

Post-Conviction: The Intersection of Victims' Rights and Supervised Release

Imagine seeing your child's murderer walking down the street—a person you thought was still in prison; or imagine seeing your assailant on a work release crew in your neighborhood when you had planned to secure a protective order before the prison sentence was served. For victims of crime, unexpectedly seeing their offenders can be traumatic and dangerous. Fortunately, victims' rights do not end when the trial ends.¹ Indeed, a victim's rights to notice, to be heard, to privacy and to protection may extend decades longer, continuing when the offender is back in the community.

This Bulletin provides an overview of what “post-conviction release” means, and how to honor victims' rights throughout this stage of the criminal justice process. It also provides practical tips for victims' rights attorneys and advocates who are working with victims before and after an offender's post-conviction release.

What is Post-Conviction Release?

Speaking broadly, post-conviction release is the discharge from confinement by an agency having custody of a person.² “Discharge from confinement” includes numerous forms of release, including work release,³ work furlough,⁴ release to obtain schooling or vocational training,⁵ community supervision,⁶ home detention,⁷ medical release,⁸ probation,⁹ parole,¹⁰ pardon or clemency,¹¹ and unconditional release at the end of sentence, among others.¹²

The remainder of this paper focuses on “post-release supervision”¹³—meaning that a parole board or other community corrections board or agency has made a decision resulting in the offender being released into the community subject to restrictions.¹⁴

Right to Be Notified of Release from Custody

Timely notice of an offender's release from custody *before* the offender is released is essential not only to protect the victim's explicit right to notice of important moments in the criminal justice system, but also to protect the victim's rights to be protected from the accused¹⁵ and to be treated with fairness, dignity and respect.¹⁶ If the victim is not aware that the offender will be released, the victim cannot make meaningful decisions about safety planning, or otherwise prepare for a chance encounter with the offender.¹⁷

In some jurisdictions, a victim is statutorily required to “opt-in” to receive notice of the offender’s release.¹⁸ In other jurisdictions, the victim is to be automatically notified.¹⁹ Some states adopt a hybrid approach to notification, in which victims are automatically notified when certain types of offenders are scheduled for release, yet not notified when other offenders are scheduled for release.²⁰ In others states the law is silent as to notification.²¹ Notably, even when the law is facially silent regarding notification, if the victim’s exercise of other rights would require notice to be meaningful, notice must be provided.²²

If the victim’s address or telephone number changes between the offender’s incarceration and release, the burden is likely on the victim to inform the relevant organization or individual so that effective notice can be given.²³

Regardless of method of notice, for it to be legally sufficient it must be timely, accurate and reasonable.²⁴ If the notice given to the victim does not meet this standard—for instance, the victim is not informed of the release until days before the release, or no notice is given at all—the notice given to the victim can be challenged as inadequate. Often, a failure to notify the victim of the offender’s release is coupled with a failure to have notified the victim that release is even being contemplated, thus also denying the victim the right to be heard. If this is the case, consider a motion to have the release order set aside so that a new hearing may be conducted that includes victim input regarding the release decision.^{25, 26}

Protecting the Victim Upon Release

Many states, and the federal government, grant victims an explicit right to reasonable protection from the accused, a term which includes convicted persons.²⁷ This right does not end when the offender has been released from custody but is still being supervised or is under the court’s jurisdiction.²⁸

Generally, there is flexibility in setting the conditions for supervised release.²⁹ Thus, offenders may be required to undergo treatment;³⁰ refrain from possessing a firearm;³¹ or be subject to some form of electronic monitoring.³² Some conditions may more directly aim to protect the victim. For instance, offenders can be ordered not to be within a certain distance of the victim’s residence or place of employment.³³ In addition, some jurisdictions will automatically renew a no-contact order as a condition of release.³⁴ Some jurisdictions also explicitly provide that the victim be given a current photograph of the offender.³⁵

Changes to or Violations of Supervised Release

Even with safety measures in place, the offender does not always abide by them. In the event that the offender is violating conditions of supervised release, the victim is not without options.

Supervising authorities may impose sanctions upon offenders subject to supervised release. These sanctions may include the offender's entry into treatment programs, electronic monitoring, house arrest or a return to confinement.³⁶

A decision to revoke supervised release triggers the protections of the Fourteenth Amendment, and requires a preliminary inquiry in the nature of a preliminary hearing, and a revocation hearing that meets minimal due process requirements.³⁷ A preliminary hearing—or its equivalent—is intended to be an initial inquiry, with the purpose of determining whether there is probable cause or a reasonable ground to believe that the offender has violated conditions.³⁸ Some states explicitly allow for the general public to be present at these hearings.³⁹ Although generally there is no specific provision affording victims a right to be present during this hearing, a victim may be able to assert an implied right to be present based on other victims' rights, including the right to be present at proceedings generally, to protection, and to be treated with fairness, dignity and respect.

The form of the final revocation hearing varies by jurisdiction but requires, at a minimum: (1) written notice of the claimed violations of parole to the offenders; (2) disclosure to the offenders of the evidence against them; (3) opportunity of the offenders to be heard in person and to present witness and documentary evidence; (4) the offenders' right to confront and cross-examine adverse witnesses, unless there is good cause not to allow this; (5) a neutral and detached hearing body; and (6) a written statement by the fact-finders as to the evidence relied on and the reasons for revoking parole.⁴⁰ Unlike with the preliminary hearing, many jurisdictions affirmatively allow the victim to be present during the revocation hearing.⁴¹ Even if the right is not explicit, as noted above, a victim may be able to assert an implied right to be present based on other victims' rights, including the right to be present, to protection, and to be treated with fairness, dignity and respect.

Regardless of whether the victim is at the revocation hearing, many jurisdictions allow for or require that the victim be alerted of a change in the offender's supervisory release status. This includes changes due both to a violation of the imposed supervisory release conditions, or due to the natural expiration of the term of supervised release.⁴²

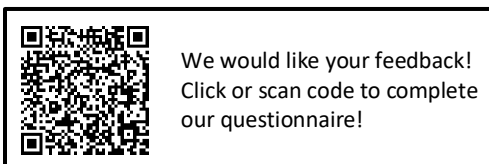
Practice Tips

When considering a victim's rights post-release, attorneys and advocates working with victims should consider the following practice tips:

- Know the Rights and Resources in Your Jurisdiction. Identify key post-conviction victims' rights and resources regarding protection in your jurisdiction, including any found in constitution, statute, rules, and/or agency practice.
- Know the Process for Notification in Your Jurisdiction. Identify whether your state requires the victim to register to receive notification, or whether notification is automatic.

If the statutory scheme is unclear as to notification, contact each releasing authority to determine how the victim can ensure timely prior notification of release. Note: If notification is automatic and the victim *does not* want to receive notifications, understand the procedure for stopping notification.

- Make Sure the Victim's Contact Information is Up-to-Date. In the event the victim wishes to receive notification of release, be sure to notify each release authority of updated information. Take note that some jurisdictions have particular requirements, for example that the victim have a landline for purposes of notification.⁴³
- Request Meaningful Protections Prior to Release. When the release authority is still considering post-release conditions, consider asking for the protections that would be most beneficial for the victim with whom you are working. For instance, if your jurisdiction does not allow for automatic renewal of a protective order upon release, consider asking that this be a condition imposed. Further, if the release authority has already determined post-release conditions, consider asking for re-consideration to allow for additional conditions if the ones imposed are inadequate to protect the victim.
- If There is a Violation of the Victim's Rights, Consider Filing a Motion. In making the motion, be sure to include all rights implicated, including rights to notice, protection, to be heard, and to be treated with fairness, dignity and respect. Please contact NCVLI for technical assistance.



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¹ See *Overview of Victims' Right to be Heard in Connection with Parole and Other Post-Conviction Release Proceedings*, Victim Law Bull. (Nat'l Crime Victim Law Inst., Portland, Or.) Dec. 2018,

<https://law.lclark.edu/live/files/27372-victim-input-at-parole-bulletinwith-qr-code-pdfpdf>; *Survey of Select Federal and State Laws Governing Victim Impact Statements and a Victim's Right to Be Heard Post-Conviction Regarding the Imposition and Completion of Sentence* (Nat'l Crime Victim Law Inst., Portland, Or.), Aug. 2018, <https://law.lclark.edu/live/files/26753-right-to-be-heard-post-conviction-survey-qr>.

² See, e.g., Miss. Code Ann. §99-43-3(o) (“‘Post-conviction release’ means parole or discharge from confinement by an agency having custody of the prisoner.”).

³ Work release generally refers to participation in a manual labor program, such as to improve public facilities and roads. See, e.g., Ala. Code § 14-8-36; Cal. Penal Code § 4024.2.

⁴ Work furlough allows prisoners to continue their regular employment or obtain new employment during incarceration, returning to confinement after work hours. See, e.g., Ariz. Rev. Stat. Ann. § 31-333; Cal. Penal Code § 1208(b); D.C. Code § 24-251.02.

⁵ See, e.g., Ind. Code Ann. § 11-12-5-2; Minn. Stat. Ann. § 241.26; Neb. Rev. Stat. Ann. § 81-1850(3); N.Y. Correct. Law § 870.

⁶ See, e.g., Cal. Penal Code § 3451; Minn. Stat. Ann. § 244.13; Tex. Code Crim. Proc. art. 42A.001 *et seq.*

⁷ See, e.g., Ariz. Rev. Stat. Ann. § 41-1604.13; Ind. Code Ann. § 35-38-2.5-7; Md. Code Ann., Crim. Proc. § 11-508(a)(3). Often, home detention will require monitored supervision, such as by a GPS monitoring device. See *id.*

⁸ Medical release generally occurs when an offender is permanently incapacitated and determined to no longer present a danger to self or to others, or when an offender is terminally ill. See, e.g., Fla. Stat. Ann. § 947.149; N.C. Gen. Stat. § 15A-1369.

⁹ Although probation refers to the imposition of community-based supervision in lieu of incarceration, many jurisdictions impose a short term of imprisonment as a condition of probation. See Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. Crim. Law & Criminology 1015, 1021-22 (2013). Generally, probation is conditional on an offender's compliance with certain rules, such as attending work, avoiding new criminal conduct, avoiding drugs and alcohol, and other restrictions. *Id.* at 1022.

¹⁰ Parole refers to community-based supervision after serving some period of incarceration. The term “parole” is in some disfavor, with the use of the term “post-release supervision” becoming more common in its place. See, e.g., Cal. Penal Code § 3451; N.C. Gen. Stat. § 15A-1368.2; Or. Rev. Stat. § 144.085(1).

¹¹ For a discussion of clemency and pardons with regard to victims' rights, see Mary Margaret Giannini, *Measured Mercy: Managing the Intersection of Executive Pardon Power and Victims' Rights with Procedural Justice Principles*, 13 Ohio St. J. Crim. L. 89 (2015).

¹² For instance, Wisconsin provides for an “intensive sanctions program,” whereby offenders are released with at least one of the following conditions: placement in a residential-facility type program; intensive

or other field supervision; electronic monitoring; community service; restitution; or other programs prescribed by the department. Wis. Stat. Ann. § 301.048.

¹³ Although this Bulletin focuses on one type of release, there may be considerable overlap among the rights and remedies available to victims with other forms of release.

¹⁴ The past few decades have seen a shift away from parole as a post-incarceration option due, in part, to concerns about the amount of discretion vested in parole boards. See Paul J. Larkin, Jr., *Parole: Corpse or Phoenix?*, 50 Am. Crim. L. Rev. 303, 315 (2013) (noting that by the end of 2002, 16 states had abolished discretionary parole for nearly all offenses; 21 states had sunset provision for their parole laws; and 19 states had limited parole release authority).

¹⁵ For more information about victims' rights to notice and protection, see *Fundamentals of Victims' Rights: A Summary of 12 Common Victims' Rights*, Victim Law Bull. (Nat'l Crime Victim Law Inst., Portland, Or.), Nov. 2011, <https://law.lclark.edu/live/files/11823-fundamentals-of-victims-rights-a-summary-of-12>.

¹⁶ See *id.* at pp. 1-2, citing 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl on the federal victims' rights law, the Crime Victims' Rights Act, 18 U.S.C. § 3771) ("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.").

¹⁷ As but one example of many, Marsalee Nicholas, after whom many states' victims' rights constitutional amendments are named, was murdered by her ex-boyfriend. Her mother, who had no notice of the release of her daughter's murderer on bail, ran into him at a grocery store. Laura L. Richardson, *The Impact of Marsy's Law on Parole in California*, 49 No. 5 Crim. Law. Bull. Art. 6 (2013).

¹⁸ See, e.g., 28 C.F.R. § 551.152(a); Ariz. Rev. Stat. Ann. § 13-4412(A); Ark. Code Ann. § 16-90-1109(a); Cal. Penal Code § 679.02(a)(14); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(c)(I)(A), (B); Conn. Gen. Stat. Ann. § 54-230(d); Haw. Rev. Stat. Ann. § 706-670.5(2); Idaho Code Ann. § 19-5306(I)(d); 725 Ill. Comp. Stat. Ann. 120/4.5(d)(1); Iowa Code Ann. §§ 915.16; 915.17; 915.18(1)(b); Ky. Rev. Stat. Ann. §§ 196.280(1); 421.500(5)(c); La. Stat. Ann. §§ 46:1844(B); 15:574.4(B)(1); Md. Code Ann., Crim. Proc. § 11-508; Md. Code Ann. Corr. Servs. § 7-801; Mich. Comp. Laws Ann. §§ 780.769(1); 780.771(3); Minn. Stat. Ann. § 611A.06(1); Mont. Code Ann. § 46-24-212; Neb. Rev. Stat. Ann. § 81-1850; Nev. Rev. Stat. Ann. §§ 209.521; 213.131(4); N.Y. Crim. Proc. Law § 380.50(4); (5); N.C. Gen. Stat. §§ 15A-825(11), (12); 15A-836(a); 15A-1371(b)(3)(d); 15A-837(a); Okla. Stat. Ann. tit. 21, § 142A-13(A)-(C); Or. Rev. Stat. Ann. §§ 144.260; 144.098; 18 Pa. Cons. Stat. Ann. § 11.214; 12 R.I. Gen. Laws Ann. § 12-28-3(13); S.C. Code Ann. § 16-3-1560(A); S.D. Codified Laws § 23A-28C-1; Utah Code Ann. § 64-13-14.7; Vt. Stat. Ann. tit. 13, § 5305; Va. Code Ann. §§ 19.2-11.01(A)(3)(d); 53.1-133.02; 53.1-160(A); Wash. Rev. Code Ann. §§ 72.09.712; 10.77.205; Wis. Stat. Ann. §§ 302.114(6)(b); 304.06(c)(3).

¹⁹ See, e.g., Del. Code Ann. tit. 11 § 9413(a), (b) (requiring that victims be provided with written notice of an offender's projected release date, release or release to a community-based program, parole board

hearing date, and escape); D.C. Code § 23-1902(d) (providing for, *inter alia*, “timely notice” to victims of “[s]cheduling of a release, parole, record-sealing, or post-conviction hearing for the offender”); Fla. Stat. Ann. § 944.605(1) (providing for notification of release “unless otherwise requested by the victim” when the name and address of the victim has been furnished to the agency); Ind. Code. Ann. § 11-13-3-3(c) (providing for notification of release “[u]nless the victim has requested in writing not to be notified”); Kan. Stat. Ann. §§ 59-29a13; 22-3727(a) (notification if victim’s address is on file); N.D. Cent. Code § 12.1-34:02(17) (“Registered victims and witnesses must be informed whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Victims who are not registered must be given the same notice by the appropriate custodial authority.”); Ohio Rev. Code Ann. § 2930.16(D) (“If a defendant is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or is under a sentence of life imprisonment or if an alleged juvenile offender has been charged with the commission of an act that would be aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or be subject to a sentence of life imprisonment if committed by an adult, except as otherwise provided in this division, the notices described [above] shall be given regardless of whether the victim has requested the notification [unless the victim specifically requests not to be given notice]”) *see also* Ohio Rev. Code Ann. § 2967.12(H) (regarding pardon and parole: “If a defendant is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or is under a sentence of life imprisonment, except as otherwise provided in this division, the notice . . . shall be given to the victim or victims representative regardless of whether the victim or victim’s representative has made a request for notification,” unless the victim takes steps to show he or she does not wish to receive notice”); Tex. Code Crim. Proc. Ann. art. 56.11(a) (requiring notice of release or escape to be provided to the victim where the “victim or witness desiring notification of the defendant’s release [has] provide[d] the Texas Department of Criminal Justice, the sheriff, or the community supervision and corrections department supervising the defendant, as appropriate, with the e-mail address, mailing address, and telephone number of the victim, witness, or other person through whom the victim or witness may be contacted”); Tex. Gov’t Code Ann. § 508.117(a) (before considering the release of an offender on parole, the parole panel “shall make a reasonable effort to notify” the victim “using the name and address provided on the victim impact statement”); Tex. Code Crim. Proc. Ann. art. 42.21(a) (requiring that “the entity holding the person” convicted of a family violence offense “make a reasonable attempt to give personal notice of the imminent release to the victim of the offense or to another person designated by the victim to receive the notice”).

²⁰ *Compare* Ala. Code. § 15-22-36(e)(5) (requiring a victim to register to request notice in advance of the parole board’s decision regarding release) *with id.* at §§ (e)(6); (f) (“For any defendant convicted of the offenses named in (e)(1)a. to i., inclusive, . . . in those cases, the probation and parole officer assigned to prepare a pre-sentence or post-sentence investigation report shall at that time register the most recent information for the victim named in the indictment into the automated victim notification system.”; those who have been entered into the victim identification system will receive notice of “any board action . . . taken granting any pardon or parole.”); *See also, e.g.,* Alaska Stat. Ann. § 33.30.013 (“(a) The commissioner shall notify the victim if the offender . . . (3) is released to the community on a furlough, on an early release program, or for any other reason. (b) The commissioner is required to give notice of a change in the status of an offender under this section only if the victim has requested notice of the change, except that the commissioner is required to give notice, mailed to the last known address of the victim, in every case of a crime involving domestic violence.”); Cal. Penal Code § 646.92 (stating, with regard to

stalking and domestic violence offenses, “in the event the victim had not originally requested notification under this section, the sheriff or the chief of police, as appropriate, shall make an attempt to advise the victim . . . of the victim’s right to notification under this section[.]” whereas other sections do not have this additional safeguard); *Compare* Ga. Code Ann. § 42-1-11(b) requiring that a “good faith effort” be made to notify the victim when the victim so requests) *with* Ga. Code Ann. § 16-5-93(a) (requiring notification to victims of stalking, unless the victim fails to provide a phone number); *Compare* Me. Stat. tit. 17-A § 1175(1) - (2) (requiring the victim to request notice for general release) *with* Me. Stat. tit. 25 § 2803-B(1)(D)(1) (“All law enforcement agencies shall adopt written policies regarding procedures to deal with . . . [d]omestic violence, which must include, at a minimum, the following: (1) A process to ensure that a victim receives notification of the defendant’s release from jail[.]”); *Compare* Mass. Gen. Laws Ann. ch. 258B, § 3(s), (t) (requiring victims to “provide the appropriate authority with current information as to their address and telephone number” to receive notice of release) *with* Mass. Gen. Laws Ann. ch. 123A, § 6A (stating, with regard to sex offenders participating in a community access program, that notice must be given to “any victim of the sexual offense from which the commitment originated”); *Compare* Miss. Code Ann. § 99-43-41 (requiring the victim to file a request for notice to learn of general release) *with* Mo. Rev. Stat. § 595.209 (providing automatic notice to victims of murder or attempted murder, and manslaughter or attempted manslaughter—among other listed crimes—of any release; but requiring a written request for victims of other non-listed crimes); *Compare* N.H. Rev. Stat. § 21-M:8-k(II)(s) (providing for notice, upon request, of an offender’s change of status, such as prison release) *with* N.H. Rev. Stat. § 135-E:20(I) (providing for notice to the victim prior to the release of a sexually violent predator “to the extent possible”); *Compare* Tenn. Code Ann. §§ 40-38-103(a)(3); 41-21-240(a); 40-28-505(c) (requiring the victim to request notice of release) *with* Tenn. Code Ann. § 40-28-107(d) (requiring, in cases in which the defendant was convicted of kidnapping, that the parole board notify the sheriff of the county in which the crime was committed, and that the sheriff “make all reasonable and diligent efforts to notify the hostage or victim of the offense that the defendant will be released on parole”).

²¹ In Mississippi for instance, victims are statutorily given notice of their right to be notified and give statements prior to an offender’s release on parole or into supervised custody, but there is no explicit statutory requirement that the victim receive notice of the actual release. Miss. Code Ann. § 99-43-43(1)-(3). The Robina Institute’s 2017 survey of releasing authorities found that two of the forty states that responded to the survey did not require notice of the releasing authority’s decision with regard to the offender’s supervised release. Ebony L. Ruhland et al., Robina Inst. of Crim. Law and Crim. Just., *The Continuing Leverage of Releasing Authorities: Findings from a Nat’l Survey* (2016), p. 29, http://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/final_national_parole_survey_2017.pdf.

²² See, e.g., *State ex rel. Hance v. Ariz. Bd. of Pardons and Paroles*, 875 P.2d 824, 829 (Ariz. 1993) (noting that the victims cannot meaningfully assert their rights if they are not notified that they have such rights); *Fundamentals of Victims’ Rights: A Summary of 12 Common Victims’ Rights*, Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, at 2 <https://law.lclark.edu/live/files/11823-fundamentals-of-victims-rights-a-summary-of-12> (“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.”). For a discussion of victims’ rights to be heard at supervised release hearings, see *Overview of Victims’ Right to Be Heard in Connection with Parole and Other Post-Conviction Release Proceedings*, Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Dec 2018, <https://law.lclark.edu/live/files/27372-victim-input-at-parole-bulletinwith-qr-code-pdfpdf>.

²³ See, e.g., 28 C.F.R. § 551.152(b) (“Staff shall advise each approved victim and/or witness of that person’s responsibility for notifying the Bureau of Prisons of any address and/or telephone number changes.”); Alaska Stat. Ann. § 33.30.013(c) (“A victim who has requested notice [of the offender’s change in status] shall maintain a current, valid mailing address on file with the commissioner.”); Cal. Penal Code § 646.92 (“[T]he duty to keep the department or county sheriff informed of current contact information shall remain with the victim.”); D.C. Code § 23-1902 (“The victim or the representative of the victim appointed by the court has a continuing obligation to provide the appropriate investigative, prosecutive, judicial, or correctional agency with correct and up-to-date information on the victim’s name and address or an alternative means by which the victim can be given notice.”); Tex. Code Crim. Proc. Ann. art. 56.11(d) (“It is the responsibility of a victim or witness desiring notification of the defendant’s release to provide the Texas Department of Criminal Justice, the sheriff, or the community supervision and corrections department supervising the defendant . . . with the e-mail address, mailing address, and telephone number of the victim . . . and to notify the appropriate department or the sheriff of any change of address or telephone number . . .”).

²⁴ See, e.g., *United States v. Turner*, 367 F. Supp. 2d 319, 332 (E.D.N.Y. 2005) (“Each of these three adjectives—‘reasonable, accurate, and timely’—is important: ‘reasonable’ provides vital flexibility; ‘accurate’ may well impose an affirmative obligation to advise victims of schedule changes. . . ; and ‘timely’ is designed to be a flexible concept that ensures a victim can reasonably arrange her affairs to attend the proceeding for which notice is given.”); *Mont. Assoc. of Counties v. State by & through Fox*, 389 Mont. 183, 201 (Mont. 2017) (discussing victims’ right to “reasonable, accurate, and timely notice”); *State v. Bruce*, 907 N.W.2d 773, 777 (N.D. 2018) (same).

²⁵ See *State ex rel. Hance*, 875 P.2d at 832 (finding the remedy for failure to inform the victim of the offender’s upcoming release hearing and subsequent release into home custody was to have the release order set aside and to have a new hearing ordered); *Edens et al. v. Or. Bd. of Parole Marion Cty*, Nos. 07C22594 & 07C22595 (Or. Cir. Ct. Jan. 11, 2008) (on file with author) (finding numerous violations of the victim’s rights, including the victim’s right to 30 days’ notice of parole proceedings and the existence of an administrative rule purporting to limit the victim’s right to be heard to three minutes which, even if not enforced, “has a chilling effect on the full exercise of the victim’s rights and is unnecessarily intimidating[,]” and directing the Board to “conduct an entirely new parole consideration hearing where the victim is given adequate notice and full opportunity to participate”); *Daniels v. Traughber*, 984 S.W.2d 918 (Tenn. Ct. App. 1998) (affirming the propriety of the Tennessee Board of Parole’s decision in scheduling a new parole hearing after failing initially to provide notice to the victim’s representative, as requested, and affirming the Board’s decision to rescind its prior grant of parole after hearing testimony from the victim’s family). Please contact NCVLI for technical assistance or for help with identifying a potential attorney referral for victims’ rights enforcement litigation. See also Nat’l Crime Victim Law Inst., *Overview of Victims’ Right to Be Heard*, *supra* note 22.

²⁶ Depending on your jurisdiction, the failure to tell the victim about release, without more, may not be sufficient grounds for filing such a motion. See, e.g., Kan. Stat. Ann. § 59-29a13 (“In addition to any other information required to be released under this act, prior to the release of a person committed under this act, the secretary shall give written notice of such placement or release to any victim of the person’s activities or crime who is alive and whose address is known to the secretary. Failure to notify shall not be a reason for postponement of release.”). However, unless there are explicit laws to the contrary in a jurisdiction, there is a good faith basis to file such a motion. Please contact NCVLI for assistance.

²⁷ See, e.g., 18 U.S.C. § 3771(a)(1) (providing crime victims with “[t]he right to be reasonably protected from the accused”); Alaska Const. art. 1, § 24 (guaranteeing victims “the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court”); Conn. Const. art. 1, § 8(b)(3) (guaranteeing victims “the right to be reasonably protected from the accused throughout the criminal justice process”); Ill. Const. art. 1, § 8.1(a)(7) (guaranteeing victims “[t]he right to be reasonably protected from the accused throughout the criminal justice process”); Mich. Const. art. 1, § 24(1) (guaranteeing victims “[t]he right to be reasonably protected from the accused throughout the criminal justice process”); Mo. Const. art. 1, § 32(1)(6) (guaranteeing victims “[t]he right to reasonable protection from the defendant or any person acting on behalf of the defendant”); N.M. Const. art. 2, § 24(A)(3) (guaranteeing victims “the right to be reasonably protected from the accused throughout the criminal justice process”); Ohio Const. art. I, § 10a(4) (guaranteeing victims the right “to reasonable protection from the accused or any person acting on behalf of the accused”); Or. Const. art. I, § 43(1)(a) (guaranteeing victims “[t]he right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process and from the alleged youth offender or youth offender throughout the juvenile delinquency proceedings”); S.C. Const. art. I, § 24(A)(6) (guaranteeing victims the right to “be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process”); Wis. Const. art. I, § 9m (requiring the state to ensure that victims are provided “reasonable protection from the accused throughout the criminal justice process”).

²⁸ See, e.g., 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) (citing 150 Cong. Rec. S10910 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl) (“The right to protection also extends to require reasonable conditions of pre-trial and post-conviction [release] that includes protections for the victim’s safety.”)).

²⁹ See generally Ruhland et al., *The Continuing Leverage of Releasing Authorities*, *supra* note 21 (“[T]he vast majority of releasing authorities are responsible for setting conditions that govern supervision.”). See also Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. Crim. Law & Criminology 1015, 1032 (2013) (“Laws governing the imposition of release conditions are broadly permissive: courts and correctional agencies may legally impose almost any condition on a probationer or parolee on the grounds that any conceivable term of release will be less punitive than the authorized term of confinement.”).

³⁰ For instance, under federal law, a court must impose, as a mandatory condition of probation for domestic violence crimes, that a defendant attend an offender rehabilitation program. 18 U.S.C. § 3563(a). See also, e.g., *State v. Reed*, 341 P.3d 616 (Kan. Ct. App. 2015) (noting that offenders on post-release supervision for a sex crime conviction are typically required to receive sex offender treatment, serving to rehabilitate the offenders and protect the victim and future victims); Ruhland et al., *The Continuing Leverage of Releasing Authorities*, *supra* note 21, at Table 13 (noting that 13 of 40 respondents had, as a condition of supervised release, that the offender undergo medical or psychiatric treatment).

³¹ See Ruhland et al., *The Continuing Leverage of Releasing Authorities*, *supra* note 21, at Table 13 (noting that 39 of 40 responding authorities had this condition in place); see also 18 U.S.C. § 3563(b)(8) (listing, as a discretionary condition of probation, refraining from possessing a firearm).

³² See, e.g., 18 U.S.C. § 3563(b)(19) (listing as a discretionary condition of probation, that the offender may be “required to remain at his place of residence during nonworking hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices”).

³³ See, e.g., 49 Cal. Jur. 3d Penal & Corr. Inst. §290 (2019) (prohibiting the offender from coming within 35 miles of the victim’s or witness’s residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or post-release community supervision); 18 U.S.C. § 3563(b)(13) (listing, as a discretionary condition of probation, that the offender “reside in a specified place or area, or refrain from residing in a specified place or area”).

³⁴ See, e.g., Tex. Fam. Code Ann. § 85.025(c) (providing that “[i]f a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire . . . the period for which the order is effective is extended, and the order expires on (1) the first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or (2) the second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less”); Minn. Stat. Ann. § 518B.01, (subd. 6a)(b)(4) (stating that a court may extend the terms of an existing order if “the respondent is incarcerated and about to be released, or has recently been released from incarceration”).

³⁵ See Alaska Stat. Ann. § 33.30.013(e) (“As part of the notice under this section, the commissioner shall send the victim a photograph of the offender if the victim has specifically requested in writing that a photograph be sent. The photograph must have been taken within three weeks of the offender’s release or, if the offender escapes from custody, must be the most recent photograph in the commissioner’s possession.”); 725 Ill. Comp. Stat. Ann. 120/4.5(d)(1) (“The Prisoner Review Board, upon written request, shall provide to a victim or any other concerned citizen a recent photograph of any person convicted of a felony, upon his or her release from custody.”).

³⁶ See Ruhland et al., *The Continuing Leverage of Releasing Authorities*, *supra* note 21, at Table 30.

³⁷ *Morrissey v. Brewer*, 408 U.S. 471 (1972).

³⁸ *Id.* at 485.

³⁹ See Ruhland et al., *The Continuing Leverage of Releasing Authorities*, *supra* note 21, at Table 22.

⁴⁰ *Morrissey*, 408 U.S. at 488-89.

⁴¹ See Ruhland et al., *The Continuing Leverage of Releasing Authorities*, *supra* note 21, at Table 24, and accompanying text (noting that in 44% of responding jurisdictions, the victim may be present and participate; in an additional 23.5%, the victim may be present to observe, while in 26.5% of cases, the victim may not be present).

⁴² See, e.g., Ariz. Rev. Stat. Ann. § 13-4415 (requiring that, upon victim's request, the victim be notified of a probation modification, termination or revocation); Colo. Rev. Stat. § 24-4.1-302.5 (requiring notification to the victim, upon request, if the offender absconds from probation or parole); S.D. Codified Laws § 23A-28C-13 (stating that the victim may request to be notified if the offender is considered for early final discharge from parole, is placed on removal from work release, a global positioning system, or a community transition program, or absconds supervision).

⁴³ See Ga. Code Ann § 16-5-93(a) (stating that the victim of stalking is entitled to notice of release of the offender, but “[n]o such notice shall be required unless the victim provides a landline telephone number other than a pocket pager or electronic communication device number to which such notice can be directed”). If there are limiting statutory provisions like this in your jurisdiction, consider challenging them as a violation of the victim's right to effective notice, and the victim's right to be treated with fairness, dignity and respect. This provision may also arguably impact other constitutional rights, as it may have a disproportionate impact on the poor. In the meantime, consider using the victim's attorney's or representative's phone number for purposes of securing notice.