

The Rights of Victims of Crime

Adapted from VictimLaw.org and the National Center for Victims of Crime

(<https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp> and

<http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victims%27-rights>)

Introduction

Thirty years ago, victims had few legal rights to be informed, present, and heard within the criminal justice system. Victims did not have to be notified of court proceedings or of the arrest or release of the defendant, they had no right to attend the trial or other proceedings, and they had no right to make a statement to the court at sentencing or at other hearings. Moreover, victim assistance programs were virtually non-existent.

Since then, there have been tremendous strides in the creation of legal rights and assistance programs for victims of crime. Today, every state, the District of Columbia, and several United States territories have an extensive body of basic rights and protections for victims of crime within its statutory code. Victims' rights statutes have significantly influenced the manner in which victims are treated within the federal, state, and local criminal justice systems.

The core rights for victims of crime include:

- The right to be treated with fairness, dignity, sensitivity, and respect;
- The right to attend and be present at criminal justice proceedings;
- The right to be heard in the criminal justice process, including the right to confer with the prosecutor and submit a victim impact statement at sentencing, parole, and other similar proceedings;
- The right to be informed of proceedings and events in the criminal justice process, including the release or escape of the offender, legal rights and remedies, and available benefits and services, and access to records, referrals, and other information;
- The right to protection from intimidation and harassment;
- The right to restitution from the offender;
- The right to privacy;
- The right to apply for crime victim compensation;
- The right to restitution from the offender;
- The right to the expeditious return of personal property seized as evidence whenever possible;
- The right to a speedy trial and other proceedings free from unreasonable delay;
- The right to enforcement of these rights and access to other available remedies.

Victims' Rights: Strong, permanent, and enforceable

In addition to statutory victims' rights, nearly two-thirds of the states have adopted amendments to their state constitutions guaranteeing rights to victims of crime. Including these in state constitutions increases the strength, permanence, and enforceability of victims' rights. Some state amendments include a few broadly worded rights, while others provide a long list of specific rights for victims of crime.

Rights that are guaranteed by a constitution are stronger than rights that are set out only in statutes. Incorporating victims' rights into constitutions also gives those rights a degree of permanence. Statutes can be changed at any time by the state or federal legislature. In contrast, it is relatively difficult to change the constitution of a state or that of the United States. In addition, giving victims' rights constitutional protections generally makes those rights enforceable. If an official or a state agency violates a constitutional right, a court

usually has the power to order that official or agency to comply with the constitution.

Although there is no amendment to the U.S. Constitution affording crime victims' rights, the Crime Victims' Rights Act (CVRA), enacted as part of the Justice for All Act of 2004, establishes the rights of crime victims in federal criminal justice proceedings, provides mechanisms for victims to enforce those rights, and gives victims and prosecutors standing to assert victims' rights.

Who May Exercise Victims' Rights?

Exactly who the law considers a "victim" entitled to a particular right is defined by the federal, state, or tribal code. In some jurisdictions, basic rights are afforded only to victims of felonies, while in others, victims of any violent crime, whether felony or misdemeanor, may exercise such rights. Many jurisdictions also provide rights to victims of serious juvenile offenses, and extend victims' rights to the surviving family members of a homicide victim, or to the parent, guardian, or other relative of a minor, disabled or incompetent victim. In some states, a victim's legal representative or another person designated by the victim may exercise rights on the victim's behalf.

A victim is usually defined as a person who has been directly harmed by a crime that was committed by another person.

Along with general rights for crime victims, many jurisdictions have created special rights for certain groups of crime victims with unique needs. These include victims of sexual assault, domestic violence, stalking, or human trafficking, or victims who are elderly, young children, or victims with disabilities.

What exactly are the rights of victims of crime?

In general, victims' rights laws require that victims of serious crimes have certain information, protections, and a limited role in the criminal justice process. Victims' rights depend on the laws of the jurisdiction where the crime is investigated and prosecuted: state, federal or tribal government, or military installation.

According to law in most jurisdictions, victims have the following rights in the criminal justice process:

Victims have the right to be treated with dignity, respect, and sensitivity.

Victims generally have the right to be treated with courtesy, fairness, and care by law enforcement and other officials throughout the entire criminal justice

process. This right is included in the constitutions of most states that have victims' rights amendments and in the statutes of more than half the states.

Victims have the right to be heard in the criminal justice process.

In most jurisdictions, especially for violent and other serious crimes, victims have the right to prepare and deliver a "victim impact statement" during the trial of their attacker. Victim impact statements allow crime victims, during the decision-making process on sentencing or parole, to describe to the court or parole board the impact of the crime on their lives. The victim impact statement may include a description of psychological, financial, physical, or emotional harm the victim experienced as a result of the crime. A judge may use information from these statements to help determine an offender's sentence; a parole board may use such information to help decide whether to grant a parole and what conditions to impose in releasing an offender. Many victims have reported that making victim impact statements improved their satisfaction with the criminal justice process and helped them recover from the crime.

In some states, the prosecutor is required to confer with the victim before making important decisions. In all states, however, the prosecutor (and not the victim) makes decisions about the case.

Victims have the right to be informed.

The purpose of this right is to make sure that victims have the information they need to exercise their rights and to seek services and resources that are available to them. Victims generally have the right to receive information about victims' rights, victim compensation, available services and resources, how to contact criminal justice officials, and what to expect in the criminal justice system. Victims also usually have the right to receive notification of important events in their cases. Although state laws vary, most states require that victims receive notice of the following events:

- the arrest and arraignment of the offender
- bail proceedings
- pretrial proceedings
- dismissal of charges
- plea negotiations
- trial
- sentencing
- appeals
- probation or parole hearings
- release or escape of the offender

States have different ways of providing such information to victims. Usually, information about court proceedings is mailed to the victim. Some states have an automated victim notification system that automatically calls or e-mails the victim with updates on the status of the offender, while others require the victim to telephone the authorities to receive such updates.

Victims have the right to protection.

In many states, victims have the right to protection from threats, intimidation, or retaliation during criminal proceedings. Depending on the jurisdiction, victims may receive the following types of protection:

- police escorts
- witness protection programs
- relocation
- restraining orders

Some states also have laws to protect the employment of victims who are attending criminal proceedings.

Victims have the right to apply for compensation.

All states provide crime victim compensation to reimburse victims of violent crime for some of the out-of-pocket expenses that resulted from the crime. The purpose of compensation is to recognize victims' financial losses and to help them recover some of these costs. All states have a cap on the total compensation award for each crime, and not all crime-related expenses are covered. To be eligible for compensation, victims must submit an application, usually within a certain period of time, and show that the losses they are claiming occurred through no fault of their own. Some types of losses that are usually covered include:

- medical and counseling expenses
- lost wages
- funeral expenses

Compensation programs seldom cover property loss or pain and suffering. Also, victim compensation is a payer of last resort; compensation programs will not cover expenses that can be paid by some other program, such as health insurance or workman's compensation.

Victims have the right to restitution from the offender.

In many states, victims of crime have the right to restitution, which means the offender must pay to repair some of the damage that resulted from the crime. The purpose of this right is to hold offenders directly responsible to victims for the financial harm they caused. The court orders the offender to pay a specific amount of restitution either in a lump sum or a series of payments. Some types of losses covered by restitution include:

- lost wages
- property loss
- insurance deductibles

Victims have the right to the prompt return of personal property.

Crime investigators must often seize some of the victim's property as evidence for a criminal case. In most states, authorities must return such property to the victim when it is no longer needed. To speed up the return of property, some states allow law enforcement to use photographs of the item, rather than the item itself, as evidence. The prompt return of personal property reduces inconvenience to victims and helps restore their sense of security.

Victims have the right to a speedy trial.

While the right to a fair, speedy trial is guaranteed for defendants of a criminal proceeding, it is also an important right for victims of crime. The long-winded nature of some criminal cases has been shown to extend or even enhance the emotional damage a victim suffers after being subject to a violent crime. There have even been many examples of victims giving up on pursuing justice due to the ongoing psychological difficulties. Trials that are organized, scheduled, and held in a reasonable time frame allow victims to see their rights carried out (and maybe even to pursue other rights, such as restitution) and to achieve a sense of closure from what is often a traumatizing event.

Victims have the right to enforcement of the laws that protect them.

To be meaningful, legal rights must be enforced. States are beginning to pass laws to enforce victims' rights, and several states have created offices to receive and investigate reports of violations of victims' rights. Other states have laws that permit victims to assert their rights in court.

