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## Fundamentals Of Victims' Rights: A Summary of 12 Common Victims' Rights

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This bulletin summarizes twelve common victims' rights. In most jurisdictions the legal definition of victim is broad and includes persons beyond those who are the "direct" victim of the crime. For example, surviving family members of homicide victims, guardians of minors, and other selected representatives are included in many jurisdiction's definition of crime victim. Each jurisdiction is unique and therefore determining whether a person is entitled to a right requires analysis of both the right and the definition of "victim." *See Fundamentals of Victims' Rights: An Overview of the Legal Definition of Crime "Victim" in the United States*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), November 2011.

### I. Right to Due Process, Fairness, Dignity, Respect, and Privacy

The right to fairness, dignity, respect, and privacy is the right to have one's rights considered within the criminal justice system. Some combination of these broad rights are found in many jurisdictions nationwide.

A majority of states provide victims with the right to be treated with fairness, dignity, and respect.<sup>1</sup> In addition, while there is an implicit right to privacy in the United States Constitution, a handful of states explicitly provide victims with a constitutional right to privacy,<sup>2</sup> and other states provide for victim privacy through numerous statutory or rule provisions, such as: rape shield laws; counseling and other privileges<sup>3</sup>; protection of victim contact information; and the right to refuse a defense request for an interview.<sup>4</sup>

One of the most recent codifications of these rights is found in the federal Crime Victims' Rights Act (CVRA)<sup>5</sup>, which provides that victims have "[t]he right to be treated with fairness and with respect for the victim's dignity and privacy."<sup>6</sup> In describing this subsection of the CVRA, Senator Kyl, one of the co-sponsors of the legislation, stated:

The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct government agencies and employees, whether they are in executive

or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.<sup>7</sup>

Senator Kyl's statement makes clear that a right to fairness means that victims are entitled to due process. As the United States Supreme Court has noted, at the heart of due process is the idea that "parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified."<sup>8</sup> So at a minimum, a victim's right to fairness includes the right to notice and an opportunity to be heard.

Thus, while the rights of "fairness," "dignity," "respect," and "privacy," are broad and seemingly abstract, such that defining them may be daunting,<sup>9</sup> these are enforceable rights with unique meaning. The impact of these broad rights and victims' interests underlying them can be seen influencing judicially created criminal procedure and a number of courts are starting to interpret the rights.<sup>10</sup>

## II. Right to Notice

The right to notice is the right to advisement of the existence of crime victims' rights and the right to advisement of specific events during the criminal justice process. The right to notice is distinct from the right to information, which refers to a crime victim's right to be generally informed about criminal proceedings and about available resources. The language of the right to notice varies by jurisdiction.

At the state level, there are substantial variations regarding whether a victim must enter a request to trigger the right to notice. The requirement that a victim "request" notice takes numerous forms: some states explicitly require written request<sup>11</sup>, while others do not include a writing requirement; at least one state requires "registration" with the prosecutor<sup>12</sup>; and at least one state requires the victim maintain a landline through which the victim can be reached.<sup>13</sup>

On the federal level, subsection (a)(2) of the

CVRA provides that a crime victim has the "right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused."<sup>14</sup>

The right to notice is at the heart of victims' participatory status because, if a victim is unaware of his or her rights or proceedings in which those rights are implicated, the victim cannot participate in the system. As noted above, the United States Supreme Court has stated that due process, at its core, requires that "parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified."<sup>15</sup> The critical nature of the right to notice was observed by Senator Kyl while discussing the notice provision of the CVRA: "The notice provisions are important because if a victim fails to receive notice of a public proceeding the criminal case at which the victim's right could otherwise have been exercised the right has effectively been denied."<sup>16</sup>

## III. Right to be Present

The right to be present refers to the victim's right to physically attend the criminal trial and other criminal justice proceedings related to the investigation, prosecution, and incarceration of his or her offender. Historically, in-person victim attendance was well-accepted. A shift happened in 1975, however, when, with the adoption of Federal Rule of Evidence 615 (the rule of sequestration), exclusion of victims from criminal proceedings became routine. The Rule of Sequestration required automatic exclusion of witnesses if requested by either the prosecutor or defendant.<sup>17</sup> Most states adopted a rule similar to the federal rule,<sup>18</sup> and as a result, crime victims were routinely identified as potential witnesses, resulting in their systematic exclusion from trial. Importantly, however, beginning in the early 1980's, an overwhelming majority of jurisdictions passed constitutional or statutory provisions guaranteeing a crime victim the right to be present.<sup>19</sup>

Eleven states give victims the right

to be present at trial subject to exclusion for interference with the defendant's constitutional rights, including the rights to due process and a fair trial.<sup>20</sup> At least sixteen states provide crime victims with an unqualified right to be present at trial.<sup>21</sup> Ten additional states provide victims with the right to be present at trial, subject to other qualifications: five give victims the right to be present unless their testimony is affected<sup>22</sup>; two give victims the right to be present if practicable<sup>23</sup>; two give victims the right to be present subject to the discretion of the court<sup>24</sup>; and one gives victims the right to be present after testifying.<sup>25</sup>

The CVRA sets forth an expansive right to be present at criminal justice proceedings. Subsection (a)(3) provides a crime victim with the right "not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding."<sup>26</sup> This places a heavy burden on the party opposing the victim's presence. As the Ninth Circuit Court of Appeals explained:

[A] district court must find by clear and convincing evidence that it is highly likely, not merely possible, that the victim-witness will alter his or her testimony.<sup>27</sup>

Further, under the CVRA, the court must "make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding."<sup>28</sup> The legislative history of the CVRA reveals the breadth of the right. Specifically, Senator Feinstein, one of the co-sponsors of the legislation, noted that the right was "intended to grant victims the right to attend and be present throughout all public proceedings."<sup>29</sup> Senator Kyl stated that the right

allows crime victims in the vast majority of cases to attend the

hearings and trial of the case involving their victimization.

This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pretrial, trial, or post-trial proceedings.<sup>30</sup>

Because the victim's right to be present is grounded in state constitution, state statute, or federal statute, but not the federal constitution, the victim's right must be exercised in a way that does not violate the defendant's federal constitutional rights. Notably, an overwhelming majority of courts have concluded that mere victim presence does not violate a defendant's federal constitutional rights.<sup>31</sup> Instead, a defendant's federal constitutional rights are implicated only where a crime victim affirmatively engages in disruptive or other prejudicial behavior. Further, in most jurisdictions, passage of constitutional and statutory rights to be present effectively abrogated the court rule of sequestration as it applied to crime victims.

#### IV. Right to be Heard

The right to be heard refers to the right to make an oral and/or written statement to the court at a criminal justice proceeding. Most statutory and constitutional rights to be heard are drafted in mandatory terms, leaving judges no discretion whether to allow crime victims to make a statement at sentencing.<sup>32</sup> Even in the absence of an explicit law providing a victim with the right to be heard, such as where a person does not meet the legal definition of victim, a sentencing court retains discretion to hear relevant information from any person.<sup>33</sup>

A few states explicitly provide for how a victim may exercise the right to be heard.<sup>34</sup> Unless the right is specifically limited by constitution, statute, or rule,<sup>35</sup> the victim may elect the

method by which he or she wishes to be heard at sentencing.<sup>36</sup> A few jurisdictions have codified this choice of method.<sup>37</sup> Depending upon jurisdiction, victims have the right to be heard at release, plea, sentencing, and parole. Focusing on the critical stages of plea and sentence, at least twelve states provide for the right to be heard by the court prior to the acceptance of any proposed plea agreement<sup>38</sup>; and thirty-three states provide for the right to be heard by the prosecutor prior to the presentation of the plea agreement to the court.<sup>39</sup> A handful of states provide for the victim to be heard both by the prosecutor and the court prior to acceptance of a plea agreement.<sup>40</sup> At least thirty-nine states provide crime victims with a constitutional or statutory right to be heard at sentencing.<sup>41</sup> These laws provide generally that a victim has the right to be heard at sentencing<sup>42</sup> or, more specifically, that a victim has the right to make a statement to the court at sentencing.<sup>43</sup> An additional four states provide that crime victims have the right to make a verbal statement subject to the court's discretion or to submit a written impact statement that the sentencing court must consider prior to sentencing the defendant.<sup>44</sup> A few states require that the victim make a request to be heard prior to exercising that right.<sup>45</sup>

On the federal level, subsection (a)(4) of the CVRA provides a crime victim with “[t]he right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.”<sup>46</sup> During passage of the CVRA, Senator Kyl stated:

This provision is intended to allow victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. The right is a right independent of the government or the defendant that allows the victim to address the court. To the extent the victim has the right to independently address the court, the victim acts as an

independent participant in the proceedings.<sup>47</sup>

The Ninth Circuit Court of Appeals interpreted the right to be heard under the CVRA as a victim's “indefeasible right to speak, similar to that of the defendant, and for good reason . . . .”<sup>48</sup>

Notably, while the right to be heard at plea and sentencing are often written as separate statutes or constitutional provisions, the right to be heard at sentencing implicitly includes the right to be heard at plea because the right to be heard at sentencing may only be meaningful if exercised prior to a defendant's plea.<sup>49</sup>

## V. Right to Reasonable Protection

The right to reasonable protection relates to the victim's right to safety from the accused. It is generally reflected in constitutional and statutory provisions that address issues of the victim's physical safety and mental and emotional health.

At least nine states provide victims with a broad constitutional right to protection.<sup>50</sup> In several other states, victims have constitutional and statutory rights to be free from intimidation, harassment, or abuse.<sup>51</sup> In addition to these broad rights to protection, many states afford protection by providing crime victims with sufficient information and/or notice to allow them take steps to ensure their own protection. For instance, state statutes include the right to notice of the offender's: release on bail (thirty-five states)<sup>52</sup>; pre-trial release (thirty-one states)<sup>53</sup>; conditional or temporary release from prison (thirty-nine states)<sup>54</sup>; commutation (fourteen states)<sup>55</sup>; parole (forty-six states)<sup>56</sup>; final release (forty states)<sup>57</sup>; and release from a mental health institution (twenty-two states).<sup>58</sup> Most state statutory schemes also provide victims with notice of offender escape (forty-one states)<sup>59</sup> and, in some cases, recapture (sixteen states).<sup>60</sup> Protection rights are also provided through a myriad of other laws, including those providing for: no contact orders as a condition of release; the availability of civil orders of protection; the right to be heard at bail and other release

proceedings regarding the dangerousness of the offender; the right to not disclose personal or contact information during testimony<sup>61</sup>; and the right to a separate victim waiting area in the courthouse.<sup>62</sup>

On the federal level, subsection (a)(1) of the CVRA provides crime victims with “[t]he right to be reasonably protected from the accused.” Noting that, “the government cannot protect the crime victim in all circumstances,”<sup>63</sup> Senator Kyl stated that the right to protection has concrete meaning, including not only that crime victims be afforded separate and secure waiting areas during proceedings, but also that the conditions of pretrial and post-conviction release include protections for the victim’s safety.<sup>64</sup> Thus, the CVRA’s right to protection creates a “substantive right to have the victim’s safety made not simply a consideration in release decisions, but a requirement.”<sup>65</sup> In addition to the CVRA, the Victims’ Rights and Restitution Act of 1990,<sup>66</sup> provides that “[a]t the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall . . . (2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section,” which includes the right to “reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.”<sup>67</sup>

## VI. Right to Restitution

Restitution is money paid from the offender to the victim for losses that the victim suffered as a result of the offender’s crime. Depending upon the jurisdiction’s statutory or constitutional provision, the right to restitution can be mandatory or discretionary, and can entitle the victim to full or partial restitution.

Every state has a statutory provision providing some right to restitution, and at least eighteen states have enshrined the right in their constitutions.<sup>68</sup> A number of states make restitution mandatory in virtually all cases.<sup>69</sup> Several states mandate restitution or require

a court to state on the record their reasons for failing to order restitution.<sup>70</sup> In other states, restitution orders are made at the discretion of the court.<sup>71</sup>

On the federal level, Mandatory Victim Restitution Act (MVRA),<sup>72</sup> requires the court to order restitution in certain cases for each victim in the full amount of the victim’s out-of-pocket losses. The MVRA defines “victim” as:

[A] person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy or pattern.<sup>73</sup>

When interpreting the predecessor to the MVRA, the Victim and Witness Protection Act,<sup>74</sup> the United States Supreme Court authorized an award of restitution only for the loss caused by the specific conduct that is the basis for the offense of conviction.<sup>75</sup> After the enactment of the MVRA, courts have concluded that a “direct victim” must suffer losses by criminal conduct underlying a defendant’s convictions. This is illustrated in *United States v. Menza*,<sup>76</sup> where the court remanded the issue of restitution to the trial court to determine whether losses incurred by the DEA in cleaning up defendant’s methamphetamine laboratories directly related to the criminal conduct involved in defendant’s underlying convictions for possession of chemicals with the intent to manufacture a controlled substance.<sup>77</sup>

The CVRA also provides for restitution. In subsection (a)(6), the CVRA provides crime victims with “[t]he right to full and timely restitution as provided in law.”<sup>78</sup> When the breadth of this right to restitution was discussed on the Senate Floor, Senator Kyl noted that the

provision was meant to specifically “endorse the expansive definition of restitution given by Judge Cassell in *U.S. v. Bedonie* and *U.S. v. Serawop*,” in which the Federal District Court for the District of Utah afforded future lost earnings to a crime victim.<sup>79</sup>

### VII. Right to Information and Referral

The right to information is the right to be informed about criminal proceedings and available resources. Victims’ rights statutes and constitutional provisions generally entitle victims to be provided information related to three broad categories: victim services; the criminal justice process itself; and the specific criminal justice proceeding or case involving the person accused of the crime committed against the victim.

An overwhelming number of states require that crime victims be provided with information about victim services.<sup>80</sup> This includes information about governmental agencies that provide victim services; information or referrals to private organizations that provide victim services – often including medical services, social services, and crisis or emergency services; and compensation benefits.<sup>81</sup> Several states require the provision of victim services, but do not require that the victim receive information about those services.<sup>82</sup> In most states, either law enforcement personnel or the prosecutor is the government entity required to provide information about such services to the victim.<sup>83</sup> Turning to the second category, at least twenty states require that victims be provided general information about the criminal justice process, sometimes including information about their role in that process.<sup>84</sup> Regarding the third category, it is difficult to quantify the number of states that require that victims be provided information about the case involving the crime committed against them. Some states require that victims be provided information, upon request, about the status of their case, while other states require that crime victims be provided such information only at specific points during the proceedings. Several states that do not explicitly provide the right to information, provide victims with the right to confer with

the prosecutor, which necessarily includes the right to information about the victim’s case. In addition, other victim’s rights, such as the right to notice, when properly afforded, require that information about a victim’s case be provided on an ongoing basis.

On the federal level, the Victims’ Rights and Restitution Act of 1990, provides that “[a]t the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall . . . (2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section.”<sup>85</sup> The services mentioned in this provision also fall into the three categories identified above.

### VIII. Right to Apply for Victim Compensation

Compensation is money paid from the government to a crime victim to reimburse the victim for certain losses incurred as a result of a crime.

While victims do not have the right to automatically receive compensation, victims in every state have the right to apply for compensation. This is true because all states receive funds under the Victims of Crime Act that support some form of compensation or reparations program. Recovery of monies from state compensation programs is typically limited: only certain types of losses are compensated; states generally “cap” the amount of compensation available; and victims are required to reimburse the compensation fund from monies received from other sources, such as insurance, civil settlements, or restitution. In general, victims of crime do not have a right to or expectation of full recovery from their state’s compensation fund for the full amount of losses suffered as a result of the crime committed against them. Detailed information about compensation programs nationwide can be found on the National Association of Crime Victim Compensation Boards’ website, <http://www.nacvcb.org/>.

## IX. Right to Proceedings Free From Unreasonable Delay

The right to proceedings free from unreasonable delay is not the right to proceedings free from any delay, but from unreasonable delay. “Unreasonableness” is often fact-specific.

At least twenty-five states provide victims with some version of a right to prompt disposition of a criminal proceeding.<sup>86</sup> In addition to a general right for crime victims to have proceedings free from unreasonable delay, some jurisdictions afford child victims and other vulnerable populations with a specific right to a “speedy trial” in certain situations.

Federally, subsection (a)(7) of the CVRA provides crime victims with “the right to proceedings free from unreasonable delay.”<sup>87</sup> In debating this provision on the Senate Floor, Senator Feinstein stated: “This provision should be interpreted so that any decision to continue a criminal case should include reasonable consideration of the rights under this section.”<sup>88</sup> As Senator Kyl further explained: “This provision [in the CVRA] should be interpreted so that any decision to schedule, reschedule, or continue criminal cases should include victim input through the victim’s assertion of the right to be free from unreasonable delay.”<sup>89</sup>

While this right to proceedings free from unreasonable delay does not give a crime victim control of the criminal justice process, it does help ensure crime victim presence and independent participation throughout the process and helps avoid the secondary victimization caused by delay. As Senator Kyl noted: “[D]elays in criminal proceedings are among the most chronic problems faced by victims. Whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case. A central reason for these rights is to force a change in a criminal justice culture which has failed to focus on the legitimate interests of crime victims, a new focus on limiting unreasonable delays in the criminal process to accommodate the victim is a positive start.”<sup>90</sup>

## X. Right to Confer

The right to confer is a right for the victim to both gather and provide information about the crime and the process to the prosecutor. The right to confer it is not a right to control the prosecution. The timing of affording the right to confer is critical in light of the fact that so many criminal cases are resolved by a plea. For the right to have any meaning it must mean a victim has the right to confer prior to the government reaching a binding plea agreement.

Constitutions and statutes in a number of states give victims a right to confer with the prosecution concerning charging or disposition.<sup>91</sup>

Federally, subsection (a)(5) of the CVRA provides crime victims with “the reasonable right to confer with the attorney for the Government in the case.”<sup>92</sup> Senator Feinstein explained that the right “is intended to be expansive. For example, the victim has the right to confer with the Government concerning any critical stage or disposition of the case.”<sup>93</sup> Senator Kyl further noted:

This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, victims are able to confer with the government’s attorney about proceedings after charging. I would note that the right to confer does [not] impair [ ] prosecutorial discretion . . . .<sup>94</sup>

Courts have recognized that failing to afford the right to confer prior to reaching a plea agreement or a final disposition violates the right.<sup>95</sup> Reasonably then, the plea should be undone as violation of the right. One court has, however, held that while the right to confer must mean the right to confer prior to final disposition, failure to

afford the right did not affect the validity of the disposition.<sup>96</sup>

### **XI. Right to a Copy of the Presentence Report and Transcripts**

The right to access a copy of the presentence report and transcripts of court proceedings is critical to a victim's ability to actively and meaningfully participate in the proceedings.

A number of states explicitly provide victims the right to a copy of these materials.<sup>97</sup>

At the federal level, the law allowing appointment of a guardian ad litem for juvenile victims allows access to these materials, by providing that, upon appointment, a guardian ad litem "may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child."<sup>98</sup> The CVRA does not, however, contain an explicit provision affording a similar right. Even where the right to access these materials is not explicit, arguments can be made that, in order for a victim to meaningfully exercise his or her other rights, including the rights to be treated with fairness, to be heard at sentencing and to restitution, a victim must have access to all relevant portions of a presentence report and to transcripts of proceedings.<sup>99</sup>

### **XII. Right to Standing and Remedies**

Legal standing refers to a crime victim's ability to independently assert and enforce his or her constitutional and statutory rights at both the trial level and, when appropriate, in appellate courts. Meaningful enforcement of rights requires victims to have both trial level standing to assert crime victims' rights and a mechanism for appellate review of a rights violation.

The United States Supreme Court has explained that the question of standing "is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'"<sup>100</sup> For federal courts,

the Supreme Court has set forth a three-part test to determine whether a litigant has standing:

- 1) the litigant must have suffered an "injury in fact";
- 2) there must be a nexus between the injury and the conduct complained of; and
- 3) the injury must be redressable by a favorable decision.

Historically, party-status has not been a pre-requisite to standing to assert constitutional and statutory rights.<sup>101</sup>

In general, state constitutional and statutory crime victims' rights legislation have no explicit provisions addressing trial level standing. Instead, states have generally established state-specific standing analyses that must be undertaken in each case. Generally, if a person meets the federal three-prong standing test, he or she will meet a state's standing requirements.<sup>102</sup> Similarly, very few states explicitly provide for appellate review of decisions affecting crime victims' rights.<sup>103</sup> The lack of an explicit provision for appellate review, though, does not preclude a victim from seeking review of a rights violation through a petition for writ of mandamus, prohibition, or certiorari.<sup>104</sup>

On the federal level, the CVRA explicitly provides trial level standing to crime victims to assert their rights and sets forth a specific, expedited mechanism for appellate review of any denial of such rights. With regard to trial level standing, subsection (d)(1) of the CVRA provides: "The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights."<sup>105</sup> This statement indicates that crime victims have standing in federal trial court to assert their CVRA rights. When discussing this provision during debate, Senator Feinstein stated:

This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim, to stand with other counsel in the



well of the court, and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way.<sup>106</sup>

A victim's trial level standing is bolstered by subsection (d)(3) of the CVRA, which provides the method of assertion: "The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith."<sup>107</sup>

Standing to seek appellate review is also explicit in the CVRA. If the district court denies the relief sought by a crime victim for a rights violation, the CVRA sets forth a clear, expedited appellate review process. Specifically, subsection (d)(3) provides that a crime victim may petition for a writ of mandamus and that the court of appeals must take up and decide the issue within seventy-two hours. Generally, under federal mandamus law, review is discretionary; in contrast, the CVRA "contemplates active review of orders denying crime victims' rights claims even in routine cases."<sup>108</sup> The CVRA "creates a unique regime that does, in fact, contemplate routine interlocutory review of district court decisions denying rights asserted under the statute."<sup>109</sup>

<sup>1</sup> Ariz. Const. art. 2, § 2.1(A)(1) (treated with fairness, respect, and dignity); Cal. Penal Code § 679 (treated with dignity, respect, courtesy, and sensitivity); Colo. Rev. Stat. § 24-4.1-302.5(1)(a) (treated with fairness, respect, and dignity); Conn. Const. art. 1, § 8(b)(1) (treated with fairness and respect); Haw. Rev. Stat. § 801D-1 (treated with dignity, respect, courtesy,

and sensitivity); Idaho Const. art. 1, § 22(1) (treated with fairness, respect, and dignity); Ill. Const. art. 1, § 8.1(a)(1) (treated with fairness and respect for victim's dignity); Ind. Const. art. 1, § 13(b) (treated with fairness, dignity, and respect); Kan. Stat. Ann. § 74-7333(a)(1) (treated with courtesy, compassion, and respect for victim's dignity); La. Const. art. I, § 25 (treated with fairness, dignity, and respect); Md. Const. Decl. of Rights art. 47(a) (treated with dignity, respect, and sensitivity); Mich. Const. art. I, § 24(1) (treated with fairness and respect for victim's dignity); Miss. Const. art. 3, § 26A (treated with fairness, dignity, and respect); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a) (treated with fairness and respect for victim's dignity); N.J. Const. art. I, § 22 (treated with fairness, compassion, and respect); N.M. Const. art. II, § 24(A)(1) (treated with fairness and respect for victim's dignity); Ohio Const. art. I, § 10a (accorded fairness, dignity, and respect); Okla. Const. art. II, § 34 (treated with fairness, respect, and dignity); Or. Const. art. I, § 42(1) (accorded due dignity and respect); Pa. Const. Stat. § 11.102(1) (treated with dignity, respect, courtesy, and sensitivity); R.I. Const. art. 1, § 23 (treated with dignity, respect, and sensitivity); S.C. Const. art. I, § 24(A)(1) (treated with fairness, respect, and dignity); Tenn. Code Ann. § 40-38-102(a)(1) (treated with dignity and compassion); Utah Const. art. I, § 28(1)(a) (treated with fairness, respect, and dignity); Vt. Stat. Ann. tit. 13, § 5303(a) (treated with dignity and respect); Va. Const. art. I, § 8-A (accorded fairness, dignity, and respect); Wash. Const. art. 2, § 35 (accorded due dignity and respect); Wis. Const. art. I, § 9(m) (treated with fairness and dignity).

<sup>2</sup> See, e.g., Ill. Const. art. I, § 8.1(a)(1); Mich. Const. art. I, § 24(1); N.M. Const. art. II, § 24(A)(1); Wis. Const. art. I, § 9(m).

<sup>3</sup> See, e.g., Ark. Code Ann. § 24.65.200; Ariz. Rev. Stat. § 13-4430.

<sup>4</sup> See, e.g., Ariz. Const. art. 2, § 2.1(A)(5) (right to refuse interview, deposition, or other discovery request by defendant); La. Const. art. 1, § 25 (right to refuse to be interviewed by accused); Or. Const. art. I, § 42(1)(c) (right to refuse an interview, deposition, or other discovery request by defendant).

<sup>5</sup> 18 U.S.C. § 3771.

<sup>6</sup> *Id.* at § 3771(a)(8).

<sup>7</sup> 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

<sup>8</sup> *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal citations omitted).

<sup>9</sup> Notably, one state, Utah, took the unusual step of statutorily defining the terms. *See* Utah Code Ann. §§ 77-38-2(2) (defining dignity as “treating the crime victim with worthiness, honor, and esteem”), (3) (defining fairness as “treating the crime victim reasonably, even-handedly, and impartially”), (8) (defining respect as “treating the crime victim with regard and value”).

<sup>10</sup> *See* Douglas E. Beloof, *Weighing Crime Victims’ Interests in Judicially Crafted Criminal Procedure*, 56 Cath. U. L. Rev. 1135 (2007).

<sup>11</sup> *See, e.g.*, Ala. Code § 15-23-63(a).

<sup>12</sup> *See* Iowa Code §§ 915.10(2), 915.12.

<sup>13</sup> *See* Ga. Code Ann. § 16-5-93(a).

<sup>14</sup> 18 U.S.C. § 3771(a)(2).

<sup>15</sup> *Fuentes*, 407 U.S. at 80 (internal citations omitted).

<sup>16</sup> 150 Cong. Rec. S4267-68 (daily ed. April 22, 2004) (statement of Sen. Kyl).

<sup>17</sup> Federal Rule of Criminal Procedure 615 provides: “At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.” Fed. R. Evid. 615 (emphasis added).

<sup>18</sup> *See, e.g.*, Colo. R. Evid. 615; N.M. R. Evid. 11-615; S.C. R. Evid. 615.

<sup>19</sup> *See* Douglas E. Beloof & Paul G. Cassell, *The Crime Victim’s Right to Attend the Trial: The Rescendant National Consensus*, 9 Lewis & Clark L. Rev. 481, 504-13 (2005) (identifying forty-two states, the District of Columbia, and the federal government as providing victims either an unqualified or qualified right to be present at trial).

<sup>20</sup> *See* Beloof & Cassell, *supra* note 19, at 506-10 & nn.133, 138 (discussing state laws providing victims with a qualified right to attend trial) (citing Ala. Const. art. I, § 6.01(a) (right to attend qualified by

exclusion for interference with defendant’s constitutional rights); Fla. Const. art. I, § 16(b) (same); Ind. Const. art. I, § 13(b) (same); Kan. Const. art. 15, § 15 (same); N.H. Rev. Stat. § 21-M:8-k(II)(e) (same); Ark. Stat. § 16-90-1103 (right to attend qualified by exclusion if necessary to protect defendant’s “fair trial” rights; Cal. Penal Code § 1102.6 (same); Neb. Const. art. I, § 28(1) (same); Ohio Rev. Code § 2930.09 (same); Va. Code §§ 19.2-11.01(4)(b), 19.2-265.01 (same); Wis. Stat. §§ 906.15, 950.04, 938.299) (same)).

<sup>21</sup> *See id.* at 505 & n.125 (discussing state laws providing for the unqualified right to be present) (citing Alaska Const. art. I, § 24; Ariz. Const. art. 2, § 2.1(A); Colo. Const. art. II, § 16a; Idaho Const. art. I, § 22; La. Const. art. I, § 25; Mich. Const. art. I, § 24; Miss. Const. § 26A; Miss. Code Ann. § 99-43-21; Mont. Const. art. I, § 32; Mont. Code Ann. § 46-24-106(1); Nev. Const. art. I, § 8(2); N.M. Const. art. II, § 24(5); Okla. Const. art. II, § 23(A); Or. Const. art. I, § 42; S.C. Const. art. I, § 24; Tenn. Const. art. I, § 35; Utah Const. art. I, § 28(1)(b)).

<sup>22</sup> *See id.* at 510-11 & n.150 (discussing state laws providing right to be present unless court finds presence would affect victims’ testimony) (citing Conn. Const. art. I, § 8; Conn. Gen. Stat. § 54-85f; Del. Code Ann. tit. 11 § 9407; Ill. Const. art. I, § 8.1(a)(8); Mass. Gen. Laws Ann. ch. 258B; Mass. R. Crim. P. 21; Tex. Const. art. I, § 30(b)).

<sup>23</sup> *See id.* at 511-12 & nn.155-56 (discussing state laws providing right to be present where practicable) (citing Md. Const. Decl. of Rights, art. 47; Md. Code Ann. Crim. Proc. § 11-302; N.C. Gen. Stat. § 15A-832(e)).

<sup>24</sup> *See id.* at 512-13 & nn. 163-71 (discussing state laws providing right to be present subject to court discretion) (citing Ga. Code Ann. § 24-9-61.1; N.J. Const. art. I, § 22; N.J. R. Evid. 615; S.D. Codified Laws § 23A-28C-1; Wash. Const. art. I, § 35, Wash. Rev. Code § 7.69.030; Wyo. Stat. Ann. §§ 1-40-203(b), 1-40-206)).

<sup>25</sup> *See id.* at 513-14 & n. 173 (discussing Vermont law providing right to be present after victim testifies) (citing Vt. Stat. Ann. tit. 11, § 13-5309, Vt. R. Evid. 615).

<sup>26</sup> 18 U.S.C. § 3771(a)(3).

<sup>27</sup> *In re Mikhel*, 453 F.3d 1137, 1139 (9th Cir. 2006) (emphasis in original).

<sup>28</sup> 18 U.S.C. § 3771(b); *see also In re Mikhel*, 453 F.3d at 1139 (quoting 18 U.S.C. § 3771(b)).

<sup>29</sup> 150 Cong. Rec. S4268 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

<sup>30</sup> *Id.* (statement of Sen. Kyl).

<sup>31</sup> *See State v. Beltran-Felix*, 922 P.2d 30, 33-34 (Utah Ct. App. 1996) (collecting cases where courts have concluded that crime victim's constitutional or statutory right to be present does not facially violate defendant's due process or fair trial rights); *see also* Beloof & Cassell, *supra* note 19, at 527-34 (compiling cases where courts considered constitutional implications of victim attendance at trial and finding only one state court arguably found a conflict between victim presence and defendant's constitutional rights).

<sup>32</sup> *See, e.g.*, Ill. Const. art. I, § 8.1(a)(2) (providing, "Crime victims . . . shall have the following rights as provided by law: . . . (4) The right to make a statement to the court at sentencing.") (emphasis added). *Cf. People v. Hemmings*, 808 N.E.2d 336, 339 (N.Y. 2004) (stating that victims' rights laws "elevated what had previously been a privilege left entirely to the discretion of the sentencing court to a right that a victim could exercise at his or her discretion") (internal quotation omitted).

<sup>33</sup> *See State v. Kimmick*, 928 A.2d 489, 491-92 (Vt. 2007) (considering whether sentencing court erred in hearing from non-victim, the appellate court explained that the issue is "the relevancy of his testimony"); *State v. Harvey*, 710 N.W. 482, 494 (Wis. Ct. App. 2006) (noting that the court may hear from any person with information relevant to sentencing, regardless of whether that person has the legal right to be heard as a "victim"); *State v. Parks*, 962 P.2d 486, 490-91 (Kan. 1998) (explaining that the passage of victims' rights laws was not intended to preclude non-victims from speaking at sentencing where their statements were relevant). *But cf. State v. Layman*, 214 S.W.3d 442, 453-54 (Tenn. 2007) (concluding that the trial court erred in hearing from a homicide victim's family prior to deciding whether to accept

the prosecutor's proposed plea agreement and motion to nolle prosequi where those family member's did not have a legal right to be heard).

<sup>34</sup> *See, e.g.*, Alaska Stat. § 12.61.010(a)(9) (providing victim with right to make a written or oral statement at sentencing); Tex. Code Crim. Proc. Ann. art. 42.03(1)(b) (providing that a victim has right to make statement only after sentence has been pronounced).

<sup>35</sup> Even where statutes and/or rules provide some specific limit on the right to be heard, those provisions are invalid if they attempt to narrow a paramount law. For example, where a constitutional or statutory provision provides a mandatory right to be heard, but a rule attempts to make that right discretionary or otherwise limits the method by which a victim can elect to be heard, the rule is invalid. *Cf. United States v. Degenhardt*, 405 F. Supp. 2d 1341, 1344-45 (D. Utah 2005) (explaining that "a broad congressional mandate in a statute must take precedence over a narrower court rule," and concluding that the limits on which victims may be heard at sentencing contained in Fed. R. Crim. Proc. 32 were invalid because they conflicted with 18 U.S.C. § 3771(e), which provides the right to be heard to all victims).

<sup>36</sup> *See Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 435 F.3d 1011, 1016 (9th Cir. 2006) (construing the federal statutory right to be heard to provide the victim with the right to make an oral statement at sentencing); *Degenhardt*, 405 F. Supp. 2d at 1345-47 (concluding that the right to be heard cannot be satisfied by allowing the victim to submit only a written victim impact statement and preventing the victim from personally addressing the sentencing court); *Mayer v. State*, 124 P.3d 710, 716 (Wyo. 2005) (explaining that a victim could submit both a written statement and make an oral statement at sentencing, even though not required by law). *But see United States v. Marcello*, 370 F. Supp. 2d 745, 747-48 (N.D. Ill. 2005) (concluding that the victim's right to be heard was met where the victim was allowed to submit a written victim impact statement).

<sup>37</sup> *See, e.g.*, Utah Code Ann. § 77-38-4(7) ("Except as otherwise provided in this section, a victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement . . .").

<sup>38</sup> See Ariz. Const. art. 2, § 2.1(4); Conn. Const. art. 1, § 8(b)(7); Idaho Const. art. I, § 22(A)(6); Mo. Const. art. I, § 32(2); S.C. Const. art. I, § 24(A)(5); Colo. Rev. Stat. § 24-4.1-302.5(d); Me. Rev. Stat. Ann. tit. 17-A, § 1173; Minn. Stat. § 611A.0301; N.H. Rev. Stat. Ann. § 21-M:8-k(II)(p); R.I. Gen. Laws § 12-28-4.1(a); Tex. Code Crim. Proc. Ann. art. 56.02(a)(5) (limited to written input); Utah Code Ann. § 77-38-4(1).

<sup>39</sup> See Ariz. Const. art. 2, § 2.1(A) (6); Or. Const. art. I, § 42(1)(f); S.C. Const. art. I, § 24(A)(7); Ala. Code § 15-23-64; Ark. Code Ann. § 16-21-106(b); Colo. Rev. Stat. § 24-4.1-302.5(e); Del. Code Ann. tit. 11, § 9405; Fla. Stat. § 960.001(g); Ga. Code Ann. § 17-17-11; Haw. Rev. Stat. § 801D-4(a)(1); Ind. Code Ann. § 35-40-3(b)(3); Ky. Rev. Stat. Ann. § 421.500(6); Me. Rev. Stat. Ann. tit. 17-A, § 1173; Mich. Stat. Ann. § 780.756(3); Miss. Code Ann. §§ 99-43-11, -27; Mo. Rev. Stat. § 595.209(4); Mont. Code Ann. § 46-24-104(3); Neb. Rev. Stat. § 29-120; N.H. Rev. Stat. Ann. § 21-M:8-k(II)(f); N.J. Stat. Ann. § 52:4B-44(b)(2); N.Y. Exec. Law § 642(1); N.C. Gen. Stat. § 15A-832(f); N.D. Cent. Code § 12.1-34-02(13); Ohio Rev. Code § 2930.06(A); Pa. Const. Stat. §§ 11.201(4), 11.213(b); S.D. Codified Laws § 23A-28C-1(5) (limited to written input); Tenn. Code Ann. § 40-38-114(a); Tex. Code Crim. Proc. Ann. art. 56.02(a)(13) (limited to written input); Utah Code Ann. § 77-38-2(5)(d); Vt. Stat. Ann. tit. 13, § 5321(e); Va. Code Ann. § 19.2-11.01(4)(d); W. Va. Code § 61-11A-6(5); Wis. Stat. § 971.095(2). A handful of states provide victims with the right to confer with the prosecutor, but because there is no explicit temporal requirement attached to that right, it is not included in the state laws cited above.

<sup>40</sup> See Ariz. Const. art. 2, §§ 2.1(A)(4), (6); S.C. Const. art. I, § 24(A)(5), (7); Colo. Rev. Stat. § 24-4.1-302.5(d), (e); Me. Rev. Stat. Ann. tit. 17-A, § 1173; Mo. Rev. Stat. § 595.209(4); Tex. Code Crim. Proc. Ann. art. § 56.02(a)(13); Utah Code Ann. §§ 77-38-4(1), 77-38-2(5)(d).

<sup>41</sup> See Ala. Const. amend. 557, Ala. Code § 15-23-74; Alaska Const. art. 2, § 24; Ariz. Const. art. 2, § 2.1(A)(4); Cal. Penal Code § 679.02(a)(3); Colo. Const. art. II, § 16a, Colo. Rev. Stat. § 24-4.1-302.5(10)(g); Conn. Const. art. 1, §(8)(b)(8); Fla.

Const. art. I, § 16, Fla. Stat. § 960.01(1)(k); Idaho Const. art. I, § 22(6); Ill. Const. art. I, § 8.1(a)(4); Ind. Code Ann. § 35-40-5-5; Iowa Code § 915.21(1)(b); Kan. Const. art. 15, § 15(a); La. Const. art. I, § 25, La. Rev. Stat. Ann. § 1842(2); Me. Rev. Stat. Ann. tit. 17-A, § 1174(1)(A); Md. Const. Decl. of Rights, art. 7(b), Md. Code Ann., Crim. Proc. § 11-403; Mass. Gen. Laws ch. 258B, § 3(p); Mich. Const. art. I, § 24(1); Minn. Stat. § 611A.038(a); Miss. Const. art. 3, § 26A(1), Miss. Code Ann. § 99-43-33; Mo. Const. art. I, § 32(1)(2); Neb. Const. art. I, § 28(1); Nev. Const. art. 1, § 8(2)(c); N.H. Rev. Stat. Ann. § 21-M:8-k(I)(p); N.J. Stat. Ann. § 52:4B-36(n); N.M. Const. art. II, § 24(A)(7); N.C. Const. art. 1, § 37(1)(b); Ohio Rev. Code § 2930.14(A); Okla. Const. art. II, § 34(A); Pa. Const. Stat. § 11.201(5); R.I. Gen. Laws § 12-28-3(11); S.C. Const. art. I, § 24(A)(5); S.D. Codified Laws § 23A-28C-1(8); Utah Const. art. I, § 28(1)(b), Utah Code Ann. § 77-38-4(1); Vt. Stat. Ann. tit. 13, § 5321(a)(2); Va. Const. art. I, § 8-A(3); Wash. Const. art. 2, § 35; Wis. Const. art. I, § 9(m); Wyo. Stat. Ann. § 14-6-502(a)(xvii).

<sup>42</sup> See, e.g., Ariz. Const. art. 2, § 2.1(4) (providing that a victim has the right “[t]o be heard at . . . sentencing”); Idaho Const. art. I, § 22(6) (providing that a victim has the right “[t]o be heard, upon request, at . . . sentencing . . . unless manifest injustice would result”).

<sup>43</sup> See, e.g., Conn. Const. art. 1, §(8)(b)(8) (providing that a victim has the “right to make a statement to the court at sentencing”); Ill. Const. art. I, § 8.1(8) (same).

<sup>44</sup> See Ark. Code Ann. § 16-21-106(a)(1)(H) (right to submit victim impact statement); N.D. Cent. Code § 12.1-34-02(14) (provides for oral statement at discretion of the court; otherwise, written statement); Tenn. Code Ann. § 40-38-202 (requiring a sentencing judge to solicit and consider a victim impact statement, but not specifying whether that may be given verbally); Tex. Crim. Proc. Code Ann. § 56.02(a)(13) (providing for a victim impact statement, but not specifying whether that statement may be given verbally).

<sup>45</sup> See, e.g., Idaho Const. art. I, § 22(6) (providing that a victim has the right to be heard upon request); Utah Const. art. I, § 28(b) (same).

<sup>46</sup> 18 U.S.C. § 3771(a)(4).

<sup>47</sup> 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

<sup>48</sup> 435 F.3d 1011, 1016 (9th Cir. 2006).

<sup>49</sup> Douglas E. Beloof, *Constitutional Implications of Crime Victims as Participants*, 88 Cornell L. Rev. 282, 286, 290 (2003); *see also* *People v. Stringham*, 253 Cal. Rptr. 484, 490 (Cal. Ct. App. 1988) (explaining the purpose behind the victim's statutory right to be heard at sentencing is "to acquaint the court with the victim's unique perspective of the case, and require consideration of the victim's statement by the court," and acknowledging that, where a defendant enters a guilty plea and matters proceed directly to sentencing, the proper construction of the right is to allow the victim the opportunity to speak in opposition to a plea bargain at sentencing, and that a contrary result would reduce the victim's sentencing statement to "an arid ritual of meaningless form."").

<sup>50</sup> *See, e.g.*, Alaska Const. art. 2, § 24; Conn. Const. art. 1, § 8(b)(3); Ill. Const. art. 1, § 8.1(a)(7); Mich. Const. art. I, § 24(1); Mo. Const. art. I, § 32(1)(6); N.M. Const. art. II, § 24(A)(3); Ohio Const. art. I, § 10a; S.C. Const. art. I, § 24(a)(6); Wis. Const. art. I, § 9(m).

<sup>51</sup> *See, e.g.*, Ariz. Const. art. 2, § 2.1(A)(1); Okla. Const. art. II, § 34; Tenn. Const. art. I, § 35(2).

<sup>52</sup> *See, e.g.*, Ala. Code § 15-23-75; Colo. Rev. Stat. § 24-4.1-302.5; Conn. Gen. Stat. § 54-286e; Ga. Code Ann. § 17-17-5; Mich. Stat. Ann. § 780.768a(1)(b).

<sup>53</sup> *See, e.g.*, Fla. Stat. Ann. § 960.001; Ky. Rev. Stat. Ann. § 421.500; Mont. Code Ann. § 46-24-203; Vt. Stat. Ann. tit. 13, § 5304.

<sup>54</sup> *See, e.g.*, Ariz. Rev. Stat. § 13-4414; Colo. Rev. Stat. § 24-4.1-303; Haw. Rev. Stat. § 353-8; Mass. Gen. Laws ch. 258B, § 3; N.Y. Crim. Proc. § 149-a.

<sup>55</sup> *See, e.g.*, N.D. Cent. Code § 12.1-34-02; Ohio Rev. Stat. § 2930.16; Okla. Stat. tit. 57 § 360.

<sup>56</sup> *See, e.g.*, Fla. Stat. Ann. § 960.001; Ga. Code Ann. § 17-17-5; Me. Rev. Stat. Ann. tit. 17-A § 1257-A; N.J. Stat. Ann. § 39:4-50.11; Ohio Rev. Stat. § 2930.16.

<sup>57</sup> *See, e.g.*, Ohio Rev. Stat. § 2930.16; Okla. Stat. tit.

57, § 513.2; S.C. Code Ann. § 16-3-1530; Vt. Stat. Ann. tit. 13, § 5305; Wash. Rev. Code § 9.94A.612; Wyo. Stat. Ann. § 1-40-203.

<sup>58</sup> *See, e.g.*, Colo. Rev. Stat. § 16-8-115; Conn. Gen. Stat. § 17a-596; Fla. Stat. Ann. § 960.001.

<sup>59</sup> *See, e.g.*, Ark. Code Ann. § 12-29-114; Cal. Penal Code § 679; Colo. Rev. Stat. § 24-4.1-302.5; La. Rev. Stat. Ann. § 46:1844; Minn. Stat. § 611A.06; N.M. Stat. Ann. § 31-26-4; W. Va. Code 61-11A-8(c)(4).

<sup>60</sup> *See, e.g.*, Ga. Code § 42-1-11; La. Rev. Stat. § 45:1844; Minn. Stat. § 611A.06; Mo. Rev. Stat. § 595.209.

<sup>61</sup> *See, e.g.*, Ala. Code § 15-23-69 (providing that, based on "reasonable apprehension of the victim of acts or threats of physical violence or intimidation by the defendant, the family of the defendant, or by anyone at the direction of the defendant," the prosecutor may ask the court to direct that the victim or any other witness not be compelled to testify pretrial as to "facts that could divulge the identity, residence, or place of employment of the victim, or other related information without consent of the victim unless necessary to the prosecution of the criminal proceeding"); Del. Code Ann. tit. 11 § 9403 (providing that the court cannot compel a victim to testify as to his or her residential or business address or place of employment, nor disclose the phone numbers of either); Md. Code Ann., Cts. & Jud. Proc. § 9-501 (providing that the court may prohibit disclosure of victim address and phone number during trial); Minn. Stat. § 611A.035 (providing that victims cannot be compelled to disclose their residential address or employment during trial testimony); Ohio Rev. Code Ann. § 2930.07 (providing that a victim cannot be compelled to testify regarding his or her address if there are "reasonable grounds" for victim apprehension of acts of threats of violence against the victim or his or her family).

<sup>62</sup> *See, e.g.*, Ala. Code § 15-23-68; Ark. Code Ann. § 16-21-106; Colo. Rev. Stat. § 24-4.1-302.5; Fla. Stat. Ann. § 960.001; Haw. Rev. Stat. § 801D-4; Ind. Code § 35-33-8-5; Minn. Stat. § 611A.034; Mo. Rev. Stat. § 595.209; Neb. Rev. Stat. §§ 81-1848, 178.5696; Ohio Rev. Code Ann. § 2930.10; S.C. Code Ann. § 16-3-1530; Tenn. Code Ann. § 40-

38-102; see also *Restitution For Crime Victims: A National Strategy*, Report of the Victims Committee, Criminal Justice Section, American Bar Association, 2 (2003).

<sup>63</sup> 150 Cong. Rec. S10910 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

<sup>64</sup> Jon Kyl, Steven Twist, & Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581, 596 (2005).

<sup>65</sup> *Id.*

<sup>66</sup> 42 U.S.C. § 10607.

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., Alaska Const. Art. I, § 24; Ariz. Const. Art. 2, § 2.1; Cal. Const. Art. I § 28; Conn. Const. art. 1, § 8(b); Idaho Const. Art. I, § 22; Ill. Const. Art. I § 8.1; La. Const. Art. I, § 25; Mich. Const. Art. I, § 24; Mo. Const. Art. I, § 32; N.M. Const. Art. II § 24; N.C. Const. Art. I, § 37; Okla. Const. Art. II § 34; Or. Const. Art. I, § 42; RI Const. Art. I, § 23; S.C. Const. Art. I, § 24; Tenn. Const. Art. I, § 35; Tex. Const. Art. I, § 30; Wis. Const. Art. I, § 9(m).

<sup>69</sup> See, e.g., Ariz. Const. Art. 2, § 2.1 (“[A] victim of crime has the right . . . [t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.”); Ala. Code § 15-18-67; Fla. Stat. Stat. Ann. §§ 775.089, 921.187; Iowa Code § 910.2.

<sup>70</sup> See, e.g., Idaho Const. art. 1, § 22(7), Idaho Code Ann. § 19-5304; N.M. Const. art. 2, § 24, N.M. Stat. Ann. § 31-17-1(C); Or. Const. art. 1, § 42(1)(d), Or. Rev. Stat. Ann. § 137.106; W. Va. Code § 61-11A-4.

<sup>71</sup> See, e.g., Fla. Stat. Ann. § 775.089; Kan. Stat. Ann. § 8-1019 (“sentence . . . may include restitution”); Neb. Rev. Stat. § 29-2280 (“sentencing court may order the defendant to make restitution”); N.C. Gen. Stat. §§ 15A-1021, 15B-24 (“a court may require a defendant to pay restitution to a victim”).

<sup>72</sup> 18 U.S.C. § 3663A.

<sup>73</sup> *Id.* at § 3663A(a)(2).

<sup>74</sup> 18 U.S.C. § 3663.

<sup>75</sup> *Hughey v. United States*, 495 U.S. 411, 413 (1990).

<sup>76</sup> 137 F.3d 533 (7th Cir. 1998).

<sup>77</sup> *Id.* at 538.

<sup>78</sup> 18 U.S.C. § 3771(a)(6).

<sup>79</sup> 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

<sup>80</sup> See, e.g., Ala. Code §§ 15-23-62(1) (emergency and crisis services), (2) (compensation); Alaska Stat. § 12.61.010(5) (compensation); Ariz. Rev. Stat. §§ 13-4405(A)(3)(b) (c) (emergency, crisis, and medical services), (d) (victim assistance programs, including compensation); Colo. Rev. Stat. § 24-4.1-302.5(1) (l) (crisis, medical, mental health, social services, rehabilitative services, and financial assistance); Del. Code Ann. tit 11, §§ 9410(2) (social services and other assistance), (4) (victim service unit), (5) (compensation), 9411(4) (compensation); Fla. Stat. §§ 960.001(1)(a)(1) (compensation), (2) (crisis, counseling, social service support, community-based victim treatment programs); Ga. Code Ann. §§ 17-17-6(a) (2) (compensation), (3) (community-based victim service programs); Haw. Rev. Stat. § 801D-4(a)(4) (financial assistance and other social services); Iowa Code § 915.13(1)(b) (compensation); Kan. Stat. Ann. §§ 74-7333(3) (compensation), (9) (social services and other medical, psychological, and social assistance); Ky. Rev. Stat. Ann. §§ 421.500(3) (emergency, social, medical services, and compensation), (5) (same); Me. Rev. Stat. Ann. tit. 17-A, § 6101(1) (A) (victim advocate and compensation); Mass. Gen. Laws ch. 258B, § 3(e) (social services and financial assistance); Mich. Stat. Ann. §§ 780.753 (emergency and medical services, compensation), 780.782 (same), 780.813 (same); Minn. Stat. § 611A.02 (crisis centers, resources for specific victim populations, and compensation); Miss. Code Ann. § 99-43-7(a), (b) (emergency and crisis services, and compensation); Mo. Const. art. I, § 32(1)(8) (services), Mo. Rev. Stat. § 595.209(5)(b) (emergency and crisis services, and compensation); Mont. Code Ann. § 46-24-201(1) (compensation), (2) (community-based medical, housing, counseling, and emergency services); Neb. Rev. Stat. § 81-1848(2)(d) (financial assistance and services); N.H. Rev. Stat. §§ 21-M:8-k(II)(i) (available resources, financial assistance, and social ser-

vices), (j) (compensation); N.J. Stat. Ann. § 52:4B-36 (available remedies, financial assistance, and social services); N.M. Stat. Ann. § 31-26-8(A) (medical and crisis intervention services); N.Y. Exec. Law §§ 641(1) (a) (compensation), (b) (counseling, victim/witness assistance programs, and services for specific victim populations); N.C. Const. art. 1, § 37(d) (availability of services); N.D. Cent. Code § 12.1-34-02(5) (counseling, treatment, and support services, including services for specific victim populations); Ohio Rev. Code §§ 2930.04 (2) (medical, counseling, housing, emergency, and other available services), (3) (compensation); Okla. Stat. tit. 19, § 215.33(3) (financial and other social services); Pa. Const. Stat. §§ 11.201(1) (basic information concerning services), 11.212(b) (compensation and available services); R.I. Gen. Laws § 12-28-3(a) (9) (financial assistance and other social services); S.C. Code Ann. §§ 16-3-1520(A)(3) (victim assistance and social service providers), (4) (compensation); Tenn. Code Ann. §§ 40-38-107(b) (referral services), -113 (2) (crisis intervention, emergency, and medical services); Tex. Code Crim. Proc. Ann. art. 56.02(a)(6) (compensation), 56.07(a)(2) (compensation, referrals to social service agencies, crime victim assistance coordinator); Vt. Stat. Ann. tit. 13, § 5314(a)(2) (medical, housing, counseling, and emergency services and compensation); Va. Code Ann. §§ 19.2-11.01(2) (financial assistance, including compensation, and social services); Wis. Stat. §§ 950.04(1v)(t)(u), 950.08(1)(b) (referral to available services, crisis counseling, and emotional support), (2g) (b) (compensation), (2g)(g) (information about local agencies that provide victim assistance); Wyo. Stat. Ann. §§ 14-6-502(a)(iv) (compensation), (v) (services and assistance).

<sup>81</sup> Compensation is money received from the government compensation or reparations program that is intended to reimburse the victim for certain types of injuries suffered as a result of the crime. Arguably, several of the state provisions that require that victims receive information about compensation could be characterized as notice provisions – advance identification of the statutory right to compensation and the victim’s right to apply for and receive compensation.

<sup>82</sup> See, e.g., Ark. Code Ann. § 16-21-106(d) (requiring prosecutors to assist victims in applying for financial assistance and other social services, but not requiring prosecutors to provide information about the services or

their responsibility to assist the victim); La. Rev. Stat. Ann. § 1844(1) (requiring that law enforcement agencies ensure that victims receive emergency, social, and medical services, but not requiring those agencies to provide information about those services).

<sup>83</sup> As a practical matter, victims likely experience a delay in receiving crucial information about crisis, emergency, medical, and social services where that information is provided by the prosecutor’s office rather than a victim’s typical first point of contact – law enforcement personnel.

<sup>84</sup> See, e.g., Ala. Code § 15-23-62(4); Fla. Stat. § 960.001(1)(a)(3); Ga. Code Ann. §§ 17-17-6(a) (1), 8(a); Kan. Stat. Ann. § 74-7333(a)(4); Ky. Rev. Stat. Ann. § 421.500(3)(a); Mass. Gen. Laws ch. 258B, § 3(a); Mich. Stat. Ann. § 780.816(a); Miss. Code Ann. § 99-43-7(d); Mo. Const. art. I, § 32(1) (8); Mont. Code Ann. §§ 46-24-201(1)(c), (d); N.H. Rev. Stat. § 21-M:8-k(II)(b); N.J. Stat. Ann. § 52:4B-44(b)(1); N.M. Stat. Ann. § 31-26-9(4); N.Y. Exec. Law § 641(1)(c), (d); N.C. Const. art. 1, § 37(1)(d); N.D. Cent. Code § 12.1-34-02(2); Tenn. Code Ann. § 40-38-103(a)(1); Tex. Code Crim. Proc. Ann. art. 56.08(a)(1); Utah Code Ann. § 77-37-3(1)(c); Wis. Stat § 950.08(2r)(a).

<sup>85</sup> 42 U.S.C. § 10607.

<sup>86</sup> See, e.g., Alaska Const. art. 2, 24 (timely disposition); Ariz. Const. art. 2, 2.1(A)(10) (speedy disposition); Colo. Rev. Stat. § 24-4.1-302.5(1) (o) (prosecutor and law enforcement officials seek to achieve a swift and fair resolution of the proceedings); Conn. Const. art. 1, § 8(b)(2) (timely disposition); Del. Code Ann. tit. 11, §§ 9404 (a) (court should consider victim’s interest in speedy prosecution), (b) (court should expedite proceedings involving child victim); Fla. Stat. § 960.001(1)(a) (7) (prompt disposition); Idaho Const. art. 1, § 22(2) (timely disposition); Ill. Const. art. 1, § 8.1(a)(6) (timely disposition); La. Rev. Stat. Ann. § 1844(J) (speedy disposition and prompt and final conclusion of the case); Md. Code Ann., Crim. Proc. § 11-1002(b)(13) (speedy disposition); Mass. Gen. Laws ch. 258B § 3(f) (prompt disposition); Mich. Const. art. I, § 24(1) (timely disposition); Minn. Stat. § 611A.033(a) (victim can request prosecutor to make request for speedy trial); Miss. Code Ann. § 99-43-19

(final disposition free from unreasonable delay); Mo. Const. art. I, § 32(1)(5) (speedy disposition); Neb. Rev. Stat. § 81-1848(2)(i) (speedy disposition); N.M. Const. art. II, § 24(A)(2) (timely disposition); N.D. Cent. Code § 12.1-34-02(12) (prompt disposition); S.C. Const. art. I, § 24(A)(11) (reasonable disposition and prompt conclusion of the case); Tenn. Const. art. I, § 35(6) (speedy trial or disposition); Utah Code Ann. § 77-38-7 (speedy resolution of the charges); Vt. Stat. Ann. tit. 13, § 5312 (victim may object to a delay in prosecution); Wis. Const. art. I, § 9(m) (timely disposition).

<sup>87</sup> 18 U.S.C. 3771(a)(7).

<sup>88</sup> 150 Cong. Rec. 24269 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

<sup>89</sup> 150 Cong. Rec. S10910 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

<sup>90</sup> *Id.*

<sup>91</sup> *See, e.g.*, Alaska Const. art. I, § 24 (“to confer with the prosecution”); Ariz. Const. art. 2, § 2.1(A)(6) (“[t]o confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition”); Idaho Const. art. I, § 22(5) (“[t]o communicate with the prosecution”); Ill. Const. art. I, § 8.1(a)(3) (“shall have... the right to communicate with the prosecution”); Ind. Const. art. I, § 13(b) (“shall have the right... to confer with the prosecution, to the extent that exercising these rights does not infringe upon the constitutional rights of the accused”); La. Const. art. I, § 25 (“shall have... the right to confer with the prosecution prior to final disposition of the case”); Mich. Const. art. I, § 24(i) (“shall have... right to confer with the prosecution”); N.M. Const. art. II, § 24(A) (“shall have... the right to confer with prosecution”); N.C. Const. art. I, § 37(i)(h) (“shall be entitled to... the right as prescribed by law to confer with the prosecution”); S.C. Const. art. I, § 24(A)(7) (“have the right to... confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition”); Tenn. Const. art. I, § 35(1) (“shall be entitled to... [t]he right to confer with the prosecution”); Tex. Const. art. I, § 30(b)(1) (“on request... the right to confer with representative of the prosecutor’s

office”); Va. Const. art. I, § 8-A(7) (“[t]he right to confer with the prosecution”); Wis. Const. art. I, § 9m (“state shall ensure that crime victims have... the opportunity to confer with the prosecution”); *see also* Del. Code Ann. titl. 11, § 9405; Ga. Code Ann. § 17-17-11; Haw. Rev. Stat. § 801D-4(a)(1); Neb. Rev. Stat. § 29-120; N.Y. Exec. Law § 642(1); Vt. Stat. Ann. tit. 13, § 5321(e); W. Va. Code § 61-611A-6(5).

<sup>92</sup> 18 U.S.C. § 3771(a)(5).

<sup>93</sup> 150 Cong. Rec. S4268 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

<sup>94</sup> 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

<sup>95</sup> *See, e.g., In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008) (holding that the government’s failure to consult with victims of a refinery explosion prior to entering plea with defendant violated the victim’s right to confer); *United States v. Heaton*, 458 F. Supp. 2d 1271, 1272-73 (D. Utah 2006) (holding that a prosecutor’s failure to confer with the victim prior to moving to dismiss a charge was inconsistent with the victim’s right to be treated with “fairness and respect” because it denied the court the opportunity to take into consideration the victim’s view when ruling on the request for dismissal); *State v. Means*, 926 A.2d 328, 335 (N.J. 2007) (explaining that where a victim’s right to be notified about and comment on a proposed plea are violated, the sentencing court should postpone sentencing to allow the prosecutor to confer with the victim and inform the victim of the right to be heard at sentencing).

<sup>96</sup> *See State v. Layman*, 214 S.W.3d 442, 453 (Tenn. 2007) (explaining that the right to confer requires the prosecutor “to confer with the victim before the final disposition of a criminal offense and before the commencement of a trial . . . . However, the failure of a prosecutor to confer with a victim will not affect the validity of plea agreements or any other disposition of the case.”).

<sup>97</sup> *See* Ala. Code § 15-23-73(b) (“The victim shall have the right to review a copy of the pre-sentence investigative report, subject to the applicable federal or state confidentiality laws, at the same time the document is available to the defendant.”); Alaska Stat. § 12.55.023 (2004) (affording victim the right to look at portions of sentencing report); Ariz. Const. art. 2, § 2.1 (affording



victim right to review presentence report when available to the defendant); Ariz. Rev. Stat. Ann. § 13-4425 (affording victim right to review presentence report, “except those parts excised by the court or made confidential by law”); Fla. Stat. Ann. § 960.001 (affording victim right to review presentence report); Idaho Code § 19-5306 (affording victim right to review presentence report); Ind. Stat. Ann. 35-40-5-6(b) (2004) (affording victim right to read and “respond to” material contained in the presentence report); La. Const. art. 1, § 25 (affording victim “right to review and comment upon the presentence report”); Mont. Code Ann. § 46-18-113 (2005) (giving prosecutor discretion to disclose contents of presentence report to victim); Or. Rev. Stat. Ann. § 137.077 (2003) (presentence report may be made available to victim); *see also* Colo. Rev. Stat. § 24-72-304(5) (2005) (giving prosecutor discretion to allow victim or victim’s family to see presentence report).

<sup>98</sup> 18 U.S.C. § 3509(h)(2).

<sup>99</sup> *See* Paul G. Cassell, *Treating Crime Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007 Utah L. Rev. 861; Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims’ Rights Act*, 2005 BYU L. Rev. 835.

<sup>100</sup> *See, e.g., Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980) (allowing non-party newspaper to petition criminal court for protection of First Amendment rights); *United States v. McVeigh*, 106 F.3d 325, 334 n.7 (10th Cir. 1997) (explaining that non-party status was not a bar to mandamus review).

<sup>101</sup> *Id.*

<sup>102</sup> *See, e.g., N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 847 (N.M. 1998) (setting forth an analysis of standing requirements in New Mexico).

<sup>103</sup> *See, e.g., Ariz. Rev. Stat. § 13-4437(A)*; Md. Code Ann., Crim. Proc. § 11-103; S.C. Const. art. I, § 24(B) (2).

<sup>104</sup> *See, e.g., Melissa J. v. Superior Ct.*, 190 Cal. App. 3d 476 (Cal. Ct. App. 1987) (allowing victim to file petition for writ of mandamus for review of violation of victims’ rights); *Ford v. State*, 829 So.2d 946 (Fla. Dist. Ct. App. 2002) (approving victim’s petition for writ of certiorari for review of violation of victims’

rights).

<sup>105</sup> 18 U.S.C. § 3771.

<sup>106</sup> 150 Cong. Rec. 24261 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

<sup>107</sup> 18 U.S.C. § 3771. Even the United States Attorney General recognizes that the CVRA affords crime victims standing to assert their rights. *See* 2005 *Attorney General Guidelines for Victim and Witness Assistance* 8.

<sup>108</sup> *See Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 435 F.3d 1011, 1017 (9th Cir. 2006).

<sup>109</sup> *Id.*

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