

# ***Victims' Rights***

## **Framework for Discussion**

### **Introduction and Historical Overview**

The victims' rights revolution can be said to have begun with research published in Frank Cannavale's *Witness Cooperation, with a Handbook on Witness Management* (Lexington Books, 1976), which demonstrated that after prosecution charges were filed, the single greatest cause of their later failing was that witnesses, notably victims, stopped answering the DAs' calls and letters. Those findings led directly to the first prosecution-based victim/witness service programs, with new measures to "manage" witness appearances more thoughtfully. But the new victim/witness staff learned that sending letters notifying witnesses of their next hearing, perhaps with some tips on how to get to the courthouse, was not enough – not when victims would then have to wait for hours in a room with the defendant glowering at them, or learn only by chance that the case had pled out. The frustration with the ongoing indifference with which the system continued to treat victims was voiced by many victims testifying before the 1982 President's Task Force on Victims of Crime, one of whom implored, "Why didn't anyone consult me? I was the one who was kidnapped, not the state of Maryland!"

By that time, in the mid-80s, individual victims and their system-based allies – who were earning the title of "victim advocates" – were joining forces with those outside the system, notably champions of the victims of sexual assault and domestic violence, of homicide and drunk driving, and of child and elder abuse, among others. They fought for a full range of services for their injured clients, and in the justice system they began to campaign for victims to be vindicated for the violations done to them and to be treated with **fairness**, dignity and respect. These campaigns have succeeded – but only to a degree.

### **Key Policy Tenets**

1. All victims whose crimes are reported that involve a suspect known to the justice authorities should have the right to be informed of and present at all public hearings regarding the case, and have the right to present allegations of fact and opinions to any body considering the sentence or release of the accused or convicted offender.
2. All decisions regarding the sentence of a confessed or convicted offender should consider methods of imposing accountability to the victim as well as to the public. Full restitution should be ordered in every case, and other methods of personable accountability, such as are contemplated in programs of **victim-centered** restorative justice, should be an option to the victim and offender whenever appropriate.
3. Victims who choose for various personal reasons to *not* report the crimes committed against them should be treated with **fairness**, dignity and respect, and provided with information about and referrals to supportive services that can help them cope with the aftermath of victimization.

### **Recommendations for Action**

1. Victim advocates in every state should take an inventory of their own victims' rights laws, agency policies and practices. If fundamental rights to be present, heard, and restituted are not expressed in their state constitutions, as is true in 17 states, campaigns should be mounted to put them there. If the inventory within any of the 33 states with amendments reveals that its rights have been found to be incomplete or unenforceable – victims are found to have no "standing" to even assert the violation of their rights – or are expressed in such amorphous terms as to considered mere poetry, the time has come to amend such amendments so as to make the rights comprehensive, enforceable guarantees.

2. State-by-state inventories are also needed of victims' rights statutes, especially those that spell out the standards and procedures which the justice system must meet and which victims may use as enforcement measures. Enforcement procedures need to be strengthened so that victims may obtain redress of violations quickly and simply, with support, as needed, from compliance programs and legal clinics.
3. The inventory should also focus on the concerns of specific groups of victims. For example:
  - a. Are the privacy rights of sexual assault victims adequately protected in law and practice?
  - b. Are victims of domestic violence who seek protective orders regularly notified when such court orders have been served to their alleged or convicted batterers?
  - c. Are child victims provided with support and assistance that is commensurate with their age and cognitive development?
  - d. Are victims with physical and mental disabilities offered services and support that can help them understand their rights, and the services available to assist them?
  - e. Are victims with limited English proficiency (LEP) offered information in their primary language, through the use of translators and written information?
4. The service implications of offering victims' rights should be re-examined. Are criminal justice system resources sufficient, for example, to perform the administrative tasks required to implement and enforce victims' rights? Are there sufficient forensic resources to process rape kits in a timely way or otherwise collect and make productive use of forensic evidence?
5. Beyond the tools to establish and enforce the rights of individual crime victims, *all* states should establish an administrative compliance mechanism, via a complaint board, ombudsman, or other device, whereby patterns of noncompliance can be aired and then addressed through administrative means.
6. The upcoming General Accountability Office report on the effectiveness of the 2004 federal *Crime Victims' Rights Act* should be reviewed with care by the victim justice community. They should consider the basic question that prompted the statutorily-required report – is a federal statute sufficient, in lieu of a federal constitutional amendment, to guarantee that victims' rights will be honored? – with a predisposition towards answering that question in the negative, for two reasons: victims' rights to participation and restitution were core components of the administration of criminal justice at the nation's founding, a birthright which should be restored as a matter of principle; and no Federal statute can reach beyond the relatively small number of cases prosecuted in the Federal system, a dam to practical victims' rights enforcement that needs to be breached.