

Post-Conviction Victims' Rights & Services
Recommendations for Practice

Prepared by the
National Crime Victim Law Institute

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Background

Victim advocacy over the past few decades has resulted in the increased understanding of, and compliance with, crime victims' statutory and constitutional rights, as well as improved victim services such that the criminal justice system can be more responsive to victims' needs. The majority of these efforts, however, have focused on pretrial and trial phases of criminal justice. This despite the fact that crime victim involvement with the justice system continues long after trial and often requires victims to navigate a complex maze of post-conviction processes. For instance, offenders can challenge a conviction through direct appeal, post-conviction relief, and habeas corpus review. They may seek to have a conviction expunged. Governors or other executive agencies may have authority to pardon or grant clemency to an offender. Agencies such as jails, corrections, parole boards, and community corrections may each be involved in supervision and control of an offender at various times post-conviction. Restitution collection may require victims to navigate civil proceedings. Throughout each of these post-conviction moments, victims have legal rights in constitution, statute, and rule. These are rights that include information, notification, protection, restitution, privacy and participation. Unfortunately, best practices in affording victims these rights are often hindered by lack of robust or clear laws, agency silos, lack of knowledge about enforceability of the rights, concern and confusion over permissibility of information sharing, uncertainty regarding how to weigh victims' and offenders' respective rights, and lack of sufficient funding for victim advocacy and legal services post-conviction.

Recognition that the post-conviction victims' rights landscape is complex and that victims' rights compliance is inconsistent is not new. *New Directions from the Field: Victims' Rights and Services for the 21st Century*, published in 1998, dedicated a chapter to corrections. Notably, however, the recommendations in *New Directions* primarily focused on improved information and communications, with minimal attention

paid to the legal rights of victims. The lack of focus on victims' legal rights in *New Directions* is attributable, in part, to the lack of court interpretation of the meaning and scope of victims' rights at the time. By 2013, victims' rights had advanced and an OVC initiative, *Vision 21: Transforming Victim Services*, that included an in-depth look at the organizations that serve crime victims' role in the overall response to crime and delinquency in the United States, produced a final report recognizing the need to include legal services within the victim services field to make victims' rights meaningful. See U.S. Dept. of Justice, *Vision 21 Transforming Victim Services Final Report*, May 2013, https://ovc.ncjrs.gov/vision21/pdfs/Vision21_Report.pdf.

At the intersection of these two publications lays the possibility of articulating a new horizon of post-conviction victims' rights and services to help make victims' rights more meaningful.

In 2017, the National Institute of Corrections issued a Post-Conviction Victim Service Legal Issues RFP to delve into the current post-conviction landscape and identify the gaps and opportunities related to interagency collaboration in order to improve victims' rights compliance and enforcement post-conviction. The National Crime Victim Law Institute applied for and was awarded the project. The project design brought together a multi-disciplinary group of experts to analyze existing rights and services, identify gaps and opportunities for interagency collaboration, and draft a set of recommendations to assist jurisdictions in the development of systems to improve rights compliance and implementation of integrated trauma-informed services post-conviction. This paper is the product of project efforts.

Project Methodology

Post-Conviction Victims' Rights: Recommendations for Practice

Page 2 of 10

Revised May 12, 2019

Because each jurisdiction has unique post-conviction rights and systems, articulating a detailed, uniform set of national practices was not feasible during the project.

Consequently, the project's goal was to identify recommendations that any jurisdiction could leverage to analyze local practice, identify gaps, and pinpoint opportunities for improving victims' rights and services. The following components informed the project:

- Field Input. A wide range of experts involved in post-conviction processes and victim services participated by invitation in the project. Those who were involved represented a diversity of profession, geography, and justice system component. There were two levels of participation: stakeholders and an expanded partner group, with the former being regularly involved to guide and participate in project conversations, and the latter being involved periodically to review draft products. The names of stakeholders, together with an overview of expanded partnership group membership, is in appendix A.
- Literature, Materials and Practice Review. The project team developed and deployed a research plan to identify existing post-conviction victims' rights and services resources. The plan consisted of conducting outreach to the field and reviewing legal and social science databases and governmental organizations' websites. Pursuant to this plan, a literature, materials and practice review was completed. It included numerous state and federal materials (e.g., brochures, reports, and organizational policies) that articulate existing and promising practices together with state and federal laws and policies that implicate victims' rights post-conviction. The review is in appendix B.
- Map of Post-Conviction Victim Service Processes. Over the course of the project, participants analyzed victims' rights and experiences across possible post-conviction paths on which victims may find themselves. Through this work, the project identified legal and service gaps related to victims' rights, interagency

collaboration, and information access. This work informed the creation of a Model Post-Conviction Victim Process Map (Model Map) to assist jurisdictions in analyzing their processes. This Model Map is in appendix C.

Over the course of the project, nine technology-assisted meetings and one in-person meeting occurred. In total, 50 individuals from 19 states, consisting of system- and community-based advocates, attorneys, researchers, and academics were involved. These individuals represented prosecution, juvenile justice, community justice, corrections, and community supervision. Of these, 26 individuals—14 stakeholders, eight guests from six federal agencies, and four project team members—attended the in-person meeting. Discussions across meetings included analysis of current law and practice and identification of gaps and promising practices. Meeting agendas as well as key materials reviewed at each meeting are in appendix D. Throughout these discussions, current practices in post-conviction victims' rights and services were juxtaposed with the envisioned model of post-conviction victims' rights and services. This paper's findings and recommendations are drawn from this work.

General Findings

Stakeholders collaboratively envisioned a model of trauma-informed post-conviction systems, processes, laws, and policies that were responsive to the rights, needs, and recovery of victims while holding offenders accountable and promoting safe communities. Stakeholders identified the following obstacles to achieving this vision:

- Uncertainty of Law. A general lack of understanding regarding the meaning and scope of victims' rights as well as how these rights co-exist with system obligations and offender rights (attributable in part to a lack of court decisions regarding victims' rights in post-conviction settings) impedes consistent rights compliance.
- Dispersed Information and Differing Interpretations. Even within a single jurisdiction, information regarding victims' rights, defendants' rights, and agency obligations is often scattered across a variety of sources, including the criminal code, administrative rules, and organizational policies, which impedes a cohesive approach to victims' rights and services. Further, within a single jurisdiction the legal interpretation of the meaning of each right varies in light of the dearth of binding legal guidance.
- Siloed Systems. Pre- and post-conviction agencies are often entirely separated and maintain separate data systems with little cross-sharing of victims' rights assertions and related information. This siloing negatively affects continuity and consistency of victim services and rights compliance post-conviction, which contributes to the re-traumatization of victims.
- Lack of Trauma-Informed Training. Too few pre- or post-conviction personnel are well-trained on the effects of trauma or on how to provide trauma-informed services, which contributes to the risk of re-traumatizing victims during post-conviction interactions with system personnel.
- Insufficient Cross-Jurisdictional Promising Practice Exchange. Too few opportunities exist for studying and sharing successful practices for rights compliance and trauma-informed post-conviction services across jurisdictions.
- Pre-Conviction Bias. A cultural misapprehension that the moment of conviction is the end of the criminal justice system has led to an over-focus on pre-conviction victims' rights, needs, and services and has allowed victim needs during post-conviction to be overlooked to the detriment of victims.
- Inadequate Access to Legal Services. Referrals and access to victims' rights attorneys are rare, which leaves victims without the legal services necessary to help

them meaningfully understand and evaluate their rights, which impedes assertion, compliance, and enforcement of rights as well as development of legal precedent necessary to clarify the law.

The following recommendations respond to these findings and aim to move post-conviction services and systems toward consistently affording victims their rights—including the rights to be treated with fairness, dignity, and respect—and recognizing victims as integral actors in, and consumers of, meaningful and effective post-conviction systems.

Recommendations

Eight recommendations follow. Each is marked with icons to identify the themes of the recommendation and key persons to whom the recommendation is addressed.



In addition, promising practices are spotlighted with this icon:



- (1) *Increase research on victim experience and participation in post-conviction processes (i.e., from sentencing through an offender's full release from supervision) to inform policies and practice and make research more accessible.*



While numerous federal and state agencies conduct research on crime victimization and victims' needs and services, there is a dearth of research on victim participation and satisfaction with post-conviction processes, the effect of post-conviction systems on victims, and the levels of compliance with victims' rights post-conviction. The research that does exist is not widely disseminated or readily available to post-conviction practitioners, which hinders the integration of this research into practice. Victims would be better served and post-conviction systems could become more trauma-informed and compliant with victims' rights if additional research was conducted and effectively disseminated.



The [National Institute of Corrections Information Center](#)

has links to internal and external reports, data and statistics.

The National Institute of Corrections, in collaboration with the National Institute of Justice, should facilitate a national conversation of practitioners and researchers to develop and implement short- and long-term research plans. These plans would include possible collaborations between public and private research

organizations. A central agency should ultimately maintain a comprehensive, searchable repository of such research.

- (2) *Encourage and support active collaboration and cross-training of representatives from the wide range of agencies and organizations (system- and community-based; inter- and intra-jurisdictional) that work with victims or perform jobs that affect victims' rights post-conviction.*



Post-conviction systems are varied, complex, and often confusing. Further, post-conviction services and systems are often wholly separate from pre-conviction services and systems. The numerous agencies, their diverse structures and the lack of common agreement regarding permissibility of sharing of information can hinder the delivery of seamless victim services and result in inconsistent compliance with victims' rights. Victim services that exist within these diverse agencies are often underfunded and understaffed and may be structurally isolated from other agency divisions within which they are housed. The result impairs the full implementation of best practices and policies on victims' rights and services. Increasing all practitioners' understanding of the full panoply of post-conviction processes, systems, and rights can help ensure victims meaningfully participate across both systems. This knowledge of other agencies, systems, and processes will promote victim healing and recovery through warm hand offs, continuity of care, and policy enhancements.

Funders and agency/policy leaders should significantly increase their encouragement of and support for regular and meaningful collaboration across the full spectrum of pre- and post-conviction services and agencies within a jurisdiction. Practitioners should seek out and participate in such collaboration.

(3) *Create a trauma-informed post-conviction training (similar in model to state victim assistance academies) that covers the full post-conviction continuum, victim experience, victims' rights, trauma effects, and trauma-informed communications. Require personnel across the pre- and post-conviction continuum (e.g., law enforcement, prosecution-based victim assistance, corrections, community supervision, judiciary) to receive this training.*



The Minnesota Department of Corrections has a model training.

Oregon's Basic Parole and Probation Academy trains new parole officers on victims' rights and how to work effectively with victims.

Multnomah County, Oregon, provides additional "new hire" training for parole officers on working with victim advocates and restitution.

The Illinois Attorney General's Office is planning an Advanced Victim Assistance Academy on post-conviction victims' rights.

The Arizona Attorney General's Office's training on pre- and post-conviction rights, restitution, and probation was recognized as a model by the United States Department of Justice in 2017.



Even though offenders often spend more time in the criminal justice system post-conviction than pre-conviction, many victims and the pre-conviction and general victim service professionals with whom they work know little about post-conviction processes. Further, while most funded victim services are pre-conviction (e.g., in prosecutor's offices), the hand-off to post-conviction services is rarely a priority. The result is that post-sentencing, victims enter the longest, most unfamiliar part of the criminal justice system with the least support and little preparation. In addition, there is a lack of understanding among pre- and post-conviction criminal justice professionals about how trauma affects victims, the need for trauma-informed practices, and communication. All of this can cause re-traumatization – i.e., new or additional trauma for victims – beyond the effect of the original crime.

It is recommended that post-conviction victim advocacy experts, working in collaboration with trauma experts, be supported by funders and agency/policy leaders in the design and delivery of trauma-informed training. The training should include:

- An overview of all post-conviction processes and rights
- Research regarding the effects of trauma
- Information about how to provide trauma-informed responses, care, and communications

The training should be required for all practitioners who interact with victims post-conviction, including those who are the bridge or hand-off from pre- to post-conviction.

- (4) *Leverage technology to increase information dissemination to victims and to create integrated communications and seamless information-sharing across post-conviction actors to promote compliance with*



victims' rights and interests post-conviction.

In most jurisdictions, a victim interacts with numerous post-conviction agencies as the offender moves across phases of the post-conviction process. Generally, each post-conviction agency has a unique website and information brochure and uses a distinct case management and victim notification system. Agencies within a single jurisdiction may even have different approaches to how victims activate their rights (e.g., opt-in vs. opt-out). As a result, interagency information sharing is minimal at best, creating confusion and re-traumatization for victims as they have to initiate contact with each responsible agency. While technology cannot replace human interaction with victims, it can be a tool to ensure victims have access to the information that they need when they need it. Technology may also help jurisdictions:

- Streamline, standardize, and improve information sharing and collaboration across agencies (e.g., transferring the victims' assertion of rights)
- Facilitate delivery of services (e.g., notifications)
- Minimize opportunities for human errors

When done well, technology can enhance continuity of care in victim services by facilitating a case management approach to victim services.

It is recommended that funders and agency/policy leaders identify a single agency within each jurisdiction with strong interagency support to take the lead in bringing together post-conviction stakeholders to develop a technology plan to enhance interagency information sharing and continuity of victim care. Technology that leverages, integrates, and factors existing systems; meets the operational and functional needs of agencies; and considers long-term sustainability should be a priority of such a plan. The effort should begin with

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Multnomah County, Oregon's [Case Companion](#) website created from a partnership and grant provided by Code for America was a collaborative design to share information with victims while improving systems.

detailed planning discussions with practitioners regarding the vision for the technology, securing ongoing financial support, determining the host agency, ensuring data security, and formalizing processes and policies for victims' informed consent. Jurisdictions should leverage work done in this area by other jurisdictions.


- (5) *Ensure seamless delivery of victim assistance from pre-conviction through post-conviction by leveraging human assistance and technology.*



While most jurisdictions have relatively comprehensive pre-conviction victim services, when a victim transitions into post-conviction systems, more often than not the transition is confusing and far from seamless. Even when pre-conviction services provide some information about post-conviction rights and services, it may be minimal or done at a time when the victim may be unable to process the information fully. Ultimately, this leaves victims without critical information necessary for meaningful participation in the post-conviction process, and it often leads to re-traumatization. Systems and processes that ensure the sharing of information about rights and services across the life of a case would help victims know when and how to connect with relevant system actors and thereby improve outcomes for victim safety and empowerment, as well as offender management.

Agency/policy leaders should adopt and funders should support that a life cycle case management approach be taken to victim services to ensure continuity of care for a victim from pre-conviction through post-conviction. The structure of such services can be that of a single human “navigator” or “liaison”

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 [Pennsylvania's Office of Victim Advocate](#), an established state victim advocate with a clearly defined position that includes statutorily representing the interests of victims on post-sentencing rights and services, streamlines services and elevates victims' rights.


who would leverage technology to help a victim understand and navigate each step post-conviction. Using a case management approach that leverages technology can help victims know who to contact with questions about the process, the offender, available services, and their rights. This approach would also ensure that a victim is aware of restitution collection efforts.

- (6) *Laws in each jurisdiction should provide victims with meaningful participatory status in the post-conviction process by affording them sufficient information, notice, protection, privacy, financial support, and access to no-cost legal services to aid their healing.*



While every jurisdiction affords victims some constitutional, statutory, and/or rule-based rights, the rights afforded and their enforceability varies greatly. Without comprehensive, enforceable rights that attach pre-charging and continue throughout post-conviction (e.g., parole, probation, appeal, habeas corpus), victims' privacy, safety, and financial stability are in jeopardy. Moreover their dignity is jeopardized when they are treated as interlopers, rather than rightful participants, in the process.

Practitioners, policy makers, and victims' rights experts should collaborate to compare a jurisdiction's existing laws against the checklist contained in appendix E and the collection of laws contained in appendices F (participation), G (privacy), and H (protection) to identify any gaps or provisions that undermine victims' meaningful role in the system. The laws must include a clear right to restitution and procedures for restitution collection. From this review, a plan for amending the law

 [The National Crime Victim Law Institute](#) has resources to help states analyze their rights. Of specific interest may be the Victims' Rights Enforcement

(considering changes to constitution, statute, rule, and policy) should be crafted and advanced. Such a plan should include identification of funding to make the rights meaningful, including access to no-cost legal services to help victims with the assertion and enforcement of their rights.

- (7) *Create a dedicated, temporary funding stream to establish or enhance post-conviction victim services, education, and technology, and require collaboration and cross-training on post-conviction victims' rights and services for existing funding of pre-conviction victim services.*



Post-conviction victim services are generally under-resourced and understaffed. Funding is needed for personnel, training, and technology enhancements to make post-conviction victim services effective and vigorous. A short-term, dedicated funding stream can allow jurisdictions to invest in victim services and rights compliance that will bring post-conviction victim services to a level minimally on par with pre-conviction victim services. Further, as noted throughout, the demarcation of pre- and post-conviction victim services fails to recognize the continuity of victim needs which, when combined with silos of agencies, is detrimental to victim involvement, empowerment, and recovery. Collaboration and increased understanding among professionals interacting with victims at all phases of criminal justice will benefit victims, the system, and our communities by improving victim services, reducing trauma, and reducing the risk of re-traumatization.

It is recommended that funds be dedicated for jurisdictions to initiate or enhance post-conviction victim services systems in accord with the other recommendations contained in this paper. This funding would allow states that do not have services to establish them and those that have some services to enhance them. Further, it is recommended that agencies receiving pre-conviction victim services funds be required to collaborate with, and be trained on, post-conviction victims' rights and services.

- (8) *Increase victim access to no- or low-cost legal services pre- and post-conviction.*



Post-conviction processes present complexities that are difficult to navigate even for the most skilled advocates and attorneys. For those who have experienced trauma, who are unfamiliar with the justice system or who are uneducated in law, navigating and acting one's rights within the post-conviction process is nearly impossible. A victims' rights attorney (VRA) is able to increase victim satisfaction and victim healing during the post-conviction process in myriad ways. A VRA can facilitate communication between system actors and the victim, explain system processes, identify and predict moments that implicate victims' rights and services, help victims assert rights, and zealously advocate for those rights as necessary. Providing no- or low-cost legal services is a recognized method of making rights meaningful. As the United States Supreme Court noted in a 1932 case, "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." Likewise, victims' rights to be heard and rights to privacy, safety, and restitution are of little avail to the victim who is lost in the complex maze of post-conviction without legal guidance.

It is recommended that pre- and post-conviction victim service providers and agencies actively inform victims of the opportunity to access legal services to assist them with their rights and develop referral processes and systems for connecting victims to VRAs. It is further recommended that funders increase available funding for such legal services.

Conclusion

Because post-conviction systems are incredibly complex yet perhaps the least spoken about of criminal justice processes, and because post-conviction victim services are among the least resourced, crime victims struggle to access their rights and meaningfully participate in criminal justice post-conviction. The victim services field is poised to identify and leverage innovative tools, resources, and solutions to enhance post-conviction victim services and to increase compliance with victims' rights. The collaborative efforts of this project have identified the need to:

- Design and implement trauma-informed practices informed by research and supported by technology.
- Support collaborative approaches that mitigate the complexity of post-conviction systems, increase efficiencies, and support information sharing.
- Ensure a continuum of legal and social services support for victims pre- and post-conviction.

The recommendations identified in this paper, when funded and implemented, would move the field forward toward increased compliance with and enforcement of victims' rights.

Appendix A

Appendix B

Appendix C

Appendix D

Appendix E

Appendix F

Appendix G

Appendix H