



ENFORCING THE RIGHTS OF CRIME VICTIMS

With legal rights for crime victims established in every state, efforts in the victims' movement have turned to the enforcement of those rights. It has become increasingly clear that states need to make a variety of measures available to victims and their advocates to ensure compliance with victims' rights laws.

The types of crime victim complaints are wide-ranging. As examples:

a crime victim may be denied a clear legal right, for instance where a victim is informed that he or she will not be able to present a victim impact statement;

a crime victim may believe he or she has been mistreated by criminal justice officials, in violation of a victim's right to be treated with dignity and respect; or

a victim may have a complaint about the functioning of the criminal justice system, such as where a homicide survivor believes a murder investigation hasn't been conducted properly.

Each of these types of complaints requires a different type of response. Direct intervention in the criminal case may be necessary to rectify an impending violation of a legal right. A broader investigation into agency policies and practices may be required to improve an agency's response to victims in general. And it may be necessary to have an independent agency make an inquiry into an investigation or prosecution. In some states, one office serves several of these functions.

This overview will describe the various approaches to enforce victims' rights and address victim's complaints.

Complaint resolution process

Several states have created a designated entity to receive, investigate, and attempt to resolve crime victim complaints. In some states, this may be an ombudsman or victims advocate; in others, it may be a committee or board. Experience in those states has shown that the majority of calls from crime victims are resolved by providing information or referrals. However, many go on to the formal complaint and investigation stages. Some states also give the investigatory agency the ability to impose consequences on offending agencies or officials found to have violated a victim's rights.

States with a complaint resolution process include:

- Alaska: Alaska created a state office of victims' rights to assist crime victims in obtaining their legal rights. The office has the power to receive and investigate complaints of crime victims regarding denial of their rights.¹
- Arizona: While not statutorily created, Arizona has a Victims' Rights Enforcement Officer, which operates as a crime victim ombudsman, in the Attorney General's office, authorized to receive and investigate complaints of crime victims. The Officer also provides information and referrals, as well as assistance, to complainants and other callers.
- Colorado: Colorado has a Victims' Rights Coordinating Committee which, after investigating and attempting to resolve any complaints regarding the provision of rights, may refer violations to the Governor, who must ask the Attorney General to bring an injunctive action.²
- Connecticut: In Connecticut, the Office of the Victim Advocate has a wide range of duties, which include the receipt and investigation of crime victim complaints of mistreatment by state agency or other entity providing services to victims, and coordinating and cooperating with agencies concerned with the implementation, monitoring, and enforcement of the constitutional rights of victims.³
- Maryland: Maryland has a Compliance Initiative within the Governor's Office of Crime Control and Prevention, Bureau of Victim Services. The Compliance Initiative has a toll-free line through which it can take complaints and make referrals. It can attempt to resolve victims' complaints and can act as a liaison between victims and criminal justice agencies.
- Minnesota: Minnesota established a Crime Victim Ombudsman office that operated as a neutral third party in investigating the complaints of victims of crime. Those complaints could include a possible violation of rights, the delivery of victim services, the administration of the crime victims' reparations act, and other complaints of mistreatment. The ombudsman could also act as a liaison between crime victims and witnesses and criminal justice agencies.⁴ The office was defunded in 2003, and its duties were absorbed by the state's Center for Crime Victim Services.
- South Carolina: South Carolina also has a Crime Victim Ombudsman which can review and attempt to resolve complaints against the criminal or juvenile justice systems or victim assistance programs. The Ombudsman can also act as a liaison between those parties.⁵

- Utah: Utah uses Local Victims' Rights Committees in each judicial district, composed of various officials and victim representatives. The Committees may hold hearings and publish findings.⁶
- Wisconsin: Wisconsin has created a Crime Victims Rights Board, which can review complaints of violations of rights. Based on its findings, the board is authorized to issue reprimands, seek injunctive relief in court, or bring civil actions to assess a civil forfeiture of up to \$1,000.⁷

Legal standing

Legal standing for crime victims and, on their request, prosecutors or other officials, is an important component of a system to make victims' rights a reality. Legal standing gives victims the right to ask the court to rule on an issue of victims' rights. For example, if a court has informed a victim that he or she will not be able to attend the trial, a crime victim must have "legal standing" in order to be able to ask the court to reconsider its ruling, or to seek a higher court ruling on the issue. Without legal standing to enforce rights, there is no effective means for a victim to assert his or her rights during the criminal justice process, when time is often of the essence.

Arizona, Florida, Indiana, and Texas all give crime victims legal standing to assert their rights.⁸ In Alabama, Arizona, Florida, Mississippi, and Texas, the prosecutor also has standing to assert rights on the victim's behalf.⁹ Alaska and Connecticut give the state Victim Advocate the ability to advocate for the crime victim in the criminal case.¹⁰

While they do not have general legal standing to assert their rights, crime victims in Maryland are empowered by statute to file an application for leave to appeal to the State's Court of Special Appeals any final order denying certain basic rights.¹¹ Arizona's statutes grant victims the right to have set aside any postconviction release decisions resulting from hearings in which they were denied the opportunity to receive notification, attend, and be heard.¹² Arizona's statutes also grant victims standing to seek injunctive relief for violations of rights, or even to bring an action for money damages against a government entity "responsible for the intentional, knowing, or grossly negligent violation of the victims' rights."¹³

Routine monitoring

Complaint resolution processes and crime victim standing can help an assertive crime victim resolve a violation of rights. In contrast, routine monitoring provides a way to uncover and stop ongoing violations of rights, without relying on individual crime victims initiating complaints. Such monitoring can include regular examination of an agency's policies and procedures, review of staff training regarding victims' rights, and regular measurement of crime victim satisfaction. This type of monitoring can discover a misinterpretation of the law, as for example cases in which an agency may not realize that some misdemeanor victims were entitled to legal rights. It might also reveal outdated forms or procedures that were resulting in denial of rights.

Arizona has an auditing process for those agencies receiving money from the victims' rights fund.¹⁴ In Connecticut, the Victim Advocate is authorized to evaluate the delivery of services to victims by state agencies and those providing services to victims, and to review the procedures of any state agency or other entity providing services to victims with respect to victims' rights.¹⁵

Internal checks

For some violations of rights, there are no effective remedies. For example, if a victim was not informed of the right to be heard before a plea agreement is entered, and a plea has been accepted by the court, no remedy can return to the victim the ability to have input in the disposition of the case. The only effective response is to prevent such violations from occurring. Including a check within the law, to ensure that rights have been provided before a case can proceed, can prevent violations.

For example, under Maryland law, the State's Attorney is required to certify to the court clerk that a crime victim was provided information about victims' rights.¹⁶ Similarly, Indiana law requires that as part of a plea recommendation presented to the court, the prosecuting attorney must certify that he or she has offered to show the proposed agreement to the victim and that the victim has had an opportunity to offer an opinion regarding the agreement.¹⁷

Conclusion

Crime victims' rights to be informed, present, and heard throughout the criminal justice system are guaranteed by law at the state and federal level, but their implementation remains incomplete. Victims' rights cannot be made a reality until crime victims have the ability to redress their complaints and governments undertake measures to monitor the provision of victims' rights. The result will be a stronger system of justice, inspiring the confidence of victims and witnesses as well as the public at large.

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1. Alaska Stat. §§ 24.65.010 et seq. (2001).
 2. Colo. Rev. Stat. §§ 24-4.1-117.5, 24-4.1-303 (2000).
 3. Conn. Gen. Stat. §§ 46a-13b to 13j (2001).
 4. Minn. Stat. § 611A.74 (2000).
 5. S.C. Code Ann. §§ 16-3-1620 to 1630 (2000).
 6. Utah Code Ann. § 77-37-5 (2000).
 7. Wis. Stat. Ann. §§ 950.08, 950.09 (2000).

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8. Ariz. Rev. Stat. §§ 8-416, 13-4437 (2000); Fla. Stat. Ann. § 960.001(7) (2000); Ind. Code Ann. §35-40-2-1 (2000); Tex. Const. Art. 1, §30.
 9. Ala. Code § 15-23-83 (2000)(Attorney General or district attorney); Ariz. Rev. Stat. §§ 8-416, 13-4437 (2000)(prosecutor, at the request of the victim); Fla. Stat. Ann. § 960.001(7)(2000); Miss. Code Ann. § 99-43-47 (2000); Tex. Const. Art. 1, Sec. 30 (prosecuting attorney).
 10. Alaska Stat. § 24.65.110 (2001) (victims' advocate has general ability to advocate for crime victim in an ongoing criminal case); Conn. Gen. Stat. §§ 46a-13c, 13g (2001) (Victim Advocate may file a limited special appearance in court to advocate for victim's rights).
 11. MD Code Crim. Proc. Tit. 11, §103 (2003).
 12. Ariz. Rev. Stat. §13-4436 (2000).
 13. Ariz. Rev. Stat. § 13-4437 (2000).
 14. Ariz. Rev. Stat. § 41-191.08 (2000).
 15. Conn. Gen. Stat. § 46a-13c (2001).
 16. MD Code Crim. Proc. tit. 11, §104 (2003).
 17. Ind. Code Ann. § 35-35-3-2 (2000).