

Interpreters: A Requirement for Meaningful Exercise of Victims' Rights by Non-English Speaking¹ Victims²

INDEX

- I. A Non-English Speaking Victim's Rights Require Appointment of an Interpreter
- II. State Interpreter Laws Support Appointment of Interpreters to Assist Non-English Speaking Victims in Exercising Their Rights

For non-English speaking victims³ accessing courts and effectuating their rights can be daunting. According to a 2011 American Community Survey conducted as part of the U.S. Census Bureau, more than 60 million persons in the United States who are age 5 or older—about 20 percent of the population—speak a language other than English at home.⁴ Modern crime victims' rights envisions victims meaningfully exercising their rights and being active participants in the system.⁵ Yet, a "high level of English proficiency is required for meaningful participation in court proceedings due to the use of legal terms, the structured nature of court proceedings, and the stress normally associated with a legal proceeding when important interests are at stake."⁶ Thus, to achieve the promise of modern victims' rights, non-English speaking victims require interpreters.⁷

Victims' rights to fairness, dignity, respect, due process, and to be present and heard, together with a jurisdiction's laws on appointment of interpreters and sound public policy, support appointment of interpreters throughout criminal court proceedings⁸ to assist non-English speaking victims.⁹

I. A Non-English Speaking Victim's Rights Require Appointment of an Interpreter

Some combination of the broad rights to fairness, dignity, and respect is found in jurisdictions nationwide. A majority of states explicitly provide victims with the right to be treated with fairness, dignity, and respect.¹⁰ Further, many state constitutions explicitly afford due process to victims of crime,¹¹ and where state constitutions do not explicitly provide for it, guarantees of dignity, respect, fairness, and the right to be heard, encompass basic notions of due process.¹² Fundamental aspects of due process include the opportunity to be heard in a "meaningful manner" and to be treated fairly.¹³ From a legal as well as common-sense perspective, this requires that non-English speaking victims must be able to comprehend court proceedings and access information and court services to the same extent as their English-speaking counterparts. Fairness requires that non-English speaking victims be able to participate meaningfully during legal proceedings.¹⁴

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In addition to these broad rights, victims are afforded the right to be present. The right to be present refers to the victim's right to attend the criminal trial and other criminal justice proceedings related to the investigation, prosecution, and incarceration of his or her offender.

The vast majority of states provide victims either an unqualified or qualified right to be present at a variety of criminal proceedings, including trial.¹⁵ Strong public policy supports this right of attendance: “[T]he right to attend the trial may be critical in allowing the victim to recover from the psychological damage of a crime. It seems reasonable to assume a victim’s attendance at a trial may ‘facilitate healing of the debilitating psychological wounds suffered by a crime victim.’”¹⁶ Notably, not only does attendance aid recovery, but it also prevents the “secondary harm” that may result if a victim is excluded from trial.¹⁷

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. Depending upon the jurisdiction, victims have the explicit right to be heard at release, plea, sentencing, and parole. Focusing on the critical stages of plea and sentence, at least 39 states provide crime victims with a constitutional or statutory right to be heard.¹⁸ Most statutory and constitutional rights to be heard at sentencing are drafted in mandatory terms, leaving judges no discretion.¹⁹

To effectuate the rights to be present and heard in a meaningful manner, victims must be given access to all necessary information. For example, a non-English speaking victim’s exercise of his or her right to be present will not be satisfied solely by enabling the victim’s physical presence at proceedings. Rather, as courts have recognized with respect to criminal defendants, in order for the non-English speaking victim’s presence to be meaningful, the court must appoint an interpreter to assist the victim in understanding the proceedings.²⁰

Similarly, the right to be heard is of little value if victims are not adequately informed about the pending matter. If victims are not meaningfully informed, it follows that they cannot meaningfully

form their views, let alone make their views known to the prosecution or to the court, and they are thereby denied the ability to exercise their right to be heard. Consequently, to ensure meaningful exercise of the right, victims must be provided interpreters from the earliest stages of the proceedings before the victims address the court to provide them with the information necessary to make their communication with the court meaningful. Only with knowledge of all relevant information may victims fulfill one of the key purposes of the right to be heard—acquainting the court with the victims’ unique perspectives and otherwise providing input valuable to the court’s decision making process.²¹

II. State Interpreter Laws Support Appointment of Interpreters To Assist Non-English Speaking Victims in Exercising Their Rights

A number of jurisdictions have statutes, rules, and judicial policies that arguably either require or provide for court appointment of interpreters to assist non-English speaking victims, particularly when read in light of that jurisdictions’ crime victims’ rights laws.

A handful of states follow in some part the Model Court Interpreter Act § 2B (1995), which begins with a policy statement declaring it the “intent of this Act to provide for the certification, appointment, and use of interpreters to secure the state and federal constitutional rights of non-English speaking persons in all legal and administrative proceedings.”²² “Non-English speaking person” is defined to mean “any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.”²³ “Principal party in interest[.]” is then defined to mean “a person involved in a legal proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.”²⁴ The Model Act further provides that when an interpreter is requested or “when the [court] determines that a

principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter *shall* be appointed.”²⁵ In the jurisdictions that have adopted in substantial part the provisions outlined above,²⁶ crime victims qualify as principal parties in interest with critical rights at stake and therefore the court has a clear duty to appoint interpreters to assist non-English speaking victims during criminal proceedings.

A number of other jurisdictions, although not following the Model Act’s language, either require or provide for court appointment of interpreters to assist non-English speaking victims.²⁷

Some of these laws expressly include victims in the categories of non-English speaking persons for whom the court must appoint an interpreter; others define non-English speaking persons broadly enough to include victims. These jurisdictions—like those that follow the Model Act—also provide authority for the proposition that the court either must or should exercise its discretion to appoint interpreters to assist non-English speaking victims in exercising their rights.

State victims’ rights require—and state interpreter provisions as well as strong public policy rationales support—a trial court’s appointment of an interpreter to assist non-English speaking victims during criminal proceedings. It is only with the assistance of an interpreter that non-English speaking victims can exercise their rights to fairness, dignity, respect, and due process, and to meaningful presence and participation.

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For additional resources relating to the protection, enforcement, and advancement of crime victims’

rights, please visit NCVLI’s website at www.ncvli.org.

¹ Consistent with the Model Court Interpreter Act definition, the term “non-English speaking” is used throughout this article to refer to both non-English speaking persons as well as those with limited-proficiency in the English language. *See infra* note 3.

² NCVLI is actively working on the intersection of victims’ rights and the use of interpreters by non-English speaking victims as part of its work under the Legal Assistance for Crime Victims: An OVC Capacity Building Initiative. Through that Initiative, OVC TTAC and NCVLI are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally and to provide resources designed to give attorneys the tools needed to increase their knowledge base about crime victim issues. For additional information about the Initiative and to stay up-to-date on future work on this topic, please visit NCVLI’s website or <https://www.ovcttac.gov/>.

³ A non-English-speaking person is “any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.” Model Court Interpreter Act § 2B (1995) (Model Act), *reprinted in* William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* 215-34 (1995).

⁴ 2011 U.S. Census Bureau, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1601&prodType=table.

⁵ *See Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2006) (“The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children—seen but not heard. The Crime Victims’ Rights Act sought to change this by making victims independent participants in the criminal justice process.”).

⁶ ABA Standing Committee on Legal Aid and Indigent Defendants, ABA Standards for Language Access in Courts (Adopted as ABA policy on February 6, 2012), at 1, *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_lan-

guage_access_proposal.authcheckdam.pdf. The ABA Standards further explain that:

Lack of language access services exacts a serious toll on the justice system. Although there is scant national data on the number of LEP [limited-English proficient] persons involved in court proceedings, there is ample experience and anecdotal evidence to substantiate that many LEP persons regularly come before the courts and are unable, without language access services, to protect or enforce their legal rights, with devastating consequences to life, liberty, family, and property interests. Persons who are unable to communicate in English are also likely to have limited understanding of their rights and of the role of the courts in ensuring that rights are respected. The language barrier exacerbates this lack of awareness, and effectively prevents many LEP persons from accessing the system of justice.

Id. at 1-2 (internal citation omitted).

⁷ “Although the term ‘translate’ is frequently used interchangeably with or instead of ‘interpret,’ the activities are distinct and require different skills. Interpreting is oral rendering of one spoken language into another, while translation is the rendering of a written document from one language into a written document in another language. The Model Act recognizes that court interpreters will be required to perform *sight translations*, which involves reading and orally translating a written document.” Model Act, *supra* note 3, at n. 4 (emphasis in original).

⁸ This article focuses on the appointment of interpreters in state criminal court proceedings. A complete discussion of this topic as applied to federal courts is outside the scope of this article.

⁹ U.S. Department of Justice guidance documents conclude that federal law—namely Title VI and the Safe Streets Act—require meaningful access by limited-English proficient (LEP) persons in all programs and activities that receive federal financial assistance

from DOJ, including state court operations. *See, e.g.*, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,471 (June 18, 2002) (directing court recipients of financial assistance from DOJ that: “At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present.”). The Assistant Attorney General for the Civil Rights Division issued a guidance letter in August 2010 to all Chief Justices and State Court Administrators describing the obligation of state courts under Title VI to provide LEP individuals with meaningful access to court proceedings, notwithstanding any conflicting state or local laws or court rules. Letter from Assistant Attorney General Thomas Perez to Chief Justices and State Court Administrators 1 (Aug. 16, 2010) (Guidance Letter), available at www.lep.gov/final_courts_ltr_081610.pdf (noting that “[t]he Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations”). In the Guidance Letter, DOJ identified areas of “particular concern[,]” which include courts that limit the types of proceedings for which qualified interpreter services are provided by the court, and courts that charge persons involved with a case for the cost of interpreter services. *Id.* at 2. With respect to the first concern about courts that limit the types of proceedings, DOJ emphasized that it “views access to *all* court proceedings as critical[,]” and that “[c]ourts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime[.]” *Id.* (emphasis in original). With respect to the cost of interpreter services, DOJ explained that “court proceedings are among the most important activities conducted by recipients of federal funds[,]” and, as such, “DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.” *Id.* In the vast majority of jurisdictions, the meaningful presence and participation of a victim during court proceedings—including, but not limited to, trial—involves the exercise of that victim’s constitutional or statutory rights and, as such, would be “necessary or appropriate” by definition. Thus, federal law provides additional au-

thority requiring courts to provide interpreters free of charge to effectuate the right of non-English speaking victims to meaningful access to the courts.

¹⁰ See, e.g., Ariz. Const. art. 2, § 2.1(A)(1) (treated with fairness, respect, and dignity); Conn. Const. art. 1, §8(b)(1) (treated with fairness and respect); 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); 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.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); Utah Const. art. I, § 28(1)(a) (treated with fairness, respect, and dignity); 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); Cal. Penal Code § 679 (treated with dignity, respect, courtesy, and sensitivity); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(a) (treated with fairness, respect, and dignity); Haw. Rev. Stat. Ann. § 801D-1 (treated with dignity, respect, courtesy, and sensitivity); Kan. Stat. Ann. § 74-7333(a)(1) (treated with courtesy, compassion, and respect for victim's dignity); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a) (treated with fairness and respect for victim's dignity); Tenn. Code Ann. § 40-38-102(a)(1) (treated with dignity and compassion); Vt. Stat. Ann. tit. 13, § 5303(a) (treated with dignity and respect).

¹¹ See, e.g., Ariz. Const. art. 2, § 2.1(A) (acknowledging victims' "rights to justice and due process"); Cal. Const. art. I, § 28(b) (same); S.C. Const. art. I, § 24(A) (same); Tenn. Const. art. I, § 35 (same); Utah Const. art. I, § 28(1) (same).

¹² See, e.g., Douglas Evan Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 Utah L. Rev. 289, 294 (1999) (explaining that some victims' rights, such as the "rights to notice and attendance, and the right to speak to the prosecutor and the judge . . . are, by nature, due-process-like rights"). See also *United States v. Heaton*, 458 F. Supp. 2d 1271, 1272-73 (D. Utah 2006) (stating that fairness and conferral rights could not be satisfied "without having the victim's views on the subject[.]" and quoting the explanation of Senator Kyl—one of the chief sponsors of the federal Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771—that the CVRA's right to be treated with fairness "includes the notion of due process").

¹³ 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." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal citations omitted). See also *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (internal citations omitted) ("For more than a century the central meaning of procedural due process has been clear: '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.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' These essential constitutional promises may not be eroded."); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (citation omitted) ("A fundamental requirement of due process is 'the opportunity to be heard[.]'" and "[i]t is an opportunity which must be granted at a meaningful time and in a meaningful manner."); *People v. Vasquez*, 137 P.3d 199, 207-8 (Cal. 2006) (quoting *Ganger v. Peyton*, 379 F.2d 709 (4th Cir. 1967)) (discussing "the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment").

¹⁴ A number of courts have held or recognized that where a defendant does not understand or speak English well enough to adequately comprehend or communicate in the proceedings, federal and state constitutional rights to fundamental fairness and due process of law require that an interpreter be provided. See, e.g., *United States v. Cirrincione*, 780 F.2d 620, 634 (7th Cir. 1985) (holding "that a defendant in a

criminal proceeding is denied due process when: (1) what is told him is incomprehensible; (2) the accuracy and scope of a translation at a hearing or trial is subject to grave doubt; (3) the nature of the proceeding is not explained to him in a manner designed to insure his full comprehension; or (4) a credible claim of incapacity to understand due to language difficulty is made and the district court fails to review the evidence and make appropriate findings of fact”); *United States v. Mosquera*, 816 F. Supp. 168, 173 (E.D.N.Y. 1993) (internal citations and quotations omitted) (“The due process clause also prohibits trying the criminal defendant who lacks capacity to understand the proceedings, to consult with counsel or to assist in the preparation of his defense. This prohibition refers not only to mental incompetents, but also to those who are hampered by their inability to communicate in the English language.”); *Giraldo-Rincon v. Dugger*, 707 F. Supp. 504, 507 (M.D. Fla. 1989) (internal citation omitted) (adopting the report and recommendation of the federal magistrate judge and concluding that the state “trial judge’s refusal and failure to inquire into [defendant’s] need for and ability to pay for an interpreter violated his Sixth Amendment right to confrontation and his right to due process of law. Regardless of any probability of guilt, the [defendant’s] trial ‘lacked the fundamental fairness required by the due process clause.’”).

¹⁵ See Douglas E. Belooof & Paul G. Cassell, *The Crime Victim’s Right to Attend the Trial: The Reasendant National Consensus*, 9 Lewis & Clark L. Rev. 481, 504-13 (2005).

¹⁶ *Id.* at 536 (quoting Ken Eikenberry, *Victims of Crime/Victims of Justice*, 34 Wayne L. Rev. 29, 41 (1987)).

¹⁷ *Id.* (quoting Dean G. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L. Rev. 7, 18-19 (1987) (“[V]ictims’ perceptions about the equity of their treatment and that of the defendants affects their crime-related psychological trauma [F]ailure to . . . offer the right of [criminal justice] participation should result in increased feelings of inequity on the part of victims, with a corresponding increase in crime-related psychological harm.”)). Cf. *Polyvictims: Victims’ Rights Enforcement as a Tool to Mitigate “Secondary Victimization” in the Criminal Justice System*, NCVLI Victim Law Bulletin (Nat’l

Crime Victim Law Inst., Portland, Or.), March 2013, at 1-2 (internal citations omitted), available at <https://law.lclark.edu/live/files/13798-polyvictims-victims-rights-enforcement-as-a-tool> (discussing that “for some victims, interaction with the criminal justice system—through contact with law enforcement, defense attorneys, prosecutors, judges and other legal system personnel and processes—can cause secondary victimization, which has been associated with increased posttraumatic stress symptoms and other physical and mental distress. Secondary victimization can cause victims to feel frustrated with and alienated from the criminal justice system; it can also reduce the victims’ ‘self-esteem, faith in the future, trust in the legal system, and faith in a just world.’”).

¹⁸ See Ala. Const. amend. 557; Alaska Const. art. 2, § 24; Ariz. Const. art. 2, § 2.1(A)(4); Colo. Const. art. II, § 16a; Conn. Const. art. 1, §(8)(b)(8); Fla. Const. art. I, § 16; Idaho Const. art. 1, § 22(6); Ill. Const. art. 1, § 8.1(a)(4); Kan. Const. art. 15, § 15(a); La. Const. art. I, § 25; Md. Const. Decl. of Rights, art. 7(b); Mich. Const. art. I, § 24(1); Miss. Const. art. 3, § 26A(1); Mo. Const. art. I, § 32(1)(2); Neb. Const. art. I, § 28(1); Nev. Const. art. 1, § 8(2)(c); N.M. Const. art. II, § 24(A)(7); N.C. Const. art. 1, § 37(1)(b); Okla. Const. art. II, § 34(A); Pa. Const. Stat. § 11.201(5); S.C. Const. art. I, § 24(A)(5); Utah Const. art. I, § 28(1)(b); Va. Const. art. I, § 8-A(3); Wash. Const. art. 2, § 35; Wis. Const. art. I, § 9(m); Ala. Code § 15-23-74; Cal. Penal Code § 679.02(a)(3); Colo. Rev. Stat. Ann. § 24-4.1-302.5(10)(g); Fla. Stat. Ann. § 960.01(1)(k); Ind. Code Ann. § 35-40-5-5; Iowa Code Ann. § 915.21(1)(b); La. Rev. Stat. Ann. § 1842(2); Me. Rev. Stat. Ann. tit. 17-A, § 1174(1)(A); Md. Code Ann., Crim. Proc. § 11-403; Mass. Gen. Laws Ann. ch. 258B, § 3(p); Minn. Stat. Ann. § 611A.038(a); Miss. Code Ann. § 99-43-33; N.H. Rev. Stat. Ann. § 21-M:8-k(I)(p); N.J. Stat. Ann. § 52:4B-36(n); Ohio Rev. Code Ann. § 2930.14(A); R.I. Gen. Laws Ann. § 12-28-3(11); S.D. Codified Laws § 23A-28C-1(8); Utah Code Ann. § 77-38-4(1); Vt. Stat. Ann. tit. 13, § 5321(a)(2); Wyo. Stat. Ann. § 14-6-502(a) (xvii).

¹⁹ 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) (internal quotation omitted) (stating that vic-

tims' 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").

²⁰ As recognized in analogous cases discussing the necessity of appointing interpreters to assist non-English speaking defendants, the right to be present is empty if it means only that non-English speaking persons may watch what they cannot understand. See *Mosquera*, 816 F. Supp. at 172 ("To be 'present' implies more than being physically present. It assumes that a defendant will be informed about the proceedings so he can assist in his own defense."); *United States v. Carrion*, 488 F.2d 12, 14 (1st Cir. 1973) (internal citations omitted) ("Clearly, the right to confront witnesses would be meaningless if the accused could not understand their testimony, and the effectiveness of cross-examination would be severely hampered . . . [t]he right to an interpreter rests most fundamentally, however, on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment."). As such, courts have cautioned that: "Courts, prosecutors, and defense attorneys alike must be especially vigilant in assuring that a language barrier does not unfairly prejudice a criminal defendant." *United States v. Garcia*, 956 F.2d 41, 45 (4th Cir. 1992). See also *ex rel. Negron*, 434 F.2d at 389 (quoting *Dusky v. United States*, 362 U.S. 402 (1962) (per curiam)) ("It is . . . imperative that every criminal defendant—if the right to be present is to have meaning—possess 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.'"); *State v. Natividad*, 526 P.2d 730, 732 (Ariz. 1974) (citing *Lewis v. United States*, 146 U.S. 370 (1892)) ("[Defendant's inability to understand testimony] would be as though a defendant were forced to observe the proceedings from a soundproof both [sic] or seated out of hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes whereby the state had put his freedom in jeopardy. Such a trial comes close to being an invective against an insensible object, possibly infringing upon the accused's basic 'right to be present in the courtroom at every stage of his trial.'"); Thomas M. Fleming, J.D., 32 A.L.R. 5th 149 (1995) ("Because language is the principal means of communication in a legal proceeding, the participants' ability to understand and speak that language is critical to the

proceeding's fairness. The explosive growth of immigration to the United States, both legal and illegal, has increased the number of criminal defendants and witnesses who lack a full command of English and need a qualified interpreter to function meaningfully in the courtroom.").

²¹ See Douglas E. Beloof, *Constitutional Implications of Crime Victims as Participants*, 88 Cornell L. Rev. 282, 285 (2003); Douglas E. Beloof, *Weighing Crime Victims' Interests in Judicially Crafted Criminal Procedure*, 56 Cath. U. L. Rev. 1135, 1152 (2007) ("In *Payne v. Tennessee*, decided in 1991, the Court recognized crime victims as unique individual human beings whose particularized harm could be the subject of victim impact statements."); *People v. Stringham*, 253 Cal. Rptr. 484, 490 (Cal. Ct. App. 1988) (explaining that 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."); see also *State v. Koertje*, Nos. CR090171, CR080477, CR080626 (Yamhill Cnty. Cir. Ct., Sept. 21, 2009) (Arraignment/Pleading Order) (on file with author) (Oregon state trial court decision granting the state's "Motion re: Claim of Violation of Crime Victim's Rights re: Interpreters, and for Sentencing"). The *Koertje* court, in correspondence with the Court Interpreter Services after its decision to order interpreters for a non-English speaking victim, maintained that the "Oregon Constitution now provides a crime victim with a constitutional right to meaningful participation in the criminal proceeding [I]n situations where the victim can neither understand what is being said, nor make a statement to the court, I believe the Constitution requires that the court make an interpreter available to the victim." Letter from John L. Collins, Presiding Judge, Oregon Circuit Court, 25th Judicial District, Yamhill County, to Kelly Mills, Program Manager, Court Interpreter Services, Oregon Judicial Department (Nov. 13, 2009) (on file with author). According to the court, the state's original request was for the appointment of an interpreter

for the victim as an observer at trial, but the request was narrowed when the defendant changed his plea and agreed to proceed with sentencing. The victim spoke Nahuatl, a native Central American language, and because the Nahuatl interpreter spoke Nahuatl and Spanish only, another interpreter was required to translate from English to Spanish. In discussing the critical nature of the victim's participation in the proceedings, the court remarked as follows:

The victim did appear at sentencing and did wish, as was her right, to address the court. As it turns out, some of her remarks would not have been possible had she not been able to have what the judge, prosecutor, defendant attorney [and] the defendant said in court. Her input was valuable to the court, and that opportunity to have that input appeared to be very important to her. The interpreters, then, not only assisted in interpreting the victim's statement to the court, but also in allowing the victim to do so meaningfully by understanding what was said by others in court. I cannot see how it would have been possible for the victim to play this 'meaningful role' without the assistance of the two interpreters.

Id. The court's remarks emphasize the importance of meaningful victim input in the process, which may benefit the victim as well as provide valuable information to the court.

²² Model Act, *supra* note 3, at § 1.

²³ *Id.* at § 2B.

²⁴ *Id.* at § 2E.

²⁵ *Id.* at § 4 (emphasis added).

²⁶ See e.g., Idaho Code Ann. Ct. Admin. r. 52; La. Rev. Stat. Ann. Crim. Proc. art. 25.1; N.M. Stat. Ann. §§ 38-10-2 & 3; Or. Rev. Stat. Ann. §§ 45.273-75; Pa. Cons. Stat. Ann. §§ 4412, 4416; R.I. Gen. Laws Ann. §§ 8-19-1 & 2; Utah Code Ann. Jud. Admin. r. 3-306; Wash. Rev. Code Ann. §§ 2.43.010-090.

²⁷ See e.g., Colo. Sup. Ct. C.J. Directive 06-03, available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2006-03%20amended%2006-11.pdf (mandating that as a matter of policy "the courts shall assign and pay for language interpretation for all parties in interest during or ancillary to a court proceeding," and defining "party in interest" to include "a victim"); Fla. Stat. Jud. Admin. r. 2.560(a), available at [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F854D695BA7136B085257316005E7DE7/\\$FILE/Judicial.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F854D695BA7136B085257316005E7DE7/$FILE/Judicial.pdf?OpenElement) ("In any criminal or juvenile delinquency proceeding in which a non-English speaking person is a victim, an interpreter shall be appointed unless the court finds that the victim does not require the services of a court-appointed interpreter"); S.C. Code Ann. § 17-1-50(B)(1) ("Notwithstanding any other provision of law, whenever a party, witness, or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or to testify, the court must appoint a . . . qualified interpreter to interpret the proceedings to the party or victim or to interpret the testimony of the witness."); Tenn. Code Ann., Sup. Ct. Rules r. 42 § 3, available at <http://www.tncourts.gov/rules/supreme-court/42> ("Appointing an interpreter is a matter of judicial discretion. It is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English. If the court determines that a participant has such limited ability, the court should appoint an interpreter pursuant to this rule."); Va. Code Ann. § 19.2-164 ("In any criminal case in which a non-English speaking person is a victim or witness, an interpreter shall be appointed by the judge of the court in which the case is to be heard unless the court finds that the person does not require the services of a court-appointed interpreter."); Wis. Stat. Ann. § 885.38(3)(a) ("If the court determines that the person has limited English proficiency and that an interpreter is necessary, the court shall advise the person that he or she has the right to a qualified interpreter at the public's expense if the person is one of the following . . . [a]n alleged victim, as defined in s. 950.02(4)."). Another category of jurisdictions appears to expressly provide for interpreter services to assist criminal defendants and witnesses only. Even though these jurisdictions do not expressly provide for the right of victims to court

appointment of interpreters, when considered in light of the crime victims' rights laws, the interpreter provisions should not be read as mandating a ceiling, but instead as providing a floor establishing the minimum requirements the courts are required to uphold. As such, crime victims are entitled to interpreter services in these jurisdictions as well. *See e.g.*, 2013 Ark. Acts 237 (H.B. 1325) (amending statutes to include new subchapters (Ark. Code Ann. §§ 16–10–1101 to 1108), which provide, *inter alia*, that “[a] person with limited English proficiency who is a party to or a witness in a court proceeding is entitled to a qualified interpreter to interpret for the person throughout the court proceeding”); D.C. Code § 2-1902(a) (“Whenever a communication-impaired person is a party or witness . . . the appointing authority may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person.”); Ga. Code Ann., Ct. r. 1 and app. B2(“A”)(1), available at <http://www.georgiacourts.org/councils/state/benchbook/state%20court%20benchbook/Chapters/B2%20Interpreters.pdf> (“An interpreter is needed and an interpreter shall be appointed when the decision maker . . . determines, after an examination of a party or witness, that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) the witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or the jury.”); Tex. Code Crim. Proc. Ann. art. 38.30(a) (“When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for the person charged or the witness.”).

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Training & Education. We train nationwide on the meaning, scope, and enforceability of victims' rights through practical skills courses, online webinars, and teleconferences. We also host the only conference in the country focused on victim law.

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