

Chapter 5 Victims' Rights and Remedies

Let's revisit Polly now that it has been a few days since she was victimized. Remember that Polly is a young undergraduate student who was accosted by two offenders as she was walking home. Her school bag was stolen, and she was assaulted. Unlike most victims, Polly called the police to report what had happened to her. She had to have 10 stitches at the hospital. Clearly a victim, she was still questioned by the police about why she was walking home alone at night. She very well may have felt victimized by this questioning—and we know that she had a hard time emotionally after being victimized. She found it hard to get out of bed, and she missed several classes—she even altered her schedule and stopped going out alone at night.

In [Chapter 3](#), you considered the toll this victimization took on Polly—on her emotions and her lifestyle, and of course financially. As you know, Polly is not alone in suffering these costs. Many victims experience real costs and consequences. But how do victims deal with these outcomes? Are they left to recover on their own, or are services available to them? Whose responsibility is it to help crime victims? What happens when crime victims do not get the help they need and deserve? All these questions are addressed in this chapter, and as you will see, a variety of rights and resources are available to crime victims today.

Victims' Rights

Once essentially ignored by the criminal justice system and the law, victims are now granted a range of rights. These rights have been given to victims through legislation and, in 32 states, through **victims' rights** amendments to state constitutions (National Center for Victims of Crime, 2009). The first such law that guaranteed victims' rights and protections was passed in Wisconsin in 1979; now, every state has at least some form of victims' rights legislation (Davis & Mulford, 2008). Despite each state having laws that afford victims' rights, they differ in whom the law applies to, when the rights begin, what rights victims have, and how the rights can be enforced. Common to all these state laws, however, is the goal of victims' rights—to enhance victim privacy, protection, and participation (Garvin, 2010).

Common Victims' Rights Given by State

Slightly less than half of U.S. states give *all* victims rights (Howley & Dorris, 2007). In all states, the right to compensation, notification of rights, notification of court appearances, and ability to submit victim impact statements before sentencing are granted to at least some victim classes (Deess, 1999). Other common rights given to victims in the majority of states are the right to restitution, to be treated with dignity and respect, to attend court and sentencing hearings, and to consult with court personnel before plea bargains are offered or defendants released from custody (Davis & Mulford, 2008). Other rights extended to victims are the right to protection and the right to a speedy trial. Importantly, some states explicitly protect victims' jobs while they exercise their right to participate in the criminal justice system. These protections may include having the prosecutor intervene with the employer on behalf of the victim or prohibiting employers from penalizing or firing a victim for taking time from work to participate (National Center for Victims of Crime, 2009). Some of these rights are discussed in more detail next, and others are discussed in separate parts of this chapter. To see an example of what rights a state grants, see the box on victims' rights in Virginia.

Notification

The right to **notification** allows victims to stay apprised of events in their cases. Notification is important for victims at various steps in the criminal justice process. In some jurisdictions, victims have the right to be notified when their offender is arrested and released from custody after arrest, such as on bail. Victims may also have the right to be notified about the time and place of court proceedings and any changes made to originally scheduled proceedings. Notification may also be given if the offender has a parole hearing and when the offender is released from custody at the end of a criminal sanction. Notification responsibilities may be placed on law enforcement, the prosecutor, and the correctional system. To make notification more systematic and reliable, some jurisdictions use automated notification systems to update victims (through letters or phone calls) about changes in their cases. These systems are often also set up so that a victim can call to receive updates. Some states have also moved to allowing e-mail updates for notification purposes. For instance, Maryland recently passed such legislation in 2014 (Basu, 2014). Victims of federal crimes can register to participate in the national automated victim notification system.

Box 5.1 Victims' Rights in Virginia

The Victim Services Unit provides the following services to victims of crime:

- Advocacy on behalf of crime victims
- Notification of changes in inmate transfers, release date, name change, escape, and capture
- Explanation of parole and probation supervision process
- Accompaniment to parole board appointments when requested by the victim
- Ongoing support, crisis intervention, information, and referrals
- Training, education, and public awareness initiatives on behalf of victims of crime

Victims can register to be notified through Victim Information and Notification Everyday (VINE).

VINE is a toll-free, 24-hour, anonymous, computer-based telephone service that provides victims of crime two important features, information and notification. Victims may call VINE from any touch-tone telephone, any time, to check on an inmate's custody status. For inmate information, call 1-800-467-4943 and follow the prompts.

Victims may register with VINE for an automated notification call when an inmate is released, transferred, escapes, and to learn of an inmate's parole status if the inmate is parole eligible.

Victims of crime can address the Parole Board if they have any concerns regarding the release of an offender. Victims have the option of voicing their concerns through letters or through an in-person appointment with the Parole Board.

If victims would like a staff member of the Department of Corrections, Victim Services Unit to accompany them to the appointment, they can contact the Department of Corrections, Victim Services Unit.

Source: Virginia Department of Corrections, *Victim services*. Retrieved from <http://www.vadoc.state.va.us/victim>.

Participation and Consultation

One of the overarching goals of the victims' rights movement was to increase **participation and consultation** by victims in all stages of the criminal justice system. One way victims are encouraged to participate is by submitting or presenting a victim impact statement, which is discussed later in this chapter under "Remedies and Rights in Court." Another way victims may participate is by consulting with judges and/or prosecutors before any plea bargains are offered or bail is set. Consultation may also occur before an offender is paroled or sentenced (Davis & Mulford, 2008).

Right to Protection

Victims may also need protection as they navigate the criminal justice process. Victims may be fearful of the offender and the offender's friends and family. Participation in the criminal justice system may, in fact, endanger victims. In response to this potential danger, many states include safety measures in their victims' rights, falling under the category of **right to protection**. For example, victims may be able to get no-contact or protective orders that prohibit the defendant from having any contact with the victim. Victims may also be provided with secure waiting facilities in court buildings. Victim privacy is also protected ever-increasingly in states; some disclose only minimal victim information in criminal justice records—such as law enforcement and court records (Davis & Mulford, 2008).

Right to a Speedy Trial

You have probably heard of offenders having a **right to a speedy trial**, but did you know that about half of all states also provide victims with this right? Although not as explicit as an offender's right, this right given to victims ensures that the judge considers the victim's interests when ruling on motions for continuance. In other words, in states that give victims this right, decisions about postponing a trial cannot be made without consideration of the victim. Some states also explicitly provide for accelerated dispositions in cases with disabled, elderly, or minor children victims (Davis & Mulford, 2008).

Rights Related to Evidence

In general, crime victims have the right to have any of their property that has been taken as evidence returned to them. In addition to this general right, recent attention has been given to the storage and testing of evidence, particularly as it relates to sexual assault and rape cases. In some states, victims are protected from having to pay for evidence collected such as a rape kit. They also do not have to pay for the testing of these kits. Other states have passed legislation related to notification of the status of their kits and whether a match has been identified. California's Sexual Assault Victims' DNA Bill of Rights (2003) provides victims of sexual assault the right to be informed of the status of their kit and whether a match has been identified. Similar legislation was passed in 2013 in Texas. Texas grants victims the right to receive notice when evidence is compared to DNA profiles stored in databases (National Center for Victims of Crime, n.d.-c).

Issues With Victims' Rights

Although victims' advocates have hailed the adoption of legislation and state-level amendments that give victims rights, the adoption of victims' rights has also come with problems. There has been some resistance to states and the federal government giving victims formal rights. Remember that criminal law is written in such a way as to make crimes harms against the state rather than the victim. Also think about how the U.S. Constitution provides widespread rights to those persons suspected of committing crimes. The U.S. Constitution does not currently include any language that provides victims with rights—but it does for persons suspected of committing crimes. Although this omission has been identified by some as deserving remedy, others argue that victims' rights do not have a place in our Constitution (R. Wallace, 1997). Concerns have also been expressed that providing victims with rights will create a burden on our already overburdened criminal justice system (Davis & Mulford, 2008).

Also problematic is what to do when victims' rights are not protected. What happens if a victim is not notified? Who is responsible? Does the victim have any recourse, legal or otherwise, when a right is violated? Many states do not have specific enforcement strategies in place in their victims' rights legislation, although states that have constitutional amendments generally have enforceable rights in the event that a state official violates a victim's constitutional rights. Victims may also seek a writ of mandamus, which is a court order that directs an agency to comply with a law (National Center for Victims of Crime, 2009). For other victims, although they are given rights on paper, there is little they can do if their rights are not protected. To remedy this, some states—such as California, in its passage of Marsy's Law—have passed legislation that is more comprehensive and includes language that gives victims the right to enforce their rights in court, called legal standing (National Victims' Constitutional Amendment Passage, n.d.). Some states have set up a designated agency to handle crime victims' complaints (National

Center for Victims of Crime, 2009). Despite these developments, many state victims' bills of rights specifically note that when victims' rights are violated, the crime victim does not have the ability to sue civilly a government agency or official. Whatever the redress allowed to victims, you can probably see that for victims, not having their rights protected may feel like an additional victimization and one that they can do little about—at least not easily.

Federal Law

Thus far, we have discussed common rights that states grant to victims of crime, but the federal government has also recognized the importance of protecting the rights of crime victims. (See [Table 5.1](#) for a timeline and brief description of key pieces of federal legislation related to victims' rights.) In 1982, the President's Task Force on Victims of Crime published a report that included 68 recommendations for how victims could receive recognition and get the rights and services they deserve. These recommendations led, in part, to the development of legislation that would grant victims their first federal rights. The first such piece of legislation passed was the federal **Victim Witness Protection Act (1982)**. This act mandated that the attorney general develop and implement guidelines that outlined for officials how to respond to victims and witnesses. Two years later, the **Victims of Crime Act (1984)** was passed to create the Office for Victims of Crime and to provide funds to assist state victim compensation programs. The funds are generated from fines and fees and from seized assets of offenders who break federal law. A critical step in victims' rights also occurred with passage of the **Child Victims' Bill of Rights (1990)**, which extended victims' rights to child victims and witnesses. Child victims and witnesses were granted rights to have proceedings explained in language they can understand; to have a victims' advocate present at interviews, hearings, and trials; to have a secure waiting area at trials; to have personal information kept private unless otherwise specified by the child or guardian; to have an advocate to discuss with the court their ability to understand proceedings; to be given information about and referrals to agencies for assistance; and to allow other services to be provided by law enforcement. The **Crime Control Act (1990)** and the **Victims' Rights and Restitution Act (1990)** were also passed, creating a federal bill of rights for victims of federal crime and guaranteeing that victims have a right to restitution. Specifically, victims of federal crimes were given the right to

Table 5.1 Federal Legislation Pertaining to Victims' Rights

Legislation Timeline	Key Provisions
Victim Witness Protection Act (1982)	• Provided for the punishment of anyone who tampers with a witness, victim, or informant • Required notification, if victim provided address and telephone number, for arrest of the accused, times of court appearances at which victim may appear, release or detention of accused, and opportunities for victim to address the sentencing court • Recommended federal officials consult with victims and witnesses regarding proposed dismissals and plea negotiations • Required that officials not disclose the names and addresses of victims and witnesses
Victims of Crime Act (1984)	• Established the Crime Victims Fund, which promoted state and local victim support and compensation programs • Amended, in 1998, to require state programs to include survivors of victims of drunk driving and domestic violence in eligibility for federal funds
Child Victims' Bill of Rights (1990)	Children who are victims or witnesses are provided these rights: • Proceedings explained in language children can understand • A victims' advocate present at interviews, hearings, and trial • A secure waiting area at trial • Certain personal information kept private unless otherwise specified by the child or guardian • An advocate to discuss with the court their ability to understand proceedings • Information provided about agencies for assistance and referrals made to such agencies
Victims' Rights and Restitution Act (1990)	Provided victims with the right to • be reasonably protected from the accused; • receive reasonable, accurate, and timely notice of any public proceeding involving the crime or any release or escape of the accused and to not be excluded from such proceedings; • be reasonably heard at any public proceeding involving release, plea, or sentencing; • confer with the attorney for the government in the case; • be given full and timely restitution as provided by law; • have proceedings free from unreasonable delay; and • be treated with fairness and with respect for the victim's dignity and privacy.

Violent Crime Control and Law Enforcement Act (1994)	• Allocated \$1.6 billion to fight violence against women • Included money for victims' services and advocates and for rape education and community prevention programs
Violence Against Women Act (1994)	• Provided \$1 billion to programs designed to reduce and respond to violence against women • Increased funding for victim compensation programs and established a national sex offender registry
Antiterrorism and Effective Death Penalty Act (1996)	• Made restitution mandatory in violent crime • Expanded compensation and assistance to victims of terrorism
Victims' Rights Clarification Act (1997)	• Gave victims the right to provide victim impact statements during sentencing in capital and noncapital cases, and the right to attend the trial of their offender was clarified
Violence Against Women Act (2000)	• Provided additional protections for immigrant victims of domestic violence • Authorized funding for rape prevention and education, battered women's shelters, and transitional housing for female victims of violence; addressed violence against older women and those with disabilities
Justice for All Act (2004)	• Provided additional federal protections of crime victims' rights • Provided funding to test the substantial backlog of DNA samples collected from crime scenes and convicted offenders
Violence Against Women Act (2013)	• Gave tribal courts authority to prosecute offenders in their communities even if not Native American • Prohibited survivors of domestic violence and sexual assault from being evicted from federally subsidized housing programs • Required colleges and universities to record incidents of dating violence, to implement programs to prevent its occurrence, and to provide resources to victims • Prohibited discrimination of LGBTQ survivors of violent crimes when seeking assistance from victim services and/or protection • Strengthened provisions for immigrant survivors
Sexual Assault Forensic Evidence Reporting Act (2013)	• Provided for the auditing of samples of sexual assault evidence awaiting testing • Ensured collection and processing of DNA by law enforcement agencies was done in a timely fashion and in alignment with established protocols and practices • Required the FBI to establish and publish protocols and practices that identified how DNA evidence should be collected for accuracy, timeliness, and effectiveness

- a. be reasonably protected from the accused;
- b. receive reasonable, accurate, and timely notice of any public proceeding involving the crime or any release or escape of the accused and not be excluded from such proceedings;
- c. be reasonably heard at any public proceeding involving release, plea, or sentencing;
- d. confer with the attorney for the government in the case;
- e. receive full and timely restitution as provided by law;
- f. be assured of proceedings free from unreasonable delay; and
- g. be treated with fairness and with respect for the victim's dignity and privacy.

The acts also provide that the court ensures that crime victims are afforded these rights.

The 1990s also saw the adoption of the **Violent Crime Control and Law Enforcement Act (1994)**, which included the implementation of the **Violence Against Women Act (1994)** (VAWA) that gave more than \$1 billion to programs designed to reduce and respond to violence against women. It also increased funding for victim compensation programs and established a national sex offender registry (Gundy-Yoder, 2010). The **Antiterrorism and Effective Death Penalty Act (1996)** was also passed, making restitution mandatory in violent crime cases and further expanding compensation and assistance to victims of terrorism. Victims were given the right to provide victim impact statements during sentencing in capital and noncapital cases, and the right to attend the trials of their offenders was clarified via the **Victims' Rights**

Clarification Act (1997).

Victims' rights were further expanded in the first part of the 21st century. The **Violence Against Women Act (2000)** was signed into law as part of the Victims of Trafficking and Violence Protection Act of 2000. It reauthorized some previous VAWA funding. This legislation also authorized funding for rape prevention and education, battered women's shelters, and transitional housing for female victims of violence and addressed violence against older women and those with disabilities. This act also expanded the federal stalking statute to include stalking over the Internet. The **Violence Against Women Act (2013)** was reauthorized 13 years later. Among other provisions, it expands housing protections for victims of domestic violence in all federally subsidized housing programs and protects victims of sexual assault, adds additional protections for dating violence on college campuses, and expands protection for LGBTQ survivors of violence from discrimination so they can receive services. The **Justice for All Act (2004)** strengthens federal crime victims' rights and provides enforcement and remedies when there is not compliance. It also provides monies to test the backlog of rape kits. Further attention has been given to the testing of rape kits at the federal level. The **Sexual Assault Forensic Evidence Reporting Act (2013)** (SAFER), which became law as part of the reauthorization of the Violence Against Women Act, amended the Debbie Smith Act (2004) to create grants to audit the sexual assault kit backlog (the Debbie Smith Act provided federal funding for state and local governments to address the backlog of kits at laboratories). It also mandates that at least 75% of allocated funding must be used to reduce the backlog and increase capacity of labs to process these kits through 2018 (National Center for Victims of Crime, n.d.-a).

Despite the provision and expansion of victims' rights at the federal level, there is still not a federal constitutional amendment. This lack of adoption may be somewhat surprising because the National Victims' Constitutional Amendment Network and Steering Committee was formed in 1987 and federal victims' rights constitutional amendments were introduced in both the House and the Senate in 1996. Additional victims' rights constitutional amendments were introduced in 1997, 1998, 1999, 2000, 2003, and 2004 (Maryland Crime Victims' Resource Center, 2007). Such an amendment has yet to be adopted.

Financial Remedy

In [Chapter 3](#), you read about the substantial costs that victims face after being victimized. Some of these costs are financial. Victims may lose time from work, have hospital bills, seek and pay for mental health care, need a crime scene cleaned, or lose income from a loved one's death. To help assuage some of these costs, victims can apply for financial compensation from the state, receive restitution from the offender, or seek remedy civilly.

Victim Compensation

One way victims can receive financial compensation for their economic losses is through state-run **victim compensation** programs. First begun in 1965 in California, victim compensation programs now operate in every state. Money for compensation comes from a variety of sources. A large portion of funding comes from criminals themselves—fees and fines are collected from people charged with criminal offenses. These fees are attached to the normal court fees offenders are expected to pay. In addition, the Victims of Crime Act (1984) (VOCA) authorized funding for state compensation and assistance programs. Today, the VOCA Crime Victims Fund provides more than \$730 million annually to states to assist victims and constitutes about one-third of each program's funding (National Association of Crime Victim Compensation Boards, 2014). Not only did VOCA increase funding for state programs, but it also required states to cover all U.S. citizens victimized within the state's borders, regardless of the victim's residency. It also required that states provide mental health counseling and that victims of domestic violence as well as drunk driving be covered. In the 2-year budget deal struck in 2015, \$1.5 billion was diverted from the Crime Victims Fund, so it remains to be seen how the fund will continue to operate in the future and how states will fund their programs (Sowyer, 2015).

Not all victims, however, are eligible for compensation from the Crime Victims Fund. Only victims of rape, assault, child sexual abuse, drunk driving, domestic violence, and homicide are eligible, because these crimes are known to create undue hardship for victims (Klein, 2010). In some states, victims must have experienced physical injury, whereas in others, if they experienced serious emotional trauma from the victimization, they are also eligible (Evans, 2014). In addition to the type of victimization, victims must meet other requirements to be eligible:

- Report the victimization promptly to law enforcement, usually within 72 hours of the victimization, unless good cause can be shown, such as being a child, incarcerated, or otherwise incapacitated
- Cooperate with law enforcement and prosecutors in the investigation and prosecution of the case
- Submit application for compensation that includes evidence of expenses within a specified time, generally 1 year from the date of the crime
- Show that costs have not been compensated by other sources such as insurance or other programs
- Ensure they have not participated in criminal conduct or significant misconduct that caused or contributed to the victimization

Victims can be compensated for a wide variety of expenses, including medical care costs, mental health treatment costs, funeral costs, and lost wages. Some programs have expanded coverage to include crime scene cleanup, transportation costs to receive treatment, moving expenses, housekeeping costs, and child-care costs (Klein, 2010). Other expenses for which victims may be compensated include the replacement or repair of eyeglasses or corrective lenses, dental care, prosthetic devices, and forensic sexual assault exams. Note that property damage and loss are not compensable expenses (Office for Victims of Crime, 2012), and only two states (Hawaii and Tennessee) currently pay for pain and suffering (Evans, 2014). States have caps in place that limit the amount of money a crime victim may receive from the Crime Victims Fund, generally ranging from \$10,000 to \$25,000 per incident. On average, the maximum victims can receive is \$26,000. Some states also allow for monies for catastrophic injuries and permanent disability, ranging from \$5,000 to \$150,000 (Evans, 2014).

Although compensation clearly can provide a benefit for victims, there are some problems with current compensation programs. One problem is that only a small portion of victims eligible for compensation actually receive monies from these funds. In addition, even when people do apply for compensation, there is no guarantee they will receive benefits. Data from victim compensation claims in 2012 showed that about one-fourth of claims were denied (Office for Victims of Crime, 2013). The programs also do not seem to encourage participation in the criminal justice system. There is little evidence that persons who receive compensation are any more satisfied than others (Elias, 1984) or that they are more likely to participate in the criminal justice process (Klein, 2010).

Restitution

Unlike monies from crime victims' funds, restitution is money paid by the offender to the victim. Restitution is made by court order as part of a sentence—the judge orders the offender to pay the victim money to compensate for expenses. Much like compensation programs, expenses that may be recovered through restitution include medical and dental bills, counseling, transportation, and lost wages. Restitution can also be ordered to cover costs of stolen or damaged property, unlike in crime victim compensation programs. Restitution cannot be ordered to cover costs associated with pain and suffering; it is limited to tangible and documentable expenses.

Restitution has its benefits. It is based on the notion of restorative justice, which seeks to involve the community, the offender, and the victim in the criminal justice system. Paying restitution helps restore both the offender and the victim to their precrime status. Problematic, however, is that the offender must first be caught for restitution to be ordered. Often, crimes go unreported and offenders remain free from arrest. Even if an offender is arrested, it may be difficult for the court to determine an appropriate amount for restitution. How much money should be paid in restitution to a victim whose mother's engagement ring was stolen? The ring's worth to the victim may far outweigh the dollar amount a judge would require the offender to pay in restitution. In addition, many offenders lack sufficient funds to pay victims immediately, even when court ordered. As a result, restitution may not be met.

Civil Litigation

Although compensation and restitution programs may significantly aid victims in recouping crime victimization costs, not all economic costs may be covered. Recall, too, that neither program addresses pain and suffering costs (except for the two states that allow compensation for pain and suffering). To seek redress for these uncompensated costs, victims may pursue **civil litigation** against the offender. There are some key advantages afforded to a plaintiff (the person filing the lawsuit) in a civil suit. That person is a party to the lawsuit and is allowed to make key decisions regarding whether to accept a settlement—unlike in criminal court, where it is the state versus the defendant (National Crime Victim Bar Association, 2007). Persons can seek money for emotional as well as physical harm.

In addition, the burden of proof is different in the civil justice system. Liability must be proved by a fair preponderance of the evidence, not beyond a reasonable doubt, which is the standard of proof in the criminal justice system. If the court finds that the defendant is in fact liable, then the offender is held financially accountable for the harm caused to the defendant. Much like with restitution, however, the likelihood of the victim actually receiving the money awarded is tied to the offender being identified and the offender's ability to pay. Accordingly, it may be quite difficult for the victim to recover damages awarded. Also, the costs of entering into a civil lawsuit must be borne by the victim and can be quite expensive. The victim may have to hire an attorney, and civil lawsuits can sometimes drag on for years.

Remedies and Rights in Court

Rights are also afforded to crime victims in other phases of the criminal justice system. Although not discussed in detail in this chapter, police are often the first level of criminal justice with which crime victims interact. The response that victims receive from them may shape how they view the criminal justice system as a whole and may impact their future dealings (or not) with the system should they be victimized again. It seems that when police meet victims' expectations, victims report high levels of satisfaction. When victims' expectations are not met, however, victims report lower levels of satisfaction (Chandek & Porter, 1998). That is, it is expectation in conjunction with what the police do that impacts overall satisfaction with the police. In addition to the police, the prosecutor and the courts also provide crime victims with rights. These rights are discussed next.

Victim Impact Statements

As previously discussed, the criminal trial involves two parties in an adversarial system that reflects crime as a harm against the state. As such, historically, victims seldom played more than the role of witness in the criminal trial. Not until the 1970s did victims receive rights that guaranteed them at least some voice in the criminal trial process. One of these rights was first adopted in 1976 in Fresno, California, and it gave the victim an opportunity to address the court through a **victim impact statement (VIS)**. The VIS can be submitted by direct victims and by those who are indirectly impacted by crime, such as family members. The VIS is either submitted in writing or presented orally (victim allocation).

Photo 5.1. A victim delivers her victim impact statement in court during sentencing.



© iStockphoto.com/Rich Legg

In the VIS, the harm caused is typically detailed, with psychological, economic, social, and physical effects included. Depending on the jurisdiction, the victim or others presenting a VIS may also provide a recommendation as to what the offender's sentence should be. Take a look at [Box 5.2](#), "Excerpt From Stanford Rape Victim's Impact Statement," to see an example of a VIS. In this case, the woman who was raped wrote a 13-page 7,000-word VIS and read it during sentencing. Her assailant, although convicted of three felonies—sexual assault of an unconscious person, sexual assault of an intoxicated person, and sexual assault with intent to commit rape—was ultimately sentenced to 6 months in jail and 3 years of probation (Murdock, 2016). Not only may the victim enter a VIS at sentencing, but most states allow for the victim to make a VIS at parole hearings as well. In some cases, the original VIS is included in the offender's file and will be considered during the parole process. In others, the victim is allowed to update the original VIS and include additional information that may be pertinent to the parole board. Less common, the victim may be allowed to make a VIS during bail hearings, pretrial release hearings, and plea bargaining hearings (National Center for Victims of Crime, 1999). Importantly, despite the victim's wishes, the VIS is used only as information and may impact the court's decision, but not always. As noted by the Minnesota Court of Appeals in *State v. Johnson* (1993), although the victim's wishes are important, they are not the only consideration or determinate in the prosecutor's decision to bring a case to trial.

There are many reasons to expect a VIS to benefit victims. It gives victims a right to be heard in court and allows their pain and experience to be acknowledged in the criminal justice process. As such, a VIS may be therapeutic, especially if a victim's statement is referred to by the prosecutor or judge and if the victim's recommendation is in accordance with the sentence the offender receives. In addition to this potential therapeutic benefit, a VIS may also provide valuable information to the court and criminal justice actors that allows them truly to understand the impact criminal behavior has on victims. It may help the judge give a sentence that is more reflective of the true harm caused to the victim. Also, it may prove beneficial to offenders to hear the impact of their crimes. Hearing the extent to which their actions hurt another person makes it more difficult for offenders to rationalize their behavior.

Box 5.2 Excerpt From Stanford Rape Victim's Impact Statement

"One day, I was at work, scrolling through the news on my phone, and came across an article. In it, I read and learned for the first time about how I was found unconscious, with my hair disheveled, long necklace wrapped around my neck, bra pulled out of my dress, dress pulled off over my shoulders and pulled up above my waist, that I was butt naked all the way down to my boots, legs spread apart, and had been penetrated by a foreign object by someone I did not recognize. This was how I learned what happened to me, sitting at my desk reading the news at work. I learned what happened to me the same time everyone else in the world learned what happened to me. That's when the pine needles in my hair made sense, they didn't fall from a tree. He had taken off my underwear, his fingers had been inside of me. I don't even know this person. I still don't know this person. When I read about me like this, I said, this can't be me. This can't be me. I could not digest or accept any of this information. I could not imagine my family having to read about this online. I kept reading. In the next paragraph, I read something that I will never forgive; I read that according to him, I liked it. I liked it. Again, I do not have words for these feelings ...

When I was told to be prepared in case we didn't win, I said, I can't prepare for that. He was guilty the minute I woke up. No one can talk me out of the hurt he caused me. Worst of all, I was warned, because he now knows you don't remember, he is going to get to write the script. He can say whatever he wants and no one can contest it. I had no power, I had no voice, I was defenseless. My memory loss would be used against me. My testimony was weak, was incomplete, and I was made to believe that perhaps, I am not enough to win this. That's so damaging. His attorney constantly reminded the jury, the only one we can believe is Brock, because she doesn't remember. That helplessness was traumatizing."

Source: Stanford Rape Victim Statement, 2016. Retrieved from <https://assets.documentcloud.org/documents/2854755/Victimstatement.pdf>

Despite these proposed benefits, not all victims use the right to make a VIS. For example, recent data from Texas show that only 22% of VIS applications distributed to crime victims were returned to district attorneys' offices. The type of victimization for which a VIS was submitted was most commonly sexual assault of a minor, followed by robbery (Yun, Johnson, & Kercher, 2005).

Nonetheless, the reasons that victims in general do not make a VIS are varied. They may not feel comfortable putting their feelings in writing or going to court and making a public statement; they may fear the offender and being retaliated against. Others may not be fully aware of their right to make a VIS or not know how to go about using this right. Although it is certainly a victim's choice to make or not make a VIS, it may have an impact on the sentence the offender receives. Recent research shows that when a VIS is made in capital cases, there is an increased likelihood that the offender will be sentenced to death (Blumenthal, 2009). Although a clear impact on noncapital offenses is not evident, research suggests that when a VIS does impact sentencing, it does so in a punitive fashion (Erez & Globokar, 2010). Although speculative, the reason behind this influence may be tied to the influence that hearing from the victim and his or her family has on a jury member's emotions. Research shows that being exposed to a VIS may increase feelings of hostility, anger, and vengefulness toward offenders (Paternoster & Deise, 2011). Other research has found that not all jury members respond the same to a VIS. Rather, it is those who have a tendency to approach emotions who are likely to respond with hostility and, as a result, recommend longer sentences (Wevodau, Cramer, Kehn, & Clark, 2014).

A VIS may be good for the victim, but it does raise the issue of equal justice for offenders. Does an offender deserve a more severe penalty because a VIS is made? Conversely, do victims not deserve to have their offenders penalized as severely as others if they are not able or willing to make a VIS? This issue underlies some of the debate surrounding the use of the VIS. The constitutionality of the VIS has been questioned, particularly in capital cases. Current case law makes it constitutional for a VIS to be made in capital cases. In *Payne v. Tennessee* (1991), the U.S. Supreme Court found that how the victim is impacted does not negatively impact the rights of the defendant—a VIS is a way to inform the court about the harm caused. This decision allowed states to decide whether to allow a VIS in capital cases.

The positive benefit for victims may be overstated in that making a VIS can be traumatizing for victims (Bandes, 1999). Victims may also be dissatisfied if their recommendations are not followed (Davis, Henley, & Smith, 1990; Erez, Roeger, & Morgan, 1994; Erez & Tontodonato, 1992). Furthermore, victims who make a VIS may not be likely to use and participate in additional criminal proceedings if they are victimized again, one of the key considerations in granting victims' rights (Erez & Globokar, 2010; Kennard, 1989).

Victim/Witness Assistance Programs

Victim/witness assistance programs (VWAPs) provide victims with assistance as they navigate the criminal justice system. These programs are designed to ensure that victims know their rights and have the resources necessary to exercise these rights. At their heart, however, is a goal to increase victim and witness participation in the criminal justice process, particularly as witnesses, with the notion that victims who have criminal justice personnel assisting them will be more likely to participate and to be satisfied with their experience.

These programs first began in the 1970s, with the first program established in St. Louis, Missouri, by Carol Vittert (Davies, 2010). Although not sponsored by the government, Vittert and her friends would visit victims and offer them support. Two years later, the first government victim assistance programs were developed in Milwaukee, Wisconsin, and Brooklyn, New York. Not long after, in 1982, the Task Force on Victims of Crime recommended that prosecutors better serve victims. Specifically, the task force noted that prosecutors should work more closely with crime victims and receive their input as their cases are processed. It also noted that victims need protection and that their contributions should be valued—prosecutors should honor scheduled case appearances and return personal property as soon as possible. To this end, VWAPs have been developed, most commonly administrated through prosecutors' offices but also sometimes run through law enforcement agencies. At the federal level, each U.S. attorney's office has a victim witness coordinator to help victims of federal crimes.

Today, these programs most commonly provide victims with background information regarding the court procedure and their basic rights as crime victims. Notification about court dates and changes to those dates is also given. They also provide victims with information regarding victim compensation and aid them in applying for compensation if eligible. A victim who wishes to make a VIS can also receive assistance from the VWAP in doing so. Another service offered by VWAPs is making sure the victims and witnesses have separate waiting areas in the courthouse for privacy. In some instances, VWAP personnel will attend court proceedings and the trial with the victim and his or her family.

Despite the efforts of VWAPs, research shows that some of the first of these programs did little to improve victim participation. The Vera Institute of Justice's Victim/Witness Assistance Project, which ran in the 1970s, provided victims with a wide range of services—day care for children while parents were in court, counseling for victims, assistance with victim compensation, notification of all court dates, and a program that allowed victims to stay at work rather than come to court if their testimony was not needed—to little success (Herman, 2004). An evaluation of the project showed that victims were no more likely to show up at court than those without access to these services. It was not until the Vera Institute developed a new program that provided victim advocates to go to court with victims that positive outcomes emerged. This program did, in fact, then have a positive influence on attendance in court (Herman, 2004). Few of the programs provide services identified in the research literature as most critical; instead, VWAPs are largely oriented toward ensuring that witnesses cooperate and participate in court proceedings rather than that crime victims receive needed services (Jerin, Moriarty, & Gibson, 1996).

Family Justice Centers

Family justice centers have recently begun opening throughout the United States to better serve crime victims. Because crime victims often need a variety of services, family justice centers are designed to provide many services in “one stop.” These centers often provide counseling, advocacy, legal services, health care, financial services, housing assistance, employment referrals, and other services (National Center on Domestic and Sexual Violence, 2011). The advantages of providing these services in one place are many—primarily, victims can receive a plethora of services without having to navigate the maze of health and social service agencies in their jurisdiction.

Restorative Justice

The traditional criminal justice system is adversarial, with the state on one side and the defense on the other attempting to determine if the offender did in fact commit a crime against the state. It is largely offender-centered—the offender's rights must be protected from investigation to conviction—and the victim traditionally has not been recognized as having a role beyond that of a witness, because crimes are considered harms against the state. Beginning in the 1970s, as discussed in [Chapter 1](#), the victims' rights movement sought to garner a larger role for victims in the justice process and to ensure that victims are provided the services they deserve from the state and community agencies. Also during the 1970s, there was a movement in the criminal justice system to get “tough on crime.” In doing so, more people were sentenced to prison and for longer, and our correctional system moved away from a rehabilitation model to a justice model. No longer was the correctional system dedicated to “fixing” offenders—rather, its main focus became public safety by reducing crime. This reduction was thought to be achieved through the use of tough criminal sanctions rather than treatment for the offender. Although this experiment in incarceration is not over, another movement less focused on being punitive toward offenders within the criminal justice system also emerged during the 1970s—the **restorative justice** movement.

The restorative justice movement formally began in Canada in the 1970s, but some of its principles were in place long before. Our first “systems” of justice did not define crimes as harms against the state. As such, if a person was victimized, it was up to him or her or the family to seek reparation from the offender (Tobolowsky, 1999). It was essentially a victim-centered approach. As crimes were redefined as harms against the state (or the king), the system of justice that emerged was more offender focused. Such a system was in place until the 1970s in the United States, when people began to advocate for an increased role for the victim and for victims to receive rights similar to those of offenders. The restorative justice movement was an outgrowth of the attention given to the need for victims' rights and pushback from adoption of a crime-control model exclusively focused on punishment.

The restorative justice movement is based on the belief that the way to reduce crime is not by solely punishing the offender or by adhering to a strict adversarial system that pits the defendant against the state. Instead, all entities impacted by crime should come to the table and work together to deal with crime and criminals. In this way, the restorative justice movement sees crime as harm to the state, the community, and the victim (Johnstone, 2002). Accordingly, instead of offenders simply being tried, convicted, and sentenced without the victim and community playing more than a cursory role, the system should develop and adopt strategies to deal with crime that include all relevant parties. Instead of a judge or jury deciding what happens to the offender, the restorative justice movement allows for input from the offender, the victim, and community members harmed by the offense in making a determination of how to repair the harm caused by the offender. In this way, justice is not just handed down and does not just “happen”; it is a cooperative agreement. Simply stated, restorative justice is a process “whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future” (T. F. Marshall, 1999, p. 5).

What types of programs meet this objective? Many of the programs in use today in the United States and throughout the world were adapted from or based on traditional practices of indigenous people, who, given their communal living situation, often have a stake in group members' ability to collaboratively resolve issues (Centre for Justice and Reconciliation, 2008). The most common types of programs are victim–offender mediation or reconciliation programs and restitution programs. Victim–offender mediation is discussed shortly, and restitution was discussed earlier in this chapter as a financial remedy for victims. Another program that is restorative in nature is face-to-face meetings between the victim and offender that do not involve formal mediation. **Family or community group conferencing** is also restorative. In this type of program, the victim, offender, family, friends, and supporters of both the victim and offender collectively address the aftermath of the crime, with the victim addressing how the crime impacted him or her, thus increasing the offender's awareness of the consequences of the crime. Because supporters of both sides are present, it allows additional people with a stake in the process and outcome to give input. Victims and offenders report high levels of satisfaction with group conferencing (Centre for Justice and Reconciliation, 2008). Restorative justice is also practiced through a **peacemaking circle** or **sentencing circle**. A circle consists of the victim, the offender, community members, victim and offender supporters, and sometimes members of the criminal justice community such as prosecutors, judges, defense attorneys, police, and court workers. The goals of the circle are to “build community around shared values” and to “promote healing of all affected parties, giving the

offender the opportunity to make amends” and giving all parties a “voice and shared responsibility in finding constructive resolutions” (p. 2). The circles are also designed to address the causes of criminal behavior. In sentencing circles, the parties work together to determine the outcome for the offender, whereas peacemaking circles are more focused on healing.

Victim–Offender Mediation Programs

Some victims may not wish to sit in the background and interact only on the periphery of the criminal justice system. Instead, they may wish to have face-to-face meetings with their offenders. As a way to allow such a dialogue between victims and offenders, **victim–offender mediation programs** have sprouted up throughout the United States, with more than 300 such programs in operation today. With the American Bar Association endorsing the use of victim–offender mediation and what appears to be widespread public support for these programs, victim–offender mediation is likely to become commonplace in U.S. courts. Victim–offender mediation is already widely used in other countries, with more than 700 programs operating in Europe (Umbreit & Greenwood, 2000).

Mediation in criminal justice cases most commonly occurs as a **diversion** from prosecution. This means that if an offender and victim agree to complete mediation and if the offender completes any requirements set forth in the mediation agreement, then the offender will not be formally prosecuted in the criminal justice system. In this way, offenders receive a clear benefit if they agree to and successfully complete mediation. Mediation can also take place as a condition of probation. For some offenders, if they formally admit guilt and are adjudicated, they may be placed on probation by the judge with the condition that they participate in mediation. In all instances, the decision to participate in victim–offender mediation programs is ultimately up to the victim. Most victims who are given the opportunity to participate in victim–offender mediation do so (Umbreit & Greenwood, 2000).

Victim–offender mediation programs are designed to provide victims—usually those of property crimes and minor assaults—a chance to meet with their offenders in a structured environment. The session is led by a third-party mediator whose job it is to facilitate a dialogue through which victims are able to directly address their offenders and tell them how the crime impacted their lives. The victim may also ask questions of the offender. To achieve the objectives of restorative justice, mediation programs in criminal justice use humanistic mediation, which is dialogue driven rather than settlement driven (Umbreit, 2000). The impartial mediator is there to provide unconditional positive concern and regard for both parties, with minimal interruption. As noted by Mark Umbreit (2000), humanistic mediation emphasizes healing and peacemaking over problem solving and resolution. He notes that

the telling and hearing of each other’s stories about the conflict, the opportunity for maximum direct communication with each other, and the importance of honoring silence and the innate wisdom and strength of the participants are all central to humanistic mediation practice. (p. 4)

One tangible outcome often but not always stemming from victim–offender mediation is a restitution plan for the offender, and in its developing, the victim plays a central role. This agreement becomes enforceable in court, whereby an offender who does not meet the requirements can be held accountable.

What happens after an offender and victim meet? Do both offenders and victims benefit? What about the community? It is important to evaluate programs in terms of their effectiveness in meeting objectives, and victim–offender mediation programs have been assessed in this way. Collectively, this body of research shows many benefits to victim–offender mediation programs. Participation in victim–offender mediation has been shown to reduce fear and anxiety among crime victims (Umbreit, Coates, & Kalanj, 1994), including post-traumatic stress symptoms (Angel, 2005), and desire to seek revenge against or harm offenders (Sherman et al., 2005; Strang, 2004). In addition, both offenders and victims report high levels of satisfaction with the victim–offender mediation process (McCold & Wachtel, 1998; McGarrell, Olivares, Crawford, & Kroovand, 2000; see also Umbreit & Greenwood, 2000). Victims who meet with their offenders report higher levels of satisfaction than victims of similar crimes whose cases are formally processed in the criminal justice system (Umbreit, 1994). In addition to satisfaction, research shows that offenders are more likely to complete restitution required through victim–offender mediation (Umbreit et al., 1994). More than 90% of restitution agreements from victim–offender mediation programs are completed within 1 year (Victim–Offender Reconciliation Program Information and Resource Center, 2006). Reduction in recidivism rates for offenders also has been found (Nugent & Paddock, 1995; Umbreit et al., 1994).

As you can see, our system has changed from victim-centered to entirely offender-focused and is now bringing the victim back into focus. Crime victims are afforded many rights in the criminal justice system. But, as you have seen, it is sometimes difficult for victims to exercise these rights, and they often have little recourse if their rights are not protected. These issues will certainly continue to be addressed as victims’ voices are heard and their needs met.

Summary

- Victims were first granted rights in the law in 1979. All states give the right to compensation, notification of rights, notification of court appearances, and ability to submit victim impact statements before sentencing.
- Other states may give the right to restitution, to be treated with dignity and respect, to attend court and sentencing hearings, and to consult with court personnel before plea bargains are offered or defendants released from custody. Other rights will also protect victims’ employment status so they can testify against their offenders.

- There has been some resistance to states and the federal government giving victims formal rights. Although numerous federal acts have been passed with victims' rights in mind, there still is no victims' rights amendment in the U.S. Constitution.
- To help assuage some of the financial costs of a crime, victims can apply for financial compensation from the state, can receive restitution from the offender, or can seek remedy in civil court.
- A victim impact statement can be submitted by direct victims and by those who are indirectly impacted by crime, such as family members. In the victim impact statement, the harm that was caused is typically detailed, with psychological, economic, social, and physical effects included.
- Victim/witness assistance programs provide victims with guidance as they navigate the criminal justice system. These programs are designed to ensure that victims know their rights and have the resources necessary to exercise these rights. Another goal of these programs is to increase the likelihood that a witness or victim will interact with the criminal justice system.
- The restorative justice movement is based on the belief that the way to reduce crime is not solely by punishing the offender or by adhering to a strict adversarial system that pits the defendant against the state. Instead, all entities impacted by crime should come to the table and work together to deal with crime and criminals.
- To increase dialogue between offenders and victims, victim–offender mediation programs have emerged throughout the United States.

Discussion Questions

1. Do you think it is the role of the criminal justice system to provide victims with rights? How else could we ensure that victims receive help?
2. What rights does the state in which you reside provide to crime victims? What rights do you think are most important?
3. Why would offenders be more likely to complete restitution in victim–offender mediation? Could it be used for other types of programs? Why or why not?
4. What types of services would Polly be eligible to receive? Explain.

Key Terms

Antiterrorism and Effective Death Penalty Act (1996) 64
 Child Victims' Bill of Rights (1990) 62
 civil litigation 66
 Crime Control Act (1990) 62
 diversion 72
 family or community group conferencing 71
 Justice for All Act (2004) 65
 notification 60
 participation and consultation 61
 peacemaking circle 71
 restorative justice 70
 right to a speedy trial 61
 right to protection 61
 sentencing circle 71
 Sexual Assault Forensic Evidence Reporting Act (2013) 65
 victim compensation 65
 victim impact statement (VIS) 67
 victim–offender mediation programs 71
 Victims of Crime Act (1984) 62
 victims' rights 59
 Victims' Rights and Restitution Act (1990) 62
 Victims' Rights Clarification Act (1997) 64
 victim/witness assistance programs (VWAPs) 69
 Victim Witness Protection Act (1982) 62
 Violence Against Women Act (1994) 64
 Violence Against Women Act (2000) 64
 Violence Against Women Act (2013) 64
 Violent Crime Control and Law Enforcement Act (1994) 64

Internet Resources

Centre for Justice & Reconciliation: <http://www.restorativejustice.org>

The restorative justice movement is concerned with repairing harm caused by crime. Centre for Justice & Reconciliation provides information for criminal justice professionals, social service providers, students, teachers, and victims. It includes links to research as well as more general information. It also provides information for restorative justice around the world.

Guidelines for Victim-Sensitive Victim–Offender Mediation: https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/ncj176346.pdf

Published by the Office for Victims of Crime, this is a compilation of six documents that cover issues related to restorative justice, including victim–offender mediation and family group counseling. It provides guidelines and criteria to enhance the quality of such restorative justice initiatives and to make them more victim sensitive.

National Association of Crime Victim Compensation Boards: <http://www.nacvcb.org/links.html>

This website provides links to federal agencies and resources, national victim organizations, national and state criminal justice victim-related organizations, victim-related education links, state crime victim compensation boards, federal and state correctional agencies, victim service units, sex offender registries, and other resources. It is your go-to website for links related to crime victims.

National Center for Victims of Crime Resource Library: <http://www.victimsofcrime.org/library>

The center disseminates information online for crime victims and people working with crime victims or in the area of policy. In its resource library, you can find information on victim impact statements; statistics regarding the extent of various kinds of victimization; and information on how to assist lesbian, gay, bisexual, transgender, and queer victims, among other topics.