



Victim Impact Statements: Top Twelve Practice Tips

1. **Start Early.** Working with victims on their victim impact statement well in advance of sentencing is a best practice. The statement may be one of the most difficult things that a victim will ever compose, and it may take considerable time for the victim to decide what to share and how best to share it.
2. **Support the Victim's Decision Whether or Not to Make a Statement.** Let victims know that it is completely valid to choose to give an impact statement, or to decline to give an impact statement; be clear that you will support them in either choice, and remind them that the choice is theirs all the way until the moment at sentencing when statements come in. To access a video providing an overview of a victim's right to be heard at sentencing, see *NCVLI Toolkit: The Crime Victim's Right To Be Heard at Sentencing*, <https://www.youtube.com/watch?v=eUNP6UtpzQQ>. For more information about victim impact statements, including categories of information commonly included in the statements, see *NCVLI Toolkit: Crafting Victim Impact Statements, Talking to Survivors About Victim Impact Statements*, https://www.youtube.com/watch?v=2BC2c_otFDM.
3. **Protect the Victim From Cross-Examination Regarding the Victim Impact Statement.** Know the law about whether, and under what circumstances, the defense or the state may have the ability to question or cross-examine victims about their victim impact statements. This will enable you to prepare arguments in advance opposing a request to question the victim; it will also enable you to prepare the victim for this possibility if necessary. For analysis of state law governing this topic, see *National Survey of State Victim Impact Statement Laws and Whether Defendant Has Right of Cross-examination with Respect to Victim Impact Evidence* (Nat'l Crime Victim Law Inst., Portland, Or.) (July 2010), <http://law.lclark.edu/live/files/12746-national-survey-of-state-victim-impact-statement>.
4. **Know Who May Access the Victim's Statement.** Know the law in your jurisdiction about whether, and under what circumstances, defendants may access victims' impact statements. For example, if the victim provides a written impact statement to a prosecutor or prosecution-based victim advocate in advance of the sentencing hearing, will the statement be disclosed to the defense? Similarly, if the victim provides the court with a written impact statement during the sentencing proceeding, it is important to know whether defendant is entitled to receive a written copy at that time or only as part of the record.
5. **Use of Statement by Authority Determining Defendant's Release.** Know whether the victim's statement will be automatically shared in the future with any authority that will decide whether defendant may be released from custody or supervision. If it is to be automatically shared, ensure that is the victim's desire now and let them know how to

communicate with release authorities in the future, if they want to update any information. If it is not to be shared, inform the victim of how to submit information to future release authorities.

6. The Pre-Sentence Report. Know the law and local practice regarding pre-sentence reports (PSR) or similar documents. For instance, may victims provide information that becomes part of a PSR? May victims review the PSR—in its entirety or just parts of it—before its submission to the court to correct errors and prepare for the sentencing proceeding as the parties often do? If you are aware of the governing law, it will enable you to construct the most persuasive arguments along the way to help victims more meaningfully exercise the right to be heard. *See, e.g., Integrating Crime Victims Into the Sentencing Process*, Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), 2010, <http://law.lclark.edu/live/files/21752-integrating-crime-victims-into-the-sentencing> (making the argument that a victim's right to exercise meaningful participation at sentencing, including the rights to be heard and to fairness under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, require a victim to be able to access the PSR).
7. Be Aware of Public Records' Laws in Your Jurisdiction. Be mindful of the victim's rights to privacy and protection, which include knowing the law in your jurisdiction about whether and when victim impact statements or submissions to a PSR become part of the public record in a case. If necessary, be prepared to argue that the victim impact statement or information in a PSR should be sealed to protect the victim's rights to privacy and protection.
8. Discuss With the Victim the Different Possible Formats. Familiarize yourself with the acceptable formats for victim impact statements. Depending on your jurisdiction's law, victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology. Be prepared to address potential legal challenges to the format selected.
9. Death Penalty Cases. In cases involving the death penalty, understand and explain to victims what types of statements and material are permitted as part of a victim impact statement. For example, comments on the appropriate sentence must withstand constitutional scrutiny. For legal arguments supporting the victim's right to make sentencing recommendations, *see Why Sentencing Recommendations in Victim Allocation are Permissible and Desirable*, Victim Law Article (Nat'l Crime Victim Law Inst., Portland, Or.), May 2011, <http://law.lclark.edu/live/files/21938-sentencing-recommendations-article13th-edition>.
10. Provide the Victim With Samples of Statements if Helpful. Be aware of resources that may assist victims in creating their victim impact statement. Some victims may find sample statements drafted by others to be helpful to them when approaching the

process. To access sample victim impact statements, see *NCVLI Toolkit: Crafting Victim Impact Statements, Victim Impact Statement*, <http://law.lclark.edu/live/files/17711-sample-victim-impact-statements1pdf> (providing three redacted victim impact statements that were actually submitted by victims in connection with criminal proceedings).

11. Prepare the Victim for Giving the Impact Statement. This may include visiting the courtroom in advance to familiarize the victim with the setting, providing an overview of the timing and order of events that will take place during the sentencing proceedings, requesting accommodations where necessary to facilitate the exercise of this right, or ensuring that individuals chosen by the victim are available during and after the impact statement to provide support to the victim. It may also be helpful to advise the victim to bring tissue, use large font if reading the statement in court, and to print the statement on thicker weight paper to help the victim read the statement even with shaking hands.
12. Consider Challenging a Denial of the Victim's Right to Be Heard. If the victim is not afforded his or her right to be heard at sentencing, and the victim wished to be heard, consider litigating the matter. For a general litigation checklist when seeking to challenge the denial of a victim's right to be heard at sentencing, see *NCVLI Toolkit: The Crime Victim's Right To Be Heard at Sentencing*, <https://www.youtube.com/watch?v=eUNP6UtpzQQ>. To submit a request for technical assistance to NCVLI for help with litigation challenging the denial of a victim's right to be heard at sentencing, visit NCVLI's website, www.ncvli.org, under the technical assistance heading.

This product was supported by Grant No. 2014-XV-BX-K013, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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