor of the person to whom restitution is owed, if the defendant received certain due process rights. The judgment may be enforced in the same manner as a civil judgment.	
Maryland Art. 27 § 637	Court-ordered execution against property or income deduction from work release earnings.	
Maryland Art. 27 § 640	Recordation in civil judgment index for enforcement as a civil money judgment - automatic for restitution ordered in circuit court, victim must instigation for orders issued in district court.	

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Maryland CJP § 3-829	Enforceable as a monetary judgment.	
Michigan § 3.372 § 28.1073(16) § 28.1287(766) § 28.1287(826)	Enforceable as a civil judgment by the victim or prosecutor.	
Minnesota § 609.532	Freezing of bank accounts.	
Minnesota § 611A.04	Enforceable as civil judgment.	
Mississippi § 99-37-13	collection by any means provided	✓
Missouri Const. Art. I, Sec. 32	Enforceable as civil judgment.	
Missouri § 546.630	Enforceable by collection or other legal means at court's discretion.	
Missouri § 595.209	Enforceable as civil judgment.	
Montana § 46-18-244	Court may order forfeiture and sale of offender's assets.	
Montana § 46-18-247	Order to pay restitution constitutes judgment in favor of state; on default, court may order restitution to be collected by any method authorized for enforcement of other judgments.	✓

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Nebraska § 29-2286	Enforceable as civil judgment.	
Nevada § 176.225 § 176.245	Unpaid restitution at end of probation period becomes civil liability.	
Nevada § 213.126	Discretionary assignment of wages by board of pardons and paroles.	
New Jersey § 2C:46-1	Restitution order entered as a civil judgment.	
New Jersey § 2C:46-2	Upon default, enforceable as a civil judgment, including through levying of execution.	✓
New York § CPL 420.10	Collection as civil judgment.	
North Dakota § 12.1-32-08	Enforceable as civil judgment.	
Oklahoma tit. 22 § 991a-10	Seizure and sale of real or personal property.	
Oregon § 161.685	On default, collection as civil judgment.	✓
Rhode Island § 12-19-34	State may bring civil action to place lien on personal or real property or garnish wages of defendant ordered to pay restitution.	
Rhode Island § 12-28-5.1	Civil judgment automatically entered for amount of restitution; on default, enforceable as civil judgment, including costs, interest and fees.	

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
South Carolina § 16-3-1270	Enforceable as a lien against real and personal property.	
South Carolina § 17-25-323	On default in payment on probation or parole, court may enter judgment, enforceable as a civil judgment.	✓
South Dakota § 23A-27-25.1	Assignment of wages.	
South Dakota § 23A-27-25.6 § 23A-28-1	Enforceable as civil judgment.	
Texas CCP art. 42.21	The victim has a restitution lien to secure the amount of restitution, which extends to real, or tangible or intangible personal property including motor vehicles; victim may foreclose on lien after defendant fails to timely make a payment under a restitution schedule.	
CCP art. 42.037	Order of restitution may be enforced by victim or state as a civil judgment.	
Utah § 76-3-201	Complete restitution order entered the civil judgment docket; constitutes a lien; order enforceable under the rules of civil procedure by the victim. If the defendant fails to obey court order for payment or restitution and victim pursues collection by civil process, victim entitled to recover reasonable attorneys fees. Interest accrues on amount ordered from time of sentencing.	
Utah § 76-3-201.1	Upon default, collection by any legal means.	✓

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Utah § 77-18-1	Enforceable as civil judgment.	
Utah § 77-18-6	Acts as a lien enforceable as a civil judgment.	
Utah § 77-27-6	Restitution owing upon termination of parole or expiration of sentence entered on judgment docket, enforceable as civil lien.	
Vermont tit. 13 § 7043	Enforced in the manner of civil judgments.	
Virginia § 19.2-305.2	Restitution order enforceable as civil judgment.	
Virginia § 19.2-349	The prosecuting attorney shall bring proceedings for collection and satisfaction of restitution, or may contract with private attorneys or entities for collection.	
Washington § 9.94A.142	Restitution may be enforced in the same manner as a civil judgment by the victim or the state.	
Washington § 9.94A.145	Restitution order for felony offense enforceable as civil judgment for 10 year period after sentence or after release from total confinement, whichever is longer; upon non-payment for more than 30 days, assignment of wages by victim or department.	
Washington § 9.94A.2001	Upon non-payment for more than 30 days, assignment of wages by victim or department.	✓
Washington § 9.94A.200010	Upon non-payment for more than 30 days, issuance of payroll deduction by department.	
Washington § 9.94A.200030	Discretionary issuance of order to attach property by department.	

Table 11-B

**RESTITUTION ORDERS:
ENFORCEMENT AS CIVIL JUDGMENT
Current through 1995**

State/Statute	Details	Prior Default Required
Washington § 9.94A.200040	Freezing of bank accounts.	
West Virginia § 61-11A-4	An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.	
Wisconsin § 973.09	Enforceable as civil judgment on expiration of probation.	
Wisconsin § 973.20	Enforcement as civil judgment upon termination of probation or parole, or if no probation or parole ordered.	
Wyoming § 7-9-103	Issuance of execution against assets, including wages.	
Wyoming § 7-9-114	Enforceable as a civil judgment.	

SECTION 12

THE RIGHT TO PRIVACY

INTRODUCTION

Privacy concerns are an issue for crime victims throughout the criminal justice process. Fear of harassment or retaliation from offenders who may learn their names and find out where they live through public records or court testimony deters victims from seeking justice. Many victims, not wanting the world to know what has happened to them, refuse to report crimes to avoid intrusion into their lives by the media.¹⁰⁸ Victims who want to be notified by criminal justice agencies of releases and proceedings may be reluctant to provide the contact information necessary to request notice. Anxiety over who might have access to compensation files, pre-sentence reports, and victim impact statements may result in restrained responses and guarded participation by victims.

¹⁰⁸ In a National Victim Center study published in 1992, 50% of the rape victims surveyed reported that they would be a lot more likely to report the crime if there was a law prohibiting the news media from disclosing the name and address of a rape victim. Another 16% indicated that they would be somewhat more likely to report. *Rape in America: A Report to the Nation*, National Victim Center, (1992), Figure 8, page 6.

In general, statutory protections of a victim's right to privacy most often take the following forms: 1) a prohibition against compelling testimony relating to personal information in open court; 2) exclusion or limited disclosure of victim identifying information in criminal justice records, including law enforcement reports, court materials and prosecution documents; and 3) protection from release of addresses and/or phone numbers provided for notice purposes. The specific elements of victim-related information most often protected from disclosure include address, phone number, place of employment and identity or name. Some states extend this protection to witnesses or the immediate family members of the victim. The only privacy laws that are focused on in this section and reflected in Table 12-A are those that apply to all crime victims. However, it is important to note that many states have passed laws designed to address the unique concerns of special victim populations such as children, sexual assault victims, victims of domestic violence or stalking, and the elderly and other vulnerable adults.

GENERAL PRIVACY PROVISIONS

In addition to the statutory privacy protection afforded to crime victims in a majority of states, a few states view a victim's need for privacy as important enough to deserve

constitutional protection. Crime victims in Idaho, Illinois, Michigan, Texas, and Wisconsin have been given a constitutional right to be treated with respect for their privacy throughout the criminal justice process. Several other states, such as Kansas, while not elevating the right to a constitutional level, also provide victims with a general right to privacy by statute.

COURT TESTIMONY

Coming face to face with the individual who criminally assaulted, raped or terrorized them is traumatic enough for victims who are called to testify during the prosecution of a criminal case. The fear of retaliation for taking the stand is compounded when a victim is forced to provide the offender with the tools necessary to harass and intimidate, by being compelled to state his or her name, address and phone number in open court. Fortunately, a number of states have recognized the need to limit disclosure of a victim's personal information during the course of a trial or other judicial proceeding in order to protect the safety of that victim.

While some states have imposed a general prohibition against testimony which might reveal the victim's address, phone number, place of employment or other protected information, in other states, including Alabama, Arizona, Indiana, Michigan, Ohio and Virginia, the limitation is contingent on a finding by the court of "reasonable apprehension" by the victim of acts or threats of physical violence or intimidation against him- or herself and/or family members.

Several states offer exceptions to the general prohibition against testimony about the

victim's personal information in open court. In Arizona, North Dakota and Utah, the release of confidential information may be permitted if the victim consents or the court specifically orders disclosure. Disclosure of confidential victim information may be required in Maryland and Minnesota if the court determines that the information is relevant evidence in the case. Maryland leaves the question of disclosure to the discretion of the court, authorizing the court to prohibit such testimony unless it determines the testimony is necessary. Necessity also provides a basis for requiring a victim to testify about confidential information in Delaware and Alaska; however, efforts to minimize the risk of harm to the victim or witness must be undertaken in Alaska. An address may also be disclosed in Alaska if needed to establish the site of the crime. In Virginia, on the other hand, the court may prohibit testimony of the victim's address, business address and phone number if it determines that such information is **not** relevant to the case.

In some states, the victim or prosecutor must request a prohibition against compelling the victim to testify about personal information. Prosecutors in Alabama, Michigan and Ohio must petition the court to order non-disclosure while victims must make the formal request that personal information be kept confidential in Colorado, Massachusetts, Montana and Oregon. If the court approves a victim's request for confidentiality in Massachusetts, not only does the victim not have to testify as to the specified personal information, but law enforcement officers, the prosecutor, the defendant's attorney, parole and probation officials, and corrections department personnel are also prohibited from disclosing such information

in open court. In Oklahoma, either the prosecutor or the victim can submit such a request. Laws in Indiana, Michigan and Utah specifically provide for a private viewing of the information by the judge to determine whether disclosure is appropriate.

While many of the laws which dictate the media's handling of victim information are applicable only in sexual assault cases or cases involving a minor victim, a court rule in Maryland provides victims in that state with some control over the media by requiring that the broadcasting or televising of a victim's testimony be terminated or limited upon his or her request or objection.¹⁰⁹

CRIMINAL JUSTICE RECORDS

Not only do crime victims find themselves thrust into navigating a criminal justice system that they know little about, they are often forced to reveal personal insights about themselves, their family members, and their lives to a different stranger at each phase of the process. Victims who feel that they are not being treated with respect for their privacy may be less likely to cooperate with the investigation and prosecution of their cases. Those with legitimate safety concerns may be reluctant to reveal names and addresses for fear of who might have access to such information if provided. If they can be offered statutory assurances that the information they provide will not be readily available to the defendant and members of the general public in court records and law enforcement documents, crime victims may be more willing to participate more fully with the criminal justice officials they encounter.

¹⁰⁹ MD. R. CT. ADMIN.1209.

In many states, criminal history records and transcripts of court proceedings are considered public records. Some of the same elements applied in statutes prohibiting testimony about confidential information are found in legislation excluding such information about victims in criminal justice records. Most commonly, privacy protection is imposed in conjunction with records maintained by the court, law enforcement, the prosecutor, corrections department, or the parole board. At least two states have laws which generally protect confidential information: Alaska, which withholds documents relating to a crime in the possession of a public employee from public inspection unless the victim's address and phone number have been deleted; and Florida, which exempts criminal intelligence and investigative information documents containing the victim's identity, home or employment phone number and address, and personal assets in the custody of any agency which regularly receives information from or about victims from examination and copying.

The use of confidential information is limited in court records in Alabama, Alaska, Delaware, Michigan, Ohio and Texas. Similar limitations also apply in Oklahoma, if the exclusion of the information is necessary to protect the victim or the victim's immediate family from harassment or physical harm. Alabama's law simply states that confidential victim information in court records is not considered to be of public record. Inspection of court records in Alaska may be permitted if the victim consents or if his or her name is replaced with initials. A written waiver of confidentiality by the victim authorizes the release of personal information in Delaware. Michigan provides protection by exempting disclosure pursuant to that state's freedom of information act. The victim's address may be maintained in

the court's file in Ohio and Delaware only if it is found in the trial transcript or if it is the site of the crime.

Confidential personal information pertaining to the victim of the crime contained in law enforcement records is similarly protected in Alaska, Delaware, Michigan, Minnesota, Oklahoma, Oregon and Virginia. Non-disclosure must be requested by the victim in at least Oklahoma, Oregon and Virginia. Victims in Minnesota also have the right to request law enforcement to withhold public access to confidential information. In that state, as in Oklahoma, the information will be withheld if the victim's safety is at risk. While the public has a right of access to at least some law enforcement records in both Florida and Georgia, it is unlawful for any person to inspect or copy such records for the purpose of obtaining the name, address and other information concerning the victim for the purpose of commercial solicitation. Anyone violating this provision, at least in Georgia, is guilty of a misdemeanor.

Disclosure of confidential information contained in prosecution records is limited in Alaska, Arizona, Delaware, Maine, Michigan and Virginia. Victims in Arizona have the right to require the prosecutor to withhold confidential information during discovery and proceedings, partly to discourage intimidation of the victim by the offender prior to trial. In addition, while the information may be released to defense counsel, it may not be made available to the defendant. Alaska also limits release to the defendant's attorney in most cases, however, the information may be released to a defendant who is self-represented unless he or she poses a "continuing threat" to the victim. Medical records of victims contained

in prosecution documents in Maine are treated as confidential information. Disclosure is permitted to investigating law enforcement officers and special experts designated to assist in a criminal proceeding or investigation. Other general exceptions to non-disclosure found in various states include court determination of good cause in support of the release of information, necessity of disclosure for law enforcement purposes, and statement of a victim's address to identify the site of the crime.

Maintaining the confidentiality of victim information in the custody of parole boards and corrections departments may present some unique considerations. Particularly horrifying are the stories of inmates who have accessed such records from inside the institution where they are incarcerated enabling them to re-terrorize their victims, shattering any peace of mind gained from the knowledge that their offender is confined. The address of a victim or the victim's immediate family contained in parole board records in Arizona is confidential unless written consent of the victim or family member is given. Parole board records pertaining to the victim are to be kept separately in Pennsylvania where the victim's address is confidential; however, statements or testimony concerning the nature and extent of harm suffered or the continuing effect of the crime on the victim are subject to release to the defendant unless the victim requests the information be withheld on the basis that release would endanger the safety of the person making the statement.

Victims in Colorado and Virginia who wish for personal information to be excluded from corrections records must specifically request confidentiality. Correspondence to

correctional officers or staff from a victim is confidential in Iowa. A victim there may institute a civil action to restrain the release of confidential information or for damages resulting from unauthorized disclosure, and if successful, may recover actual damages, court costs and attorney's fees.

VICTIM IMPACT INFORMATION

With more and more states providing victims with the opportunity to share the impact that the crime that was committed against them has had on them physically, emotionally and financially, many victims are choosing to be heard even if it means that personal information will be made available to the offender. While a number of states place restrictions on releasing information about the victim to the defendant, provisions for allowing access to such information by the offender's attorney may be available. However, the defense attorney often may be prohibited from sharing that information with his or her client. There is one area where such a restriction appears to be the exception instead of the rule. In those states which permit the inclusion of a victim impact statement or victim impact related information in the presentence report, at least nineteen states allow the defendant to review the report, including the victim impact information. In addition, a defendant in California, Colorado, New York or Wisconsin who is self-represented may be granted access as may Kansas offenders who obtain court approval. The District of Columbia and at least four other states permit the defendant's attorney access.¹¹⁰

¹¹⁰ Illinois, Iowa, Maryland and Minnesota.

The states vary as to what protection, if any, is provided for information contained within the report. Idaho, for example, seals the presentence report after it is used for sentencing purposes. The report may only be opened thereafter upon a court order. In addition, while full disclosure is the general rule, the court may choose to withhold portions of the report. Indiana excludes the victim's phone number, address and place of employment from the personal information included in the victim impact statement. Michigan victims must request that their impact statement be included in the presentence report. The court may exempt from disclosure any portion of the report containing sources of information obtained on the promise of confidentiality. In Mississippi, although copies of the presentence report containing a victim impact statement shall be made available to the defendant, defense attorney and prosecutor 48 hours prior to sentencing, all copies must be returned to the court immediately after the sentence is imposed. Presentence reports in Montana are maintained as part of the court record but are not available for public inspection.

Victim impact information is also often considered in determining an offender's parole eligibility. While confidentiality provisions relating to victim impact statements in a parole setting is not a category that has been analyzed in Table 12-A, some examples are noted here. An Iowa victim's opinion concerning an offender's parole release may be included in parole board records, and the defendant in the case informed of the substance of the victim's opinion. Likewise, a victim impact statement or recommendation submitted to Maryland's parole commission shall be available to the defendant; however, the

victim's address and phone number shall be deleted prior to examination by the defendant or his or her representative. A victim impact statement submitted to the parole board in Pennsylvania is not confidential and is subject to release to the defendant; however, a victim, or the victim's family member, can request that confidential information be withheld if release of that information would endanger the safety of the individual making the statement.

COMPENSATION RECORDS¹¹¹

Another time when many crime victims may be confronted with confidentiality concerns is during the compensation application process. Since a good amount of information may be necessary for the determination of eligibility for an award of compensation, it is very likely that information of a personal nature will have to be disclosed. Victims may often find themselves in a quandary as to whether to pursue the financial assistance they need even if it results in an invasion of their privacy.

Many states authorize the record of a compensation proceeding to be made public; however, any records or reports submitted in support of a victim's claim that are protected by other confidentiality laws continue to be protected once in the custody of the compensation program. These states include

¹¹¹ For a more complete, though somewhat outdated, discussion of protecting confidentiality in the context of compensation, see "Protecting Confidentiality," *Crime Victim Compensation Quarterly*, No. 1, 1991.

Florida, Kentucky, Maryland, Michigan, New York, Pennsylvania and Virginia, and the District of Columbia. Louisiana only extends this protection to medical and law enforcement records which have been previously designated as confidential by another statute.

Idaho and Missouri permit all compensation records to be open to the public, but specify exceptions to that general rule. Two states, however, waive restrictions that generally apply. North Carolina does not recognize certain privileges if the information in question is pertinent to the compensation claim. Confidentiality of juvenile records pertaining to a victim's claim is not available in Montana. West Virginia's compensation provisions do not permit the filing of information or documents which are the subject of a protective order. At the other end of the spectrum, in Washington, all information contained in claim files and records of victims is confidential.

NOTICE INFORMATION

One of the most empowering rights that can be granted to a crime victim is the right to notice. Victims who are notified of their legal rights and remedies can become active players instead of feeling manipulated by the system. If they are made aware that a hearing has been scheduled, they can choose or decline to attend. Knowing that the offender in the case will be released enables victims to act to protect themselves. But for such notice to occur, the victim is responsible for providing the means by which such notification can be accomplished. In other words, victims who desire to be notified must generally provide a name and

address, and sometimes a phone number or other related information to the authority providing the notice. Most importantly, this information must be kept current if notice provisions are to be implemented effectively.

Realizing that victims might be fearful that their personal information might fall into the hands of the offender, some states have incorporated confidentiality declarations into their notice statutes. While Georgia, Idaho, and Minnesota have general provisions that information provided for notification purposes is confidential, most states have taken two approaches to protect victims' addresses, phone numbers and other specified information: 1) information is classified as confidential information on the basis of who in the criminal justice system is in control of the information, usually law enforcement officers, prosecutors, corrections department officials, or parole board members; or 2) classification is dependent on the intended purpose of the notice, for example, notice of release, parole or change of the offender's status.

Laws in the following states fall into the first category. A victim's registration for notification is to be maintained in a confidential file in Iowa. The confidential information which includes the victim's address and phone number is available only to those required to provide notice under Iowa law. Confidential information maintained pursuant to a request for notice by the sheriff's office or corrections department in Michigan is exempt from disclosure under Michigan's freedom of information act. Unless a victim in Pennsylvania consents in writing, an address and phone number provided for notification is only available to the prosecutor, law

enforcement, and the corrections department. Similarly, such information provided to corrections, probation, parole and pardons in South Carolina is privileged, while Utah's statute protects information provided to law enforcement, prosecution, parole and corrections. The Texas parole board is prohibited from disclosing the name or address of a victim or other person who is entitled to notice unless a consent or a court order is obtained.

Those states applying the latter approach include Alaska, Indiana, Maryland and Vermont. While Alaska provides for confidentiality of notice information in almost any situation, specifically including notice of change in offender status, escape, parole, furlough, early release and clemency, Vermont only protects personal information of the victim when provided for notice of the offender's release. The laws in Indiana and Maryland more closely track Alaska's Statute, although Maryland requires the deletion of confidential information about the victim prior to review of any documents by the defendant. The address of a victim or the victim's family in Kansas which was provided for the purpose of notifying the victim of a public comment session is confidential and kept in a separate file. Under Kansas law the information is only to be available to the victim or the victim's family--access by the defendant is specifically excluded.

OTHER

The privacy concerns of crime victims have been taken into consideration in the formulation of legislation in a number of other areas. Privileged communications

between a victim and counselor or therapist are now protected in a number of states as is well-documented in the U.S. Department of Justice Report to Congress entitled "The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors: Findings and Model Legislation" which was published in December 1995. This report provides a comprehensive overview of the status of legislation in that area.

Prior to the passage of the "Driver's Privacy Protection Act of 1994,"¹¹² many states permitted the release of motor vehicle registration information to anyone who inquired and paid the requisite fee. That Act encouraged law makers to consider the potential tragedy that could result from such free access to information. As a result, legislation has been passed in a number of states to limit disclosure of personal information from motor vehicle, voter and postal records.

With information becoming more readily available to an increasing number of people through the Internet and other advanced technology, confidentiality issues are once again coming to the forefront. In many instances, an individual is not even aware of all the places where personal information about him- or herself may be found, and, therefore, cannot act to limit or prohibit accessibility. For crime victims, such invasions of privacy will always be disconcerting, and in some cases, may prove to be fatal.

¹¹² Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721-2725 (1994).

SPECIAL VICTIM POPULATIONS

While this overview concentrates on legislation that has been passed guaranteeing privacy for crime victims in general, many states have passed additional laws covering confidentiality issues that apply specifically to children, victims of domestic violence or sexual assault, and the elderly or disabled. Some examples of legislation protecting the privacy of these special victim populations are given below.

Children¹¹³

Not surprisingly, state legislatures have been especially sensitive to the need for protecting the privacy of children who have been victimized. Some of the methods used to ensure the confidentiality of child victims are: the usage of pseudonyms or initials in court records and reports; closing the courtroom to the general public; testimony via closed circuit televisions; and incorporating confidentiality provisions into abuse reporting statutes. Alaska's sex offender registration law provides for the usage of an alternate, more generic term for the offense of incest so as to provide some

¹¹³ Child Abuse and Neglect State Statute Series, National Center for Prosecution of Child Abuse. See especially Vols. II, No. 13 ("Confidentiality of Child Abuse and Neglect Records") and IV, No. 24 ("Child Witnesses: Protecting the Identity of Child Victims") for more information on confidentiality relating to child victims.

anonymity for a child incest victim.¹¹⁴ A member of a municipal or state agency in Rhode Island who releases the identity of a child who is believed to be the victim of a violation of any law without the consent of the child's parent or guardian shall be civilly liable to the child for compensatory damages and court costs.¹¹⁵

Sexual Assault Victims

Due to the stigma so often associated with the offenses of rape and sexual assault, most, if not all states, have passed laws intended to protect the identities of victims of those types of crime. Even those states which have little legislative privacy protection for crime victims in general, have passed laws specifically to afford privacy to sexual assault victims. Allowing such victims to withhold identifying personal information when testifying, closing the courtroom to spectators, and prohibiting disclosure of a sexual assault victim's name, address and phone number from law enforcement and prosecution records are just a few of the ways that states have attempted to protect the anonymity of victims of sexual offenses. For example, Texas allows a sexual assault victim to choose a pseudonym to be used instead of the victim's name in all public files and records. A victim who takes advantage of this law may not be required to disclose his or her name, address or phone number in connection with the investigation or prosecution of the offense. Although a court may order disclosure of this confidential information, it can only do so

¹¹⁴ ALASKA STAT. § 18.65.087.

¹¹⁵ R.I. GEN. LAWS § 9-1-44.

based upon a finding that the information is essential to the case or when the identity of the victim is in issue. An individual who intentionally discloses the name, address or phone number of a victim who has elected to use a pseudonym to any unauthorized party commits a misdemeanor offense.¹¹⁶

The recent trend in notifying communities concerning the release of sex offenders presents another concern for their victims who most likely desire to remain anonymous. As states open access to sex offender registration, the potential for exposure of victims' information also increases. California, Pennsylvania and Vermont are among those states which exclude the identity of the victim from any registration information that is disclosed.

Domestic Violence and Stalking Victims¹¹⁷

Just as identity protection may be most important to sexual assault victims, safety from intimidation, harassment and possible physical injury are the paramount concerns for a victim of domestic violence or stalking who is trying to keep his or her whereabouts a secret. Not only have states passed laws protecting the address of abuse victims themselves, a number have also enacted legislation to protect shelter locations. Washington state has implemented an address confidentiality program for victims of

¹¹⁶ TEX. CODE CRIM. PROC. ANN. arts. 57.01-57.03.

¹¹⁷ Zorza, *Protecting a Battered Woman's Whereabouts from Disclosure*, Domestic Violence Report, Oct./Nov. 1995, P. 3.

domestic violence which enables such victims to apply to have a designated substitute address assigned to them which can be used in place of an actual address.¹¹⁸ Delaware and Pennsylvania allow domestic violence victims to have their phone numbers blocked from the popular caller identification programs.¹¹⁹

Elderly and Vulnerable Adults

Crimes against the elderly are often committed by those closest to them, their caregivers. Whether care is being provided by a family member or in a nursing home, elderly and vulnerable adults are subject to abuse at the hands of those who are supposed to comfort and provide for them. The confidentiality provisions found so often in child abuse reporting laws are now also being incorporated into statutes which mandate reporting of abuse of vulnerable adults. Hopefully, by maintaining the confidentiality of abuse reports, elderly and other vulnerable victims will be more likely to seek assistance if they know that by doing so they won't be exposing the abuser--oftentimes a loved one--to public scrutiny.

CONCLUSION

Provisions for confidentiality are crucial in helping victims of crime attain a sense of security. While many states have actively legislated for victims to be treated with respect for their privacy, much remains to be

done. For legislatures in those states that have not yet addressed the issue, minimum standards must be invoked so that at least basic personal information about victims is not always freely accessible. More attention must be given to media handling of confidential information. Sanctions for the unauthorized disclosure of protected victim information must be imposed so that those who act with wanton disregard of the privacy rights of victims are held accountable. For all states, the challenge to keep up with the fast pace with which technological advancements are being developed by implementing stronger, more innovative laws to protect victims from unwanted invasions of privacy will surely continue in the years to come.

¹¹⁸ WASH. REV. CODE ANN.
§§ 40.24.010-900.

¹¹⁹ DEL. CODE ANN. tit. 29 § 921; 66
PA. CONS. STAT. ANN. § 2906.

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Alabama § 15-23-69	Identity; residence; place of employment.	Prevent compelling of testimony during pre-trial proceedings or trial if "reasonable apprehension" of acts or threats of physical violence or intimidation against V or V's immediate family.						Consent of V.	PR must petition CT to prevent compelling of testimony of V or W.
	Address; phone number; place of employment; other relevant V info.	✓							CI not public record.
Alabama § 15-23-73	Economic, physical and psychological impact on V and immediate family.					VIS in PSR		PSR containing VIS available to D and D's atty.	

CI=Confidential Information
 CT=Court
 PSR=Presentence Report

CJO=Criminal Justice Official
 D=Defendant
 LE=Law Enforcement
 V=Victim

COMP=Compensation Program
 PBD=Pardons and Parole Board
 VIS=Victim Impact Statement

COR=Department of Corrections
 PR=Prosecutor
 W=Witness

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Alaska § 12.47.095	Address.						CI provided for notice of pending or actual change in D's status.		CI not to be disclosed to D or D's atty.
Alaska § 12.55.088	Address.						CI provided for notice of modification of sentence.		CI not to be disclosed to D or D's atty.
Alaska § 12.61.100	Address; phone number.								Prohibits "unnecessary disclosure" of CI to protect Vs and Ws from harassment, intimidation, and unwarranted invasion of privacy.
Alaska § 12.61.110	Address; business address; phone number.		✓				In possession of public employee	Records not available for public inspection unless CI deleted.	

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Alaska § 12.61.120	Address; phone number.				✓		Disclosure upon CT determined showing of good cause. Disclosure permitted to D's atty. D may receive if self- represented unless poses "continuing threat" to V or W.		
Alaska § 12.61.130	Address; business address; phone number.	V and W not required to disclose CI in open court during trial or hearing related to prosecution.	✓				Disclosure if CT determines CI "necessary and relevant."	Means to minimize risk of harm to V or W to be taken. CI not to be placed in CT files.	
Alaska § 12.61.140	Name.		✓				Inspection permitted if V consents or if name replaced with initials.	Records containing V's name not open to public.	
Alaska § 12.61.150								Public not to be excluded from proceedings; media may report info lawfully obtained.	

CI=Confidential Information CJO=Criminal Justice Official COMP=Compensation Program COR=Department of Corrections
 CT=Court D=Defendant LE=Law Enforcement PBD=Pardons and Parole Board PR=Prosecutor
 PSR=Presentence Report V=Victim VIS=Victim Impact Statement W=Witness

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cj's Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Alaska § 33.16.120	Address.						CI provided for notice of granting or denial of discretionary parole or release not to be disclosed to D or D's atty.		
Alaska § 33.20.080	Address.						CI provided for notice of application for executive clemency not to be disclosed to D or D's atty.		
Alaska § 33.30.013	Address.						CI provided for notice of escape, furlough, early release, or other not to be disclosed to D or D's atty.		
Arizona § 13-4410 § 13-4424	V's statement of economic, physical and psychological impact of crime.					VIS in PSR		PSR containing VIS available to D.	

CI=Confidential Information CJO=Criminal Justice Official COMP=Compensation Program COR=Department of Corrections
 CT=Court D=Defendant LE=Law Enforcement PBD=Pardons and Parole Board PR=Prosecutor
 PSR=Presentence Report V=Victim VIS=Victim Impact Statement W=Witness

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Arizona § 13-4434	Address; phone number; place of employment; locating info.	V has right not to testify at any CT proceeding.					Consent of V or CT ordered disclosure upon finding of compelling need.	Proceeding on motion for disclosure in private.	
Arizona § 31-412	Address of V or V's immediate family.				PBD		Written consent of V or V's immediate family.		
Arizona Rule Cr.P. 39	Address; phone number; address and phone of place of employment; name of employer.			✓			For good cause CT may order disclosure with restrictions to D's attorney but not D.	V has right to require PR to withhold CI during discovery and proceedings.	
Arkansas § 16-90-711	Medical treatment documents; LE investigative reports if confidential under other law.				COMP			CI remains confidential when submitted as part of COMP claim.	
California Govt § 6254	Name; address; age of V.		✓				CI to be made public except where safety of person involved in investigation would be endangered.	Address of V of rape, sexual assault, inhumane punishment of child or spouse and hate crimes may not be disclosed. Name may also be withheld upon V's request. If V of more than one crime, V may request deletion of CI in specified crime report.	

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CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
California PC § 841.5	Address; phone number of V or W.			✓			Right of D's aty to obtain CI is not affected by this section.	No LE shall disclose CI to any person who may be a D in a criminal action.	
California PC § 1054.2	Address; phone number of V or W.						Disclosure to D upon CT determination of good cause.	CI received by D's aty may not be disclosed to D. If D self- represented, CT shall provide for contact only through licensed investigator appointed by CT.	
California PC § 1191.15	V's written, audio or video statement.						CT, Probation Officer, and aty's for parties may view two days prior to sentencing date. Written transcript of audio or video tape available as public CT record after judgment and sentencing.	Statement to remain sealed until imposition of judgment and sentence.	
Colorado § 16-11-102	Identity; economic loss; physical injury; change in personal welfare or familial relationships.					VIS in PSR	PSR containing VIS to be provided to D's aty or D if self-represented.		

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Colorado § 24-4.1-303	Address; phone number; place of employment; other personal info of V and immediate family.						COR		V must request confidentiality.
Connecticut § 54-91a	Attitude of V or immediate family; damages of V, including medical expenses, loss of earnings and property loss.							Any info in files or report to be available to the office of bail commission.	No specific provisions concerning confidentiality.
Connecticut § 54-204	Medical reports and exams.						COMP		CI under general statutes is confidential while in custody of Victim Services or COMP commissioner.
Connecticut § 54-228	Request for notification and address.							CI provided for notification of application for release or release from correctional institution other than release on furlough.	CI to be kept confidential and not to be disclosed by office of V services.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Connecticut § 54-230	Address.						CI provided for notification of application for release or release from correctional institution other than release on furlough.		CI to be kept confidential and not to be disclosed by office of V services.
Delaware tit. 11 § 9403	Address; phone number; place of employment of V or V's family.	CT may not compel testimony of residential address or place of employment.	✓	✓	✓	COR	Testimony--CT determination of necessity. CJS Records-- Written waiver of confidentiality by V; disclosure as to site of crime; necessity for LE purposes; CT determined good cause; or as required by law or Rules of Crim. Procedure.	CI exempt from disclosure under Freedom of Information Act.	

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CRIME VICTIM'S RIGHT TO PRIVACY

Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	C's Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
District of Columbia § 3-411	Records or reports obtained by Mayor for COMP purposes if confidentiality is protected by another law.					COMP	Record of COMP hearing is public record.		
District of Columbia § 23-103 § 23-103a	Information concerning emotional, psychological, financial, or physical harm or loss suffered by V.					VIS in PSR	VIS portion of pre- sentence report to be disclosed by CT to D's atty at reasonable time prior to imposition of sentence.		
District of Columbia Rule 32						VIS in PSR	VIS portion of pre- sentence report to be disclosed by CT to D's atty at reasonable time prior to imposition of sentence.		
Florida § 119.07	Info concerning personal assets of V.						Property stolen or destroyed during crime not protected. Criminal intelligence and investigative information concerning CI exempt from inspection, examination and copying.		

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CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Florida § 119.07	Identity; home or employment phone number and address; personal assets of V.		✓*	✓*	✓*	* Any agency regularly receiving info from or about Vs.	Federal and state agencies with authorized access by law shall be granted access in furtherance of statutory duties.	Criminal intelligence and investigative information documents containing CI exempt from inspection, examination and copying.	
Florida § 119.105	Name; address.			✓			Police reports are public records unless made exempt or confidential by special law and may be examined by every person.	Names and addresses of Vs obtained from police reports may not be used for commercial solicitation of V or V's relatives.	
Florida § 960.15	Any record or report obtained by Department of Labor and Employment Security or hearing officer which is confidential under other law.					COMP	Exemption from disclosure is subject to Open Government Sunset Review Act (§ 119.14).	CI shall remain confidential and not be subject to public disclosure.	

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Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Georgia § 17-10-1.1	Identity; economic loss; physical injury including seriousness and permanence; request for psychological services; other info related to impact of crime.					VIS	D to be provided copy of VIS. No general provisions for confidentiality of statement.		
Georgia § 17-17-10	Address; phone number; place of employment.						As a condition of allowing response to inquiry about CI, CT may require no transmission of CI to D by counsel or officer of the CT.	CI may not be transmitted to D.	
Georgia § 17-17-14	Address; phone number; name.						CI provided for notification confidential.	CI not subject to disclosure under inspection of public records provisions.	
Georgia § 35-1-9	Name; address; any other info in record.			✓			Media publication or use of CI for lawful data collection or analysis.	It is unlawful for any person to inspect or copy records to which public has right of access to obtain CI for the purpose of commercial solicitation. Violation is a misdemeanor.	

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CRIME VICTIM'S RIGHT TO PRIVACY
 Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Georgia § 42-1-11	Identifying information; request for notice; notice.						CI provided to custodial authority with custody of D is confidential.	CI accessible only to V.	
Idaho Const. Art. I, Sec. 22	Constitutional right to be treated with privacy throughout the criminal justice process.								
Idaho § 19-5306	General right to privacy throughout criminal justice process.								
Idaho § 19-5306	Address.						CI provided for notification confidential.		

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CRIME VICTIM'S RIGHT TO PRIVACY

Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Idaho § 72-1007	Records maintained by Industrial Commission for COMP purposes.					COMP	Records are open to public, provided reports of LE, hospitals, physicians , mental health, and others providing treatment to V's are subject to disclosure under chapter 3, title 9.		
Idaho Rule 32	PSR containing V's version of the offense.		✓			VIS in PSR	Full disclosure to D and D's atty unless CT chooses to with- hold portions. May be available to COR and third parties having legitimate interests with CT's permission and appropriate safe- guards to preserve the confidentiality of the report.	After PSR used in sentencing, report to be sealed by CT only to be opened upon CT order.	

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CRIME VICTIM'S RIGHT TO PRIVACY
 Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Illinois Const. Art. I, Sec. 8.1	Constitutional right to be treated with respect for privacy throughout the criminal justice process.								
Illinois ch. 725 § 120/2	General right to be treated with respect for privacy throughout the criminal justice process.								
Illinois ch. 725 § 120/4	V's general right to respect for privacy.								
Illinois ch. 730 § 5/5-3-2 ch. 730 § 5/5-3-4	Effect of offense on V and compensatory benefit of various sentencing alternatives on V.				PSR		PSR containing info on effect of crime on V to be available to CT, PR, D's arty, probation, COR, and others only upon CT order.	Report to be filed of record with CT in sealed envelope.	

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CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Indiana § 11-13-3-3	Address; phone number.						CI provided for notice of discharge, parole, parole release or violation hearing, escape, or temporary release.	Potential release of CI if CT grants motion requesting access.	D not to have access to CI of V and W. Motion requesting or objecting to release of CI may be filed. CT to review CI in private before ruling.
Indiana § 35-37-4-12	Address; phone number; place of employment.	V not required to give CI during sworn testimony if physical safety of V or family in danger.							If CT finds actual danger, CI may be disclosed to CT for in private review.
Iowa § 912.10	CI about V released to COMP program.					COMP		CI released to program only for the purpose of determining eligibility.	CI to remain confidential once released to COMP program.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Kansas § 21-4604 § 21-4605	Attitude of V or V's immediate family; financial, social, psychological, physical or other harm or loss of V; restitution needs.					VIS in PSR	PSR containing VIS may be made available to D's atty upon request. Report may be copied and retained in aty's file but no further disclosure without CT permission. Disclosure to D with CT approval.		
Kansas § 74-7304 § 74-7308	Communications or records relevant to issues of physical, mental or emotional condition of claimant/V.					COMP		No privilege applies to CI which is material to COMP claim. Confidentiality of claimant/Vs juvenile records not applicable.	
Kansas § 74-7333	General right of V to be treated with respect for privacy.								

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Kansas § 74-7338 § 74-7304 § 74-7308	Address of V or V's family.					COR	CI provided for notice of public comment session to be kept confidential and separate from all other records.	CI available only to V or V's family. CI shall not be available to D or any other party.	
Kentucky § 346.160	Records or reports obtained by board which are confidential under other law.					COMP		Record of proceeding before COMP board or member is public record. CI protected by other law shall remain confidential in board custody.	
Louisiana R.S. § 46:1806	Medical treatment documents; LE investigation reports if confidential under other law.					COMP		CI remains confidential when submitted to board as part of COMP application.	
Maine tit. 5 § 200-E	Medical records.			✓				CI available upon written request by Atty General, PR, or other authorized person; CI to remain confidential. Dissemination only to investigating LE or special expert designated by authorized person to assist in criminal proceeding or investigation, or by CT order.	

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Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Maryland Art. 26A § 14	Reports or records confidential under other law.					COMP	CI provided for notice of work release.	Record of proceeding before board or member is public record.	CI obtained by board to remain confidential.
Maryland Art. 31B § 10	Address; phone number.						CI provided for notice of release upon expiration of sentence.	Board of review to delete CI prior to examination of any document by D or D's representative.	Applicable when D detained in Patuxent Institution.
Maryland Art. 31B § 11	Address; phone number.						CI provided for notice of release upon expiration of sentence.	Board of review to delete CI prior to examination of any document by D or D's representative.	Applicable when D detained in Patuxent Institution.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Maryland Art. 41 § 4-124	Identity; economic loss; seriousness and permanence of physical injury; change in V's personal welfare or familial relationships; requests for psychological services; other info related to impact of crime.					VIS in PSR	PSR containing VIS available for public inspection only upon CT order and upon request to D's atty, designated CJOs, and mental health facility if D committed for evaluation.	PSR containing VIS confidential.	
Maryland Art. 41 § 4-609	Identity; economic loss; seriousness and permanence of physical injury; change in V's personal welfare or familial relationships; requests for psychological services; other info related to impact of crime.					VIS in PSR	PSR containing VIS available for public inspection only upon CT order and upon request to D's atty, designated CJOs, and mental health facility if D committed for evaluation.	PSR containing VIS confidential.	

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Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Maryland CJP § 9-501	Address; phone number of V or W.	CT may prohibit release of CI during criminal trial.						Release of CI upon CT determination that info is necessary and relevant.	Either party may move CT to prohibit release of CI.
Maryland HG § 12-122	Address; phone number of V or V's representative.						Depart- ment of Mental Health	CI provided for notice of mental exam, commitment or release of D.	CI to be deleted prior to examination of documents by committed D.
Maryland Rule Ct. Admin. 1209	V's testimony.	Extended media broadcasting or televising of V's testimony to be terminated or limited upon request or objection of V.							
Massachusetts ch. 279 § 4B	Name; financial loss of V or family member; psychological impact or impact on personal welfare or family relationship.						VIS in PSR		PSR containing VIS to be made available to D.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Massachusetts ch. 258B § 2	Address; phone number; place of employment; school of V, V's family or W.	Upon approval of V or W request, LE, PR, D's atty, PBD, probation, and COR prohibited from disclosing CI in open CT except pursuant to CT order.						V or W must request and obtain CT approval for confidentiality. CT may enter conditions to maintain limited disclosure to protect privacy and safety.	
Michigan Const. Art. I, Sec. 24(1)	Constitutional right to be treated with respect for privacy throughout criminal justice process.								
Michigan § 3.372(13) § 3.372(16)	Reports or records confidential under other law.				COMP		Record of proceeding before board is public record.	CI obtained by board to remain confidential. Unauthorized disclosure of CI is a misdemeanor punishable by imprisonment up to 3 months, fine not to exceed \$1,000 or both.	

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Michigan § 28.1144	Not specified. VIS pursuant to crime victim's rights act MCL §§ 780.751-- 834.					VIS in PSR	PSR containing VIS may be reviewed by D and D's atty prior to sentencing.	V must request inclusion of VIS in PSR. CT may exempt from disclosure any portion of PSR containing sources of info obtained on promise of confidentiality.	
Michigan § 28.1287 (758)	Address; place of employment; other personal identifying info.	V or W not to be compelled to testify at pretrial or trial if "reasonable apprehension" of acts or threats of physical violence or intimidation by D or at D's direction against V or family.						PR must file motion that V or W not be compelled to testify regarding CI. Hearing on motion in private.	
Michigan § 28.1287 (769)	Address; phone number.						CI maintained by sheriff or COR pursuant to request for notice is exempt from disclosure under freedom of info act.		

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State/ Statute	Confidential Information	Testimony	Cjs Records			Notice Information	Exceptions	Special Provisions
			CT	LE	PR			
Michigan § 28.1287 (784)	Address; phone number.		✓					Statement listing CI about known Vs filed with petition to invoke jurisdiction for juvenile D not public record.
Michigan § 28.1287 (788)	Address; place of employment; other personal identification.	CT may order that V not be compelled to testify on basis of V's reasonable apprehension of acts or threats of physical violence or intimidation against V or V's immediate family.					Consent of V.	PR or V must request ct not to be compelled to testify. Hearing on motion in private. Applies in juvenile cases.
Michigan § 28.1287 (812)	Name; address; phone number.		✓					Applicable in cases of serious misdemeanors involving a V. Statement listing CI filed by LE with CT not matter of public record.

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State/ Statute	Confidential Information	Testimony	C's Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Michigan § 28-1287 (818)	Address; place of employment; other personal identification.	CT may order that V not be compelled to testify on basis of V's reasonable apprehension of acts or threats of physical violence or intimidation against V or V's immediate family.						Consent of V.	PR must request CT not to compel V or other W to testify regarding CI. Hearing on motion in private.
Michigan § 28-1287 (830)	Address; phone number.		✓	✓					Exemption from disclosure pursuant to Freedom of Information Act.
Minnesota § 13.82	Data that would reveal identity of V or W.			✓					Access to CI withheld upon request of V or W if revealing identity would threaten personal safety or property.

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VICTIMS' RIGHTS: JUVENILE PROCEEDINGS
Current through 1995

CATEGORY	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI
Notice of Offender's Name And Address**	✓						✓		(✓)	✓
Notice of Rights				F						
Notice of Bail/Predisposition Release			✓		✓					
Notice of Trial	(✓)		✓		✓		✓			
Notice of Disposition Hearing			✓		✓		✓			
Notice of Final Adjudication	✓				✓					
Notice of Escape				F	✓					
Notice of Post-disposition Release				F	✓					
Right to Attend Trial	✓			F	✓		✓		✓	
Right to Attend Disposition Hearing	✓			F	✓		✓		✓	
Right to Attend Other Proceeding	✓						✓		✓	
Separate Waiting Area			✓	F	✓					
Right to Present VIS - Disposition Hearing	✓		✓	F	✓	✓				
Right to Present Views, Other	✓				✓					
Explanation of Plea Agreement/Consultation					✓					
Court May Order to Restitution	✓	✓	✓	✓		✓	✓	✓	✓	✓
Right to Confidentiality of Address				T	✓					

(✓) – Right Is Implied.

** = Includes notice and access to information.

F = Offense must be equivalent to felony.

L = Limited offenses.

TOTAL Column Includes All Marks.

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VICTIMS' RIGHTS: JUVENILE PROCEEDINGS
Current through 1995

CATEGORY	SC	SD	FN	TX	UT	VT	VA	WA	WV	WI	WV	TL
Notice of Offender's Name and Address**	✓	✓				F		✓		✓	✓	20
Notice of Rights				✓		✓						15
Notice of Bail/Predisposition Release												15
Notice of Trial	✓			✓	F					✓		23
Notice of Disposition Hearing	✓			✓	F					✓		25
Notice of Final Adjudication	✓	✓				✓	F			✓	✓	25
Notice of Escape								✓				20
Notice of Postdisposition Release				✓				✓		✓		24
Right to Attend Trial				✓	F					✓	✓	24
Right to Attend Disposition Hearing				✓	F					✓	✓	25
Right to Attend Other Proceeding				✓	F					✓	✓	16
Separate Waiting Area				✓								16
Right to Present VIS - Disposition Hearing				✓	F		✓	✓		F		28
Right to Present Views, Other					F							20
Explanation of Plea Agreement/Consultation												16
Court May Order to Restitution	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	46
Right to Confidentiality of Address					F							10

(✓) – Right Is Implied.

** = Includes notice and access to information.

T = Need not testify as to address, etc.
F = Offense must be equivalent to felony.

L = Limited offenses.

TOTAL Column Includes All Marks.

**RIGHTS OF VICTIMS OF JUVENILES
STATUTE LIST**

Alabama

§ 12-15-71
§§ 15-23-60 et seq.

Alaska

Const. Art. 2, sec. 24

Arizona

§ 8-241
§ 8-821 et seq.

California

PC § 679.02
WI § 656.2
WI § 706
WI § 730.6
WI § 730.7
WI § 1764
WI § 1764.2
WI § 1767
WI § 1781

Colorado

§ 19-2-703
§ 19-2-705
§ 19-2-706
§ 24-4.1-302
§ 24-4.1-302.5
§ 24-4.1-303

Connecticut

§ 46b-124
§ 46b-138b
§ 46b-140
§ 54-201 et seq.

Delaware

tit. 10 § 1009
tit. 11 §§ 9401 et seq.

Florida

§ 39.045
§ 39.047
§ 39.0515
§ 960.001

Georgia

§ 15-11-28
§ 15-11-35

Hawaii

§ 352-19
§ 352-26.1
§ 571-31.4
§ 571-48
§§ 801D-1 et seq.

Idaho

ch. 19 § 5306
ch. 20 § 538
Const. Art. 1 Sec. 22

Illinois

705 ILCS § 405/1-8
705 ILSC § 405/5-23
725 ILSC § 120/4
725 ILSC § 120/4.5

Indiana

§ 31-6-4-15.9
§ 31-6-8-1
§§ 35-33-12-1 et seq.
§ 35-37-4-11

Iowa

§ 232.147
§ 232.29
§ 232.39
§§ 232A.1-232A.4
§ 910A.9A

Kansas

§ 38-1673
§ 38-1675
§ 38-1663
§ 38-1652
§ 74-7335

Kentucky

§ 635.010
§ 635.060
§ 640.030 (interpreted
in conjunction w/
421.500 and 421.520)

**RIGHTS OF VICTIMS OF JUVENILES
STATUTE LIST**

Louisiana

CHC Art. 811.1
CHC Art. 897

Maine

tit. 15 § 3301
tit. 15 § 3308
tit. 15 § 3312

Maryland

CJP § 3-836

Massachusetts

Chapt. 258B §§ 1 et
seq.

Michigan

§§ 28.1287(781)
et seq.

Minnesota

§§ 611A.01 et seq.
§ 629.73

Mississippi

§ 43-21-261
§ 43-21-605

Missouri

Const. art. 1, sec. 32
§§ 595.200 et seq.

Montana

§ 41-5-403
§ 41-5-523
§ 46-24-207

Nevada

§ 62.129
§ 62.193
§ 62.211
§ 62.360
§ 62.400

New Hampshire

§ 169-B:2
§ 169-B:19
§ 169-B:35-a
§ 651:67

New Jersey

§ 2A:4A-42
§ 2A:4A-43
§ 2A:4A-60
§§ 2A:4A-71 - 2A:4A-
75

New Mexico

§ 32A-2-31

New York

EL §§ 640 - 642
FCA § 308.1
FCA § 351.1
FCA § 353.2
FCA § 353.6
FCA § 758-a

North Carolina

§ 7a-649
§15A-824 et seq.

North Dakota

§ 12.1-34-01 et seq.

Ohio

§ 2151.411
§ 2151.355

Oklahoma

tit. 10 § 7303-4.2
tit. 10 § 7303-5.3
tit. 10 § 7303-5.5
tit. 10 § 7302-8.1
tit. 19 § 215.33

Oregon

§ 419C.465
§ 419C.470
§ 419C.450

Pennsylvania

§ 42-6336
§ 42-6352

Rhode Island

§ 14-1-32
§ 14-1-32.1
§ 14-1-64

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CRIME VICTIM'S RIGHT TO PRIVACY

Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Minnesota § 13.99 § 611A.06	Identifying info, including V's request for notice of release of D.					CI held for notice purposes is private data.	CI accessible only to V.		
Minnesota § 13.99 § 611A.57	Claim; supporting documents and reports.				COMP		COMP board may forward claim forms, documents and reports to local LE investigating fraudulent claims.	Claims and supporting documents are classified under § 611A.57. Upon payment, denial, withdrawal, or abandonment of claim, CI is private data on individual.	
Minnesota § 13.99 § 611A.74	V files.				Crime V Ombuds- man.			Data maintained by crime V ombudsman classified under § 611A.74. Ombudsman's files are confidential during course of investigation and while files are active. Once investigation completed and files placed on inactive status, CI is private data on individuals.	

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D=Defendant
LE=Law Enforcement
V=Victim

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PBD=Pardons and Parole Board
VIS=Victim Impact Statement

COR=Department of Corrections
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CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Minnesota § 609.115 § 611A.037	Damages, harm or problems resulting from the crime; V's opinion of appropriate disposition; V's objections to any proposed disposition.						PSR containing VIS to be provided to attys for all parties prior to sentencing. PSR shall not disclose confidential sources except at CT direction.	V has right to request LE to withhold public access to CI under §13.82.	
Minnesota § 611A.021	Data revealing V's identity.			✓			Disclosure may be required if CT finds info to be "relevant evidence."		
Minnesota § 611A.035	Address; place of employment.	V or W testifying may not be compelled to state CI on the record in open CT.							
Minnesota § 611A.62	Communications or records relevant to issue of physical, mental, or emotional condition of claimant.				COMP			No privilege applies to CI which is material to COMP claim.	

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Mississippi §§ 99-19- 155--159	Financial, emotional and physical effects of crime on V and V's family; specified info about V.					VIS in PSR	Copies of VIS to be made available to PR, D, and D's atty prior to sentencing.	All copies of VIS to be returned to CT immediately after imposition of sentence.	
Mississippi § 99-41-15	Communications or records relevant to physical, mental or emotional conditions of claimant; records or reports which are confidential under other law.					COMP		Filing of COMP claim deemed waiver of physician-patient privilege. CI confidential under other law remains confidential.	
Missouri § 557.026	Facts of offense; personal injury; financial loss of V.					VIS in PSR	D or D's atty to have access to complete PSR including VIS.		

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Missouri § 595.037	Record or report which is confidential under other law.					COMP	All info submitted to COMP program and any hearing on claim open to public except if D not yet tried or if in best interest of sexual assault or minor V.	Division may close any record, report or hearing if determines interest of justice requires.	
Montana § 44-5-311	Address; phone number; place of employment of V and V's family.	V or family member not to be compelled to testify on record in open CT regarding CI.				CIS Agency	Disclosure permitted regarding location of crime scene, for LE purposes, or if authorized by CT.	V must request confidentiality.	
Montana § 46-18-112 § 46-18-113	V's pecuniary loss; harm caused to V or V's immediate family.		✓			VIS in PSR	Copy provided to PR, D, D's aty, and agency or institution to which D committed. CT may permit other access as necessary.	All PSRs part of CT record but not open for public inspection.	

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Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records			Notice Information	Exceptions	Special Provisions
			CT	LE	PR			
Montana § 53-9-107	Information of a personal nature, including personal and medical info.					COMP	CI exempt if public disclosure would constitute unreasonable invasion of privacy unless public interest requires disclosure by clear and convincing evidence. Party seeking disclosure has burden of showing disclosure not unreasonable invasion of privacy.	Records maintained in administration of COMP program are open to public inspection and disclosure.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Nebraska § 29-2261	Written statements of V submitted to PR or probation officer.					VIS in PSR	CI provided for notification of parole violations, release of sex offender, furlough, education or work release, escape, and discharge upon completion of sentence.	No direct or indirect disclosure of PSR to anyone other than judge, probation officers and others entitled by law. CT may permit inspection by D, D's aty and others with proper interest if in the best interest of D. If D incarcerated, copy of report to be transmitted to COR.	PSR containing VIS is privileged.
Nebraska § 81-1850	Address; name.					PBD	CI provided for notification of parole violations, release of sex offender, furlough, education or work release, escape, and discharge upon completion of sentence.	Name included in D's file but not to be part of public record of parole hearing.	V must request CI to be forwarded to PBD.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Nevada § 176.145 § 176.156	Info concerning effect of crime on V, including physical or psychological harm, and financial loss.					PSR	Factual content of the PSR shall be disclosed to PR, D and D's atty.	Portions of report other than factual content and sources of information confidential and not to be made part of any public record.	
Nevada § 217.105	Any info obtained in investigation of claim.					COMP	CI may be disclosed upon request of applicant or atty, as necessary under COMP program, or upon CT order.	Info submitted or obtained in investigation of COMP claim is confidential and may not be disclosed.	
New Hampshire § 21-M:8-k	General right to be treated with respect for privacy throughout criminal justice process. Address; place of employment; other personal info.							V entitled to right of confidentiality to extent "reasonably guaranteed" by CT, LE, and COR and not inconsistent with D's rights.	

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
New Jersey § 2C:44-6	Statement of V, including nature and extent of physical, psychological, or emotional harm, extent of loss, effect of crime on V's family; specific assessment of gravity and seriousness of harm inflicted.				VIS in PSR		Disclosure of PSR containing VIS in accordance with law and Rules of Court.		
New Mexico § 31-22-18	Records or reports confidential under other law. Name; address; phone number; other personal information.				COMP		Disclosure of records and reports pursuant to other law establishing confidentiality.	Claim file containing V's personal CI shall not be released.	
New Mexico § 31-26-4	General right to be treated with respect for privacy throughout criminal justice process.								

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Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
New York CPL § 390.30	V's version of offense; extent of injury or economic loss; amount of restitution sought.					VIS in PSR	PSR containing VIS shall be available for examination and copying by PR, D's attorney or D, if self- represented. CT may exclude portions of report or sources obtained on promise of confidentiality. PSR to be made available to any CT, probation dept, or state agency to which D committed under same conditions of privacy as applied when CI first obtained.	PSR is confidential and is not available except where specifically required or permitted by statute or upon specific authorization of the CT.	
New York EL § 633	Records and reports which are confidential under other law.					COMP	Record of proceeding of COMP board to be public record unless protected under other law.	CI must remain confidential.	

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Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cis Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
North Carolina § 15A-825	Address.	Testimony as to CI not relevant in every case.						V or W may request PR to raise an objection to questioning about CI if appropriate.	
North Carolina § 15A-1371	Name.					Notification of parole determination by PBD to newspapers and other media not to include V's name.	Privileges related to CI do not apply if CI is relevant to COMP claim.	Medical info and LE records are confidential; otherwise, all records of COMP program open to public inspection.	
North Dakota § 12.1-34- 02	Address; phone number; place of employment; other personal identifying info.	V and W's not to be compelled to testify at pretrial or trial regarding CI.					Name is not protected CI. Disclosure of other CI with V's consent or if CT finds good cause.		

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
North Dakota § 12.1-34- 02 (cont.)	Nature and extent of physical, psychological, or emotional harm; extent of economic loss or property damage; need for restitution; V's recommendation for sentencing.					VIS in PSR	PSR containing VIS subject to review by D.		
North Dakota § 12.1-34- 03	Address.					CI provided to LE, PR, custodial authority, PBD, and CT must be kept confidential.			
North Dakota § 12.1-35- 03									

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
North Dakota § 54-23.4 17	Records concerning application for COMP.		✓			COMP		Juvenile and LE records may be released to the parties, counsel and representatives of the parties, but must be sealed at conclusion of proceedings. Other COMP records may be inspected by LE, V's representative, physicians and health care providers at discretion of COMP divisions, and others rendering assistance to the division.	CI, except for juvenile and LE records are not open to public disclosure.

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State/ Statute	Confidential Information	Testimony	Cjs Records			Notice Information	Exceptions	Special Provisions
			CT	LE	PR			
Ohio § 2930.07	Address; place of employment; phone number; other identifying info.	V not to be compelled to testify if "reasonable grounds" for V to be apprehensive of acts or threats of violence or intimidation by D against V, V's family and rep.	✓				Address in CT file only if site of crime or, along with phone number, if in trial transcript.	PR must file motion for non-disclosure.
Ohio § 2947.051	Identity; economic loss; seriousness and permanence of physical injury; change in V's personal welfare or family relationships; psychological impact on V.					VIS	Copies of VIS to PR and D or D's atty. All copies to be returned immediately after imposition of sentence.	VIS to be kept confidential and not public record.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Oklahoma tit. 22 § 982	Statement of V concerning offense and amount of loss.						VIS in PSR	CT shall advise D or D's aty and PR of factual contents and conclusions of PSR containing VIS.	
Oklahoma tit. 22 § 284.1	VIS of V, members of V's immediate family, or designated representative.						VIS	CT shall make copies of VIS available to the parties.	
Oklahoma tit. 22 § 984.2	Address; phone number; place of employment; personal info of V.		✓	✓					Order for nondisclosure must be requested by V or PR. CT may order nondisclosure of records other than transcript of proceeding if necessary to protect V or V's immediate family from harassment or physical harm if immaterial to D's defense.

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Oklahoma tit. 57 § 332.2	All V info including address.					PBD; COR	CI provided for notice of hearing on application for reprieve, commutation, parole, pardon or other act of clemency and of PBD decision.	All V info maintained by COR and PBD is confidential and shall not be released.	
Oregon § 135.970	Address; phone number of V or W.		✓					Upon request of V or W, CT shall order non-disclosure of CI to D.	
Oregon § 137.530	Statement of V describing effect of offense.					VIS in PSR		VIS to be made available to D and D's atty prior to sentencing.	
Oregon § 147.115	Info submitted by V in connection with claim.					COMP		Board may refuse to publicly disclose name or identifying info about V when interests of justice require. Records and reports which are confidential under other law to remain confidential.	

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Oregon § 192.501	Identity; biographical info concerning V.			✓			Record of arrest or crime report to be disclosed unless clear need to delay disclosure, including need to protect V.	Records pertaining to the V to be kept separately. Address of V or family is confidential.	
Pennsylvania § 61- 331.22a	Address of V or V's family members. Nature and extent of physical, psychological, or emotional harm; extent of loss of earnings; continuing effect of crime upon V's family.					PBD VIS	VIS CI of V or V's family not confidential and subject to release to D unless V requests withholding of info and release would endanger safety of person making statement or testifying. Board may on its own motion for good cause designate portions of statement as confidential.		

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Pennsylvania 71 P.S. § 180- 7.11	Records or reports which are confidential under other law.					COMP	Record of proceeding before COMP bureau or hearing examiner is public record.	CI which is confidential under other law to remain confidential.	
Pennsylvania 71 P.S. § 180-9.8	Address; phone number; personal identifying info of V and family.					COR PBD	CI provided for notice of pending release, escape, and commitment of D to mental health facility confidential.	Records to be kept separately.	
Pennsylvania 71 P.S. § 180- 9.10	Address; phone number.						CI provided for notice purposes disclosed only to LE, COR and PR.	Other disclosure only with prior written consent of V.	
South Carolina § 16-3-1240	Lists, names or information concerning applicants for COMP.					COMP	Written consent of applicant/recipient (V).	Unlawful except for purposes of COMP program for any person to solicit, disclose or use CI. All records, papers, files, and communications of COMP program are confidential, privileged, and not subject to disclosure under Freedom of Info Act.	

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
South Carolina § 16-3-1530	Address; phone number.						CI provided for notice purposes to COR, Probation, and PBD is privileged.	Disclosure only between departments and by CT order.	
South Carolina § 16-3-1550	V impact information.					VIS		VIS to be available to defense.	Applicable to VIS submitted for consideration at sentencing, disposition hearing or parole hearing.
South Dakota § 19-14- 18.1	Address.	Witness not to be compelled to state CI in open CT.						Disclosure if required by due process or in the interest of justice.	
South Dakota § 22-1-12	Identity; biological info of V.								No disclosure, other than in the performance of official duties, of CI until reasonable efforts made to notify member of immediate family.
South Dakota § 23A-28B- 36	Records and reports which are confidential under other law.					COMP			CI to remain confidential once in custody of COMP program.

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			CT	LE	PR			
Texas Const. Art. I, Sec. 30	Constitutional right to be treated with respect for privacy throughout criminal justice process.							
Texas CCP art. 42.01	Name; address.		✓				Restitution judgment to include CI unless not in best interest of V.	CT to substitute agency or person to receive and forward restitution payments to V.
Texas CCP art. 42.18	Name; address.					PBD not to disclose CI of V or other entitled to notice.	Disclosure permitted if consent obtained or CT orders.	
Texas CCP art. 56.03	Name; address; phone number; economic loss; physical or psychological injury; psychological services requested; change in personal welfare or family relationships of V or V's guardian or relative.				VIS		D or D's atty shall be permitted to read the statement.	

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			CT	LE	PR	Other			
Texas CCP art. 56.09	Address; phone number.		✓				Address included in file if identifies site of crime.	CI not to be part of file "as far as practical."	
Utah § 64-13- 14.7	V's request for notification and notification to V.					CI provided for notification of D's release.	Release of CI to party other than D with written consent of V.	CI is private information that may not be released to D under any circumstances.	
Utah § 64-13-20 § 77-18-1	Identity; economic loss; seriousness and permanence of physical, mental, or emotional injuries; change in V's personal welfare or familial relationships; requests for mental health services by V or V's family; other info related to impact of offense.				VIS in PSR		COR shall make PSR containing VIS available to D, D's aty, and PR. After sentencing, PSR may only be released by express CT order or rules of COR. Report intended to be used only by CT, PBD, and COR.	PSR is confidential.	

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State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Utah § 77-38-3	Address; phone number; VIS.					VIS	CI provided for notice purposes to LE, PR, Youth Parole, Youth COR, COR, and PBD.	CI only available to LE, PR, V rights committee, V/W program, COR, COMP, Commission on Criminal and Juvenile Justice, and PBD in the performance of their duties.	
Utah § 77-38-6	Address; phone number; place of employment; other locating info of V or W.	V has right at any CT proceeding, including juvenile CT proceeding, not to testify as to CI.						Disclosure permitted only if V or W specifically consents or CT orders upon finding of compelling need.	D may not compel W to testify about CI. Proceeding to determine disclosure held in private.
Utah Rule 4-601	Address; phone number.	CT shall not require Vs and Ws to state CI in open CT.							

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 CT=Court D=Defendant LE=Law Enforcement PBD=Pardons and Parole Board PR=Prosecutor
 PSR=Presentence Report V=Victim VIS=Victim Impact Statement W=Witness

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Vermont tit. 13 § 5305	Address; phone number.						CI provided for notice of release of D shall be kept confidential.		
Vermont tit. 28 § 204	Comments or written statement of V.					VIS in PSR		CT or PBD has discretion to permit inspection of part or all of PSR containing VIS by PR, D or D's atty, or other person with proper interest when welfare of D makes it desirable or helpful.	PSR is privileged and shall not be disclosed to anyone outside probation department except judge or PBD.
Virginia § 19.2- 11.01	Privacy of V and W to be protected to extent permissible under law.								
Virginia § 19.2- 11.01	Address; phone number.	V and W shall be informed that CI may not be disclosed.						No disclosure except when necessary for the conduct of the criminal proceeding.	

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CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Virginia § 19.2-11.2	Address; phone number; place of employment of V or V's family.						Disclosure permitted as: to site of crime; required by law; necessary for LE purposes; or permitted by CT for good cause.	V must request non-disclosure.	
Virginia § 19.2-269.2	Address; business address; phone number.	CT may prohibit testimony if it determines CI not material to case.							
Virginia § 19.2-299 § 19.2-299.1	Identity; economic loss; nature and extent of physical, or psychological injury, changes in V's personal welfare, lifestyle, or family relationships; any requests for psychological services.					VIS in PSR	VIS to be made available to D or D's atty.	VIS shall be kept confidential and shall be sealed upon entry of sentencing order.	

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Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records					Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other	COMP			
Virginia § 19.2- 368.14	Records and reports which are confidential under other law.							Record of any proceeding of COMP program is public record.	CI protected by other law to remain confidential	
Washington § 7.68.140	Info in claim files and V records.					COMP		CI available to public employees in performance of official duties, representative of claimant with written authorization, treating physicians, and others rendering assistance to the dept.	CI deemed confidential and not open for public inspection	
Washington § 9.94A.155	Info regarding V, next of kin, witnesses, or other specified in writing by PR to receive notice.						CI provided for notice of parole, release, community placement, work release, furlough or escape is confidential.		CI not to be available to D.	

Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Washington § 71.05.425	Info regarding V, next of kin or W.					CI provided notice of conditional release, final discharge, authorized leave, or transfer to less restrictive facility following dismissal of a sex, violent, or felony harassment offense.		CI and notice confidential and not to be made available to D.	
West Virginia § 14-2A-12	Info or documents which have been the subject of a protective order.				COMP			Any party, CT or agency from whom reports or info are requested may make a motion to restrict release of info. CT may enter any order which justice requires to protect a W or other person, including that CI be examined only by those designated, sealing of records to be opened only upon CT order, and that CI or identity of sources not be disclosed or disclosed only in specified manner.	

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Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
West Virginia § 61-11A-3	Identity; economic loss; nature and extent of any physical or psychological injury; change in V's personal welfare, lifestyle or family relationships					VIS in PSR	VIS to be made available to D and D's atty.		
Wisconsin Const. Art. I, Sec. 9m	Constitutional right to be treated with respect for privacy.								
Wisconsin § 301.048	All records or portions of records relating to mailing address.					COR	CI provided for notice of D's entry into intensive sanctions program.	CI not subject to inspection or copying under § 19.35(1).	
Wisconsin § 303.068	All records or portions of records relating to mailing address.					COR	CI provided for notice of release.	Applicable only to Vs of specified crimes. CI not subject to inspection or copying under § 19.35(1).	
Wisconsin § 304.06	All records or portions of records relating to mailing address.					PBD; VIS	CI provided for notice of parole release.	Before written VIS is made part of documentary record of parole hearing all references to CI to be deleted.	

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Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Wisconsin § 304.10	Address in written statements concerning views on application for pardon and aggravating circumstances.					VIS Governor	Governor to delete any reference to CI in any statement or document made public.	CI in VIS regarding pardon application to be closed to the public.	
Wisconsin § 304.063	All records or portions of records relating to mailing address.					COR		CI not subject to inspection or copying under §19.35(1).	
Wisconsin § 904.13	Address; name and address of any place of employment of V or family member.	Evidence of CI relevant only if meets criteria under § 904.01.						PR to make appropriate objections if evidence of CI is not relevant in a criminal action or proceeding.	
Wisconsin § 949.16	Records and reports which are confidential under other law.								
Wisconsin § 971.17	All records or portions or record relating to mailing address.					Dept. of Health and Social Services	CI available to PR.	Applicable to offenders found not guilty by reason of mental disease or defect. CI not subject to inspection or copying under §19.35(1).	

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Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY
Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Wisconsin § 972.15	Economic, physical, and psychological impact of crime on V. Identity of person providing info for PSR.					VIS in PSR	Address provided for notification shall only be used for that purpose.	PSR containing VIS to be available to PR, D's aty or D if self-represented prior to sentencing. After sentencing PSR containing VIS to be confidential and available only upon special CT authorization.	Judge may conceal identity of any person providing info for PSR.
Wyoming § 1-40-203	Statement of V.					VIS in PSR	Address provided for notification shall only be used for that purpose.	PSR containing VIS to be made available to D.	
Wyoming § 1-40-204	Address; phone number of V or W.						Address provided for notification shall only be used for that purpose.		

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Table 12-A

CRIME VICTIM'S RIGHT TO PRIVACY

Information current through 1995 bills of rights and 1994 compensation laws.

State/ Statute	Confidential Information	Testimony	Cjs Records				Notice Information	Exceptions	Special Provisions
			CT	LE	PR	Other			
Wyoming § 7-21-102	Nature and extent of physical, psychological or emotional harm; economic loss or property damage; need for restitution; status of COMP claim; recommendation for case disposition.					VIS in PSR	PSR containing VIS to be made available to D.		

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SECTION 13

VICTIMS' RIGHTS AT THE JUVENILE LEVEL

One of the primary objectives of the victims' movement was the passage of statutory bills of rights for victims of crime. To a large extent, that goal has been reached. However, those rights have generally applied only to criminal cases against adult offenders. Victims of juvenile offenders have had far fewer rights, due to the traditionally closed and confidential nature of juvenile proceedings.

With the rapid growth of juvenile violence and the realization that the need for justice and fair treatment is just as great for victims of juveniles as for victims of adult offenders, a number of states have enacted bills of rights specifically for victims of juvenile offenders, or have simply extended their existing bills of rights to include such victims. Some of those states limit the rights to victims of juveniles whose offenses would be felonies if committed by adults; others do not have such a limit. Today, nearly half of the states have a fairly comprehensive list of rights for victims of serious juvenile offenses. Some states, such as Alabama and Idaho, include victims of juvenile offenders in their general bill of rights for victims. Others, such as Arizona and Michigan, have a separate set of statutes providing rights for victims of juvenile offenders. Still other states have nothing designated as a "bill of rights" for victims of juveniles, but instead have various rights scattered throughout their juvenile justice code.

In addition to statutory rights, 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 victims' constitutional rights to victims of juveniles.

Table 13-A reflects many of the basic rights provided to victims of juveniles. However, the rights a state may grant to victims of juvenile offenders are just as varied as the rights at the adult level, and many states have gone far beyond the rights listed in this Table. Texas provides the right to have the court consider the safety of the victim in determining whether the juvenile should be detained prior to adjudication.¹²⁰ Louisiana gives victims the right "to retain counsel to confer with law enforcement and judicial agencies on the disposition of the victim's case." Arizona and Michigan provide notice of appellate proceedings.¹²¹

Most of the "rights" of victims of juvenile offenders should more accurately be called "suggestions" or "recommendations," as they are only advisory in nature. For example, Maryland's statute entitled "Rights of victim or witness of delinquent act" list the rights a victim of a delinquent act or a witness

¹²⁰ TEX. JUV. JUS. CODE ANN.
§ 57.002.

¹²¹ ARIZ. REV. STAT. ANN. § 8-290.02;
MICH. STAT. ANN. § 28.1287(796).

“*should*” have,¹²² the text of the statute itself refers to the provisions as “guidelines.” Nevada leaves a victim’s right to attend a juvenile proceeding to the sole discretion of the judge or referee.¹²³ However, several states provide meaningful and enforceable rights to victims of juveniles. Arizona provides that victims have standing to seek an order or to bring a special action mandating that the victim be afforded any right under the Constitution, the juvenile victims’ bill of rights, or a court rule. The victim can also recover damages from a governmental entity for any intentional, knowing or grossly negligent violation of rights. The prosecutor may also assert the victim’s rights on behalf of the victim.¹²⁴ Michigan’s law prohibits civil actions for damages as a means of enforcement, but leaves open other mechanisms to enforce the victim’s rights, such as injunctive actions.¹²⁵

Table 13-A makes no distinction between “rights” that are mandated and those that remain in the discretion of the criminal justice system. Some of the rights listed are almost never strictly required. For example, courts are instructed to provide a separate waiting area for victims “if practicable” or “if resources permit.” Further analysis would be required to compare the strength of the provisions. Due to such wide variance in

strength, the relative effectiveness of some victims’ rights provisions remains an open question.

In Table 13-A, the category “notice of offender’s name and address” includes those laws that permit access to that information; in other words, it encompasses both laws that require the system to send the information to the victim and those that allow the victim to have such information on request. The category “notice of rights” includes two approaches: those that have a single statute requiring a victim to be given a written list of rights, and those states in which most of the individual statutes that provide a right to a victim also require that the victim be notified of the right.

The category “notice of post-trial release” encompasses any post-trial release, but does not necessarily indicate that victims are entitled to notice of *all* post-trial releases. Some of the states notify victims of a provisional or conditional release — the juvenile equivalent of parole — while others only require that victims be notified of a final release from custody.

Table 13-A also examines the victim’s right to attend juvenile proceedings, and is divided into three categories: the right to attend the trial, the right to attend the disposition hearing and the right to attend some other proceeding. This final category includes those state statutes that provide a right to attend a specified additional proceeding, like a post-conviction release proceeding, or provide generally that victims have a right to attend “all proceedings in the case.”

Similarly, the right to present views is summarized to include presentation of impact

¹²² MD. CTS. & JUD. PROC. CODE ANN. § 3-836.

¹²³ NEV. REV. STAT. ANN. § 62.193.

¹²⁴ ARIZ. REV. STAT. ANN. § 8-290.26.

¹²⁵ MICH. STAT. ANN. § 28.1287(800). See also, TEX. JUV. JUS. CODE ANN. § 57.004.

statements at sentencing, and presentation of views at another juvenile proceeding. This latter category includes victim statements at post-conviction release proceedings, pre-trial release proceedings, informal dispositions, and other proceedings.

As Table 13-A shows, nearly every state allows a court to order a juvenile to pay restitution as part of the disposition of a delinquency proceeding or even as part of an informal disposition. However, the ordering of restitution remains in the discretion of the trial judge. Restitution is not generally a mandatory part of every juvenile disposition. Several of the states that do not have a statute authorizing the court to order a juvenile to pay restitution do have a provision that make the juvenile and/or the juvenile's parents civilly liable for the damages caused. There is usually a cap on the amount of damages that can be recovered under such civil liability laws.

The final category in Table 13-A depicts the victim's right to confidentiality of address information. Some of the laws included in this category require the victim contact information contained in files to be kept confidential; others simply have restrictions on requiring crime victims to testify as to their current address.

The statutes summarized in Table 13-A are current through 1995. Many states have been examining this issue, and it is likely that several states have amended and extended the rights for victims of juveniles since that time. A list of statutes follows the table.

Table 13-A

VICTIMS' RIGHTS: JUVENILE PROCEEDINGS
Current through 1995

Category	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL
Notice of Offender's Name and Address**			✓		F		✓			✓				✓
Notice of Rights	F		✓			✓	✓	✓		✓			F	✓
Notice of Bail/Predisposition Release		✓	✓			✓				✓		F	F	✓
Notice of Trial	F	✓	✓			✓		✓		✓		F	F	✓
Notice of Disposition Hearing	F	✓	✓		F	✓		✓	✓	✓			F	✓
Notice of Final Adjudication	F	✓	✓			✓	✓	✓				F	F	✓
Notice of Escape	F	✓	✓		F	✓		✓		✓		✓	F	✓
Notice of Postdisposition Release	F	✓	✓		F	✓		✓		✓		✓	F	✓
Right to Attend Trial	F	✓	✓			L		✓		✓	L		F	✓
Right to Attend Disposition Hearing	F	✓	✓		F	✓		✓		✓	L		F	✓
Right to Attend Other Proceeding	F	✓	✓		F	✓				✓				✓
Separate Waiting Area	F					✓		✓				✓		✓
Right to Present VIS - Disposition Hearing	F	✓	✓		F	✓	✓	✓		✓	✓		F	✓
Right to Present Views, Other	F	✓	✓		F	✓				✓	✓		F	
Explanation of Plea Agreement/Consultation	F		✓			✓		✓				✓	F	✓
Court May Order Restitution	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓	✓
Right to Confidentiality of Address	F		T					✓					F	

(✓) – Right Is Implied.

** = Includes notice and access to information.

T = Need not testify as to address, etc.

F = Offense must be equivalent to felony.

L = Limited offenses.

TOTAL Column Includes All Marks.

Table 13-A

VICTIMS' RIGHTS: JUVENILE PROCEEDINGS
Current through 1995

CATEGORY	IN	IA	KS	KY	LA	MD	MO	MN	MS	MT	NE	NV	NH
Notice of Offender's Name And Address**	✓	✓										✓	L
Notice of Rights						✓			✓				
Notice of Bail/Predisposition Release	✓				L		✓	✓		F			
Notice of Trial					F	✓	✓			F			L
Notice of Disposition Hearing				(✓)	F	✓	✓	✓		F			L
Notice of Final Adjudication							✓	✓	✓	F		✓	L
Notice of Escape		✓			F		✓	✓					L
Notice of Postdisposition Release		✓	F		F		F	✓		F			L
Right to Attend Trial		(✓)	✓				F					✓	
Right to Attend Disposition Hearing				✓			F		✓				
Right to Attend Other Proceeding							F						
Separate Waiting Area	✓				F	✓	✓	✓					
Right to Present VIS - Disposition Hearing				(✓)	(✓)		✓	✓					L
Right to Present Views, Other				(✓)	F		✓	✓		F			L
Explanation of Plea Agreement/Consultation					F		✓	✓		F			L
Court May Order Restitution	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Right to Confidentiality of Address								✓					

(✓) – Right Is Implied.

** = Includes notice and access to information.

F = Offense must be equivalent to felony.

L = Limited offenses.

TOTAL Column Includes All Marks.

**RIGHTS OF VICTIMS OF JUVENILES
STATUTE LIST**

South Carolina

§ 20-7-780
§ 20-7-1330
§ 20-7-2125

South Dakota

§ 23A-28-14

Tennessee

§ 37-1-131

Texas

JJC § 54.041
JJC §§ 57.001 et seq.

Utah

§ 62A-7-122
§§ 77-38-1 et seq.
§ 78-3a-22
§ 78-3a-33
§ 78-3a-39

Vermont

tit. 13 § 5301
tit. 13 § 5304
tit. 33 § 5536
tit. 33 § 5538

Virginia

§ 16.1-273
§ 16.1-278.8
§ 16.1-309.1
§ 19.2-354

Washington

§ 10.97.070
§ 13.40.150
§ 13.40.160
§ 13.40.190
§ 13.40.205
§ 13.40.215
§ 13.50.050

West Virginia

§ 49-5-13b

Wisconsin

§ 48.245
§ 48.299
§ 48.34
§ 48.346
§ 48.51

Wyoming

§ 14-6-224
§ 14-6-229
§ 14-6-239
§ 14-6-240

ADDENDUM
POST-ELECTION UPDATE OF VICTIMS' RIGHTS
CONSTITUTIONAL AMENDMENTS

STATE VICTIMS' RIGHTS
AMENDMENTS

On November 5, 1996, the voters in eight states ratified constitutional amendments for crime victims' rights. This brings the total number of such state amendments to twenty-nine.

The eight states with new victims' rights constitutional amendments are: Connecticut, Indiana, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, and Virginia. Public support was strong, with an average of 80% of the voters supporting the amendments. As with the previously existing victims' rights amendments, the scope and strength of the provisions vary. However, most of the amendments provided crime victims the rights to be notified, present and heard at important criminal justice proceedings, and gave victims the right to be treated with fairness, dignity and respect throughout the criminal justice process. Table A-1 compares the rights provided by each of the new state victims' rights amendments. Table A-2 examines the enforcement language of each new amendment.

FEDERAL VICTIMS' RIGHTS
AMENDMENT

The efforts toward a federal crime victims' rights constitutional amendment continued. Hearings on the amendment were held before the full Judiciary Committees of both the Senate and House, but the measure did not reach a vote in either committee. During the 1996 election, both major political parties included constitutional rights for crime victims in their platforms, and both President Clinton and Bob Dole publicly supported including victims' rights in the U.S. Constitution. Sponsors pledged to reintroduce the measure early in the 1997 session.

STATE CONSTITUTIONAL RIGHTS OF CRIME VICTIMS
Amendments Ratified November 1996

State	Treated with Fairness and Respect	Notice of Proceedings	Notice of Release	Attend Proceedings	Heard at Proceedings	Confer with Prosecutor	Speedy Trial	Protected from Defendant	Right to Refuse Interview	Restitution and/or Compensation	Rights at Juvenile Level
CT Const. Amend. 17 (b)	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	
IN Art. I §13(b)	✓	✓		✓		✓					
NV Art. I Sec. 8				✓	✓						
NC Art. I Sec. 37		✓	✓	✓	✓	✓				Rest.	
OK Art. II Sec. 34	✓	✓	✓	✓	✓					Rest.	*
OR Ballot Measure 40	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	✓
SC Art. I Sec. 24	✓	✓	✓	✓	✓	✓	✓	✓		Rest.	*
VA Art. I Sec. 8-A	✓										

* Legislature Authorized to Extend Rights to Victims of Juveniles.

**ENFORCEMENT OF VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT
LANGUAGE OF THE AMENDMENT
Amendments Ratified November 1996**

State	Enforceability Presumed	No Cause of Action for Money Damages	No Cause of Action, Generally	Legislature May Provide for Enforcement	Victim May Enforce Rights
CT				✓	
IN	✓				
NV			✓*		✓*
NC		✓		✓	
OK	✓			**	
OR		✓			
SC		✓		**	✓
VA			✓		

* In general, enforcement actions are prohibited. However, a person *may* bring action to compel official to carry out duty required by implementing legislation.

** Amendment states that legislature may enact laws to implement, preserve or protect constitutional rights, or that victim is entitled to "rights and remedies" provided by legislature, or that legislature may define and enforce section.

