



DRAFT FINAL REPORT

THE AUTHORIZATION AND IMPLEMENTATION  
OF VICTIM IMPACT STATEMENTS

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## CHAPTER I

### INTRODUCTION

In the 1960's and 1970's, efforts to identify and respond to victim needs centered on establishing state compensation programs and expanding the use of restitution as a sentencing option. The use of compensation and restitution required objective measures of victim loss, generally determined by the monetary value of items stolen or destroyed, lost wages, and medical expenses. This economic approach to impact assessment was, in theory, intended to serve a restorative function in ameliorating victim loss by returning victims to pre-crime conditions.

Since the 1970's, the renewed prioritization of retributive justice as a correctional goal, coupled with advances in victimology research and demands for large scale reform in the legislative arena of victims' rights, has effected a shift in correctional focus, away from the offender and onto the victim. Victims' rights advocates are no longer complacent to accept a system that professes to be responsive to victims' needs while it offers services that "manage" rather than "assist" victims (Kelly, 1984b) and while it expects victims to remain outside the process as passive recipients of reimbursement for objectively measured losses. By treating victims as useful, but alien, peripherals in a complex mechanism, it has been argued that victims are twice victimized -- first, by the offender and, subsequently, by the criminal justice system.

Research on victims' reactions to their criminal justice experiences has disclosed that victims often (a) are dissatisfied with and resentful of the criminal justice system, especially court processes (Kelly, 1984a, 1984b; Hagan, 1983; Herson and Forst, 1984); (b) are unable to rid themselves of feelings of guilt and shame associated with the incident (Smale and Spickenheuer, 1979); and (c) transfer a sense of disorder, powerlessness, and fear to other life spheres (Kelly, 1984b; Schneider, 1982; Zehr and Umbreit, 1982).

In an attempt to counteract these negative effects, reformers have recommended a series of policies that promote closer victim involvement in the criminal justice system. At a minimum, it is urged that victims be acknowledged as aggrieved parties in a criminal prosecution and that they receive notification of the outcomes of all stages of the process that affect the dispositions of their cases. Other commentators are more vocal, asserting that victims be allowed to participate actively in these proceedings.

While it is generally agreed that victims should be intimately involved in the imposition of restitution orders (Kelly, 1984b; Goldstein, 1982; Hudson, 1984; Gittler, 1984; President's Task Force, 1982), there is considerably less agreement as to the nature and extent of victim participation in the broader criminal justice process. The resultant debate has produced several models of victim involvement. One model involves the victim by requiring or allowing the preparation of a written victim impact statement (VIS). This statement includes objective data on the effects of the crime on the victim. Although most commonly introduced at the sentencing hearing, typically as an attachment to the presentence report, impact statements are, in some jurisdictions, introduced at hearings focusing on bail, plea negotiations, restitution orders, or parole. A variation of this first model incorporates a victim statement of opinion, outlining the victim's subjective feelings about the crime, the criminal, and/or a proposed procedural recommendation.

A second model expands upon the first model by granting the victim the right to allocution. In some instances this interlocutory opportunity is limited to an objective delineation of crime impacts. It may, however, like its written counterpart, include subjective commentary by the victim.

Despite growing support for active victim involvement in the criminal justice process, there is little systematic knowledge about the following three issues central to a discussion of victim impact statements-- rationales, implementation, and effects.

Proponents of victim impact legislation are in disagreement as to why such legislation is necessary or desirable. While some supporters emphasize victim-based rationales, others point out that the criminal justice system, made more effective and efficient as a result of victims' rights provisions, has much to gain if victim input is solicited. Diversity in the implementation of victim impact statement statutes and policies mirrors the lack of consensus as to the underlying rationales for such provisions. As will be discussed in greater detail in later sections of this report, the utilization of victim impact statements is unpatterned. Seemingly straightforward questions as to who should be granted victim status and under what circumstances a statement should be introduced for judicial or executive consideration have received radically dissimilar responses in various jurisdictions.

In an effort to learn more about the utilization of victim impact statements in the United States, the National Institute of Justice funded a major research project to examine the inclusion and consideration of victim input at a number of criminal justice decision points. More specifically, project resources focused on the extent and nature of victim impact statements (a) in presentence reports, (b) at sentencing, and (c) at parole proceedings.

In the following pages the project is briefly described and the structure of the remainder of this research report is outlined.

## **Project Overview**

### **Phase I**

The initial phase of this larger project entailed a comprehensive analysis of enabling legislation, case law, and administrative policies. Current as of August 1987, this review discloses that 48 states had codified provisions authorizing some form of victim participation in conjunction with sentence imposition.

The consideration of victim input in postsentence decisions, while not as prevalent, is nevertheless garnering legislative and administrative acceptance. As of

August 1987, active victim involvement in parole decisionmaking (i.e., the victim may do more than just attend the hearing as a passive observer) was statutorily and/or administratively authorized in 39 states. Victims in three other sites, although not entitled to advance notice of the hearing at which parole release is to be considered, are entitled to post hoc notification of a panel's decision to release an inmate.

This intensive overview of statutes, case law, and administrative rules serves several valuable functions. As a synthesis of legal authorization, agency policy, and judicial commentary relevant to the utilization and implementation of victim impact statements, this project phase highlights the diversity of procedures that are operational throughout the nation. By providing a comparative guide to jurisdictional law, this collection will be particularly useful for legislators who are considering the introduction or modification of similar legislation.

## **Phase II**

By means of mail surveys, personal discussions, and telephone interviews, the second phase of this study examined the authorization and utilization of victim impact statements from two complementary perspectives. First, probation administrators, prosecuting attorneys, and parole board personnel were contacted to provide detailed information on the nature and extent of the utilization of victim impact statements in their local jurisdictions. Second, these respondents were asked to discuss their perceptions of and reactions to current policies and procedures for the introduction and consideration of victim input. More specifically, practitioners were invited to comment on (a) problems with jurisdictional protocols and (b) the effects, if any, of the use of victim impact information on criminal justice decisionmaking and/or victim satisfaction with criminal justice processes.

## **Report Overview**

The findings uncovered through this research endeavor are described in greater detail in the remainder of this report.

Chapter 2 presents an historical overview of the authorization of victim impact statements in the United States. This presentation is introduced by a critical examination of victim-based and system-based rationales for victim participation in criminal justice proceedings. This discussion is followed by an account of the proliferation of enabling statutes and policies and the diversity with which victim participatory models are implemented.

In Chapter 3, a more detailed description of project definitions and methodology is presented. This methodological inquiry is followed by a lengthy examination of the processes for victim participation in presentence proceedings. More specifically, Chapter 4 summarizes project findings on (a) the extent of victim impact statement preparation in responding jurisdictions, (b) the substance and breadth of victim impact statements, and (c) methods of statement preparation (e.g., format, authorship, derivation, and verification).

Because the nature of victim participation in presentence proceedings differs in many respects from the nature of victim participation in postsentence proceedings, findings pertinent to criminal justice decisionmaking at the latter juncture are presented in a separate location. Chapter 5 examines rationales for victim involvement in parole decisionmaking and traces the history of victim participation at this stage of the criminal justice process. Policies and procedures for the implementation of enabling statutes are discussed, with a particular emphasis on notification, participation, and disclosure provisions.

In Chapter 6 the focus shifts from a discussion of the rationales for and processes of victim participation in criminal justice decisionmaking to a discussion of the effects of such involvement on the affected actors. This section identifies gaps in our understanding of the victims' rights movement and, in so doing, raises a number of questions for future research.

## CHAPTER 2

### THE AUTHORIZATION OF VICTIM IMPACT STATEMENTS

#### Rationales for Victim Participation

There is no single rationale underlying the authorization of victim participation at criminal justice proceedings. It is not surprising, therefore, that supporters of victim input legislation and policies claim a variety of benefits for victims and the criminal justice system.

#### Benefits for the Victim

From the victim perspective, the consideration of victims' needs and opinions can effectively improve the quality of a victim's life by helping the victim to regain a sense of control over his life and by fulfilling a desire for retributive justice. Zehr and Umbreit (1982:64) have observed that

"One of the reasons that crime is so devastating is that it impresses upon us our vulnerability, undermining our sense of control over our lives. Victims need to be given a voice and listened to if they are to experience that restoration of power which is necessary for psychological wholeness."

The issue of the weight that is to be given to this victim voice in criminal justice decisionmaking is far from settled. Some researchers have held that mere participation in the legal system, rather than actual case disposition, is what promotes victim restoration. One advocate of this contention is Kelly (1984b: 77) who reports that, when rape victims were asked to recommend court system reforms, the most frequently mentioned suggestion was that "prosecutors should pay more attention to victim's opinion".

Other research has suggested that victim participation alone may not be sufficient and that victim restoration is fostered more directly by responding to the victim's desire for retributive justice. Hennon and Forst (1984:62), for example, have reported that the court reform most frequently recommended by a sample of victims

was to "treat offender[s] more harshly." A second study offers further support for this position. Despite limited participation in the dispositional process (i.e., victim preferences for case outcomes were communicated indirectly to court officials via victim advocates), nearly three-fourths of the victims who expressed dissatisfaction with case outcomes pointed to the court's failure to punish defendants severely enough as the basis for their dissatisfaction (Davis et al., 1984:500).

### **Benefits for the Criminal Justice System**

From the criminal justice system perspective, the goal of increasing victims' sense of control over their lives, while welcome, is nonetheless an unintended byproduct. Instead, the primary benefits of increased victim participation are expected to come from enhanced system efficiency and effectiveness. As Yankelovich et al. (1978) point out, the criminal justice system is a consumer oriented organization which relies upon continued client cooperation in order to function smoothly. If victims are dissatisfied with prior system interactions they will be hesitant to reinitiate unpleasant contacts. By inviting victim participation in criminal proceedings, the criminal justice system hopes to increase victim (i.e., consumer) satisfaction, encourage future victim involvement and, thereby, enhance system efficiency.

The expectation of enhancing system effectiveness through victim involvement derives from the idea that the probability of just decisions will increase if victim input is fostered. This is the position advanced by the President's Task Force on Victims of Crime (1982:66): "Two lives -- the defendant's and the victim's -- are profoundly affected by a criminal sentence. The court cannot make an informed decision on a just punishment if it hears from only one side."

This sentiment, however, is not shared by all criminal justice practitioners. Hernon and Forst (1984:54) report that, of a group of prosecutors and judges asked to assess the level of victim involvement in the prosecution process, 69 percent of the prosecutors and 64 percent of the judges believed that no increase in the level of

victim involvement was necessary. Furthermore, observations recorded in an experimental setting indicate that a number of prosecutors, when provided the opportunity to augment victim involvement by considering victim preferences for case outcome, were reluctant to accommodate victims' interests in sentence recommendations or were openly hostile to the process of victim input (Davis et al., 1984).

### **Proliferation of Enabling Statutes and Policies**

As noted in the preceding pages, the debate surrounding the rationales underlying the authorization of victim impact statements and the expected benefits to be derived from their use is far from settled. The desires for victim restoration, more just decisionmaking, and increased system efficiency may not be completely compatible. Consequently, intra- and interjurisdictional practices may vary depending upon which rationale predominates at any given time or locale.

Despite the lack of consensus as to why victim involvement in the criminal justice process is desirable or advantageous, there has been a flurry of legislative activity in this area in the past five years. In its Victim and Witness Protection Act of 1982, the U.S. Congress amended the Federal Rules of Criminal Procedure to mandate inclusion of a victim impact statement in Federal presentence reports. In 1984, it was reported that more than 20 states had followed the Federal Government in enacting similar presentence VIS legislation (cf. National Organization for Victim Assistance, 1984).

By 1987, the above figure had more than doubled. Research conducted in conjunction with this project identified 42 states in which presentence reports may or must document the impact of a crime upon its victim. Moreover, the submission of an independent impact statement (i.e., a statement other than that prepared for inclusion in a presentence report) at, or prior to, the sentencing hearing is presently authorized in 24 states. The victim is entitled or may be permitted to personally appear and address the court in 32 locales.

## **Implementation of Participatory Models**

Movements to implement VIS legislation have followed diverse routes. Statutes which employ common terminology and which, at first glance, outline similar legal procedures may, in practice, authorize distinctive multi-faceted variations on a theme.

The common usage of the term "victim impact statement", in the literature and by legislative bodies, suggests that there is general agreement as to the substance, preparation, and presentation of these documents. However, there is no collective body of knowledge upon which to rest such an assumption. Indeed, even a cursory review of selected state legislation reveals extensive statutory variations in the application and implementation of victim impact statements. As will be discussed below, there is minimal consensus as to (a) the procedural bases for the authorization of a VIS, (b) the definitional criteria as to what constitutes a victim for the purpose of the preparation of a VIS, (c) the specifications of the necessary and allowable contents of a VIS, (d) the authorized methods of VIS preparation, and (e) the formats for VIS presentation.

The examples that are presented in the following pages were derived from statutory review. The practical applications of these facets of model implementation, based on results of surveys and of interviews with probation, prosecutorial, and parole personnel, are discussed in Chapters 4 and 5.

### **Procedural Bases**

The characterization of recent statutes as "mandating" the use of victim impact statements (National Organization for Victim Assistance, 1984) may be misleading. In several jurisdictions, victim impact statements are incorporated within presentence reports, and victims are accorded the statutory right to submit a statement as an attachment to this legal document. In this procedural scheme, the victim's "right" to a VIS is a qualified right at best, for a VIS is possible only if a presentence report is ordered by the court. Consequently, the following scenarios may be played out. If a

defendant waives his right to a presentence report, a victim's "right" to submit a statement is effectively quashed. If a presentence report is ordered, but the victim declines to provide probation staff with a relevant statement, the victim may, in effect, waive his statutory right to participate in the sentencing process. Depending upon legislated procedure and local practice, the probation staff may or may not be authorized to include an impact statement based on information derived from other sources.

### **Victim Definition**

Many legislatures have defined a "victim" simply as a person against whom a crime has been committed. Others, however, have adopted narrower definitions which appear to deny statutorily recognized "victim" status to certain classes of victims by focusing on the nature of the offense, offense outcomes, or procedural prerequisites.

The Connecticut criminal code is illustrative of legislation that is offense specific. The victim's right to appear before the court at the sentencing hearing is limited to those cases in which the defendant has either entered a guilty plea or been found guilty of a Class A, B, or C felony. The victim's right to appear and speak at sentencing is even more restricted in New Hampshire. The applicable statute in that state specifies that this right attaches only in those cases in which the defendant has been convicted of the following offenses -- completed or attempted murder, aggravated sexual assault, first degree assault, or negligent homicide that is alcohol or drug related.

The Rhode Island statute is one example of outcome specific legislation. By limiting "victim" status to those who have "sustained personal injury or loss of property directly attributable to the felonious conduct of which the defendant has been convicted", it is questionable whether a person who was a target of an attempted felony would be accorded "victim" status. A second example of outcome specific legislation allows for the determination of "victim" status by means of an assessment of

relative rather than actual victim harm. In Indiana, prior to submitting a plea negotiation to the court, a prosecuting attorney is required to demonstrate that he has made a reasonable effort to show the recommendation to the victim and to elicit the victim's response. However, "if there are more than three (3) victims, the prosecuting attorney shall complete the procedure required by law with the three (3) who he believes have suffered the most."

Legislation in several jurisdictions incorporates procedural restrictions which, while they do not deny the legitimacy of an individual's claim to "victim" status do, nevertheless, dictate that certain victims' rights are contingent upon the satisfactory fulfillment, by the victim, of specified procedural prerequisites. To be included within the protections of the impressive victims' rights package adopted by the the Rhode Island General Assembly in 1983, the victim is required to file a "timely" crime report, and must cooperate with authorities in the subsequent investigation and prosecution. Crime victims in Massachusetts and Ohio have 5 days and 72 hours, respectively, from the time of the occurrence or discovery of the offense, to report the incident to law enforcement personnel. Failure to comply with these directions would seemingly abrogate the individual's claim to legislated rights.

### **Contents of VIS**

Without question, the impact of crime on a victim extends beyond economic loss. The psychological, emotional, and social ramifications of victimization are well documented, but are not easily quantifiable. In creating an overall assessment of crime impact, which measures are to be included?

Again there is little consensus. Connecticut law employs a highly objective and quantifiable measure of crime impact. The relevant code directs that victim statements are to relate "solely to the facts of the case and the extent of any injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced" (emphasis added). The specificity of this clause would

seem to restrict the contents of the impact statement on several fronts. It could be interpreted as prohibiting any discussion of emotional, psychological, or social trauma, regardless of the nature of the offense. Additionally, it could be construed to deny inclusion of physical and/or financial impacts of criminal conduct that, as a result of a plea negotiation, did not result in conviction. Consequently, classes of victims may be deprived of benefit of this victims' rights legislation. A case in point would be a rape/robbery victim who was both physically and psychologically traumatized by the sexual assault, but whose assailant was allowed to plead guilty only to the robbery charge because of the victim's refusal to testify at trial. In her statement before the sentencing judge, should she opt to submit one, the victim might only be authorized to document the financial loss incurred by the robbery, particularly if the rape and the robbery were temporally distinct incidents.

In contrast, legislation in other states is more liberal, authorizing not only an objective assessment of quantifiable impact measures but also inviting subjective commentary on qualitative impact measures and dispositional recommendations. Impact statements in Minnesota, for example, prepared by a probation officer pursuant to a discussion with a victim, are to include a summary of the "damages or harm and any other problems generated by the criminal occurrence" (emphasis added). A related Minnesota code outlines the victim's right to submit a written statement which will be attached to the presentence report. This affidavit provides the victim with a forum in which to voice his views on the offense, the need for restitution, and sentencing proposals.

### **Methods of Preparation**

Regardless of content, the internal validity and system impact of the VIS can be attributed, in part, to several components of document preparation. These include authorship, derivation, verification, and format.

Authorship - Is the victim the most qualified or most desirable individual to

assess the impact of crime upon himself? Is a probation officer, experienced in the preparation of presentence reports, a more capable or desirable candidate for this task? What about a prosecutor or a victim advocate? State legislatures are divided on this question. Without elaborating on the reasons for their choices, most legislators have placed primary responsibility for VIS preparation on victims and probation staff. Although a few states allow for the submission of optional statements at the sentencing stage by prosecutorial personnel, the findings of a recent court experiment in Kings County (New York) question the effectiveness of this method of victim input. Prosecutorial reluctance to consider victims' interests in sentence recommendations was attributed to (a) a lack of incentive for prosecutors to deviate from established operating procedures for case management and (b) an unwillingness to relinquish control over traditional prosecutorial functions. The researchers in that study concluded that, consequently, "it probably would be far more effective to present victims' interests directly to judges rather than rely on prosecutors to do so" (Davis et al., 1984:504).

Derivation - A related concern is the derivation of information that comprises the VIS. If prepared by the victim, this information is undoubtedly drawn from a variety of sources, including personal experiences and a review of associated bills. However, when the VIS is prepared by someone other than the victim, sources of information may be limited. Statutes in Indiana and Nebraska mandate that the probation officer try to contact the victim if the victim has not already submitted a written statement. In Nevada, while the presentence report must include an impact statement, it is not required that the victim be contacted and "the extent of any investigation or examination is solely at the discretion of the court or [probation] department and the extent of such information to be included in the report is solely at the discretion of the department."

Verification - The information and recommendations within a presentence report

can substantially affect postconviction decisions on sentencing, confinement, and parole. Thus, the accuracy of this information is of prime interest to the offender. Similarly, verification of VIS data in the presentence report may bear on the victim's interests in restitution, restoration, and retribution. When the VIS is authored by someone other than the victim, verification assumes added significance. This is evident if the statement is a synthesis of a victim discourse, but even more so if the VIS is derived from police records or other unspecified sources. To what extent are the preparers of impact statements expressly directed to verify their findings? What constitutes verification?

Format - The comparability of victim impact statements within and between jurisdictions is related to the format of the statement. It can be argued that statements that are specifically designed to quantify indicators of impact (checklist, numerical rating scale, etc.) can be useful in reducing disparity in criminal justice decisionmaking. If, as has been suggested, sentencing commissions are to establish guidelines that consider not only offense severity and offender background, but also "the degree of harm caused victims" (President's Task Force, 1982:30-31), in the determination of an appropriate sentence, it would be useful (if not absolutely essential) for crime impacts to be assessed in a manner that allows for the simple computation of an impact score or ranking. The quantifiable basis of this design would also allow for more rigorous research on the effect of victim impact statements on charging, sentencing, and release decisions.

In comparison, non-structured impact statements might better reflect the nuances of specific incidents. This alternative design, focusing on case individualization rather than on system efficiency, may better serve the victim oriented rationales of victim satisfaction and restoration.

### **Methods of Presentation**

The five most common methods of presentation for victim impact statements

include (1) written, introduced as an attachment to the presentence report; (2) written, introduced as a separate statement at the sentencing hearing; (3) oral, introduced as a separate statement at the sentencing hearing; (4) written, introduced as a separate statement at the parole hearing; and (5) oral, introduced as a separate statement at the parole hearing. The first of these methods is the most frequently employed. This is no doubt due, in part, to the relative ease and inexpense in preparation, the nondisruptive nature of its introduction, and the fact that similar statements were often incorporated in presentence reports even before the codification of the procedure. The oral presentation of victim impact statements has not been so readily accepted; some critics contend that "the possibility of emotional outbursts when victims are allowed to present their statements orally before the court...may unfairly influence the judge and jury" (American Bar Association, 1981:47).

This chapter has reviewed rationales for victim involvement in criminal justice decisionmaking and has highlighted divergent inter-jurisdictional policies for the implementation of statutes establishing an active victim role. The practical applications of the above described facets of model implementation, based on results of surveys and interviews administered to probation, prosecutorial, and parole personnel, are the foci of Chapters 4 and 5.

## CHAPTER 3

### DEFINITIONS AND METHODOLOGY

#### Definitions

Despite the rapidity with which legislators and practitioners have urged the adoption of a series of policies that promote closer involvement in criminal justice decisionmaking, there is disagreement as to the nature and extent of invited victim participation. The resultant debate has produced two primary models for victim involvement. The President's Task Force on Victims of Crime (1982) has proposed that victims of violent crimes be given the opportunity to participate under both models.

The first model involves the victim by requiring or allowing the preparation of a written victim impact statement. In its most commonly adopted form, it includes objective data on the effects of the crime on the victim. A variation of this model incorporates a victim statement of opinion, outlining the victim's subjective feelings about the crime, the criminal, and/or the proposed procedural recommendation (e.g., negotiated plea, sentencing proposal, parole release).

**Model #1:** The preparation and presentation of a written victim impact statement, to be introduced at one of several decision points in the criminal justice system, is allowed or required by law. This statement includes one or both of the following:

- (a) an objective assessment of the effects of the criminal occurrence on the victim.
- (b) a subjective commentary outlining the victim's feelings on the crime, the criminal, or the proposed procedural recommendation.

A second model expands upon the first model by granting the victim the right to allocution. In some instances, this opportunity is limited to an objective delineation of the effects of the crime. It may also, however, include subjective commentary by the victim.

Model #2: The presentation of an oral statement, at one of several decision points in the criminal justice system, is allowed or required by law. This statement includes one or both of the following:

(a) an objective assessment of the effects of the criminal occurrence on the victim.

(b) a subjective commentary outlining the victim's feelings on the crime, the criminal, or the proposed procedural recommendation.

## **Methodology**

Project methodology was divided into two phases, each of which examined VIS legislation from a distinct observational perspective. The first phase focused on enacted legislation and interpretive constitutional and administrative law; the second phase looked at current patterns of implementation and criminal justice system personnel perceptions of and reactions to the utilization of victim impact statements. Together, these phases provide a rich and diverse portfolio of legal, empirical, and subjective commentary on the current status of VIS legislation in the United States.

### **Phase I: Review of Statutes and Interpretive Law**

The initial project task entailed an exhaustive review of state statutes in order to foster an understanding of the variability in the statutory authorizations of victim impact statements. This legislative analysis encompassed codified procedures in all states which had previously adopted (or which adopted during the course of the project) one or both of the above described models of victim involvement in the criminal justice process.

The statutory review examined legislation authorizing or requiring the formalized utilization of victim impact statements at the following criminal justice decision points: pretrial intervention, plea negotiations, presentence report preparation, sentencing, the imposition of restitution orders, and parole eligibility/release proceedings. In addition to delineations of objective crime impacts and subjective victim commentary, the search also included provisions outlining less formalized procedures for victim consultation with criminal justice personnel. More specifically, project staff reviewed

Table I

Types of information sought during the legislative review

Statutory Applicability

- \* procedural prerequisites

Victim Definition

- \* offense specific limitations
- \* outcome specific limitations
- \* procedural prerequisites

Statement Content

- \* objective assessment of crime impact
  - \* financial
  - \* physical
  - \* psychological
  - \* social
- \* subjective commentary
  - \* victim recommendations for procedural options
  - \* victim comments on proposed procedures
  - \* victim opinions on the offense and/or offender

Statement Preparation

- \* authorship
- \* derivation
- \* verification
- \* format

Statement Presentation

- \* oral vs. written
- \* forum for presentation
- \* offender rebuttal

codes pertaining to, but not limited to, the topical areas outlined in Table 1. A more detailed discussion of these topics is presented in Chapter 4.

The absence of specific procedural direction in the wording of a statute is sometimes intended to permit flexibility and the exercise of discretion in the implementation of legislated measures. This phraseology can, however, result in confusion as to legislative intent. Recognizing that statutory law may be subject to multiple interpretations, project staff also conducted a secondary review of supporting materials.

Over 100 criminal justice agencies in all 50 states were contacted by mail to learn of (a) recently passed or pending legislation relevant to crime victims, and/or (b) case law and administrative rules that address, and lend interpretation to, related issues. Where these materials existed, contacts were requested to forward available copies or citations.

Among those contacted were Attorneys General; administrators of parole, probation, and community service divisions; judicial administrators; parole board commissioners; and the commissioner of a state criminal justice agency. Information provided by these sources allowed the researchers to identify several states in which victim impact statements are mandated or permitted pursuant to administrative policies, in the absence of enabling legislation. These states were added to the overall listing of VIS sites.

During the course of this research, a number of states passed new legislation or modified existing statutes to permit or mandate the gathering of information from or about victims of crime for use at various criminal justice decision points. Therefore, it was necessary to continue the statutory search for the duration of the research and to routinely update the legislative guide.

Information gleaned from this intensive overview has been utilized to construct three procedural summary tables that provide a detailed state-by-state analysis of

statutory law, administrative rules, and policy directives that shape the utilization and implementation of oral and written victim impact statements (a) within, or attached to, presentence reports; (b) at sentencing; and (c) at parole. These summary tables are presented in Appendices A, B, and C.

### **Phase II: Jurisdictional Surveys**

A second step in the project entailed the development of three distinct surveys for use with probation administrators, prosecuting attorneys, and parole board personnel. The surveys were designed to elicit detailed information on the nature and extent of the utilization of victim impact statements in local jurisdictions. These professionals were selected for examination because they are responsible for or are knowledgeable about the preparation of victim statements at the local level.

The information elicited in the three surveys paralleled the information examined in the statutory review. This methodological approach was adopted for several reasons. First was the belief that these questions are germane to an understanding of VIS legislation; it was, therefore, advantageous to explore them from a variety of perspectives. A second reason for this parallel approach was to provide a basis for comparing statutory authorization with local practice.

In preparation for this second research phase, jurisdictions were classified as to the agency or agencies (e.g., probation, prosecution, parole) responsible for implementing the authorized codes or policies. Inconsistency or vagueness in the language of some statutes made this task more difficult. In some sites, codified sections fail to specify which agency is responsible for notifying victims of their participatory rights. In other states, legislatures have established overlapping domains between the various agencies, resulting in an apparent redundancy of effort where, for example, both the probation department and the victim assistance unit within the prosecutor's office may (or must) prepare independent victim impact statements.

States were selected for inclusion in the probation survey if, by law or policy, a

victim statement is prepared by probation staff as a component of, or as an attachment to, a presentence report (PSR). Jurisdictional inclusion in the prosecutor survey was premised on the adoption of provisions authorizing a broader range of victim participatory modes. States were included if any of the following procedures were statutorily or administratively required or permitted: (a) prosecutorial consultation with the victim about pretrial, plea negotiation, and/or sentencing decisions; (b) preparation of a victim impact statement for presentation at sentencing, other than the statement included in, or attached to, the PSR; and (c) the victim's right to allocution at pretrial release proceedings, plea negotiation sessions, or the sentencing hearing. The identification of the agency with responsibility for implementing the legislation pertaining to victim involvement in parole decisions was more straight forward than that at previous decision points. States were included in the parole phase of the research if enabling codes or policies outlined a process for mandatory victim notification of the considered or actual release of an offender on parole. Notification mandates are generally, but not always, accompanied by provisions authorizing some mode of victim participation. As will be discussed in greater detail in Chapter 5, this study uncovered four sites in which victims, although advised of the release of an offender from correctional custody, are not invited to contribute to parole decisionmaking.

As has been noted previously, jurisdictional adoption and/or modification of victims' rights provisions continued throughout the study's duration. Consequently, states which were subsequently discovered to have authorized victim involvement in presentence proceedings may not have been included in the sampling frame of the second project phase. States which enacted presentence victim legislation after the completion of the probation and prosecutor surveys were not polled. Due to the active time frame of these two surveys (i.e., the lapsed time between (a) the mailing of the survey; (b) the followup, if necessary; (c) the return of the completed questionnaire;

and (d) recontact with agencies to clarify confusing or inconsistent responses), the addition of newly recognized state contacts would have endlessly delayed the data analysis.

Newly identified states were, however, routinely added to the parole survey. The updating of this sampling frame was possible for two reasons. First, the turnaround time for this survey was minimal due to its methodological design (i.e., a single in-person or telephone contact per state) and the timing of its distribution relative to the distribution of the probation and prosecutor surveys.

More detailed information about each of the three jurisdictional surveys is presented below.

Probation administrators - Thirty-two states were identified as authorizing, by state statute, the incorporation of victim impact statements within presentence reports. In addition, Alabama was included because the Alabama State Board of Pardons and Parole has an administrative policy concerning victim impact statements, although there is no legislative authorization. North Dakota was also included because victim impact statements are sometimes used in exceptional cases without legislative authorization. Kentucky was not included in the sample because responsibility for the preparation of victim impact statements had recently been moved from the probation department to the office of the commonwealth attorney.

Because most legislation authorizing the preparation of victim impact statements refers specifically to felony actions, the sample was designed to exclude probation offices that prepare presentence reports for misdemeanor cases only. Thus, within each of the 33 identified jurisdictions, the sampling frame consisted of all probation offices that prepare presentence reports and/or victim impact statements in adult felony cases.

The Probation and Parole Directory (College Park, MD: American Correctional Association, 1985) was used to identify the probation offices for study consideration. If ten or fewer offices qualified in a particular state, all offices were sampled. If more than ten offices qualified, a random sample of ten offices was drawn (see Appendix D).

A probation administrator or supervisor in each office was contacted by telephone to explain project objectives and to elicit cooperation in this study. The two offices declining study participation were replaced by the random selection of another office within the state. In a few cases, contact with the selected offices proved to be impossible; where this situation was encountered, these offices were also replaced by random selection from the remaining offices in the respective states.

A survey packet was designed for distribution to participating probation personnel. Included within the packet were (a) a letter explaining the purpose of the research, (b) instructions for completing the survey, (c) a detailed survey instrument, and (d) a self-addressed stamped return envelope. The cover letter, directions, and questionnaire are reproduced in their entirety in Appendix E.

Arranged in six sections, the survey instrument was structured to gather a wide variety of information. The first section sought general information about the probation office itself. Figures on probation staffing levels and jurisdictional workloads, for example, were requested from all respondents.

The second section elicited information about the extent of VIS preparation. Probation administrators were asked to designate the circumstances under which victim statements are prepared and to approximate (a) the level of VIS preparation in 1985, and (b) the extent to which VISs are prepared in both felony and misdemeanor actions.

The third, fourth, and fifth sections examined the nature of victim involvement at pretrial release proceedings, plea negotiations, and sentencing hearings, respectively. Within each section were parallel items requesting detailed information on (a) authorized modes of victim participation, (b) procedures for victim notification of these rights and opportunities, (c) authorship and verification of victim statements, and (d) specifications of the necessary and allowable contents of a VIS. Because the legislative review suggested that formalized participatory options were considerably more prevalent at sentencing than at pretrial release or plea negotiation sessions,

section five was expanded to include supplemental questions on (a) victim participation at separate restitution hearings, if applicable; (b) the defendant's opportunity to contest the VIS; (c) the standard format for VIS preparation; and (d) the estimated extent of victim utilization of available participatory options.

The final section of the questionnaire invited respondent commentary on various aspects of VIS authorization and implementation. More specifically, probation administrators were asked to address concerns such as (a) problems in implementation, (b) the relationship between theory and practice in the authorization of VISs, and (c) the effect of VIS policies on criminal justice decisionmaking and victim satisfaction.

In addition to their completed surveys, respondents were asked to provide project staff with two optional sources of documentation. First, each administrator was asked to forward blank copies of any standard VIS forms, worksheets, or guidelines utilized or referred to in conjunction with VIS preparation. Second, respondents were asked to supply copies of completed impact statements (with identifying information deleted) so that project staff could familiarize themselves with variations in document preparation. In particular, a request was made for several examples each of a "good" impact statement (i.e., accurate, comprehensive, and clearly organized), a "bad" impact statement (i.e., poorly organized, incomplete, and/or inaccurate), and a "typical" impact statement. Although not every respondent complied with these requests, the completed and blank VISs that were received proved helpful in clarifying some responses to the survey instrument.

Surveys were distributed to 259 probation administrators in 33 states. Fourteen of these mailings were ruled to be invalid either because they were undeliverable or because the responding office indicated that, contrary to both its listing in The Probation and Parole Directory and information given to project staff during the initial telephone contact, it did not handle felonies. Of the 245 valid mailings, 125 surveys were returned, representing an overall response rate of 51 percent. Of the 125

returned instruments, 8 were unusable due to refusals, confusing responses, or excessive missing data. Thus, the usable response rate was just under 50 percent. For a more detailed breakdown of response rates, refer to Table 2.

Prosecuting attorneys - At the time of the distribution of the second jurisdictional survey, legislation in 35 states specified prosecutorial responsibility for one or more of the following procedures: (a) notification of victim rights, (b) consultation with the victim about the disposition of his or her case, and (c) preparation of victim impact statements. With one exception, all of the county or district level prosecuting attorneys' offices in these states comprised the sampling frame. In Texas, where legislated victims' rights provisions are binding only in those counties having populations of at least 100,000 people, the sampling frame was limited to prosecutors' offices in counties that satisfied this requirement.

A listing of county and/or district prosecuting attorneys' offices in each of the 35 states was obtained from The National Directory of Law Enforcement Administrators and Correctional Institutions (Milwaukee, WI: National Police Chiefs and Sheriffs Information Bureau, 1986). If ten or fewer offices were listed for a particular state, all offices were included in the sample. If more than ten offices were listed, a random sample of ten offices was generated. It was found that, in some states, a single prosecutor has jurisdiction over several counties or districts. In the event that such a prosecutor was selected more than once, multiple listings were deleted and replacement offices were randomly drawn. A complete listing of the sampled offices is presented in Appendix F.

The survey packet that was disseminated to prosecutorial personnel included the following four components: (a) a letter explaining the purpose of the research, (b) instructions for survey completion, (c) a detailed questionnaire, and (d) a self-addressed stamped envelope for returning the questionnaire. The cover letter, instructions, and survey instrument are reproduced in their entirety in Appendix G.

Table 2

Probation surveys mailed and returned, by state

State	Surveys mailed <sup>a</sup>		Surveys returned <sup>b</sup>		Percent response rate	
	Total	Valid	Total	Usable	Valid <sup>a</sup>	Usable <sup>b</sup>
Alabama	10	10	6	5	60.0	50.0
Alaska	3	3	2	2	66.7	66.7
Arizona	10	10	6	6	60.0	60.0
California	10	9	5	5	55.6	55.6
Connecticut	10	10	4	4	40.0	40.0
Delaware	3	3	2	2	66.7	66.7
Idaho	7	7	3	3	42.9	42.9
Illinois	10	10	4	4	40.0	40.0
Indiana	10	10	2	2	20.0	20.0
Iowa	8	7	5	4	71.4	57.1
Kansas	10	9	3	3	33.3	33.3
Louisiana	10	10	0	0	0.0	0.0
Maryland	4	1	1	1	100.0	100.0
Michigan	11	11	7	7	63.6	63.6
Minnesota	10	10	5	4	50.0	40.0
Missouri	10	10	6	6	60.0	60.0
Montana	4	3	3	3	100.0	100.0
Nebraska	10	9	7	6	77.8	66.7
Nevada	4	4	4	4	100.0	100.0
New Jersey	10	10	5	5	50.0	50.0
New Mexico	4	4	4	4	100.0	100.0
New York	10	10	4	4	40.0	40.0
North Dakota	1	1	1	1	100.0	100.0
Ohio	10	9	4	3	44.4	33.3
Oklahoma	8	6	2	2	33.3	33.3
Oregon	10	10	4	4	40.0	40.0
Pennsylvania	10	8	5	5	62.5	62.5
Rhode Island	1	1	1	1	100.0	100.0
Tennessee	9	9	6	6	66.7	66.7
Utah	7	7	3	2	42.9	28.6
Vermont	5	4	1	1	25.0	25.0
Virginia	10	10	5	3	50.0	30.0
West Virginia	10	10	5	5	50.0	50.0
	259	245	125	117	51.0	47.8

a

The number of valid mailings equals total mailings minus invalid mailings. A mailing was designated as invalid if (a) the packet was returned as undeliverable or (b) the receiving probation office indicated that it did not prepare presentence reports in felony cases.

b

The number of usable mailings equals total mailings minus unusable mailings. A response was deemed unusable if (a) the receiving office refused to participate; (b) the responses were overly confusing, illegible, or inconsistent; or (c) the extent of missing data was excessive.

While the prosecutorial survey paralleled that distributed to probation administrators, it differed in several notable respects. Changes both in the organization of the sections and in the phraseology of some questions were made to improve the questionnaire. Difficulties experienced with the probation questionnaire as well as recognized variations in prosecutorial responsibilities prompted these revisions.

Two sections from the original questionnaire were deleted. A new section, focusing on the nature and extent of prosecutor-victim consultation, was developed to gain insight into the operationalization of statutory provisions that grant consultation rights or privileges to victims. Finally, a decision was made to eliminate the separate survey section outlining victim participation in pretrial proceedings. Utilization of this section in the probation survey suggested that it was too structured to accurately characterize informal methods of victim participation at this stage. In its place, less structured items were introduced to elicit information on the nature and extent of victim participation in pretrial decisions.

The resultant survey instrument was collapsed into five sections. The first section elicited general information about the preparation of victim impact statements, including (a) permissible participatory options at various criminal proceedings, (b) notification procedures, (c) estimated number of VISs prepared in 1985 and 1986, (d) circumstances under which a VIS is prepared, and (e) existence and responsibilities of any victim service agency relative to statement preparation.

Section two highlights the frequency of prosecutor-victim consultation at six criminal justice decision points. Respondents were asked to comment upon both the weight given to victims' preferences and on the effect of victim consultation on the effectiveness of the criminal justice system, victim satisfaction with case outcomes, and victim cooperation with the prosecution.

Sections three and four request detailed information on victim involvement with plea negotiations and sentencing, respectively. Subsections within these two sections

dealt with the authorship, verification, and content of VISs. In addition, the fourth section elicited data on restitution, the standard format of the local VIS, and the nature and frequency of use of the various VIS models.

The final section consisted of open-ended questions inviting the respondents' opinions on various aspects of VIS authorization and implementation. Topical areas such as problems in implementation, perceptions of legislative intent, and the effect of VIS policies on criminal justice decisionmaking and victim satisfaction were covered.

The supplemental documentation requested in the earlier survey was sought also from prosecuting attorneys. Respondents were asked to supply project staff with several examples each of "good", "bad", and "typical" victim impact statements; a blank VIS form or worksheet; and any guidelines prosecution staff may reference in VIS preparation.

In April 1987, surveys were disseminated to 331 prosecuting attorneys in 35 states. Approximately 6 weeks later, followup letters were posted. This latter communication (a) restated project objectives, (b) stressed the significance of each prosecutor's reply to the utility of the study, (c) served as a reminder to delinquent respondents, and (d) provided a business reply card for prosecutors who did not receive or who misplaced the original survey and who, consequently, desired a replacement packet. Requests for replacement surveys were received from 47 sampled offices.

As displayed in Table 3, four packets were undeliverable and have been subtracted from the total number of valid mailings. Overall, 105 packets were returned. Of these, 89 were usable for data analysis purposes. This represents a total response rate of approximately 32 percent but a usable response rate of just over 27 percent.

Parole board administrators and members - As of late summer 1987, 41 states had been identified as authorizing, by state statute or agency policy, mechanisms for victim notification of, and/or participation at, parole proceedings.

Table 3

## Prosecutor surveys mailed and returned, by state

State	Surveys mailed <sup>a</sup>		Surveys returned <sup>b</sup>		Percent response rate	
	Total	Valid	Total	Usable	Valid <sup>a</sup>	Usable <sup>b</sup>
California	10	10	1	0	10.0	0.0
Colorado	10	10	6	4	60.0	40.0
Connecticut	8	8	1	0	12.5	0.0
Delaware	1	1	1	1	100.0	100.0
Florida	10	10	3	2	30.0	20.0
Georgia	10	10	5	5	50.0	50.0
Hawaii	4	4	1	1	25.0	25.0
Idaho	10	7	2	2	28.6	28.6
Illinois	10	10	4	4	40.0	40.0
Indiana	10	10	3	2	30.0	20.0
Iowa	10	10	2	1	20.0	10.0
Kentucky	10	10	4	4	40.0	40.0
Louisiana	10	10	2	1	20.0	10.0
Maine	8	8	4	4	50.0	50.0
Maryland	10	10	4	3	40.0	30.0
Massachusetts	10	10	5	2	50.0	20.0
Michigan	10	10	3	3	30.0	30.0
Minnesota	10	10	1	1	10.0	10.0
Missouri	10	10	3	3	30.0	30.0
Mississippi	10	10	3	3	30.0	30.0
Nebraska	10	10	4	4	40.0	40.0
New York	10	10	2	2	20.0	20.0
North Dakota	10	10	3	3	30.0	30.0
Ohio	10	10	4	3	40.0	30.0
Oregon	10	10	2	2	20.0	20.0
Pennsylvania	10	10	5	3	50.0	30.0
South Carolina	10	10	2	2	20.0	20.0
South Dakota	10	10	2	2	20.0	20.0
Tennessee	10	10	4	4	40.0	40.0
Texas	10	10	4	4	40.0	40.0
Vermont	10	10	5	5	50.0	50.0
Virginia	10	10	1	1	10.0	10.0
Washington	10	10	2	1	20.0	10.0
West Virginia	10	10	2	2	20.0	20.0
Wisconsin	10	9	5	5	55.6	55.6
	331	327	105	89	32.1	27.2

a

The number of valid mailings equals total mailings minus invalid mailings. A mailing was designated as invalid if the packet was returned as undeliverable.

b

The number of usable mailings equals total mailings minus unusable mailings. A response was deemed unusable if (a) the receiving office refused to participate; (b) the responses were overly confusing, illegible, or inconsistent; (c) the extent of missing data was excessive; or (d) the completed survey was received too late to be included in the analysis.

Due to the lack of definitional specification in the statutory language of many of the review parole codes, mechanisms for victim notification and participation were not clearly delineated. Furthermore, dramatic variations in codified procedures led project staff to doubt the possibility of constructing a questionnaire that could meaningfully tap the diverse experiences of the releasing bodies. Consequently, an alternative data collection technique was instituted. Instead of the primarily fixed answer format of the probation and prosecutor surveys, an effort was made to schedule a telephone or in-person interview with a parole administrator or board member in each jurisdiction. Because decisionmaking is a centralized state responsibility and the number of states with victim oriented legislation was deemed manageable, neither intra- nor interstate sampling was necessary.

A letter was mailed to the Chairperson or Executive Director of the parole board in each of the identified states. Approximately 1 week later, the project director initiated telephone contact with each of the addressees. The purpose of this contact was threefold. First, it allowed the researcher to explain project objectives, establish rapport, and respond to any questions the staff person might have. Second, in the event that the addressee did not consider himself or herself to be the most knowledgeable person to assist with the study, the conversation permitted the identification of a more appropriate interviewee. Finally, the director was able to schedule the interview for a mutually agreeable date and time. Contact persons were advised that, absent a stated preference to the contrary, interviews would be taped so as to maximize flexibility in questioning. Confidentiality of responses was assured in all cases.

Interviews ranged in duration from 20 minutes to 2 hours. Among other things, parole personnel were asked to briefly describe the passage of victims' rights legislation in the jurisdiction and the range of options for victim participation in parole decisionmaking. They were also requested to estimate the extent to which victims

utilize these opportunities, and then were invited to comment upon the effect of victims' rights legislation on parole board policies and operations.

Upon completion of each interview, a state narrative was drafted. This document synthesized information gleaned from the taped interview, the legislative search, and the review of administrative rules. In several instances, where the accuracy of substantive or procedural assertions was in question, the narrative was forwarded to the interviewee for verification and comment. Finalized narratives provide descriptive information on (a) the legislative history of the enabling statutes; (b) procedures, prerequisites, and time frames for victim notification; (c) modes of victim participation; (d) disclosure of oral and written victim statements; and (e) victim notification of, or participation at, other postsentence proceedings. These narratives are presented in Appendix H.

During the 10 month period, October 1986 through July 1987, at least one representative from 35 of 41 identified parole boards was interviewed by the project director. Of these, 33 interviews were conducted by telephone and two were conducted in-person. In five of the jurisdictions where interviews could not be scheduled, draft narratives were prepared and forwarded to parole personnel for review. Staff in four of these sites returned the materials with revisions. For a detailed listing of the nature of staff contacts with parole personnel, see Table 4.

Table 4

Nature of staff contacts with parole personnel, by state

<u>State</u>	<u>Telephone interview</u>	<u>In-person interview</u>	<u>Staff response to draft narrative</u>	<u>No contact</u>
Alabama	x			
Alaska	x			
Arizona	x			
Arkansas	x			
California			x	
Colorado	x			
Connecticut	x			
Delaware	x			
Florida				x
Georgia		x		
Hawaii	x			
Idaho	x			
Illinois -	x			
Indiana				x
Iowa	x			
Kentucky			x	
Louisiana	x			
Maryland	x			
Massachusetts	x			
Michigan	x			
Minnesota				x
Missouri	x			
Nebraska			x	
Nevada	x			
New Hampshire	x			
New Jersey	x			
New Mexico	x			
New York		x		
North Carolina				x
North Dakota			x	
Ohio	x			
Oklahoma	x			
Oregon	x			
Pennsylvania	x			
Rhode Island	x			
South Carolina	x			
South Dakota	x			
Tennessee	x			
Texas	x			
Utah				x
Virginia	x			
West Virginia	x			
Wyoming	x			

CHAPTER 4  
PROCESSES FOR VICTIM PARTICIPATION  
IN PRESENTENCE PROCEEDINGS

This chapter presents the findings of the surveys distributed to probation administrators and prosecuting attorneys. Because both the design of these surveys (fixed format vs. open-ended) and the nature of the information sought (presentence vs. postsentence victim involvement) differ markedly from the survey of parole personnel, the findings of the third jurisdictional survey merit separate attention. Accordingly, victim participation at parole proceedings is discussed in Chapter 5.

Probation and prosecutor survey findings are presented in five sections. The first two sections describe the emergence of two general models of victim involvement in judicial decisionmaking and outline three formats for VIS presentation. A third section investigates the role of the preparing agent and the victim in determining the extent of VIS preparation in responding jurisdictions. Examinations of the substance and breadth of VISs are the focus of a fourth section. In particular, objective and subjective measures that may be included in an overall assessment of crime impact are presented here. Following this discourse on VIS contents, the reader's attention is directed to a discussion of methods of VIS preparation. More specifically, this final section centers on four issues related to statement preparation: format, authorship, derivation, and verification.

**Models for Victim Participation**

As outlined in Chapter 3, two general models of formalized victim involvement have emerged. One model involves the victim by requiring or allowing the preparation of a written VIS. This statement typically includes objective data on the effects of the crime on the victim, and may outline the victim's subjective feelings about the crime, the criminal, and/or a proposed procedural recommendation. A second model expands

upon the first model by granting the victim the right to allocution. Like its written counterpart, this interlocutory opportunity may be limited to an objective delineation of crime impacts. It may, however, include subjective victim commentary.

Victim involvement in presentence proceedings is generally thought of in terms of formalized participatory options that are available postconviction. A discussion of the victim role in the judicial process cannot, however, overlook or downplay the significance of formal victim contacts at earlier criminal justice decision points. As reported by prosecutors and displayed in Table 5, both oral and written VISs have also been employed prior to pretrial release decisions, plea negotiation sessions, and the judicial consideration of a negotiated plea. At pretrial release hearings, written statements may be submitted by victims in just under 13 percent of responding jurisdictions. As the prosecution advances to the plea negotiation phase, victim submission of a written statement becomes a possibility in twice as many sites. Another substantial increase is seen in the proportion of sites that permit written VISs prior to the acceptance of a negotiated plea.

A similar pattern is seen in the relationship between victim allocution and prosecution progress. While victims in less than 10 percent of the sampled jurisdictions may address the judge prior to the commencement of plea sessions, this figure jumps to 33 percent once a plea has been negotiated and to 82 percent at a sentencing hearing.

Victim consultation, while not a formal participatory option is, nevertheless, a well-established mechanism by which a victim can contribute to criminal justice decisionmaking. Victim opinions and/or recommendations may be sought and transmitted in a variety of fashions. In a small number of jurisdictions prosecutors are directed, by law or agency policy, to consult with a victim prior to charge selection, a decision of nolle prosequi, or pretrial release decisions. More commonly, a prosecutor's decision to seek informal victim input at these preconviction decision points is a personal one. Sampled prosecutors noted that informal victim-prosecutor consultation

Table 5

Participatory options available to crime victims  
at selected criminal justice decision points,  
as reported by prosecuting attorneys

[Percent]

Prior to pretrial release decisions	
Consultation with prosecutor	43.8
Submission of written VIS	12.5
Allocution	8.0
Prior to negotiation sessions	
Consultation with prosecutor	85.4
Submission of written VIS	26.4
Allocution	5.6
Prior to acceptance of negotiated plea	
Consultation with prosecutor	92.1
Submission of written VIS	44.9
Allocution	33.0
Prior to sentencing	
Consultation with prosecutor	91.0
Submission of written VIS	87.6
Allocution	82.0

Figure 1

Frequency of prosecutorial consultation with victims at various criminal justice decision points, as reported by prosecuting attorneys

Prior to recommending a defendant for a pretrial intervention or diversionary program

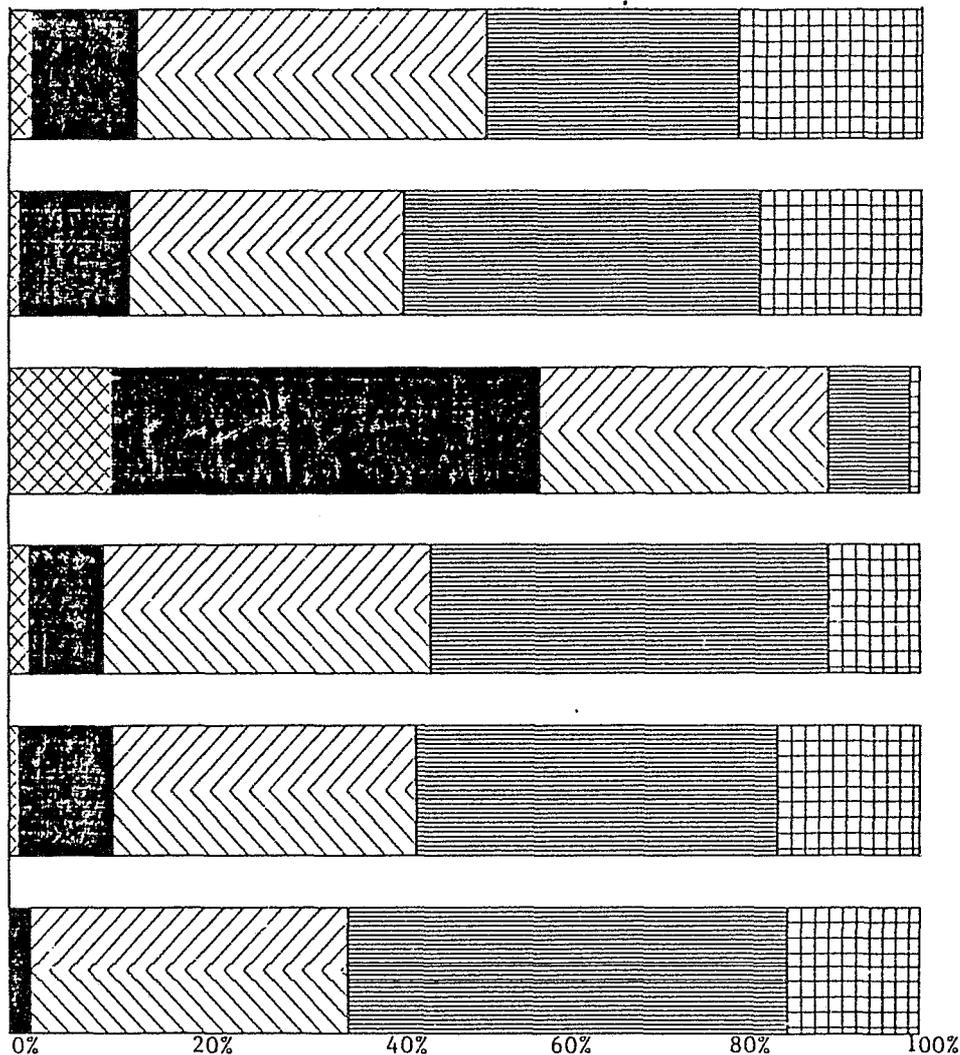
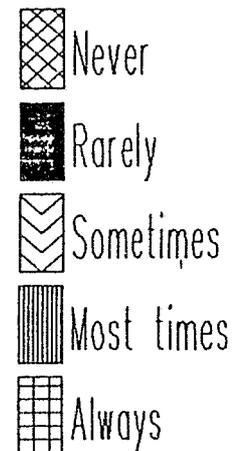
Prior to a decision to nolle prosequi

Prior to charge selection

Prior to entering into plea negotiations

After a plea has been negotiated but prior to the court's acceptance of the plea

Prior to sentencing



Percent of responding jurisdictions

is widely adopted and is available to victims far more more often than are the more formalized participatory models.

Victim-prosecutor consultation can, theoretically, enhance a victim's role in all phases of the judicial process if (a) prosecutors do, in practice, allow victims to comment upon proposed procedural recommendations; and (b) victim information is seriously weighed in the decisionmaking process. How do these contingencies translate into practice?

Figure 1 attempts to address the first of these contingencies by graphing the frequency of victim-prosecutor consultation at six presentence decision points. As reported by the survey respondents, consultation is least likely to occur prior to charge selection. At this point, the majority of respondents indicate that they "never" (11 percent) or "rarely" (47 percent) seek victims' opinions. Prosecutors claim that consultation is most frequently employed prior to sentencing, occurring "most times" (48 percent) or "always" (15 percent) at this juncture.

Little information is available about the second contingency. Although prosecutors observe that they give "some weight" (62 percent) or "a lot of weight" (38 percent) to victims' preferences or recommendations when making pretrial or plea decisions, the actual weight given to this commentary by prosecutors and judges is an unknown quantity.

### **Presentational Formats**

Based on the formal participatory models described above and in Chapter 3, three formats for the presentence presentation of victim impact statements have been authorized and implemented throughout the United States. These formats include:

1. Written, introduced as a component of, or an attachment to, the presentence report;
2. Written, introduced as a separate statement at the sentencing hearing;  
and
3. Oral, introduced as a separate statement at the sentencing hearing.

The preparation of a VIS within, or attached to, a presentence report, is statutorily authorized or mandated in 42 states. The introduction of independently written statements at sentencing (i.e., statements other than those included with the presentence report) is permitted in 24 states. And, in 32 states, victims are entitled to or may be granted an interlocutory opportunity prior to sentence imposition.

Typically, the format that is adopted in any jurisdiction for the presentation of a written VIS reflects the working environment of the preparing agency. Where responsibility for statement preparation lies with probation staff, for example, the first of these methods is the most frequently employed. As shown in Figure 2, 81 percent of responding probation administrators indicated that VISs are routinely incorporated within presentence reports or are appended to these court documents. The overwhelming adoption of this presentational format is no doubt due, in large part, to the relative ease and inexpense in preparation, the nondisruptive nature of its introduction, and the fact that similar statements have, for many years, been included in presentence reports.

Not surprisingly, prosecuting attorneys volunteered very different responses to this survey item. Although slightly over half observed that presentence reports were the operational vehicle for VIS presentation in their jurisdictions, 40 percent of the prosecutors reported that they relayed written victim input to the court independent of the PSR.

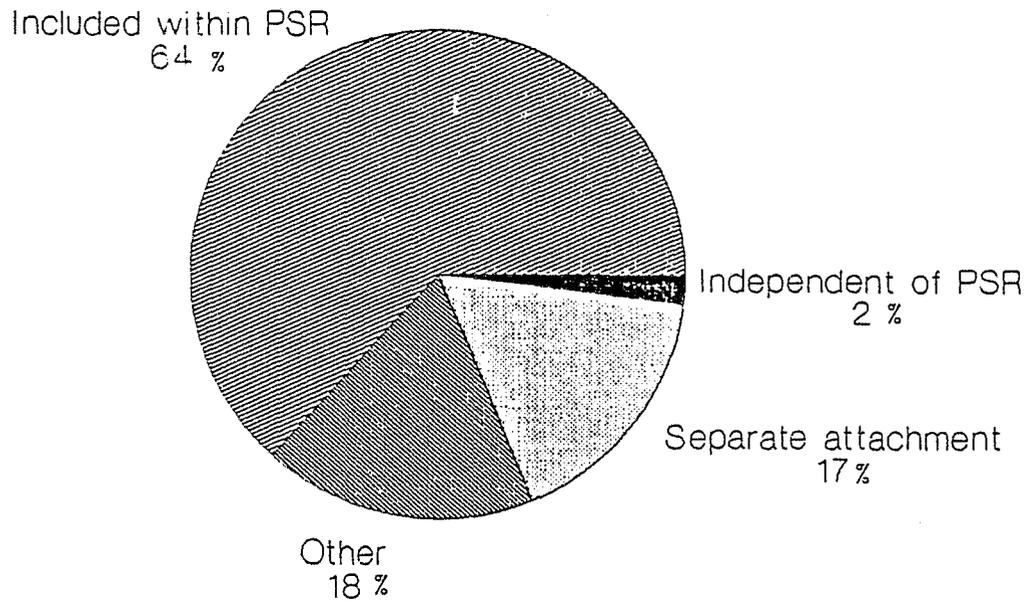
## **The Extent of VIS Preparation**

### **Agency Preparation**

For over four-fifths of the probation administrators and half of the prosecutors, the standard procedure for submitting a written VIS for judicial consideration is as an attachment to, or a component of, a presentence report. This poses an interesting question. If a presentence report is not prepared (either because a presentence investigation is not mandatory or because a defendant waived his or her right to such a

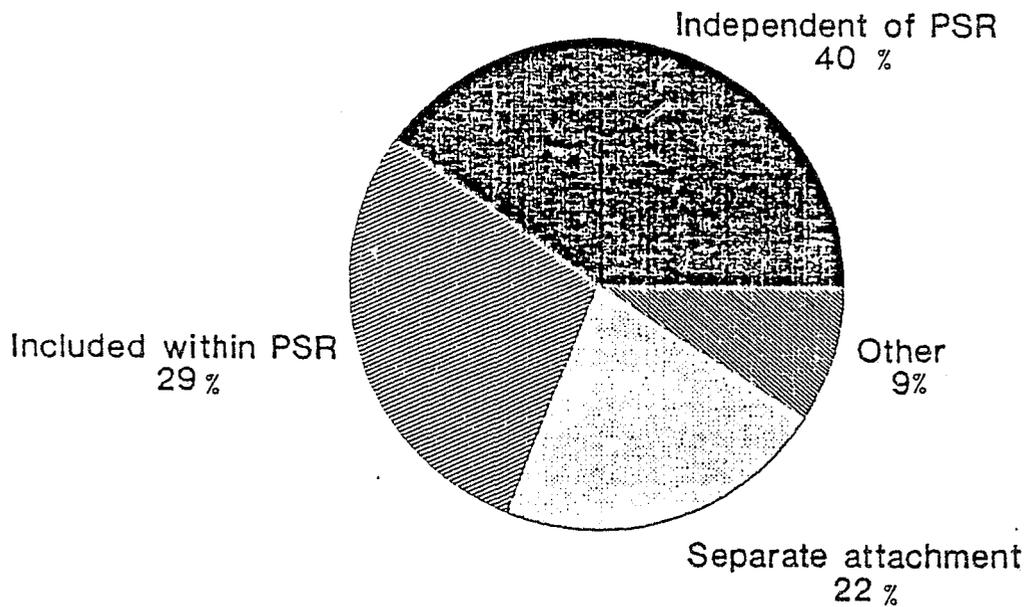
Figure 2

Standard method for presentation of written VISs for judicial consideration at sentencing, by office of preparation



VISs prepared by probation staff

[N=113]



VISs prepared by prosecutorial personnel

[N=68]

report), is the opportunity for victim input compromised? In an effort to shed light on this situation, probation staff were asked to comment specifically on the interrelationship between the preparation of PSRs and the preparation of VISs.

As reported by these officials, a defendant has a legal right to a presentence report in 88 percent of the local jurisdictions. This right may be waived by the defendant in just under three-fourths of these sites. In the event that a defendant does waive this right, 74 percent of the probation administrators indicated that local policy allows for the independent preparation and presentation of a VIS at the request of either the victim, the court, the defense attorney, or the prosecuting attorney. When asked if, at the present time, VISs are, in practice, prepared in felony actions for which no PSRs are prepared, a surprisingly low 22 percent responded in the affirmative.

At first glance, the above cited figures may be alarming. However, other statistical information on the extent of VIS preparation by prosecutors and probation staff sheds further light on this topic.

Prosecuting attorneys reported that VISs are currently being prepared in approximately 61 percent of felony actions. The corresponding figure that was supplied by probation administrators was substantially higher. While probation administrators in 21 jurisdictions acknowledged that VISs were prepared for 50 percent or fewer felony actions (regardless of whether or not a presentence investigation was conducted), the distribution is highly skewed and a much greater completion rate was reported by the majority of respondents. On average, probation respondents claimed that victim statements were prepared for over three-fourths (78 percent) of all felonies; interestingly, 36 percent of these departments noted that VISs had been completed for every felony action.

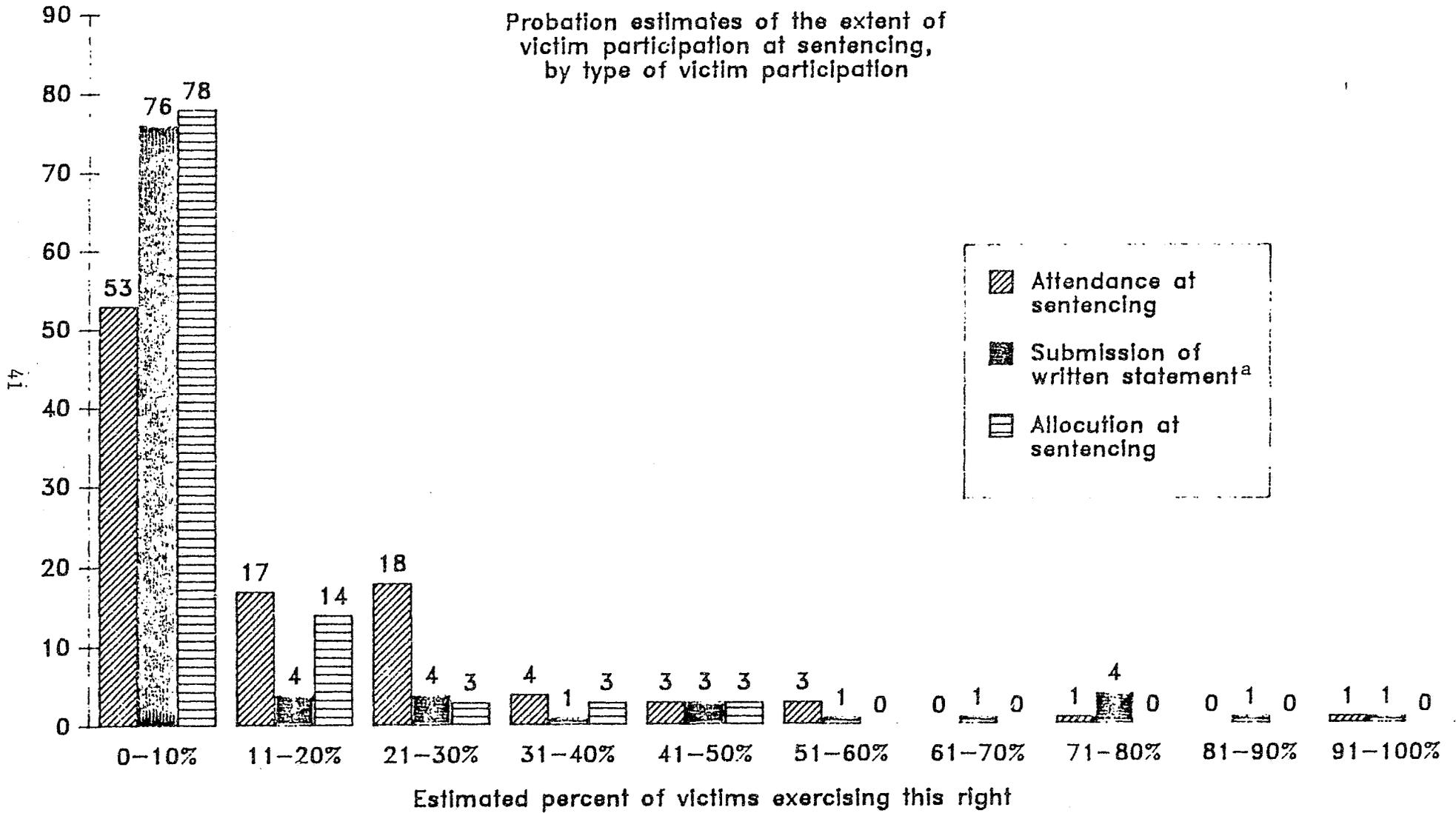
### **Victim Preparation**

In all responding sites (from both jurisdictional surveys), the victim is legally entitled to attend the sentencing hearing. The victim has a right to present a written

Percent of jurisdictions

Figure 3

Probation estimates of the extent of victim participation at sentencing, by type of victim participation



<sup>a</sup> Other than statement within, or attached to, the presentence report

statement (other than the statement in the PSR) to the court at the time of sentencing in 86 percent of these locales. Victim allocution, although an opportunity in 161 sites, was reported to be a matter of right in only 57 percent of the responding jurisdictions.

As graphically displayed in Figure 3, victims seldom employ these participatory options. Overall, probation administrators estimate that (a) fewer than 18 percent of victims are in attendance when their offenders are sentenced, (b) independent written statements are submitted by under 15 percent of crime victims, and (c) where allocution is a statutory right, oral statements are presented by just over 9 percent of crime victims. As might be expected, those persons most likely to participate at sentencing are the victims, or the families of victims, of violent crimes and of sexual assaults.

It may be argued that probation administrators are not in a position to accurately estimate the level of victim attendance and participation at sentencing proceedings and that, consequently, the reliability of the above statistics may be in question. In reply, it must be noted that the prosecutor survey produced comparable findings. While prosecutors' estimates of the proportion of victims attending sentencing hearings (26 percent) exceeded the corresponding probation estimate, estimated levels of victim allocution (13 percent) and independently written statements (15 percent) were notably similar to those reported by probation administrators.

Assuming that the participatory void suggested by the lower than expected participation levels is an accurate reflection of the extent of victim involvement at sentencing, to what can these figures be attributed? Although this study was not designed to examine this question, three hypotheses are posited here.

In the jurisdictions reporting minimal levels of victim input it is possible, first, that victims are unaware of participatory options. Indeed, when respondents were asked to identify the biggest problem encountered in the preparation of VISs, the most frequently mentioned problem by both probation staff and prosecutorial personnel was

difficulty in notifying the victim of participatory opportunities. Probation officers attributed their failure to contact victims to inaccurate or incomplete address information. Prosecutors, on the other hand, cited the lack of time and/or staff.

A second explanation is that victims, although advised of these opportunities, are discouraged, or at least not actively encouraged to participate. A review of victim notification letters sent by probation staff requesting that the victim call the probation office during specified hours reveals that many of the communications are not very clear in stating the purpose of such contact. Some notices do not mention the possibility of VIS preparation or the use of such a statement, if prepared.

A third hypothesis is that victims, aware of the participatory opportunities prior to sentencing, choose not to participate. This conscious nonparticipation may be indicative of (a) a lack of interest, (b) the fact that victims are not sufficiently convinced of the importance of their input, or (c) victim acceptance of current sentencing patterns in the local jurisdiction. Although this third explanation was voiced by some respondents, it was clearly a minority position.

## **VIS Contents**

### **Substance**

The criminal justice system has long acknowledged that crime can strike a major economic blow to its victims. In the 1960's, legislatures responded by establishing state compensation programs and by encouraging the expanded use of restitution as a sentencing option. The use of compensation and restitution relied on objective measures of victim loss, generally determined by the monetary value of items stolen or destroyed, lost wages, and medical expenses.

Undeniably, the impact of crime on a victim extends beyond economic loss. The psychological and social ramifications of victimization have been well documented in social science and psychological literature. These psycho-social effects are not, however, easily quantifiable. Consequently, claims of psychological or social damages are resistant to verification and rebuttal.

In creating an overall assessment of crime impact, which measures are to be included? Should such an assessment be limited to objectively calculated and verifiable costs? Should subjective evaluations of a victim's emotional trauma be allowed as a measure of victim harm? To what extent should a victim's fear of revictimization be available for judicial review? Is the VIS an appropriate forum for victim commentary on a proposed plea or sentence agreement? Should a victim be permitted or encouraged to submit his or her own sentence recommendation?

State legislatures have responded to these questions in diverse fashion. Appendix A, a summary of statutes and policies that authorize VISs within presentence reports, identified 9 states (California, Montana, Nebraska, New Hampshire, Oregon, Rhode Island, Tennessee, Vermont, and Wyoming) that either do not provide any guidelines for VIS content or that refer only vaguely to "a statement relating to the sentencing", the "victim's comments on the offense", or a "description of victim harm." Of the 42 states whose legislation permits or requires the inclusion of victim statements in PSRs, 28 specify the inclusion of physical impact information, 27 allow emotional/psychological impacts, 33 allow financial impacts, and 15 specify social ramifications; 16 specifically provide for the inclusion of a victim's sentence recommendation or a victim's opinion on a sentence or restitution proposal.

A parallel review of the 38 jurisdictions in which victims may present an oral or written VIS at sentencing (see Appendix B) reveals similar results. Four states (Colorado, Maryland, New Mexico, and North Carolina) do not provide any guidance to statement preparers. Codes in Idaho and Rhode Island are only slightly more informative, noting generally that a VIS is to include a statement of the impact which the defendant's conduct has had on the victim. In Delaware, prosecutorial policy focuses on contextual exclusion rather than inclusion. A memorandum from the State Prosecutor, dated 11/14/83, specifies that photographs and written materials may not be submitted by the victim at sentencing. Although the victim may allocute at this

hearing, there are no guidelines as to what may or may not be expressed in oral testimony.

The permissible, mandated, and prohibited contents of VISs, as reported by probation administrators and prosecuting attorneys, are displayed in Tables 6 and 7, respectively. The data indicate that (a) economic impacts, particularly medical expenses and the cost of lost, stolen, or destroyed property, and (b) assessments of the seriousness and permanence of physical injuries, are the pieces of information that are most likely to be required as part of any impact assessment. This finding is consistent with the development of societal efforts to identify and respond to victims' needs, primarily by focusing on a determination of restitution amounts. As relatively objective measurements of victim harm, these are the only four items whose inclusion is not explicitly prohibited in any responding jurisdiction.

An assessment of psycho-social impacts, while permissible in nearly every jurisdiction, is required far less often than are assessments of physical or economic impacts. This shift in emphasis may reflect the reluctance of courts to commit themselves to the documentation or consideration of information about which there is no professional consensus.

Do respondents' reports of VIS contents reflect the actual contents of these written documents? Because standardized VIS forms are employed in such a large proportion of sites (see discussion, p.51,infra), project staff recognized that this issue merited further attention. Accordingly, probation administrators and prosecutors were asked to provide copies of VISs utilized in their jurisdictions. Fifty probation departments and 38 prosecutors' offices complied with this request.

A selection of sample VISs are presented in Appendix I. This review of standard VISs, for the most part, confirmed the relative employment of assessments outlined in Tables 6 and 7. All of the submitted forms incorporate or, indeed, prioritize, a calculation of the victim's financial losses. Parallel assessments of physical harm are

Table 6

- Information and assessments for inclusion in an oral or written VIS to be presented at sentencing, as reported by probation administrators

[Percent]

<u>Information</u>	<u>Must be included</u>	<u>May be included</u>	<u>May not be included</u>
Identification of victim	71	25	5
Subjective commentary			
Victim summary of offense	28	68	4
Victim opinion of offender	25	72	3
Victim fear of revictimization	26	71	3
Victim opinion on restitution	54	46	1
Victim opinion of sentence recommendation	26	68	6
Victim's own sentence recommendation	26	62	12
Economic impact			
Medical expenses	65	35	0
Value of lost, stolen, or destroyed property	65	35	0
Direct loss of earnings	45	52	4
Indirect loss of earnings	26	69	6
Insurance compensation	53	46	1
Physical impact			
Seriousness of physical injury	63	37	0
Permanence of physical injury	61	39	0
Psychological impact			
Emotional or psychological injury	53	47	0
Request for psychological services	41	57	2
Change in personal welfare	35	65	0
Change in familial relationships	28	71	1
Other information			
Letters from employers	7	86	8
Letters from crime witnesses	9	83	9
Letters from family members	7	88	6

Table 7

Information and assessments for inclusion in an oral or written VIS to be presented at sentencing, as reported by prosecuting attorneys

[Percent]

<u>Information</u>	<u>Must be included</u>	<u>May be included</u>	<u>May not be included</u>
Identification of victim	74	26	0
Subjective commentary			
Victim summary of offense	21	72	7
Victim opinion of offender	13	85	3
Victim fear of revictimization	13	87	0
Victim opinion on restitution	24	75	1
Victim opinion of sentence recommendation	18	79	3
Victim's own sentence recommendation	15	82	3
Economic impact			
Medical expenses	41	59	0
Value of lost, stolen, or destroyed property	39	61	0
Direct loss of earnings	36	63	1
Indirect loss of earnings	26	70	4
Insurance compensation	30	67	3
Physical impact			
Seriousness of physical injury	45	55	0
Permanence of physical injury	43	57	0
Psychological impact			
Emotional or psychological injury	33	66	1
Request for psychological services	24	72	4
Change in personal welfare	23	76	1
Change in familial relationships	18	79	3
Other information			
Letters from employers	8	85	8
Letters from crime witnesses	11	79	11
Letters from family members	9	88	3

recorded less often, and measures of psychological and/or social harms are oftentimes attenuated or missing altogether. To an even greater degree, subjective victim commentary on fear of reprisal from the defendant, sentencing recommendations, or attitudes towards the criminal justice system may be neither invited nor permitted.

### **Breadth**

A related question asks whether the contents of a VIS should be specifically limited to include only those harms directly attributable to the offense for which the defendant is being sentenced. There is minimal consensus as to VIS breadth. Of those officials who responded to this question, 58 percent of the probation officers and 54 percent of the prosecutors stated that the VIS could relate to all crimes originally charged. In the remaining jurisdictions, the contents of the VIS are to pertain only to those crimes for which the defendant is currently being sentenced.

### **Methods of Preparation**

Regardless of statement content, the validity and potential impact of a VIS can be affected by four issues related to the preparation of the statement: format, authorship, derivation, and verification.

#### **Preparational Format**

Oral statements - The procedure by which a VIS is prepared for presentation raises some interesting questions about the comparability of VISs within and between jurisdictions. Clearly, oral statements can have a dramatic impact on a sentencing judge. In addition to relaying a detailed account of the victimization, a personal appearance by the victim can carry an emotional appeal that may not be similarly conveyed by a written statement. And, while this individualized approach may provide information that the judge deems useful or insightful, the format does not allow practitioners or researchers to reliably assess the relative effect of the transmitted information on the sentencing decision. Moreover, there is real concern that the impact of the presentation may prove to be more determinative than the impact of the crime itself in the assignment of criminal penalties.

Written statements - Although victim allocution is an option in 32 states, written statements are statutorily permitted or required in all but three jurisdictions (see Appendices A and B). Prosecutors identified five major variations in the procedures by which these materials are prepared. In some jurisdictions, the victim authors a letter which is either presented unabridged at sentencing (in conjunction with, or independent of, a PSR) or is used by a preparing agent to complete a summary report (in conjunction with, or independent of, a PSR). In other sites, the victim completes a standard VIS form which, like a letter, may be presented in its entirety or may be referenced by a preparing agent in the preparation of a summary statement. A fifth variation entails the preparation of a summary report based on an interview or telephone conversation with the crime victim.

Jurisdictions adopt preparational formats for varying reasons. While the preparation of an agency-authored summary statement can better ensure that VISs include comparable pieces of information and present these items in a standard format for judicial review, such statement preparation can be both time consuming and costly. With court review of an independent victim statement, data comparability may be sacrificed for administrative efficiency. The use of standardized impact forms is an approach that attempts to best make use of available resources. System efficiency and data comparability may be fostered. The breadth of information obtained in this fashion may be compromised, however, by this attempt to describe diverse victimization experiences by a standardized format.

Because of the relative merits and demerits of each approach, and the preferences of particular victims, many jurisdictions employ multiple variations of these preparational formats. Prosecuting attorneys reported a fairly even division between jurisdictions that utilize a single procedural format (33 percent), dual formats (36 percent), or three or more formats (31 percent).

As outlined in Table 8, the most frequently employed format is the unabridged

Table 8

Procedure by which a written VIS is prepared for presentation at sentencing, as reported by prosecuting attorneys

[Percent]

Victim writes a letter which is presented in its entirety	53
Victim completes a standard VIS form which is presented in its entirety	69
Victim writes a letter which is used by the preparing agent to author the VIS	24
Victim completes a standard VIS form which is used by the preparing agent to author the VIS	15
Victim is interviewed by the preparing agent who authors the VIS	55

presentation of a standard VIS form. Over half of the responding sites indicated that victims could also submit independent letters or could, if they preferred, speak informally with a member of the prosecutor's staff who would then incorporate the victim's comments and opinions into a summary statement. It should not be surprising that agency summary of a completed VIS form is the least utilized preparational procedure. This is the procedure that most appears to entail a duplication of efforts.

Statements that are specifically designed to objectify indicators of victim harm (by means of a checklist, numerical rating scale, etc.) may be useful in reducing disparity in sentencing. This design would also allow for the simple computation of an impact score or ranking and would also allow for more rigorous research on the effect of VISs on sentencing decisions.

On the other hand, nonstructured impact statements might better reflect the nuances of specific offenses. This alternate design, focusing on case individualization rather than on system efficiency, may better serve the victim-oriented rationales of victim satisfaction and restoration.

Three-fifths of the probation administrators and over three-fourths of the prosecutors acknowledged the utilization of a standard form for the preparation of written VISs. Nearly all (96 percent) of the respondents described this form as fully or partially open-ended in format. Although two-thirds of the sampled officials indicated that they had experienced no problems with this form, others cited their local forms for not effectively reflecting victims' needs or interests, overburdening probation staff, or being too complicated, in whole or in part, for meaningful victim response (see Table 9). Both sets of officials agreed that the VISs should be lengthened rather than shortened so as to better serve the needs of the victim and the preparing staff. In particular, probation staff urged the expansion of those sections used to determine restitution amounts.

The diversity of VIS contents and formats, as demonstrated by the selection of

Table 9

Prosecutors experiencing problems with  
standardized VIS forms, by type of problem

[Percent]<sup>a</sup>

Problem

Does not effectively reflect the needs or interests of the victim	26
Does not effectively reflect the needs or interests of the criminal justice system	11
Overburdens staff responsible for VIS preparation	5
Too complicated for some victims to fill out correctly	37
Does not elicit sufficient information	47
Other	16

-----  
a

The basis for the computation of this figure is the total number of prosecutors reporting the utilization of standardized VIS forms in their jurisdictions.

VIS forms in Appendix I, reflects the lack of definitional precision in legislative and administrative authorizations of these materials. Although some states have designed standard forms that are to be utilized in all local courts, a more common scenario is the departmentalized development of VIS forms that are distributed by criminal justice personnel in individual counties, judicial districts, or probation territories. Consequently, there are both intra- and interjurisdictional variations in the extent and nature of recorded victim harms.

A review of the appended forms indicates that some are highly structured with clearly delineated topical areas. By providing explicit written guidance to the victim, these documents supply criminal justice personnel with detailed information that can be systematically recorded and analyzed. In contradistinction are those open-ended VISs that provide minimal guidance (but maximum flexibility) to the victim. Forms of this type are often used in conjunction with more structured economic assessment sheets that are to be completed if restitution claims are to be filed.

### **Authorship**

The following questions relative to the authorship of victim impact statements were posed in Chapter 2: Is the victim the most qualified or most desirable individual to assess the impact of crime upon himself? Alternatively, is a probation officer or a victim advocate a more capable candidate for this task?

Survey recipients were requested to identify both (a) the individuals who, in practice, shoulder primary responsibility for the preparation of written VISs, and (b) the individuals who the respondent believes, in theory, would be the most appropriate personnel to perform this function.

Practical attribution of responsibility - In practice, probation administrators observed that, in 92 percent of their jurisdictions, full or shared responsibility for statement preparation was attributed to a probation officer (see Table 10). Surprisingly, victim responsibility was mentioned by only one-fifth of these respondents;

Table 10

Authorship and derivation of written VISs to be introduced for judicial consideration at sentencing or restitution hearings, as reported by probation administrators

[Percent]<sup>a</sup>

Persons contributing to VIS

Victim	21
Probation officer	92
Prosecuting attorney	18
Victim service worker	5

b

Sources of information

Direct victim statements	94
Probation report summarizing information obtained from the victim	78
Independent probation investigation	46
Case information from police records	57
Case information from prosecution files	64
Insurance receipts	3
Other	3

a

Column entries may sum to more than 100 percent due to multiple responses.

b

If the victim is not the sole author of a VIS, the preparing agent must derive an assessment of crime impacts from other sources. This is a listing of sources of information from which probation administrators may derive the formal VIS that is to be presented for judicial consideration at a sentencing or restitution hearing.

victim service agencies were cited even less frequently, having been specified by only 6 respondents (approximately 5 percent).

The infrequency with which probation staff have victims author VISs is suggestive that the VIS for judicial consideration at sentencing or restitution hearings is primarily an agency prepared summary statement. Despite the fact that 59 percent of the probation officials stated that a standard VIS form is available, the above cited figures suggest that victim contact at these sites is used primarily as a tool for the probation officer in the preparation of a VIS as a component of the PSR. Recall from Figure 2 that 81 percent of all VISs in these locations are included within, or attached to, PSRs.

In sharp contrast, prosecutors note that victims contribute to VISs substantially more often. As outlined in Table 11, victim authorship is reported in 97 percent of the responding sites. This finding is consistent with the data depicted in Figure 2, indicating that the predominant method for VIS presentation in prosecutorial jurisdictions is other than as a section within the PSR.

Responsibility for VIS authorship is shared by victim advocates relatively frequently in prosecutorial jurisdictions (44 percent), but rarely in sampled probation sites (5 percent). This variable representation of victim service agencies may be attributed to a number of factors, three of which are briefly noted here.

An initial factor is the limited availability of these units. Despite strong vocal support for pilot projects targeting victim advocacy, only 28 percent of probation respondents (vs. 64 percent of prosecutorial respondents) cited the existence of a local program that assists in the preparation of VISs. It is important to note that the above finding does not preclude the possibility that victim service units with other agendas (e.g., procedural notification or the provision of child care, transportation, or moral support) may be operational in these sites. (see Table 12)

A second factor that may account for the diminished role of the victim service agency in VIS preparation is agency affiliation. Although a few of these victim service

Table 11

Authorship and derivation of written VISs  
to be introduced for judicial consideration,  
as reported by prosecuting attorneys

[Percent]<sup>a</sup>

<u>Persons contributing to VIS</u>	<u>In conjunction with plea negotiations</u>	<u>At sentencing or restitution hearings</u>
Victim	92	97
Probation officer	39	45
Prosecuting attorney	26	34
Victim service worker	47	44
b		
<u>Sources of information</u>		
Direct victim statements	93	95
Statements of family members	89	89
Case information from police records	61	74
Case information from prosecution files	59	72
Insurance receipts	67	75
Other	11	20

a

Column entries may sum to more than 100 percent due to multiple responses.

b

If the victim is not the sole author of a VIS, the preparing agent must derive an assessment of crime impacts from other sources. This is a listing of sources of information from which prosecuting attorneys may derive the formal VIS that is to be presented for judicial consideration at a sentencing or restitution hearing or in conjunction with plea negotiations.

Table 12

Existence, affiliation, and assistance  
of victim service agencies, as reported by  
prosecuting attorneys and probation administrators

[Percent]

	<u>Prosecuting attorneys</u>	<u>Probation administrators</u>
Jurisdictions with victim service agencies that assist in the preparation of VISs	64	28
<u>Agency affiliation</u>		
Law enforcement	2	6
Probation	2	12
Prosecuting attorney's office	88	70
Autonomous agency	6	6
Other	2	6
<u>Nature of assistance</u>		
Provide victims' addresses/ phone numbers	54	45
Interview victims for PSR	27	36
Prepare VIS for attachment to PSR	27	36
Prepare VIS for independent introduction	40	24
Assist victims with completion of standardized VIS form	81	15
Supply and process VIS forms	21	24

units were described by probation staff as autonomous agencies (6 percent), or as affiliates of local law enforcement authorities (6 percent) or the probation department itself (12 percent), the vast majority (70 percent) of these victim service agencies are affiliated with the prosecuting attorney's office. Because VISs are most often prepared in conjunction with a presentence report, the placement of an advocacy unit within an agency other than the agency conducting the presentence investigation may hinder the unit in its performance of this function.

Survey data lend some support to the above supposition. Respondents were presented with a brief listing of roles that a victim service agency might perform to assist in VIS preparation, and were asked to indicate which of the roles were performed by the local agency. The item cited most frequently by probation officials was the provision to the probation officer of the names and addresses of crime victims. This was the item least suggestive of active involvement with the preparation of VISs.

Again, the responses of the prosecuting attorneys vary markedly from the probation responses. While there is agreement that victim service units are located disproportionately within prosecutors' offices, the nature of assistance provided by these advocates is quite different. As reported by over four-fifths of the prosecutors, victim service workers play an active role in VIS preparation by assisting victims with the completion of standardized impact assessment forms.

A third explanation for the probation-prosecutor response variation may be survey construction. By simply checking a box, probation respondents were able to attribute authorship responsibility to the probation department, the prosecutor's office, or the victim. Victim service agencies were not, at that time, specifically mentioned on the itemized list. To be recorded, this response had to be volunteered within the "other" category. This omission was corrected before the prosecutor survey was distributed so that prosecutorial respondents were presented with a revised item listing and could simply check the box attributing authorship responsibility to a victim service unit.

Theoretical attribution of responsibility - For the most part, probation administrators concurred that their staffs were the most appropriate personnel to prepare VISs. Thirty-two percent of the sample did, however, express a belief that other personnel might be better suited to this task, with these responses evenly divided between the prosecuting attorney's staff and victim service agencies.

Prosecutors, on the other hand, were significantly less likely to feel that their staffs should be involved in the preparation of VISs. Although 22 percent of the respondents to this question agreed that prosecutors were best suited for this task, many more argued that prosecutors should not be involved. The reasons cited most often for this position were time constraints, inadequate training, and the need for VIS completion by a less biased party. Stated preferences for probation involvement were voiced by 19 respondents; 9 others opined the victim alone should shoulder this responsibility. The vast majority, however, observed that victim service units (regardless of their affiliation with the district attorney's office) employ the most appropriate personnel for VIS preparation.

Victim noncooperation - If a victim does not cooperate with a probation officer in the preparation of a written VIS, what other individuals, if any, are authorized to provide a statement on the victim's behalf? As displayed in Tables 13 and 14, the basis for victim noncooperation plays a major role in determining whether a surrogate VIS will be permitted. If the actual victim is unable to participate, due to death, age, or incapacitation, over 98 percent of all responding jurisdictions accept impact commentary from other sources, primarily from family members and legal representatives. A very different scenario presents itself if the victim refuses to participate with the preparing agent. In this situation, only 55 percent of the sampled sites provide for a nonvictim authored impact statement.

What purpose is served by these variations? What is the relationship between the theoretical underpinning of VIS legislation and policies for its implementation? If the

Table 13

Individuals authorized to provide a VIS on behalf of the victim at sentencing, by basis for victim nonparticipation, as reported by probation administrators a

	<u>Written VIS</u> <u>Victim unable</u> <u>to participate</u> (N=115)	<u>Written VIS</u> <u>Victim refusal</u> <u>to participate</u> (N=111)	<u>Oral VIS</u> <u>Victim unwilling</u> <u>to appear personally</u> (N=95)
Some person	113	61	82
Family member	108	44	50
Attorney	59	37	68
Victim advocate	31	19	22
Collateral professional b	7		0
Friend	3	1	0
Probation officer	2	1	4
Guardian	2	0	0
Insurance company	0	1	0
Judicial designee	0	0	2
No other person	2	50	13

a

Column entries may sum to more than the total due to multiple responses.

b

Includes physicians, psychologists, social workers, etc.

Table 14

Individuals authorized to provide a VIS on behalf of the victim at sentencing, by basis for victim nonparticipation, as reported by prosecuting attorneys a

	Written VIS		Oral VIS
	<u>Victim unable to participate</u> (N=76)	<u>Victim refusal to participate</u> (N=69)	<u>Victim unwilling to appear personally</u> (N=68)
Some person	75	38	48
Family member	71	23	29
Attorney	32	14	35
Victim advocate	35	18	21
Collateral professional b	26	15	13
Friend	6	4	0
Probation officer	22	18	19
Guardian	42	18	20
District attorney	0	0	12
No other person	1	31	20

a

Column entries may sum to more than the total due to multiple responses.

b

Includes physicians, psychologists, social workers, etc.

legislative or administrative purpose for VIS authorization is to improve criminal justice efficiency by providing decisionmakers with information detailing the impact of a crime on a particular individual, then pertinent impact information should be sought despite the inability or unwillingness of a victim to be the provider of this information. In such a case, the authorship of the VIS would be secondary. If, however, VISs have been authorized to serve the purpose of victim satisfaction or to facilitate the victim's restoration to a pre-crime state, these objectives may not be achieved by seeking nonvictim authorship of a statement.

As noted in an earlier section of this report, few victims exercise their right to allocution at sentencing. While there is no immediate explanation for this participatory void, one can not rule out the potential effect on the victim of confronting the defendant at this proceeding. It is difficult for many victims to acknowledge physical, psychological, and social trauma in the presence of friends. It may be even more disturbing to vocalize these sentiments if strangers, and the offender in particular, are present in the room. If the victim wishes to present a statement for judicial consideration, but is not willing to appear personally, some other person may appear on behalf of the victim in 86 percent of the probation jurisdictions and in 71 percent of the prosecutor jurisdictions. Tables 13 and 14 show that attorneys, followed by family members, are the most frequently authorized persons to speak for the victim.

### **Derivation**

While information included in a VIS may be drawn from any number of sources (e.g., police records, prosecution files, family or community statements), VISs in 94 percent of the responding jurisdictions are derived at least in part from direct victim statements. Indeed, it was reported that 98 percent of the preparing officers consult with crime victims "always" or "most times".

Despite this remarkable report of victim consultation, it was hypothesized that the actual method of victim consultation that was employed would have a marked effect

on whether or not impact information would be derived directly from a victim. As a simple test of this hypothesis, the survey asked respondents to note the way(s) by which victims are consulted, and to estimate the extent to which victims comply with these requests for information.

Three primary modes of victim consultation - personal interview, telephone interview, and mailed form - were targeted for examination. For each consultation mode, jurisdictional compliance rates ranged widely from 2 to 100 percent. Contrary to expectations, the overall likelihood that a victim would cooperate with a preparing agent was not, however, significantly influenced by the means by which the informational request was initiated. Where victim consultation is operationalized as a face-to-face interview, a mean compliance rate of 74 percent was computed. Similar rates were calculated when telephone contacts were employed (73 percent) and when a form was mailed to the victim (69 percent).

### **Verification**

As standards for victim impact statements evolve, emerging constitutional issues must be addressed (cf. McLeod, 1986). Clearly, a convicted offender has an interest in retaining his liberty status in the community. The imposition of an incarcerative term may constitute a grievous loss of liberty for the purpose of invoking 14th Amendment due process guarantees. If victim statements about crime impacts influence judicial decisionmaking in sentencing, should a VIS be subject to disclosure and challenge? If a defendant is not permitted to review the contents of this potentially damaging document, should probation staff be required to independently verify victim claims of financial, physical, or psychological harms?

There is general agreement on the issue of disclosure, with 88 percent of the sample indicating that all or part of the VIS is disclosed to the defendant (or attorney) prior to sentencing. Where local practice limits the sections of the VIS that are available for the defendant's inspection, the information that is most frequently shielded

is victim identification, the victim's own sentencing recommendation, and the victim's fear of revictimization.

Just under half of the jurisdictions allow for a defense challenge of the VIS prior to the sentencing hearing, and nearly all (95 percent) permit such challenges at the sentencing hearing. In 45 percent of the local sites, the defendant (or attorney) is entitled to cross-examine the victim as to statements included in the VIS, although this right is limited in approximately one-third of the responding courts to a debate of factual statements.

Independent verification of victim claims is of particular significance in those jurisdictions where a defendant's access to victims' statements is restricted or prohibited. Only 18 percent of the probation administrators reported that their staffs "always" verify factual information provided by the victim for inclusion in the VIS. In contrast, a similar proportion indicated that staff personnel do not, in practice, verify victim claims. In the remaining locales, independent verification is provided (a) "if time permits" (27 percent) or (b) under certain circumstances (34 percent), generally when restitution claims are filed.

## CHAPTER 5

### VICTIM PARTICIPATION AT PAROLE

This chapter examines the rationales underlying parole decisionmaking and traces the history of victim participation at this critical criminal justice stage. Data on policies and procedures for the implementation of authorizing statutes are presented, with a special focus on notification, participation, and disclosure provisions.

#### **Historical Overview**

The first indeterminate sentencing statute was enacted in New York in 1876. By 1922, 36 other states had followed New York's lead in instituting some mechanism for the conditional release of an offender. The emergence, in the 1920's of the medical model of criminal punishment, bringing with it the contention that offender treatment requires more than mere confinement, was rapidly gaining popularity.

No serious criticisms of the correctional system's attempts at rehabilitation were voiced for several decades. During the 1940's and 1950's, however, the observed failure of institutional programs to achieve their rehabilitative aims became a matter of public debate. Critics faulted legislators and correctional administrators for their quiescence in bridging the gap between rhetoric and action in the implementation of effective treatment modalities. It was argued that in order for the system to achieve its enunciated goal there needed to be an increase in financial allocations and a more efficient use of available resources.

In the early 1960's, criticism of the rehabilitative model began anew. The target of this second round of attack shifted from claims of operational mismanagement to concerns about the dysfunctional by-products of the rehabilitative ideal and of the indeterminate sentence. Outlining a three point slate for reform, critics demanded a concerted effort to eliminate disparity in sentencing, a lesser use of incarceration as a criminal punishment, and the imposition of shorter sentences where imprisonment was

deemed an appropriate sanction. Despite widespread dissatisfaction with operational considerations, the underlying assumptions of indeterminacy (i.e., that offenders can and should be treated) were not challenged.

By the following decade, the focus of the controversy had shifted yet one more time. Discussions of the optimal means for achieving the end result - crime reduction through offender reformation - had been replaced by heated debates over the propriety of the processes by which persons were selected for and subject to incarceration. Among other things, the rehabilitative ideal and its operative, incarcerative indeterminacy, were severely criticized for a failure to demonstrate treatment efficacy, the wreaking of psychological havoc on offenders uncertain of sentence durations, and a tolerance of procedural laxity within the institution. It was argued further that the exercise of unfettered discretion by correctional personnel in the setting of an inmate's release date resulted in grossly disparate sentences. Unlike reformers of an earlier era who may have attributed these procedural deficiencies to administrative misfeasance, or who may have considered these negative consequences to be offset by the benefits of the rehabilitative model, the new wave of reformers rejected the very premise of the positivist school of criminology. Emphasizing both offender and system accountability, reformers of the 1970's urged an immediate and comprehensive re-evaluation of the entire parole process.

The ensuing debate over the propriety of administrative discretion in the determination of institutional release dates was accompanied by a renewed interest in other purposes of sentencing and in alternative sentencing structures. As the penological pendulum began its swing from positivist sentencing theory back to that espoused by the proponents of the classical school of criminology, scholars and legislators began to review jurisdictional practices and to suggest changes. While there was general consensus about the need for injecting more consistency and more fairness into the sentencing process, there was considerably less agreement as to the most appropriate means for achieving this end.

Grounded primarily in the theory of retributive justice, the proposed sentencing structures reflected the following commonalities: (a) offenders should be punished for criminal behaviors; (b) punishment should be meted out uniformly; (c) the severity of the punishment should be established at the time of sentencing, i.e., there should be little or no postsentence discretion. The abolition of parole, and the concomitant adoption of some form of determinate sentencing structure, was heralded by many as a necessary and welcome implication of the rejection of the rehabilitative ideal (cf. President's Task Force, 1982).

To this end, one group of reformers urged the adoption of a system of nondiscretionary, nonparolable sentences derived from an assessment of risk and/or deserved deserved punishment (cf. American Friends Service Committee, 1971; Morris, 1974; Fogel, 1975). A more moderate stance was advocated by reformers who argued that calculation of a "just" sentence must be based upon more than the legal description of the offense. Proponents of presumptive sentencing and sentencing guidelines contended that justice in sentencing could be achieved by structuring or limiting discretion, but that discretion need not be abolished (cf. Twentieth Century Fund, 1976; von Hirsch, 1976).

### **The Retention of Parole Decisionmaking**

The extent to which paroling authorities will retain their discretionary release powers remains to be decided within legislative chambers. However, three interrelated statutory and administrative trends - legislative reluctance to abolish parole; an associated emphasis on structuring, rather than eliminating parole decisionmaking; and an expansion of information to be considered at parole hearings to incorporate victim input - suggest that the abolitionary forecasts of the previous decade may have been overstated. These observable trends are discussed in greater detail below.

#### **Reluctance to Abolish Parole**

Despite the recommendations of nationally acclaimed groups (cf. President's Task

Force, 1982) and an apparent willingness on the part of lawmakers to re-examine and modify sentencing policies, legislatures have been reluctant to completely abandon administrative discretion. As of January 1983, no state had established a legislatively fixed, nondiscretionary sentencing structure, and only nine states and the Federal system had taken any steps to eliminate the possibility of a discretionary parole board release (Bureau of Justice Statistics, 1983).

The observed lull in statutory amendment mirrors indecision on the part of practitioners and researchers as to the appropriate role of administrative decisionmaking in American penology. The Figgie Report on Parole (1985:11), for example, found that, although half of the polled lawyers and two-fifths of the surveyed judges noted that the current parole system should be reorganized, only 10 percent of the lawyers and 2 percent of judges believed that parole should be abolished. Moreover, research conducted in jurisdictions where determinate sentences have been reintroduced has suggested that anticipated changes have not been evidenced, leading several investigators to characterize the call for the abolition of parole as a reform failure (Cullen and Gilbert, 1982; Goodstein and Hepburn, 1985).

What happened to the fury of the parole abolition movement? Why has the driving force of the "law and order" theme, with its emphasis on retributive justice, been harnessed?

There are no simple answers to these questions. One argument in support of the retention of parole decisionmaking focuses on perceived benefits to the criminal justice system. Those who view parole essentially as a tool for administrative maintenance have observed that parole functions as part of an elaborate system of checks and balances. In the event of overcrowding, discretionary release can serve as an administrative safety valve by reducing institutional populations. As representatives of the executive branch of government, paroling authorities can exercise a level of control over judicially or legislatively imposed sentences that are considered excessive. Even

in the absence of explicit parole guidelines (discussed below), the exercise of administrative discretion at parole can reduce disparity in sentencing (Weninger, 1985). With parole guidelines, the prospect of more equitable sentences is magnified (American Friends Service Committee, 1971; Gottfredson, Wilkins, and Hoffman, 1978; Gottfredson, 1979).

### **Structuring of Parole Discretion**

The inability of correctional personnel to reliably predict offender dangerousness or to assess an inmate's rehabilitative potential can, and has, contributed to the imposition of substantially dissimilar sentences on similarly situated offenders. Rather than eliminating discretionary release powers, however, an increasing number of jurisdictions are taking measures to limit and structure parole discretion or, at a minimum, to stress administrative accountability for release actions.

It has been suggested that discretion can be structured through the adoption of explicit guidelines. In 1974, the U.S. Parole Commission became the first authority to adopt such guidelines; and, although the Federal system has just recently retreated from this stance, a national study reports that 14 states have since moved in this direction (Bureau of Justice Statistics, 1983).

The formulation of explicit guidelines entails an initial identification of dimensions deemed relevant to the release decision. Offense severity (generally determined on the basis of a rank that attaches to the offense's legal description), parole prognosis (a sum that reflects the applicant's cumulative score on a variety of items associated with success or failure on parole), and prior record are factors that are oftentimes utilized in the construction of guidelines. Where the cell entry at the intersection of the offender's ratings on the identified dimensions indicates a range of months, the paroling authority is free to consider other available information before electing a specified term from within the allowable range.

The method for calculating offense severity, the extent to which the paroling

authority is bound by the grid entries, and the nature of any additional information that may be considered by the paroling body is subject to jurisdictional variation. These variations are of particular interest in this discussion in view of the growing momentum of the victims' rights movement and the suggestion that an assessment of continuing victim harm might facilitate the exactment of retributive justice or contribute to a more reliable prediction of the rehabilitative potential or dangerousness of an offender.

### **Increased Victim Participation**

In Chapter 2, it was noted that legislation authorizing some form of victim input has received mixed reviews, with proponents of the participatory models citing a variety of benefits for both victims and the criminal justice system. That discussion of victim participation focused exclusively on rationales and mechanisms for victim participation prior to sentence imposition. In large part, this is due to the fact that there has been no parallel research on the consequences to the victim, the criminal justice system, and the offender, of victim input at parole. In the absence of evidence to the contrary, one can speculate that such victim input is beneficial to all affected actors. It can be argued that the restorative and satisfying effects of presentence victim participation are reinforced if an invitation for further participation is extended to the victim postsentence. Benefits to the criminal justice system may be forthcoming if overall victim satisfaction promotes victim willingness to cooperate with system functions in the future. Furthermore, and as previously noted, a victim may be able to provide the paroling authority with valuable information permitting it to operate more effectively.

The promotion of victim involvement as a mechanism for enhancing system effectiveness has been supported by seemingly incompatible factions, including advocates of both the classical and positivist schools of criminology. The point of convergence appears to be the common belief that the probability of just decisions will increase if victim input is considered.

From among the ranks of those who support the injection of victim input into the parole release mechanism are scholars and practitioners who maintain that rehabilitation and incapacitation are valid correctional goals. The President's Task Force on Victims of Crime (1982), although it considers the abolition of parole to be an inevitability, recommends that, in the interim, parole hearings be opened to the citizenry. At this public forum, information not available at the time of sentencing could be submitted for board review. Section 101 of its Proposed Legislation states that "if actual information submitted to parole boards by victims will enhance the ability of parole boards to make informed decisions about the danger posed by criminals seeking early release."

The above perspective has shaped public policy in at least one jurisdiction. Cal. Penal Code 3043, approved by Initiative Measure (Proposition 8) in 1982, requires the parole board, before rendering any decision relative to an inmate's application for release, to consider any victim impact statement and to include in its report an assessment of "whether the person would pose a threat to public safety if released on parole".

The possibility that victim commentary at the time of the parole hearing might contribute to the reliability of an assessment of present dangerousness is questioned by Ranish and Shichor (1985) who conclude that undue emphasis on positivist sentencing rationales may compromise the constitutional rights of offenders. In charging that victim allocution serves no purpose other than to intimidate decisionmakers into extending prison terms beyond socially justifiable limits, they write this about parole hearings in California:

"The [enabling legislation] is clearly designed to intimidate judges and parole board members. It attempts to influence these professionals in one specific policy direction - toward harsher punishment or denial of parole... A victim can rarely contribute to any substantive information regarding the offender's current status or the degree to which there has been any rehabilitation by the criminal in question... The goal of the initiative is to limit the options for criminal suspects and defendants and insure a greater control over the sentencing and the release of offenders.

In ultimate terms, this entire effort is a political one, an attempt to direct public policy toward a specific, conservative direction" (pp. 54-56).

Parole retention has also been supported by classical school criminologists. Efforts to retain parole reflect a growing awareness that administrative discretion and the imposition of "just deserts" may not be antithetical. The retributive justice model of the 1970's posited that the severity of an imposed punishment was to be proportionate to the severity of the triggering offense. At that time, it was generally accepted that a calculation of offense severity should take into account the totality of the harm caused by the commission of the crime, and that this sum could be reliably determined at the time of sentencing. Contrary to the above supposition, an assessment of victim harm (and, thus, of societal harm) may not be completely ascertainable at the time of sentencing. The crime may have long-term consequences that either do not present themselves or do not develop until months or years after the crime's commission (Schneider, 1982; Waller, 1982). Consequently, the argument can be made that the most accurate determination of "just deserts" is a determination that considers any assessment provided by the victim of altered or newly realized crime impacts.

### **Proliferation of Enabling Statutes and Policies**

Whatever the merits of these arguments, the extent to which victim input into parole release decisions has been authorized has increased dramatically in the past few years. The rapidity of legislative changes in this area has been such that written materials citing statutory enactments are often out-of-date before publication. For example, Karmen (1984: 232-233), for presentation in his introductory victimology text, derives information from several sources and constructs a table which states that victim allocution at parole is an option in three states: Arkansas, California, and Massachusetts. A second document reviews legislation deemed current as of January 1984, and reports that victim allocution is authorized in seven states: the three above

mentioned sites plus Alabama, Connecticut, Nevada, and New Hampshire. This same source cites legislation authorizing the submission of written victim impact statements at parole in Alabama, Arizona, Arkansas, Connecticut, Massachusetts, Nevada, and Rhode Island (Woodard and Anderson, 1984).

Based on a review of existent legislation and of policy directives supplied by paroling authorities, Appendix C demonstrates that victim participation at parole proceedings is considerably more prevalent than was suggested by those earlier documents. As of August 1987, victim participation at parole is statutorily and/or administratively authorized in 39 states. In 38 of these locales, victims are entitled or authorized to submit written commentary; parole board acceptance of written statements is discretionary in an additional site. Allocution is a victim right or is routinely permitted in 30 states. In Florida, New Mexico, North Dakota, Ohio, and Texas, victims may, at the discretion of the board, appear personally to address the panel or its representative.

### **Processes for Victim Participation**

While nearly three-fourths of U.S. jurisdictions currently authorize some mode of active victim participation, policies permitting victim attendance at the actual parole hearing have not been so widely accepted. To date, only 26 states allow victim presence when release decisions are considered. Many parole administrators attribute this reluctance to open their doors to fiscal and temporal constraints. Noting that understaffed boards are already faced with staggering caseloads, it is feared that the introduction of additional voices will further paralyze the parole release mechanism.

### **Notification of Impending Proceedings**

Victims in Georgia, Hawaii, and Minnesota, although entitled to post hoc notification of a decision to release an inmate, are not entitled to advance notice of the hearing at which that decision is made. Where victim notification of impending hearings is statutorily or administratively required, provision of the notice is oftentimes

contingent upon the classification of the offense for which the offender has been convicted or the family's fulfillment of specified procedural prerequisites.

Offense classification - In over half of the states, authorized mechanisms for victim notification and participation are available to a victim of any felony for which parole is an option. In 15 sites, however, victim eligibility for legislated rights is determined by the seriousness of the offense. Codes in six of these states provide that certain postconviction rights exist only for victims of "violent crimes" or of specifically cited offenses (usually Part I crimes). Participatory rights in six other locales are limited to victims whose offenders' actions fall more generally within designated offense classifications (e.g., Class A, B, or C felonies). In the three remaining states, the manner by which victims can contribute to the release decision varies with the seriousness of the offense. While any victim (or, in some cases, any interested party) may submit a written statement for parole consideration, the right to attend or to testify at the release hearing attaches to a lesser included group.

The applicability of victims' rights may also hinge on the seriousness of the imposed punishment. Tennessee legislation, for example, specifies that victim notification of release hearings is required only in those cases where the offender has been sentenced to a term of 10 or more years in the penitentiary, regardless of the committing offense.

Where the nature or extent of legislated rights depends upon either offense classifications or the length of punishment, it should be apparent that the defendant's plea to a lesser charge may dilute or, indeed, negate a victim's right to be actively involved in the parole release process.

Procedural prerequisites - Victim notification may also be withheld by the victim's failure to satisfy one or more legally prescribed conditions. Three of these procedural prerequisites -- registration with the paroling authority, maintenance of a current address, and cooperation with criminal justice personnel -- were found to be fairly common contingencies within victims' rights legislation (see Table 15).

Table 15

Selected characteristics of victim notification provisions

	Number of states a
<u>Procedural prerequisites</u>	
Victim registration	28 b
Maintenance of current address	28 b
Cooperation with system personnel	5
<u>Source of notification</u>	
Parole board	34
Department of Corrections	2
Prosecuting attorney	2
County sheriff	1
Unspecified	2
<u>Method of notification</u>	
Mail	36 c
Phone	3
Hand delivery	1
Unspecified	3
<u>Notification time frame (prior to hearing)</u>	
Less than 15 days	7
15 to 30 days	6
30 to 90 days	19
Over 90 days	3
Unspecified	6

a

Column entries may sum to more than the total due to multiple responses.

b

Includes three states in which preregistration and/or address update mandates apply only to victims of specified offenses.

c

Includes three states that specify that notice is to be provided by certified or registered mail.

1. Victim registration -- Legislatures are divided on the issue of victim registration. In 11 states, notice of impending hearings is automatically forwarded to all eligible victims (i.e., victims whose offenders or victimizations satisfy criteria outlined above). In sharp contrast, victims in 25 states receive notification only if they have filed a specific request for such notice with the paroling authority. Finally, intermediary policies are in effect in Colorado, Massachusetts, and West Virginia. In these three locales, routine notice is mandated for certain classes of victims (victims of violent crimes, victims of offenders serving parolable life sentences, and victims of sexual offenses, respectively) while all other victims must comply with preregistration standards.

The two major approaches to victim registration reflect differing perspectives on the evolving relationship between the criminal justice system and the victim. Proponents of policies establishing automatic notice mechanisms contend that victim notification is a basic victim right and that the victim's claim to this entitlement should not be contingent upon the satisfaction of a simple procedural task.

Proponents of policies requiring preregistration for notification claim to be no less sensitive, and perhaps more sensitive, to basic victims' rights. Acknowledging the victim's right to be notified of proceedings affecting his or her case, these advocates also recognize a victim's right not to be so notified. In several jurisdictions where victim notification is automatic, parole administrators cited examples of victims who resented the unsolicited board notice as an intrusion into their personal lives. In large part, these were victims who either did not want to be reminded of the traumatizing incident or did not want their previously uninformed spouses or families to know that the victimization had occurred.

2. Maintenance of current address -- As reported by parole administrators, one of the most pressing problems relative to victim notification is the establishment of victim location. Due to the mobility of the American populace, the passage of time,

and the environmental reminders of some particularly heinous crimes, many victims have changed their residences since the commission of the crime. Where the paroling authority is mandated to notify the victim of impending proceedings, but there is no corresponding obligation on the part of the victim to keep the board apprised of any changes in address, attempts at notification can be especially problematic. What effort at victim location is minimally acceptable? If a letter mailed to the address indicated on the court records is returned as "addressee unknown", has a sufficient "good faith" effort been demonstrated? To what extent is the paroling authority liable if, after unsuccessful attempts at notification, the inmate is released and appears at the victim's doorstep?

In response to both the logistical problems and increasing liability concerns, a growing number of jurisdictions are advising victims that receipt of advance notification is contingent upon the victim's maintenance of an updated address in parole board files. At present, legislative enactments in 26 states carry similar provisions. In Ohio, in addition to alerting the board to any changes in address, the victim is legally responsible for advising the board, in writing, of (a) a current home telephone number; (b) a current business telephone number, if applicable; and (c) a listing of the days of the week and the hours of the day during which the victim can be reached at the numbers provided. A victim's failure to routinely update the requisite information could have dire consequences in view of the fact that advance notice of Ohio parole proceedings may be given by mail or by phone; by law, parole staff need only make three "good faith" attempts at phone notification.

3. Cooperation with system personnel -- Victim cooperation with system personnel is a third, and less commonly observed, statutory provision. This procedural prerequisite appears to compromise a victim's claim to presentence and postsentence rights if the victim's interactions with criminal justice system personnel are less than optimal. In Massachusetts, Missouri, and Pennsylvania, for example, notification and

participatory opportunities may be denied if the victim failed to report the victimization to law enforcement officials in a timely fashion, generally within five days of the crime's occurrence or discovery. In New Mexico and North Dakota, the victim is further required to cooperate fully with law enforcement and prosecutorial personnel in the investigation and prosecution of the offender.

While the victim's failure to satisfy the above conditions could seemingly abrogate a victim's claim to legislated rights, parole administrators in these states were often unaware of these statutory riders or, if aware, indicated that opportunities for victim notification and participation at parole would not be diminished, regardless of the quantity or quality of previous system contacts.

Notification process - Typically, notice of a parole hearing is mailed to the victim by the releasing body 1 to 3 months prior to the scheduled hearing. This notice informs the victim of the date and location of the impending session, and outlines the participatory options that are available to the victim. The victim is urged to submit written statements sufficiently in advance of the hearing to permit adequate time for board review. Rarely are there any restrictions placed on the content, format, or length of these materials. Where victim allocution is permissible, the victim is advised to contact the board or the correctional facility housing the inmate (if testimony is to be presented at that site) in advance to indicate his or her intention to appear before the panel.

Certainly, there are variations to the above described notification procedure. As reported in Table 15, in a few jurisdictions, notice is provided, not only by the parole board, but by correctional, prosecutorial, or law enforcement personnel. And, while the standard method for notice delivery is by mail, three states have authorized phone notification and one permits hand-delivery. Legislation in three other states fails to specify any particular method for notice provision.

The most variable factor in codified notice provisions is the prescribed

notification time frame, i.e., the amount of time between notice provision and the scheduled hearing. The shortest permitted time frame is found in Iowa where victim notification need not be given more than five days before parole consideration. In contrast, policies in Maryland and West Virginia mandate that notice is to be forwarded to victims at least 90 days prior to the hearing. Recently enacted legislation in Pennsylvania specifies that notice is to be given at the "time of public notice." Because public notice of parole proceedings was not mandated prior to the enactment of this statute in 1986, it is unclear what time frame was intended by the legislature. Parole personnel in that state have suggested that the victim be notified 6 to 7 months prior to the hearing.

Many administrators contacted as part of this project voiced concern over what they considered to be inadequate periods for notification and victim response. Oftentimes, the victim has minimal lead time during which to prepare an oral or written statement for submission to the parole board. Where the victim has moved (and, therefore, the letter must be forwarded one or more times), or where the victim's desire to appear personally at the hearing requires advance arrangements (e.g., time off from work, child care, motel reservations), these temporal constraints are particularly troublesome. Parole boards, in many cases, are powerless to rectify this situation because they do not know which inmates are to be considered for parole during a given month until they receive a master list from correctional authorities. This list may not be forthcoming until several weeks before the scheduled release session.

### **Disclosure**

In the previous chapter, attention was directed to fundamental constitutional issues which have emerged as standards have evolved for the utilization of victim impact statements at presentence proceedings. These legal concerns must also be addressed relative to postsentence proceedings. Just as a convicted offender has an interest in retaining his liberty status in the community, so does an incarcerated felon

have an interest in gaining release as early as possible. In those jurisdictions where parole is deemed to be an inmate right rather than an administratively granted privilege, the denial of early release may constitute a grievous loss of liberty for the purpose of invoking 14th Amendment due process guarantees.

Do victim statements about the offense and the offender affect parole board decisionmaking? As part of the interview schedule, parole contacts were asked to address this question. Most interviewees replied generally that victim statements were given the same amount of weight as other factors (institutional behavior, preparole plan, etc.), or that they were given a "great deal" of weight. Although respondents, for the most part, were noncommittal in their replies, there was general agreement that personal appearances have more of an effect than do written statements.

Only one state spokesperson was able (or willing) to provide a quantitative response. This parole administrator, from an urbanized Middle Atlantic state, noted that, where no victim impact statements are available for board review, 40 to 50 percent of parole applications are denied; where statements are submitted, the rate of parole denial rises sharply to approximately 80 percent. NOTE: These figures do not account for variations in offense typology or severity. The reader is therefore advised to exercise caution in the interpretation of these statistics.

Although there is, at this time, no systematic quantitative evidence to support the contention that victim statements play a significant role in determining release dates, the comments of parole board personnel suggest that victim prepared materials do affect decisionmaking in some fashion. In view of this, should these statements be subject to disclosure and challenge?

A review of enabling legislation and parole board policies reveals that the balance between victim confidentiality and the inmate's right to disclosure has been weighted in favor of the victim. Where victim allocution at the actual release hearing is permitted (N=14), the presence of the defendant is routinely permitted in half of the

jurisdictions. In the other seven sites, victims can elect to testify absent the offender. Defendant rebuttal of victim statements is permitted in ten of these locations.

Disclosure and challenge of (a) transcripts, recordings, and/or summaries of oral statements not made in the inmate's presence; and (b) written statements favor the victim more dramatically. Of the 36 states whose statutes or policies address this issue, only 5 systematically disclose victim information. In 23 states, victim statements are deemed to be confidential and, thus, not subject to inmate review. In the remaining 8 sites, disclosure decisions are made on a case-by-case basis, at the discretion of victims or paroling officials (see Table 16).

The extent of disclosure in conjunction with parole hearings is significantly lower than the corresponding rate of presentence disclosure, as reported by probation administrators (see Chapter 4). This disparity is attributable, no doubt, to policies of judicial and legislative nonintervention in correctional administration as well as to the relative recency of legislation authorizing victim participation at postconviction proceedings. An increasing number of inmate suits challenging these practices can be expected within the next decade.

Table 16

Disclosure of oral and written VISs at parole

	<u>Number of states</u>
<u>Inmate presence at oral testimony</u>	
No	21
Yes	14 a
Unspecified	1
<u>Disclosure to inmate</u>	
No	23
Yes	5
Discretionary	8
Unspecified	2

a

In seven states, inmate presence during victim allocation is permitted if consistent with the wishes of the victim; in one additional site, inmate presence is at the discretion of the parole board.

CHAPTER 6  
THE EFFECTS OF VIS LEGISLATION:  
A CHALLENGE FOR THE FUTURE

As outlined in the previous chapters, a vast array of victim participatory mechanisms have been introduced throughout the United States. Without question, this report has succeeded in demonstrating diversity in the substance and process of these provisions. Chapters 4 and 5 documented variations in the preparation and presentation of victim impact statements both presentence and postsentence.

It is far more difficult to assess the merits of these variations. The difficulty of this task has two major sources: (1) the absence of coordination between the substance of VIS legislation and the process for its implementation and (2) the dearth of outcome-specific information on the impact of VIS legislation on criminal justice and victim decisionmaking.

In this final chapter, the interrelationship of substance, process, and outcome is addressed. Policy recommendations are stated and foci for future research are suggested.

#### **Impact on Decisionmaking**

Despite the fact that victim participation at various criminal justice junctures is permitted in nearly every state, very little is known about the impact of victim participatory roles on affected actors in the criminal justice process (e.g., defendants, victims, system practitioners).

Before one can begin to understand how or to what degree VIS legislation does, in reality affect criminal justice decisionmaking, one must first be aware of the extent to which VIS legislation can, in theory, impact on decisionmaking. The mere existence of expansive VIS provisions does not necessarily infer that there is any mechanism by which criminal justice personnel can actually incorporate this information into their decisionmaking processes.

## Theoretical Incorporation of Victim Input

Two initial questions must be addressed. First, to what extent, if at all, does the sentencing structure of a particular jurisdiction permit the consideration of victim input? Clearly, in a jurisdiction where determinate sentences are judicially imposed, there is no discretionary release function and, consequently, there is no mechanism for utilizing victim input. If parole guidelines are employed, what dimensions form the axes? Can an assessment of victim harm affect the calculation of one of these factors? To what extent? Must it be an assessment of delayed victim harm (i.e., harm that was unknown at the time of sentencing) or can this assessment detail all past and present crime impacts? If parole guidelines are not in use, has the legislature or paroling authority identified factors that are to be considered prior to rendering a release decision? Is victim harm included in this listing?

The relevance of the above issue was highlighted in In re Fain, 139 Cal.App. 3d 295, app'd, 145 Cal.App. 3d 540 (1983). In this case, a parole board decision to release an offender was reversed after massive public outcry. The Superior Court ruled that the parole board reaction to public opinion violated the applicant's due process rights because statutory provisions required that revocation decisions rest on relevant, articulated grounds; it held further that the relevance of public opinion had not been demonstrated. The dissenting opinion suggests that the ruling is a step backward in the victims' rights movement when it observes that legally prohibiting a parole board from incorporating the statements of interested parties into release decisions is analogous to tossing a "meatless bone... to the public".

A second question that must be asked deals with the extent to which legislative or administrative provisions are enforceable or subject to implementation. In some states, laws have been introduced only after careful consideration by a joint committee of legislators, paroling personnel, and correctional authorities. Because the affected actors are intimately involved with the codification of the operational aspects of the

enabling provisions, implementation is occurring in a timely and efficient fashion. This may entail the allocation of additional monies to underwrite increased costs for victim notification, the establishment of training programs for newly appointed victim assistance personnel, or the development of a sophisticated recordkeeping system to enable personnel to systematically track and accommodate victim requests for participation and notification.

Elsewhere, legislation has seemingly been enacted in a communication vacuum. In some states, codes may simply be modeled after existent legislation in other locales, or may blindly incorporate public demands without due consideration to the financial or temporal constraints of the affected agencies. Where legislation is passed independently of agency consultation, implementation may be awkward or, indeed, unfeasible. The legally accountable agency may be unable to implement the law due to insufficient resources or because the new mandate is inconsistent with or contradictory to existent department policy.

Two examples serve to illustrate this point. (NOTE: The selection of these codes for examination is in no way intended to denigrate the enthusiasm or integrity of those involved with the victims' rights movement in these states.)

Legislation authorizing victim participation at parole was passed by the Pennsylvania legislature and took effect in October 1986. Act 134 of 1986, amending the Pennsylvania Parole Act of 1941, specifies that the parole board is to provide advance notice of a release hearing to a victim of any felony at the same time as "public notice" is given. The Pennsylvania parole board did not initiate this legislation and implementation of the statute's language has proven to be problematic in at least two respects. First, this provision was modeled largely after legislation in the neighboring state of New Jersey, a state that requires the publication of parole hearings scheduled for the following month. In Pennsylvania, however, no such public notice had previously been mandated. Consequently, the new code could be interpreted

in one of several manners. It could be interpreted as implying that victim notification was required only if and when public notice was given; alternately, the law could be read to infer that, as of the effective date of the legislation, public notice of parole hearings was to become standard procedure. Second, regardless of the offense of conviction, the new law specifies that responsibility for victim notification lies with the parole board. In most jurisdictions, this delegation of responsibility would not prove problematic. In Pennsylvania, however, offenders sentenced to terms of imprisonment ranging from 11.5 to 23 months are considered to be under the jurisdiction of the sentencing judge, not of the parole board. In these cases, who is to supply the required notice -- the sentencing judge or the parole board? Clearly, these are issues that need to be resolved before any meaningful system of victim notification and participation can be effected.

A second example is an expansive array of victims' rights which recently became law in Oregon. Ballot Measure 10 was passed by a citizen's initiative in November 1986. This Crime Victims' Bill of Rights specifies, in part, mechanisms by which victims are to be notified of and allowed to participate at postconviction proceedings. Because the mandates were codified as a result of a citizen initiative, rather than standard legislative processes, the initiative cannot be amended by actions of the legislature; court rulings alone can modify these provisions.

The measure specifies that advance notice of all hearings and/or releases is to be forwarded to all victims who have requested such notification and who have furnished the parole board with a current address. Without further guidance in the implementation of this provision, several potential administrative problems are evident.

First, there is no mention of when, how, or by whom the victim is to be advised either of the existence of notification and participation rights or of the need to register for them. Second, although advance notice of impending institutional hearings is to be provided by the parole board, the range of hearings for which notice is to be

given may exceed the purview of paroling authorities. The measure states simply that notice is to be sent at least 30 days prior to (1) "all hearings" and (2) "the release from actual physical custody, whether by work release, institutional leave, or any other means of any convicted person" (emphasis added). If "all hearings" is construed as including administrative reviews in addition to parole consideration hearings, the parole board may be required to deliver notice of, and allow participation at, disciplinary hearings, reclassification hearings, emergency furlough hearings, etc., whether or not the parole board is typically involved in these decisions.

### **Actual Impact on Criminal Justice Decisionmaking**

The effect of VIS legislation on the criminal justice system, in general, and on individual victims, in particular, is a function of both (a) the actual effect of the law on criminal justice personnel, resources, and decisions; and (b) the degree and nature of local compliance with statutory provisions.

The question of compliance is of particular interest because of the characterization of VIS legislation as "mandating" the preparation of impact statements. This depiction may be quite misleading, reflecting statutory rhetoric more so than practical application. Putting aside for the moment those statutes which restrict the applicability of VIS legislation to specific offenses or which make applicability contingent upon the preparation of a presentence report, the fact remains that little is known about jurisdictional rates of compliance. The findings of a recent telephone survey of probation departments, asking about known measures of compliance with VIS legislation, revealed that only two states were able to provide any statistics on compliance. It was reported that, of the nearly 4,000 presentence reports completed in Maryland during the second half of 1982, only 23 percent included an impact statement. New Jersey probation personnel observed that, while there were no comprehensive data, approximately two-thirds of sampled felony actions failed to include an impact statement (New York State Crime Victims Board, 1983). How often are impact

statements prepared? To what extent are compliance rates a factor of offense, offender, or victim characteristics? Alternatively, is the preparation or nonpreparation of an impact statement primarily a function of local practice or the allocation of resources?

### **Policy Recommendations and Suggestions for Research**

The recommendations forwarded here urge a re-examination of the substance, process, and outcome of victim impact legislation. Because of (a) interjurisdictional variations in day-to-day operations of criminal justice process and (b) limitations in our understanding of basic issues surrounding the utilization of victim impact statements, these suggestions for change are necessarily general. They do, nevertheless, set the tone for a more comprehensive policy for victim involvement in criminal justice decisionmaking.

#### **Process**

Because of the system-wide ramifications of statutorily mandated victims' rights provisions, legislators must not operate in an informational vacuum. There must be a coordinated informational exchange in conjunction with the enactment or modification of VIS provisions. This report recommends that future legislative actions reflect clearly defined and agreed upon objectives and procedural reality. To this end, legislators should invite and, indeed, proactively seek out the input of criminal justice personnel whose daily operations will be directly or indirectly affected by the proposed codes. More specifically, lawmakers and practitioners must share a mutual understanding of the role of victim input in criminal justice decisionmaking.

In addition to this philosophical convergence, the legislature must provide adequate resources for meaningful statutory implementation and must develop some mechanism for the modification of statutory processes if necessary.

In recognition of the diversity in jurisdictional practices and in the allocation of fiscal and human resources, this report does not advance any specific recommendations

as to which criminal justice practitioner would be the most appropriate agent for the preparation of a presentence victim impact statement. A general approach to victim involvement is, however, urged. Victims should be encouraged to participate in criminal justice proceedings. While a jurisdiction need not provide for victim allocution or formal written statements at pretrial release or plea negotiation sessions, the victim should be advised, in advance, of the nature of these proceedings and should be invited to comment informally to an appropriate criminal justice official. The findings of this consultative interaction would not be binding on prosecutorial or judicial decisions. Routine victim consultation would, however, establish a forum in which valuable information which may affect case processing can be transmitted to decisionmakers as early as possible.

This report recommends that victim participation at other presentence proceedings should be more formalized. At these hearings written and oral victim input should be elicited. Responsibility for victim awareness of participatory options at this juncture must not lie with the victim. Rather, there must be some stated mechanism by which a victim is alerted to the opportunities for active victim involvement. In some jurisdictions this mechanism may be oral communication; in others, a written advisement may be disseminated. It is strongly urged that the employment of both methods of communication be standard procedure. Personal interaction allows for an immediate and individual response to specific victim concerns. A written document provides more generalized information to a victim who may need time or who may wish to retreat to a sheltered environment before considering the nature of his or her role in the criminal justice process.

The nature and propriety of the victim role in postsentence proceedings is less clear and must be coordinated with the state's stated justification for imprisonment. A state whose incarcerative policies are grounded in the positivist rationales of rehabilitation or societal protection may legitimately argue that the victim is not in a

position to comment upon the parole applicant's current status. Victim involvement in conjunction with these sessions may, nevertheless, serve victim-based rationales. A state whose legislators adhere to classical school rationales of retribution or deterrence may likewise argue that a victim voice is inappropriate because punishment, proportionate to the seriousness of the offense, is to be determined at the time of sentencing. However, as noted in Chapter 5, there is a growing recognition that the extent of offense seriousness may not be completely ascertainable at the time of sentencing. Clearly, these philosophical issues must be addressed by legislators and practitioners alike.

### **Substance**

This researcher recognizes the uniqueness of each victimization experience. Not only do the circumstances of each victimization differ but also each victim's reactions to his or her experience. It is further acknowledged that, while some victim losses are easily quantifiable (e.g., value of property lost, stolen, or destroyed), other losses cannot be objectively assessed. A victim's fear of revictimization, a family's response to the sudden loss of a loved one, the social and psychological traumas that oftentimes accompany a violent assault -- these are harms that must be measured subjectively. In view of the above, this report urges the adoption of non-exclusive legislation. A victim should not be prohibited from expressing his or her feelings on any specific aspect of the victimization experience. To this end, standardized VIS forms, where employed, should be designed so as to include both open-ended and closed-ended items. With such a format objectively measured losses can be documented in a manner that facilitates review for restitution purposes. At the same time, victims are granted greater flexibility in their recordation of social, psychological, and emotional harms.

Where victim losses are presented for judicial consideration in a summary statement prepared by probation, prosecutorial, or victim assistance personnel, concerted efforts should be made to include direct victim statements. Even in the face

of victim inability or refusal to participate in the prosecution, resources should be available to document, as fully as possible, the nature and extent of victim losses in a particular case.

### **Outcome**

Once VIS provisions are in place there must be a means for evaluating whether previously defined and agreed upon objectives have been satisfied. Where practice or policy is found to be deficient some mechanism for procedural modification must be available. Three recommendations are noted.

First, each state should regularly schedule statewide seminars at which criminal justice practitioners involved with the implementation of legislatively or administratively mandated provisions can meet to discuss problems and to formulate solutions. Because VIS legislation affects a broad spectrum of actors throughout the criminal justice system, it is imperative that this forum includes the voices of probation, prosecutorial, defense, and parole personnel; victim advocates; judges; and victims.

These intrajurisdictional seminars should be complemented by interjurisdictional meetings. These latter conferences could serve as an informational exchange at which the experiences of individual jurisdictions could be informally discussed. Policies adopted successfully in one jurisdiction may be equally successful in a state with similar procedural policies. As was noted in reference to the intrastate seminars, these regional or national conferences should involve all affected criminal justice practitioners but should also involve lawmakers interested in the modification or introduction of legislation in their home districts.

Finally, there is a definite need for longitudinal research to systematically assess the effect of victim impact legislation. Several foci for future research are readily apparent. What is the effect of VIS provisions on victims of crime? More specifically, do victims, as a result of their involvement in criminal proceedings and parole hearings

(as defined by cooperation in the preparation and/or presentation of an impact statement), experience increased levels of "psychological wholeness"? Do these victims express greater satisfaction about their interactions with the criminal justice system? What are the effects of VIS legislation on the criminal justice system? Does the focused discussion of victim harm have an effect on bond decisions, sentence length, the balance between incarcerative and nonincarcerative sentences, the number of restitution orders imposed, or parole release dates? In what ways do subjective victim commentaries affect these same variables?

The above stated policy recommendations and suggestions for research are to serve as a challenge to researchers, lawmakers, and practitioners. As our knowledge base increases, we can continue to shape the role of the victim in criminal justice decisionmaking to meet the needs of both the victim and the criminal justice system.

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APPENDIX A  
SUMMARY TABLE  
VICTIM IMPACT STATEMENTS IN PRESENTENCE REPORTS

	AL	AK	AZ	AR	CA	CO
Offense prerequisites						
Any felony	x	x	x			x
Specific felonies					(8)	
Other						
Source of notification						
Probation officer	x	x	x		x	
Prosecutor						x
Other						
Unspecified						
Method of notification						
Mail	x					
Phone						
Other						
Unspecified		x	x		x	x
Procedural prerequisites						
Must request notification						
Must update address						
Other						
Victim representation						
Spouse		(2,3,4)				
Child		(2,3,4)				
Parent		(2,3,4)				
Sibling		(2,3,4)				
Other family member						
Unspecified family member			x		(2)	
Legal guardian		(2,3,4)				
Attorney						
Other						
Statement format						
Direct victim statement	(1)					
Summary statement	(1)	x	x		x	x
Other						
Unspecified						
Contents						
Objective						
Physical	x	x	x			x
Emotional/psychological	x	x	x			x
Financial/economic	x	x	x			x
Social	x					x
Other			(7)			
Subjective						
Summary of offense						
View of offender						
Sentence recommendation	x				(5,9)	
Other		(5)				
Unspecified						
Source of information						
Victim	x				x	x
Official records	x					
Unspecified		x	x			
Disclosure to defendant						
No						
Yes		(6)			x	x
Unspecified	x		x			
Defendant rebuttal						
No						
Yes						x
Unspecified	x	x	x		x	

	CT	DE	FL	GA	HI	ID
<b>Offense prerequisites</b>						
Any felony	(10)	x				x
Specific felonies						
Other						
<b>Source of notification</b>						
Probation officer		x				
Prosecutor						x
Other	(11)					
Unspecified						
<b>Method of notification</b>						
Mail						x
Phone						
Other						
Unspecified	x	x				
<b>Procedural prerequisites</b>						
Must request notification						x
Must update address						(23)
Other		(18)				
<b>Victim representation</b>						
Spouse						
Child						
Parent						
Sibling						
Other family member						
Unspecified family member	(12)	(2,3,19)				(3,12,24)
Legal guardian		(2,3,19)				
Attorney						
Other		(2,3,19,20)				
<b>Statement format</b>						
Direct victim statement						x
Summary statement	x	x				
Other						
Unspecified						
<b>Contents</b>						
<b>Objective</b>						
Physical	(13)	x				
Emotional/psychological	(13)	x				
Financial/economic	x	x				x
Social		x				
Other	(14)					(25)
<b>Subjective</b>						
Summary of offense						
View of offender	x					
Sentence recommendation						
Other	(15)					
Unspecified						
<b>Source of information</b>						
Victim	(16)	x				x
Official records		x				
Unspecified						
<b>Disclosure to defendant</b>						
No						
Yes	(17)	(21)				
Unspecified						x
<b>Defendant rebuttal</b>						
No						
Yes	x	(22)				
Unspecified						x

	IL	IN	IA	KS	KY	LA
<b>Offense prerequisites</b>						
Any felony				(41)		
Specific felonies	(26)		(35)		(44)	
Other		(31,32)				(48)
<b>Source of notification</b>						
Probation officer	x	(33)	(36)			
Prosecutor		(33)	(36)		x	
Other				(42)		
Unspecified						x
<b>Method of notification</b>						
Mail	(27)		x			
Phone	(27)		x			
Other	(27)		(37)			
Unspecified		x		x	x	x
<b>Procedural prerequisites</b>						
Must request notification			x			
Must update address	x		x			
Other	(28)	(32)				
<b>Victim representation</b>						
Spouse	(29,30)				(45)	
Child	(29,30)				(45)	
Parent	(29,30)	(2,3)			(3,45,46)	
Sibling	(29,30)				(45)	
Other family member					(45)	
Unspecified family member		(2,3)	(3,30,38)	(12)		
Legal guardian		(2,3)			(3,46)	
Attorney						
Other					(3,46,47)	
<b>Statement format</b>						
Direct victim statement	(27)	(33)	x		x	
Summary statement	(27)	(33)	(39)	x		
Other						
Unspecified						x
<b>Contents</b>						
<b>Objective</b>						
Physical	x		x	x	x	x
Emotional/psychological	x		x	x	x	
Financial/economic	x		x	x	x	x
Social	x		x	x		
Other	(25)		(40)			
<b>Subjective</b>						
Summary of offense		x		x		
View of offender						
Sentence recommendation	x	x		x		
Other				(5,43)	(5)	
Unspecified						
<b>Source of information</b>						
Victim	x	x	x	x	x	
Official records						
Unspecified						x
<b>Disclosure to defendant</b>						
No						
Yes	x	(34)	x	x		(49)
Unspecified					x	
<b>Defendant rebuttal</b>						
No						
Yes		x	x			x
Unspecified	x			x	x	

	ME	MD	MA	MI	MN	MS
<b>Offense prerequisites</b>						
Any felony			(53)	x	x	
Specific felony						
Other		(50)			(59)	(63)
<b>Source of notification</b>						
Probation officer		x			x	x
Prosecutor			x	x		
Other					(60)	
Unspecified						
<b>Method of notification</b>						
Mail		(51)				
Phone		(51)				
Other		(51)		(55)	(60)	
Unspecified			x			x
<b>Procedural prerequisites</b>						
Must request notification				x		
Must update address				x		
Other						(64)
<b>Victim representation</b>						
Spouse				(45,56)	(2)	(2,3,4)
Child				(45,56)		(2,3,4)
Parent				(3,45,46,56)		(2,3,4)
Sibling				(45,56)		(2,3,4)
Other family member				(45,56)		
Unspecified family member		(2,19)			(2)	(3,12)
Legal guardian		(2,19)		(3,46)	x	
Attorney						
Other		(2,19,52)				(65)
<b>Statement format</b>						
Direct victim statement				x	x	
Summary statement		x	x	x	x	(64)
Other						
Unspecified						
<b>Contents</b>						
<b>Objective</b>						
Physical		x		x		x
Emotional/psychological		x	x	x		x
Financial/economic		x	x	x	x	x
Social		x	x			
Other					(61)	(7)
<b>Subjective</b>						
Summary of offense						
View of offender						x
Sentence recommendation				x	x	
Other				(5)	(62)	
Unspecified						
<b>Source of information</b>						
Victim		x		x	x	(63,66)
Official records		x				
Unspecified			x			
<b>Disclosure to defendant</b>						
No						
Yes		x	(54)	(57)	(34)	x
Unspecified						
<b>Defendant rebuttal</b>						
No						
Yes			(54)	(58)	x	
Unspecified		x				x

	MO	MT	NE	NV	NH	NJ
<b>Offense prerequisites</b>						
Any felony		x			(80)	
Specific felonies			(75)			
Other	(50,67)		(75)	(77)		(82)
<b>Source of notification</b>						
Probation officer	x		x	(78)		(83)
Prosecutor						(83)
Other		(72)				(83)
Unspecified					x	
<b>Method of notification</b>						
Mail	x					
Phone						
Other						
Unspecified		x	x	x	x	x
<b>Procedural prerequisites</b>						
Must request notification						
Must update address						
Other	(68)					(84)
<b>Victim representation</b>						
Spouse	(3,12,69)					
Child	(3,12,69)					
Parent	(3,12,69)					
Sibling	(3,12,69)					
Other family member						
Unspecified family member			(12)			
Legal guardian	(3,12,69)					
Attorney						
Other						
<b>Statement format</b>						
Direct victim statement			(76)			(85)
Summary statement	x		(76)	x	x	(85)
Other						
Unspecified		x				
<b>Contents</b>						
<b>Objective</b>						
Physical	x			x		x
Emotional/psychological	x			x		x
Financial/economic	x	(73)		x		x
Social	x					
Other	(40)				(81)	(85,86)
<b>Subjective</b>						
Summary of offense	x					
View of offender						
Sentence recommendation					(81)	
Other					(81)	
Unspecified		(73)	x			
<b>Source of information</b>						
Victim	(70)	(73)	x	(78)	x	x
Official records						
Unspecified		(73)		(78)		(85)
<b>Disclosure to defendant</b>						
No						
Yes	(71)	(74)	(21)	(79)	(79)	(87)
Unspecified						
<b>Defendant rebuttal</b>						
No						
Yes		(74)	x	x	x	(87)
Unspecified	x					

	NM	NY	NC	ND	OH	OK
Offense prerequisites						
Any felony		(89)				(53,80)
Specific felonies						
Other	(88)			(82)	(92)	
Source of notification						
Probation officer	x				x	x
Prosecutor				x		
Other					(93)	
Unspecified		x				
Method of notification						
Mail					(94)	
Phone					(94)	
Other					(94)	
Unspecified	x	x		x		x
Procedural prerequisites						
Must request notification						
Must update address				x		
Other				(28)		
Victim representation						
Spouse				(2,3,4,69)		
Child				(2,3,4,69)		
Parent				(2,3,4,69)		
Sibling				(2,3,4,69)		
Other family member				(2,3,4,69)		
Unspecified family member		(12,24)				
Legal guardian				(2,3,4,69)		
Attorney						
Other						
Statement format						
Direct victim statement		(90)		x		x
Summary statement	x	x			x	
Other						
Unspecified						
Contents						
Objective						
Physical	x	x		x	x	
Emotional/psychological	x			x	x	
Financial/economic	x	x		x	x	x
Social					x	
Other					(86)	
Subjective						
Summary of offense		x				x
View of offender						
Sentence recommendation		x		x		
Other		(5)		(5)	(5)	
Unspecified						
Source of information						
Victim		(90)		x	(95)	x
Official records					(95)	
Unspecified	x	(90)				
Disclosure to defendant						
No						
Yes	(21)	(91)		x	(96)	(79)
Unspecified						
Defendant rebuttal						
No						
Yes		x				x
Unspecified	x			x	x	

	OR	PA	RI	SC	SD	TH
<b>Offense prerequisites</b>						
Any felony		x	x			(103)
Specific felonies						
Other	(97)					
<b>Source of notification</b>						
Probation officer	x	x	x			
Prosecutor						
Other						
Unspecified						x
<b>Method of notification</b>						
Mail		x				
Phone						
Other		(37)				
Unspecified	x		x			x
<b>Procedural prerequisites</b>						
Must request notification						
Must update address						
Other		(100)	(102)			
<b>Victim representation</b>						
Spouse						
Child						
Parent	(98)					
Sibling						
Other family member						
Unspecified family member	(12)		(12)			
Legal guardian	(98)					
Attorney						
Other		(52)				
<b>Statement format</b>						
Direct victim statement		x				(104)
Summary statement		x	x			(104)
Other						
Unspecified	x					
<b>Contents</b>						
<b>Objective</b>						
Physical		x				
Emotional/psychological		x				
Financial/economic		x				
Social						
Other	(25)					(104)
<b>Subjective</b>						
Summary of offense						
View of offender						
Sentence recommendation						
Other	(5)		(25)			(104)
Unspecified						
<b>Source of information</b>						
Victim	(66)	(101)	x			(104)
Official records		(101)				(104)
Unspecified						
<b>Disclosure to defendant</b>						
No						
Yes	(99)	x				x
Unspecified						
<b>Defendant rebuttal</b>						
No						
Yes	x	x				x
Unspecified						

	TX	UT	VT	VA	WA	WV
<b>Offense prerequisites</b>						
Any felony		x	(109)		x	
Specific felonies	(105)					
Other	(105)		(109)	(110)		(112)
<b>Source of notification</b>						
Probation officer						
Prosecutor	(106)				x	x
Other	(106)					
Unspecified		x	x	x		
<b>Method of notification</b>						
Mail	x					
Phone						
Other						
Unspecified		x	x	x	x	x
<b>Procedural prerequisites</b>						
Must request notification						
Must update address						
Other						
<b>Victim representation</b>						
Spouse	(2)				(111)	
Child	(2)				(111)	
Parent	(2)				(111)	
Sibling	(2)				(111)	
Other family member					(111)	
Unspecified family member		(2,19)	(2,69)			(2)
Legal guardian	(3,29)	(2,19)	(2,69)		(111)	
Attorney						
Other		(2,19,52)			(52)	
<b>Statement format</b>						
Direct victim statement	x		x		x	
Summary statement	x		x			x
Other	(107)					
Unspecified		x		x		
<b>Contents</b>						
<b>Objective</b>						
Physical	x	x		x	x	x
Emotional/psychological	x	x		x	x	x
Financial/economic	x	x		x	x	x
Social	x	x		x	x	x
Other	(86)	(86)		(40)	(86)	(86)
<b>Subjective</b>						
Summary of offense						x
View of offender						
Sentence recommendation						
Other						(5)
Unspecified			x			
<b>Source of information</b>						
Victim	x	x	x		x	
Official records						
Unspecified				x		x
<b>Disclosure to defendant</b>						
No						
Yes	x	(108)	(21)	x	x	x
Unspecified						
<b>Defendant rebuttal</b>						
No						
Yes	x		x	x	x	x
Unspecified		x				

	WI	WY
<b>Offense prerequisites</b>		
Any felony	x	
Specific felonies		(82)
Other		
<b>Source of notification</b>		
Probation officer	(113)	
Prosecutor		
Other		
Unspecified		x
<b>Method of notification</b>		
Mail		
Phone		
Other		
Unspecified	(113)	x
<b>Procedural prerequisites</b>		
Must request notification		
Must update address		
Other	(68)	
<b>Victim representation</b>		
Spouse	(12)	
Child	(12)	
Parent	(12)	
Sibling	(12)	
Other family member		
Unspecified family member		
Legal guardian	(12)	
Attorney		
Other		
<b>Statement format</b>		
Direct victim statement		x
Summary statement		x
Other		
Unspecified	(113)	
<b>Contents</b>		
Objective		
Physical	x	
Emotional/psychological	x	
Financial/economic	x	
Social		
Other		
Subjective		
Summary of offense		
View of offender		
Sentence recommendation		
Other		
Unspecified		x
<b>Source of information</b>		
Victim	(113)	x
Official records		
Unspecified	(113)	
<b>Disclosure to defendant</b>		
No		
Yes	x	
Unspecified		x
<b>Defendant rebuttal</b>		
No		
Yes		
Unspecified	x	x

1 Every presentence investigation is to include a victim impact statement. Authored by probation and/or parole personnel, and based on information derived from the victim and from official records, this document summarizes the effect of the crime upon the victim. In addition to the victim impact statement, a Victim Impact Report is mailed to every victim by the Board of Pardons and Paroles. This questionnaire solicits victim commentary on physical and psychological injuries, monetary losses, and any changes in the victim's quality of life which may be attributable to the offense.

2 If the victim is deceased.

3 If the victim is a minor.

4 If the victim is incapacitated.

5 Need for and/or amount of restitution.

6 The presentence report is available for defendant review unless the court determines that disclosure would prove detrimental to the defendant's rehabilitation or the public safety.

7 The emotional and financial impact of the offense upon the victim's immediate family.

8 A presentence report must be prepared in all felony cases where probation is a legislatively authorized sentencing option. A victim impact statement is mandatory whenever a presentence report is prepared unless the victim has testified at any of the court proceedings concerning the offense.

9 The comments of the victim concerning the offense.

10 Excluding a capital felony.

11 Victim advocate of the Criminal Injuries Compensation Board.

12 If the victim was a homicide victim.

13 In cases involving personal injury or sexual attack, Probation Department policy requires that the presentence report include information regarding not only the immediate impact of the crime but also, when medical opinion is available, information regarding any longlasting physical or psychological damage.

14 Any damages suffered by the victim.

15 The officer's summary is to reflect the "feelings and attitudes" of the victim.

16 If the victim cannot be contacted, departmental policy directs the officer to document, within the presentence report, the steps that were taken to contact the victim.

17 Upon the defendant's request, and barring a showing of good cause for not so doing, the court shall provide the defendant or his attorney with a copy of the presentence report.

- 18 The victim must cooperate with the court and with presentence officers.
- 19 If the victim is under a mental, physical, or legal disability, or is otherwise unable to provide the required information.
- 20 The victim's personal representative, committee, treatment professional, child protection agency, or other involved state agency.
- 21 Disclosure of all or part of the presentence report may be permitted by the court whenever the court determines the best interest of the state or the welfare of a particular defendant or person makes such action desirable or helpful.
- 22 In capital cases, the defendant may cross-examine witnesses for the state and may rebut adverse testimony.
- 23 ID. CODE 19-5306(2) specifies that notice is to be given to the victim "at the address provided unless the victim subsequently provides a different address." Victims are not, however, legally required to keep the prosecutor apprised of any address changes.
- 24 If the victim was of such incapacity to preclude him or her from exercising these rights personally.
- 25 A statement of the impact which the defendant's criminal conduct has had upon the victim.
- 26 A presentence investigation is mandatory in all felony cases except where (a) both parties have agreed to the imposition of a specific sentence, or (b) the defendant has knowingly waived such investigation. The court may, at its discretion, order a presentence investigation for any defendant. A victim impact statement is to be included in all presentence reports.
- 27 The victim impact statement is a standardized form. Guidelines established by the Attorney General provide for the administration of this form in person, by telephone, or by mail. The interviewer may summarize the victim's responses or may quote the victim directly.
- 28 Victims and witnesses are legally responsible (a) to make a timely report of the crime; (b) to cooperate with law enforcement authorities throughout the investigation, prosecution, and trial; and (c) to testify at trial. The pertinent statutory provision does not suggest that failure to satisfy these procedural prerequisites will abrogate a victim's claim to legislated rights.
- 29 If the victim is physically or mentally incapable of exercising these rights.
- 30 If the victim was killed as a result of a violent crime.
- 31 Any felony in which a person has suffered harm as a result of the crime.
- 32 IND. CODE 35-35-3-6 specifies that, if there are more than three victims, the prosecutor can satisfy the mandates of 35-35-3-5 (see note 33, *infra*) by completing the procedure with the three victims who he believes have suffered the most.

33 IND. CODE 35-38-1-9 dictates that the presentence report must include any written statements submitted to the probation officer by a victim. The probation officer must certify that he attempted to contact the victim and that, if successful, the officer offered to accept the victim's written statements, or to reduce the victim's oral statements to writing. 35-35-3-5 directs the prosecuting attorney, whenever a plea recommendation is submitted to the court, to certify that (a) he has offered to show the proposed recommendation to the victim and (b) the victim has been advised of the right to present an oral statement at sentencing concerning the crime and the sentence. If unable to attend the hearing, the victim may mail a written statement to the court for inclusion in the presentence report.

34 Prior to sentencing, a defendant is entitled to either a copy of the presentence report or an advisement of the factual contents and conclusions of the report. Sources of confidential information need not be disclosed.

35 Forcible felony or any other felony or aggravated misdemeanor involving actual or threatened infliction of physical or emotional injury.

36 IA. CODE 910A.5 directs the county attorney to notify all registered victims of the right to file a written victim impact statement. Pursuant to 901.3, the presentence investigator is to provide a victim impact statement form to each victim, if one has not already been provided.

37 Hand delivered notification.

38 If the victim was rendered incompetent as a result of the offense.

39 The victim impact statement is to itemize any economic loss suffered by the victim as a result of the offense. A pecuniary damages statement report prepared by a county attorney may serve as the itemization of economic loss.

40 Any request for psychological services initiated by the victim's family as a result of the offense.

41 Whenever a presentence report is court ordered, victim information is to be included. KS. STAT. ANN. 21-4604 requires the preparation of a presentence report following all felony convictions unless the court finds that "adequate and current information is available in a previous presentence investigation report or from other sources." The court in State v Wright, 7 K.A.2d 631, 646 P.2d 1128 (1982) held that a judge's personal knowledge of a defendant may be an acceptable substitute for a presentence report.

42 Court services officer.

43 In preparing a victim impact statement, the court services officer is directed, by administrative policy, to describe any feelings the victim may have relative to the overall criminal justice system.

44 Criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest.

45 If the victim is deceased and the relation is not the defendant, the following persons may be accorded victim status per this legislatively prescribed order: spouse, adult child, parent, sibling, grandparent.

46 If the victim is legally incapacitated.

47 If the court believes that the health, safety, or welfare of a minor or legally incapacitated victim would not otherwise be adequately protected, the court may appoint a special advocate to represent the victim's interests.

48 The trial court may order a presentence investigation whenever a defendant is convicted of an offense other than a capital offense. If the offense involved a victim, and if a presentence investigation was ordered, a victim impact statement must be included in the presentence report. The district attorney may also file a victim impact statement with the court.

49 The court in State v Bosworth, Sup.1978, 360 So.2d 173, appeal after remand 373 So.2d 152, and 415 So.2d 912 ruled that due process requires a sentencing court to disclose to a defendant any information upon which the court relies in imposing sentence, excepting irrelevant or confidential matters.

50 A presentence report is to include a victim impact statement if the defendant (a) in committing a felony, caused physical, psychological, or economic injury to the victim, or (b) in committing a misdemeanor, caused serious physical injury or death to the victim.

51 The Operations Manual of the Maryland Division of Parole and Probation outlines the following procedures to be used when a victim impact statement is prepared. The probation officer is first to contact any local victim witness unit to obtain previously reported victim information. If the information provided by the victim witness unit is deemed to be incomplete or outdated, the victim is to be contacted in person, by mail, or by telephone. A face-to-face contact is required in all death penalty cases and whenever a victim specifically requests an interview with the investigating agent. It is unclear how the recent Supreme Court ruling in Booth v Maryland, No. 86-5020 (June 15, 1987) will affect this procedure.

52 A victim's personal representative or committee.

53 Excluding any crime for which a sentence of death may be imposed.

54 If the court decides to rely upon all or part of such statements in imposing sentence.

55 MICH. COMP. LAWS ANN. 780.763(2) requires that prosecutorial notice to the victim be given "by any means reasonably calculated to give prompt actual notice."

56 If the victim is physically unable to exercise the rights accorded by the statute, the victim may designate, in writing, one of the following persons to act on his or her behalf for the duration of the physical disability: spouse, adult child, parent, sibling, grandparent. Notice shall continue to be sent only to the victim.

57 Unless exempted from disclosure by the court.

58 In determining whether to order restitution and the amount of that restitution, MICH. COMP. LAWS ANN. 780.767 directs the court to consider the amount of loss sustained by any victim, the current and potential financial resources of the defendant, and the financial needs of the defendant's dependents. If so ordered, the probation officer will obtain such information for inclusion in or attachment to the presentence

report. All such information will be disclosed to the defendant and is subject to rebuttal. The evidentiary standard for dispute resolution shall be a showing of a preponderance of the evidence.

59 Crime resulting in loss or harm to a victim.

60 In addition to the notification mandates of MINN. STAT. 609.115, 611A.02 (as amended by Senate File 232 (1987)) requires the distribution, by a Peace Officer, of a listing of victims' rights when the officer takes a formal statement from the victim. If the victim does not make a formal statement, the Peace Officer is not obligated to distribute this pamphlet.

61 A summary of the damages or harm and any other problems generated by the criminal occurrence.

62 The victim's objections, if any, to the proposed disposition.

63 Presentence reports are prepared at the discretion of the court. If a presentence report is ordered, a victim impact statement must be appended if, as a result of any felony, a victim suffered direct or threatened physical, emotional, or financial harm. If a presentence report is not ordered, the victim may submit an oral or written impact statement at sentencing (see jurisdictional entry in Appendix B).

64 If there are multiple victims and the preparation of individual impact statements is not feasible, one or more representative statements may be submitted by the preparing officer.

65 Any person who has had a close personal relationship with the victim may be designated by the court to be a victim representative.

66 The investigating officer is to make a reasonable effort to contact the victim and to obtain the victim's statement. If unable to contact the victim, or if the victim declines to make a statement, the officer must so note in the report.

67 If the court does not order a presentence investigation, the prosecuting attorney may prepare a victim impact statement to be submitted to the court.

68 A victim's claim to legislated rights may be abrogated by the failure of the victim to report a crime to law enforcement authorities within 5 days of its occurrence or discovery, unless the prosecuting attorney finds good cause for the victim not so doing.

69 If the victim is incompetent.

70 Departmental policy provides that a crime victim will be requested, in writing, to contact the probation office in order to assist in the preparation of a victim impact statement. If a victim fails to respond to this correspondence, policy directs that "no further effort will be made to contact the victim, unless there is need to do so in the normal routine of the investigation itself."

71 Departmental policy of the Department of Probation and Parole states that the victim "should be cautioned that when giving crime impact information, that it shall be included in a report which will be given to the offender. If the victim requests that a certain statement he has made not be included in the report, his wish will be honored."

72 MONT. CODE ANN. 46-24-201 specifies that law enforcement personnel are to assure that a victim is given information on the "role of the victim in the criminal justice process, including what he can expect from the system, as well as what the system expects from the victim." It is unclear whether a victim is to be notified of an opportunity to contribute to the presentence report.

73 Whenever a presentence investigation is required, the probation officer is to inquire into the "harm to the victim, his immediate family, and the community." It is not specified how this information is to be obtained. A later section, however, notes that whenever the court believes that restitution may be a proper condition of a deferred or suspended sentence, the presentence report is to include documentation of the victim's pecuniary loss, as submitted by the victim.

74 All or part of the presentence report is subject to disclosure at the discretion of the judge. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those persons.

75 A homicide, first degree sexual assault, first degree assault, or robbery during which a victim has a personal confrontation with the offender; also, a drug and/or alcohol related motor vehicle accident causing serious bodily injury to a victim.

76 The presentence report is to include any written statements submitted to the county attorney or the probation officer by a victim. If no written statements have been submitted, the probation officer must certify that an attempt was made to contact the victim, and that the officer offered to accept the victim's written statements or to reduce the victim's oral statements to writing.

77 A presentence report must be prepared in all felony cases except when waived by the defendant with the consent of the court. If a presentence report is prepared, a victim impact statement must be included.

78 Pursuant to NEV. REV. STAT. 176.145(3), a victim impact statement is to be included in the presentence report only to the extent that pertinent information is available from the victim or other sources. The law does not, however, require "any particular examination or testing of the victim, and the extent of any investigation or examination is solely at the discretion of the court or department and the extent of such information to be included in the report is solely at the discretion of the department." In cases involving restitution claims, the Nevada Department of Parole and Probation has established that it is the responsibility of the officer conducting the investigation to determine restitution and to recommend an appropriate amount at the time of sentencing. The officer is directed to make a single attempt to provide a standardized claim form to all known victims in an effort to establish the total restitution figure.

79 The defendant is entitled to review the factual content of the report.

80 Unless waived by the defendant, a presentence report is to be prepared in all felony cases.

81 N.H. REV. STAT. ANN. 651:4, in describing the contents of a presentence report, makes no mention of a victim impact statement. Rather, the law states simply that the report is to include "a recommendation as to disposition, together with reference to such material disclosed by the investigation as supports such recommendation." In providing guidance for the preparation of these reports, the New Hampshire Department

of Corrections, in Policy and Procedure Directive #9, notes that the investigating officer is to "describe input from victims including their sentencing suggestions if offered. If victims provide data which has aggravation or mitigation value, it should be included."

82 Whenever a presentence report is court ordered, victim information must be included.

83 Enabling statutes are inconsistent. N.J. STAT. ANN. 2C:44-6(b) requires the probation department to notify a victim of the right to submit a victim impact statement. The Victim-Witness Assistance Act of 1985, codified as 52:4B-39 et seq., creates an Office of Victim-Witness Advocacy within the Division of Criminal Justice. The Act requires the Attorney General, through the Office of Victim-Witness Advocacy, and in conjunction with local prosecutors, to promulgate standards to ensure the enforcement of victims' rights. In part, the standards require the Office of Victim-Witness Advocacy and each county prosecutor's office to provide "advice to victims about their right to make a statement about the impact of the crime for inclusion in the presentence report or at the time of parole consideration..." ( 52:4B-44 (a)(15)).

84 If the victim wishes to submit a written statement, any such statement is to be made within 20 days of the victim's notification by the probation department.

85 A victim may submit a written statement for inclusion in the presentence report. This statement is to refer to the offense for which the defendant is being sentenced. In addition, N.J. STAT. ANN. 2C:44-6 (Supp., 1985), amending 2C:44-6 (1983), notes that any presentence report "shall specifically include an assessment of the gravity and seriousness of harm inflicted on the victim ..."

86 The effect of the crime upon the victim's family.

87 Disclosure is to be in accordance with law and the Rules of Court.

88 Presentence reports are prepared at the discretion of the court. Although not legislatively mandated, the Field Services Division of the New Mexico Corrections Department has instituted a policy by which a victim impact statement is to be included as part of any presentence report involving a human victim.

89 A presentence report must be prepared in all felony cases. The report is to include a victim impact statement when it appears that such information would be relevant to the sentencing decision.

90 N.Y. CRIM. PROC. LAW 390.30(3) (1986), repealing and replacing 390.30(3) (1982), notes that preparation of a victim impact statement does not require that a victim supply this information.

91 N.Y. CRIM. PROC. LAW 390.50(2) (1986), amending 390.50(2) (1982), states that the court, in its discretion, may except from disclosure any parts of the report that (a) are not relevant to a proper sentence, (b) may disrupt a program of rehabilitation, (c) were obtained on a promise of confidentiality, or (d) would not be in the interest of justice.

92 A victim impact statement must be prepared prior to sentencing in any felony case in which the offender caused, attempted to cause, threatened to cause, or created the risk of physical harm to the victim of an offense.

93 Pursuant to OHIO REV. CODE ANN. 2947.051, a victim impact statement may be prepared either by the local probation department, the regular probation officer assigned to the court, or by a victim assistance program that is operated by the state, any county or municipal corporation, or any other governmental entity.

94 Departmental policy specifies that contact with the victim may be made in person, by phone, or by correspondence (Presentence and Parole Board Bulletin 202).

95 Department policy directs the investigating officer to make every attempt to contact the victim personally. If personal contact is not possible, alternate sources of information, such as official records, can be utilized.

96 At the discretion of the trial court.

97 Following a felony conviction, a presentence report will be prepared upon the request of the court, the district attorney, or the defendant.

98 The consent of a parent or a legal guardian must be obtained prior to contacting a victim who is under the age of 18.

99 OR. REV. STAT. 137.079 allows the court to except from disclosure any parts of the report that (a) are not relevant to a proper sentence, (b) might seriously disrupt a program of rehabilitation, or (c) were obtained with an expectation of confidentiality. A related section ( 144.790) directs the preparing officer, before accepting a victim statement, to inform the victim that the statement will be made available to the defendant and to the defendant's attorney prior to sentencing as required by 137.079.

100 A victim's claim to legislated rights may be abrogated by the failure of the victim to report a crime to law enforcement authorities "without unreasonable delay after its occurrence or discovery, unless the victim had a reasonable excuse not to do so" (PA. CONS. STAT. 180-9.2).

101 The Bureau of Probation Services, in stating that "policy does not require that all victims be contacted personally, that is, if the subject information is available from other sources, ... direct/personal contact with the victim may not be necessary", suggests that the actual victim is not to be considered the primary source of victim impact information (Memorandum dated 11/28/84 from the Director of the Bureau of Probation Services to District Office Supervisors).

102 Legislated rights are accorded to each victim who files a timely report of the crime and who cooperates with law enforcement authorities in the investigation and prosecution of the offense.

103 Where a specific sentence has been agreed upon by the district attorney and the defendant, and the proposed sentence has been accepted by the court, no presentence report or sentencing hearing is required unless ordered by the court.

104 Any presentence report is to include a statement relating to sentencing which has been submitted by the victim or by the investigative agency.

105 Sexual assault, kidnapping, or aggravated robbery; alternatively, a person who has suffered bodily injury or death as a result of the criminal conduct of another.

106 A victim impact statement form is to be provided to the victim by the victim assistance coordinator. If a victim assistance coordinator does not serve the county or judicial district in which the offense occurred, the prosecutor is legally responsible for the provision of this form.

107 The Texas Adult Probation Commission, with the participation of the Board of Pardons and Paroles, was directed by the legislature to develop a standardized form to be used to record the impact of an offense upon its victim. Despite the existence of this form, a victim statement, by law, may be submitted orally, in writing, or by any other manner (TEXAS ANN. CODE CRIM. PROC. Art. 56.01 et seq.).

108 Upon the defendant's request, the contents of a presentence report will be disclosed if the defendant has been committed or is being evaluated for commitment to a correctional facility for treatment as a condition of probation or parole.

109 A presentence report is to be prepared in every felony case except as noted here. VT. R. CRIM. PROC. Rule 32(c)(1) notes that a court, in its discretion, may proceed without a report if (a) the defendant has two or more felony convictions, (b) the defendant refuses to be interviewed or waives the preparation of a report, or (c) it is impractical to verify the defendant's background. VT. STAT. ANN. tit. 28 204 (Supp., 1985), amending 204 (1982), further provides that, if a report has been made to any court within the state within a 2-year period with reference to the defendant, in connection with the same or another offense, submission of a copy of the earlier report may serve as a substitute for a current report, if approved by the court to which the report is to be submitted.

110 When a person is adjudicated guilty of a felony, the court may, on the motion of the defendant shall, order the preparation of a presentence report. The report may, in the discretion of the court, include a victim impact statement if the court determines that the defendant, in committing the felony for which he has been convicted, may have caused significant physical, psychological, or economic injury to the victim.

111 WASH. REV. CODE 7.69.020 (Supp., 1986), amending 7.69.020 (1981), defines a survivor of a victim to include a spouse, child, parent, legal guardian, sibling, or grandparent of a victim, and specifies that, if there are multiple survivors, the prosecutor will designate one survivor to represent all survivors for the purpose of notification. The statute does not specify (a) whether only the designated survivor may participate by providing impact information, or (b) the means by which a person becomes a legally recognized survivor, i.e., whether the death of the actual victim is a precondition and, if so, whether the victim's death must be attributable to the defendant's conduct.

112 Whenever a presentence report is ordered by the court, a victim impact statement is to be included if the defendant, in committing a felony or a misdemeanor, caused physical, psychological, or economic injury, or death of the victim. If the court does not order a presentence report, the prosecuting attorney may request that the probation officer prepare an independent victim impact statement.

113 WISC. STATS. ANN. 950.04, .05 (Supp., 1985), amending 950.04, .05 (1983), outline the victim's right to have victim impact information provided to and considered by the court, and encourage the counties to assist the victim in providing this information. The statutes do not specify (a) how or by whom the victim is to be made aware of this participatory role, (b) the format of the victim impact statement, (c)

whether the statement is to be included in or independent of a presentence report, or (d) whether this information will be disclosed to a defendant.

WISC. STAT. ANN. 972.15 addresses some of these concerns. It provides for disclosure of the presentence report to the defendant or his attorney. Concerning the source of impact information, the statute states that "the person preparing the presentence investigation report shall attempt to contact the victim..." It continues, however, by noting that "the person preparing the report may ask any appropriate person for information."

**ALABAMA**

ALA. CODE 15-22-36(e)

**ALASKA**

AK. 12.55.022, .185

AK. R. CRIM. PROC. 32(d)(2)

**ARIZONA**

AZ. REV. STAT. ANN. 12-253

**CALIFORNIA**

CAL. PENAL CODE 1203

**COLORADO**

COLO. REV. STAT. 16-11-102

**CONNECTICUT**

CT. GEN. STAT. ANN. 54-91a, -91b; 203 (as amended by P.A. 86-401)

**DELAWARE**

DEL. CODE ANN. 11 4322, 4331

**IDAHO**

ID. CODE 19-5304(12), -5306

**ILLINOIS**

ILL. REV. STAT. ch. 38 1005-3-1 to -4, 1403 to 1407

**INDIANA**

IND. CODE 35-35-3-1; -2; -5 (as amended by P.L. 126 (1985))

IND. CODE 35-35-3-6 (as amended by P.L. 204 (1982))

IND. CODE 35-38-1-7, -8 (as amended by P.L. 131 (1985))

IND. CODE 35-38-1-9, -12

**IOWA**

IA. CODE ANN. 901.2; 901.3 (as amended by House File 2458 (1986)); 901.4; 910A.2 et seq.

**KANSAS**

Court Services Officer Manual 5.4

KS. STAT. ANN. 21-4604, -4605

**KENTUCKY**

KY. REV. STAT. 421.500 to .520

**LOUISIANA**

LA. C. CRIM. PROC. Art. 875 (as amended by Acts 1983, No. 277 1); Art. 877 (as amended by Acts 1985, No. 200 1, No. 384 1)

**MARYLAND**

MD. ANN. CODE Art. 41 124 (as amended by ch. 345, Acts 1983)

**MASSACHUSETTS**

MASS. GEN. LAWS ANN. ch. 279 4B

**MICHIGAN**

MICH. COMP. LAWS ANN. 780.752 - .767

**MINNESOTA**

MINN. STAT. 609.115 (Supp., 1986), amending 609.115 (1983); 611A.02, as amended by Senate File 232 (1987)

**MISSISSIPPI**

Senate Bill 2373 (Regular Session, 1987)

**MISSOURI**

MO. REV. STAT. 57.403, 557.026

**MONTANA**

MONT. CODE ANN. 46-18-111 et seq.; 46-18-242 et seq.; 46-24-201

**NEBRASKA**

NEB. REV. STAT. 29-119; 29-2261 (Supp., 1984), amending 29-2261 (1974)

**NEVADA**

NEV. REV. STAT. 176.135, .145, .156; 209.521

**NEW HAMPSHIRE**

N.H. REV. STAT. ANN. 651:4

**NEW JERSEY**

N.J. STAT. ANN. 2C:44-6 (Supp., 1985), amending 2C:44-6 (1983); 52:4B-39 et seq.

**NEW MEXICO**

N.M. STAT. ANN. 31-21-6, -9

**NEW YORK**

N.Y. CRIM. PROC. LAW 390.20 - .50 (1986), amending 390.20 -.50 (1982);  
N.Y. CRIM. PROC. LAW 390.30 (1986), repealing and replacing 390.30 (1982)  
EXEC. LAW 259-i  
Ch. 14 of the Laws of 1985

**NORTH DAKOTA**

N.D. Code 12.1-34-02 to -03

**OHIO**

OHIO REV. CODE ANN. 2947.051  
Presentence and Parole Board Bulletin 202

**OKLAHOMA**

OKLA. STAT. ANN. tit. 22 982

**OREGON**

OR. REV. STAT. 137.079, .106, .530; 144.790  
OR. ADMIN. RULES 291-38-015

**PENNSYLVANIA**

Act 96 of 1984

PA. CONS. STAT. 180-9.2

PA. R. CRIM. PROC., Rules 1403, 1404

Memorandum dated 11/28/84 from the Director of the Bureau of Probation Services to District Office supervisors

**RHODE ISLAND**

R.I. GEN. LAWS 12-28-3 (Supp., 1986), amending 12-28-3 (1985)

**TENNESSEE**

TENN. CODE ANN. 40-35-205, -207, -208

**TEXAS**

TEXAS ANN. CODE CRIM. PROC. Art. 56.01 et seq.

**UTAH**

UTAH CODE ANN. 64-13-20 (Supp., 1985), repealing and replacing 64-13-20 (1977)

**VERMONT**

VT. STAT. ANN. tit. 28 204 (Supp., 1985), amending 204 (1982)

VT. R. CRIM. PROC., Rule 32 (Supp., 1985), amending Rule 32 (1982)

**VIRGINIA**

VA. CODE 19.2-299 et seq.

**WASHINGTON**

WASH. REV. CODE 7.69.020 et seq. (Supp., 1986), amending 7.69.020 et seq. (1981); 9.94A.110 (Supp., 1986), amending 9.94A.110 (1981)

**WEST VIRGINIA**

W.VA. CODE 61-11A-1 et seq.

Probation Officers Manual 400.005

**WISCONSIN**

WISC. STAT. ANN. 950.01 et seq. (Supp., 1985), amending 950.01 et seq. (1983); 972.15

**WYOMING**

WY. STAT. 7-13-302, as amended by Senate File 59 (1987)

APPENDIX B

SUMMARY TABLE  
VICTIM IMPACT STATEMENTS AT SENTENCING

	AL	AK	AZ	AR	CA	CO
<b>Offense prerequisites</b>						
Any felony			x		(6)	x
Specific felonies						
Other	(1)				(6)	
<b>Source of notification of sentencing hearing</b>						
Probation officer			x		x	
Prosecutor						x
Other						(10)
Unspecified	x					
<b>Method of notification of sentencing hearing</b>						
Mail					x	
Phone						
Other						
Unspecified			x			x
<b>Notification time frame</b>						
30 days prior to hearing						
Other					(7)	
Unspecified	x		x			x
<b>Procedural prerequisites</b>						
Must request notification						
Must update address						
Other						
<b>Victim representation</b>						
Spouse						
Child						
Parent					(8)	
Sibling						
Other family member						
Unspecified family member			(4)		(9)	(11)
Legal guardian					(8)	
Attorney			x		x	
Other	(2)					
<b>Victim presence at hearing</b>						
No						
Yes	x		x		x	x
Other						
Unspecified						
<b>Statement format</b>						
Written statement					x	x
Oral statement	x		x		x	x
Other						
Unspecified						
<b>Contents</b>						
<b>Objective</b>						
Physical			x			
Emotional/psychological			x			
Financial/economic	x		x			
Social						
Other			(5)			
<b>Subjective</b>						
Summary of offense			x		x	
View of offender			x		x	
Sentence recommendation						
Other	(3)		(3)		(3)	
Unspecified						x
<b>Defendant presence at oral testimony</b>						
No						
Yes	x		x		x	x
Unspecified						
<b>Disclosure to defendant</b>						
No						
Yes	x		x			
Other						
Unspecified					x	x
<b>Defendant rebuttal</b>						
No						
Yes	x				x	x
Unspecified			x			

	CT	DE	FL	GA	HI	IO
Offense prerequisites						
Any felony			x	(19)		x
Specific felonies	(12)	(15)				
Other						
Source of notification of sentencing hearing						
Probation officer		x	x	(20)		x
Prosecutor	x					
Other						
Unspecified						
Method of notification of sentencing hearing						
Mail	(13)		x			x
Phone						
Other						
Unspecified		x		(20)		
Notification time frame						
30 days prior to hearing						
Other		x	x	(20)		x
Unspecified	x					
Procedural prerequisites						
Must request notification	x					x
Must update address			x			(24)
Other	(13)					
Victim representation						
Spouse						
Child						
Parent		(4,8,16)				
Sibling						
Other family member						
Unspecified family member	(9)	(4,8,16)	(18)	(8,21)		(8,11,25)
Legal guardian		(4,8,16)				
Attorney	x			(8,21)		
Other						
Victim presence at hearing						
No						
Yes	x	x	x	x		x
Other						
Unspecified						
Statement format						
Written statement	x		x	x		
Oral statement	x	x	x	x		x
Other						
Unspecified						
Contents						
Objective						
Physical	x		x	x		
Emotional/psychological			x	x		
Financial/economic	x		x	x		
Social			x	x		
Other	(14)			(22)		(26)
Subjective						
Summary of offense	x		x	(23)		
View of offender						
Sentence recommendation						
Other	(14)					
Unspecified		(17)				
Defendant presence at oral testimony						
No						
Yes	x		x	x		x
Unspecified		x				
Disclosure to defendant						
No						
Yes	x		x	x		
Other						
Unspecified		x				x
Defendant rebuttal						
No						
Yes			x	x		
Unspecified	x	x				x

	IL	IN	IA	KS	KY	LA
<b>Offense prerequisites</b>						
Any felony						
Specific felonies	(27)				(39)	
Other		(34,35)				
<b>Source of notification of sentencing hearing</b>						
Probation officer						
Prosecutor	x	x			x	
Other						
Unspecified						
<b>Method of notification of sentencing hearing</b>						
Mail					x	
Phone						
Other						
Unspecified	x	x				
<b>Notification time frame</b>						
30 days prior to hearing						
Other	(28)				(40)	
Unspecified		x				
<b>Procedural prerequisites</b>						
Must request notification					x	
Must update address	x				x	
Other	(29)	(35)				
<b>Victim representation</b>						
Spouse	(30,31)				(41)	
Child	(30,31)				(41)	
Parent	(30,31)	(8,9)			(8,41,42)	
Sibling	(30,31)				(41)	
Other family member					(41)	
Unspecified family member	(32)	(8,9)				
Legal guardian	(32)	(8,9)			(8,42)	
Attorney						
Other					(8,42,43)	
<b>Victim presence at hearing</b>						
No						
Yes	x	x			x	
Other						
Unspecified						
<b>Statement format</b>						
Written statement	(33)	(36)			x	
Oral statement	(33)	x				
Other						
Unspecified						
<b>Contents</b>						
<b>Objective</b>						
Physical	x				x	
Emotional/psychological	x				x	
Financial/economic	x				x	
Social	x					
Other	(26)					
<b>Subjective</b>						
Summary of offense		x				
View of offender						
Sentence recommendation	x					
Other		(37)			x	
Unspecified					(3)	
<b>Defendant presence at oral testimony</b>						
No					(NA)	
Yes	x	x				
Unspecified						
<b>Disclosure to defendant</b>						
No						
Yes	x	(38)				
Other						
Unspecified					x	
<b>Defendant rebuttal</b>						
No						
Yes	x	x				
Unspecified					x	

	ME	MO	MA	MI	MN	MS
Offense prerequisites						
Any felony	x		(52)	x	x	
Specific felonies						
Other		(47)			(34)	(65)
Source of notification of sentencing hearing						
Probation officer					(61)	
Prosecutor	(44)	x	x	x	(61)	x
Other						
Unspecified						
Method of notification of sentencing hearing						
Mail		(48)				x
Phone						
Other				(57)		
Unspecified	x	(48)	x		x	
Notification time frame						
33 days prior to hearing				(57)		(66)
Other						
Unspecified	x	x	x		x	
Procedural prerequisites						
Must request notification		x		x		
Must update address		(49)	(53)	x		
Other			(54)		(62)	(67)
Victim representation						
Spouse		(50)	(55)	(41,58)	(9)	(8,9,25)
Child		(50)	(55)	(41,58)		(8,9,25)
Parent		(50)	(55)	(8,41,42,58)		(8,9,25)
Sibling		(50)	(55)	(41,58)		(8,9,25)
Other family member				(41,58)		
Unspecified family member		(50)	(55)	(41,58)	(9)	(8,11)
Legal guardian		(50)	(55)	(8,42)	x	
Attorney			(55)			
Other		(50)				(68)
Victim presence at hearing						
No						
Yes	x	x	x	x	x	x
Other						
Unspecified						
Statement format						
Written statement	(45)	x	x	x	x	(69)
Oral statement	x	x	x	x	x	(67,70)
Other					(63)	(71)
Unspecified						
Contents						
Objective						
Physical				x	x	x
Emotional/psychological				x	x	x
Financial/economic	(46)			x	x	x
Social						
Other			(26)			(22)
Subjective						
Summary of offense						
View of offender						
Sentence recommendation			x	x	x	
Other				(3)	(37)	
Unspecified	x	x				
Defendant presence at oral testimony						
No					(NA)	
Yes	x	x	x	x		x
Unspecified						
Disclosure to defendant						
No						
Yes		(51)	x	(59)	(64)	x
Other						
Unspecified	x					
Defendant rebuttal						
No						
Yes		(51)	(56)	(60)		
Unspecified	x				x	x

	MO	MT	NE	NV	NH	NJ
Offense prerequisites						
Any felony	x					
Specific felonies					(76)	(77)
Other	(72)					(77)
Source of notification of sentencing hearing						
Probation officer						
Prosecutor	x					
Other						(78)
Unspecified					x	
Method of notification of sentencing hearing						
Mail	x					x
Phone						
Other						
Unspecified					x	
Notification time frame						
30 days prior to hearing						
Other						(79)
Unspecified	x				x	
Procedural prerequisites						
Must request notification						x
Must update address						
Other	(54,73)					
Victim representation						
Spouse	(74)					(9)
Child	(74)					(9)
Parent	(74)					
Sibling	(74)					
Other family member						
Unspecified family member	(74)				(9)	(9)
Legal guardian	(74)					
Attorney	(74)				x	
Other						
Victim presence at hearing						
No						
Yes	x				x	x
Other						
Unspecified						
Statement format						
Written statement	x					x
Oral statement	x				x	x
Other	(72)					
Unspecified						
Contents						
Objective						
Physical	(75)					x
Emotional/psychological	(75)					x
Financial/economic	(75)					
Social	(75)					
Other	(75)					(22)
Subjective						
Summary of offense	(75)				x	
View of offender					x	
Sentence recommendation						(80)
Other	(75)				(3)	(80)
Unspecified						
Defendant presence at oral testimony						
No						
Yes	x				x	
Unspecified						x
Disclosure to defendant						
No						
Yes					x	
Other						
Unspecified	x					x
Defendant rebuttal						
No						
Yes						
Unspecified	x				x	x

	NM	NY85	NC	ND	OH	OK
<b>Offense prerequisites</b>						
Any felony			x			
Specific felonies		(86)		(91)	(94)	
Other	(81)				(35)	
<b>Source of notification of sentencing hearing</b>						
Probation officer			(90)			
Prosecutor				x	x	
Other		(87)				
Unspecified	x					
<b>Method of notification of sentencing hearing</b>						
Mail		x				x
Phone		x				(95)
Other						
Unspecified	x		x	x		
<b>Notification time frame 30 days prior to hearing</b>						
Other				(57)		
Unspecified	(82)	x	x			x
<b>Procedural prerequisites</b>						
Must request notification		x	x			
Must update address		x				(96)
Other	(83)			(29)		(35)
<b>Victim representation</b>						
Spouse	(8,11,84)		(11)	(8,9,92)		
Child	(8,11,84)		(11)	(8,9,92)		
Parent	(8,11,84)		(11)	(8,9,92)		(8)
Sibling	(8,11,84)			(8,9,92)		
Other family member				(8,9,92)		
Unspecified family member		(8,11)	(11)			(8,9)
Legal guardian	(8,11,84)		(11)	(8,9,92)		(8)
Attorney						
Other						(97)
<b>Victim presence at hearing</b>						
No						
Yes	x	x	x	x		x
Other						
Unspecified						
<b>Statement format</b>						
Written statement	x		x	(91)		(98)
Oral statement	x			(91)		(99)
Other		(88)				
Unspecified						
<b>Contents</b>						
<b>Objective</b>						
Physical				x		
Emotional/psychological				x		
Financial/economic				x		
Social						
Other						(98,99)
<b>Subjective</b>						
Summary of offense						
View of offender						
Sentence recommendation						
Other		x				
Unspecified	x	(89)		(3)		(98,99)
<b>Defendant presence at oral testimony</b>						
No			(NA)			
Yes	x			x		
Unspecified		(88)				x
<b>Disclosure to defendant</b>						
No						
Yes				x		(100)
Other						
Unspecified	x	(88)	x			
<b>Defendant rebuttal</b>						
No						
Yes				(93)		
Unspecified	x	(88)	x			x

	OR	PA	RI	SC	SD	TN
Offense prerequisites						
Any felony		x	x	(52)		(115)
Specific felonies					(110)	
Other	(101)					
Source of notification of sentencing hearing						
Probation officer						
Prosecutor	x	x	x	(107)	(111)	
Other				(107)		
Unspecified						x
Method of notification of sentencing hearing						
Mail				x		
Phone						
Other						
Unspecified	x	x	x		x	x
Notification time frame						
30 days prior to hearing						
Other				(83)		
Unspecified	x	x	x		x	x
Procedural prerequisites						
Must request notification		x				
Must update address		x		x		
Other			(103)			
Victim representation						
Spouse					(112)	
Child						
Parent					(112)	
Sibling						
Other family member						
Unspecified family member	(11)		(11,104)	(8,11,108)	(112)	x
Legal guardian	(8)				(112)	
Attorney	x			x		
Other		(2)			(112)	
Victim presence at hearing						
No						
Yes	x	x	x	x	x	x
Other						
Unspecified						
Statement format						
Written statement			(105)	x		
Oral statement	x	x	(106)	x	(113)	x
Other					(114)	
Unspecified						
Contents						
Objective						
Physical		x		x	(113)	
Emotional/psychological		x		x	(113)	
Financial/economic		x		x	(113)	
Social				x		
Other	(26)		(26)	(22)		(116)
Subjective						
Summary of offense	x					
View of offender	x					
Sentence recommendation					(113)	
Other	(3,102)		(26)		(114)	(116)
Unspecified						
Defendant presence at oral testimony						
No						
Yes	x	x	x	x	x	x
Unspecified						
Disclosure to defendant						
No						
Yes	x	x	x	x	x	x
Other						
Unspecified						
Defendant rebuttal						
No						
Yes		x	x	(109)	x	x
Unspecified	x					

	TX	UT	VT	VA	WA	WV
Offense prerequisites						
Any felony			x		x	x
Specific felonies				(72)		
Other						
Source of notification of sentencing hearing						
Probation officer			x		x	x
Prosecutor						
Other				x		
Unspecified						
Method of notification of sentencing hearing						
Mail			x			x
Phone						
Other						
Unspecified				x	x	
Notification time frame						
30 days prior to hearing						(118)
Other						
Unspecified			x	x	x	
Procedural prerequisites						
Must request notification					x	x
Must update address						x
Other						
Victim representation						
Spouse					(117)	
Child					(117)	
Parent					(117)	
Sibling					(117)	
Other family member					(117)	
Unspecified family member			(9,25)			(9)
Legal guardian					(117)	
Attorney					(2)	(2,9)
Other						
Victim presence at hearing						
No						
Yes			x	x	x	x
Other						
Unspecified						
Statement format						
Written statement				x		(119)
Oral statement			x		x	x
Other						
Unspecified						
Contents						
Objective						
Physical				x	x	
Emotional/psychological				x	x	
Financial/economic				x	x	
Social				x	x	
Other				(22)	(22)	(14)
Subjective						
Summary of offense			x			
View of offender			x			
Sentence recommendation						
Other			(3)			(14)
Unspecified						
Defendant presence at oral testimony						
No				(NA)		
Yes			(93)		x	x
Unspecified						
Disclosure to defendant						
No						
Yes			(93)	x	x	x
Other						
Unspecified						
Defendant rebuttal						
No						
Yes			(93)		x	x
Unspecified				x		x

	WI	WY
Offense prerequisites		
Any felony	x	
Specific felonies		(121)
Other		
Source of notification of sentencing hearing		
Probation officer		
Prosecutor		
Other		
Unspecified	(120)	x
Method of notification of sentencing hearing		
Mail		
Phone		
Other		
Unspecified	(120)	x
Notification time frame		
30 days prior to hearing		
Other		
Unspecified	(120)	x
Procedural prerequisites		
Must request notification		
Must update address		
Other	(54)	
Victim representation		
Spouse	(11)	
Child	(11)	
Parent	(11)	
Sibling	(11)	
Other family member		
Unspecified family member	(11)	
Legal guardian		
Attorney		
Other		
Victim presence at hearing		
No		
Yes	x	
Other		(122)
Unspecified		
Statement format		
Written statement		
Oral statement		(122)
Other		
Unspecified	(120)	
Contents		
Objective		
Physical	x	
Emotional/psychological	x	
Financial/economic	x	(123)
Social		
Other		
Subjective		
Summary of offense		
View of offender		
Sentence recommendation		
Other		
Unspecified		
Defendant presence at oral testimony		
No		
Yes		
Unspecified	(120)	(122)
Disclosure to defendant		
No		
Yes		
Other		
Unspecified	(120)	(122)
Defendant rebuttal		
No		
Yes		
Unspecified	(120)	(122)

- 1 Any offense resulting in pecuniary damages or loss to a victim.
- 2 A victim's representative or the administrator of any victim's estate.
- 3 Need for and/or amount of restitution.
- 4 If the victim died as a result of the defendant's conduct.
- 5 If the victim has died as a result of the defendant's conduct, the court shall consider, as an aggravating circumstance, the emotional and financial harm caused to a victim's immediate family.
- 6 Where the statute specifies three possible incarcerative terms, the victim may submit a written statement in aggravation or mitigation, to dispute facts in the record or in the probation report, or to present additional facts. The victim has a statutory right to allocution at sentencing following any felony conviction.
- 7 The victim is to be given "adequate" notice of all sentencing proceedings. A victim's written statement is to be submitted to the court at least 4 days prior to the date of sentence imposition.
- 8 If the victim is a minor.
- 9 If the victim is deceased.
- 10 Law enforcement personnel.
- 11 If the victim was a homicide victim.
- 12 Class A, B, or C felony or a violation of CT. GEN. STAT. ANN. 53a-72a or 53a-72b.
- 13 The state's attorney, assistant state's attorney, or deputy assistant state's attorney is to provide the victim with advance notice of the date, time, and place of the sentencing hearing if the victim has (a) indicated an intent to present an oral or written statement and (b) complied with a prosecutorial request to submit a stamped, self-addressed postcard for the purpose of notification.
- 14 Any oral or written statement is to relate solely to the facts of the case and the extent of any injuries, financial losses, and loss of earnings directly resulting from the crime for which the defendant is being sentenced.
- 15 It is the policy of the Office of the Attorney General to limit the right to allocution at sentencing to victims of the following completed and attempted felonies: sexual offenses, kidnapping, all cases involving death, all cases involving serious physical injury, and second degree assault (unless the victim is a law enforcement officer or a correction officer). The right to speak is also limited to cases in which the judge may exercise discretion in sentencing.
- 16 If the victim is physically or emotionally unable to speak.
- 17 By prosecutorial policy, the victim is not permitted to present photographs or written materials at sentencing. There are no specific guidelines as to what information may be expressed during oral testimony.

18 Enabling statutes are inconsistent. FL. STAT. 960.001 accords victim status to a relative of a victim who is a minor or who was a homicide victim. FL. STAT. 921.143 defines victim status more generally as including the victim's next of kin "if the victim has died from causes related to the crime."

19 Except where life imprisonment or the death penalty must be imposed.

20 GA. CODE 17-10-1.1 specifies that the standardized victim impact form is to be provided by the prosecuting attorney to any requesting victim. It is unclear (a) whether a victim is statutorily entitled to receive a copy of this form or (b) how a victim is to be advised of the availability of this form so as to request a copy for completion. GA. CODE 17-10-1.2 states that allocution at sentencing is not a matter of right but is permitted at the discretion of the court. The law is silent as to how, when, or by whom a victim is to be made aware of this participatory opportunity.

21 If the victim is mentally, emotionally, or physically incapacitated.

22 A statement of the impact which the defendant's conduct has had upon the victim's family.

23 Specified for oral testimony only.

24 ID. CODE 19-5306(2) specifies that notice is to be given to the victim "at the address provided unless the victim subsequently provides a different address." Victims are not, however, legally required to keep the prosecutor apprised of any address changes.

25 If the victim was of such incapacity to preclude him or her from exercising these rights personally.

26 A statement of the impact which the defendant's conduct has had upon the victim.

27 Any violent crime, except where both parties have agreed to the imposition of a specific sentence.

28 ILL. REV. STAT. ch. 38 1404(6) specifies that notice of the date, time, and place of a sentencing hearing is to be provided "in advance, whenever possible."

29 Victims and witnesses are legally responsible (a) to make a timely report of the crime; (b) to cooperate with law enforcement authorities throughout the investigation, prosecution, and trial; and (c) to testify at trial. The pertinent statutory provision does not suggest that failure to satisfy these procedural prerequisites will abrogate a victim's claim to legislated rights.

30 If the victim is dead as a result of the action for which the defendant is charged with an offense.

31 If the victim is physically or mentally incapable of exercising these rights.

32 If the victim was a victim of a reckless homicide.

33 At the time of sentencing, the victim has the right to address the court. If the victim chooses to exercise this right, the impact statement must have been prepared in writing in conjunction with the Office of the State's Attorney prior to the initial

hearing or sentencing, before it can be presented orally. The victim impact form that is prepared in this manner is the same form that is included within the presentence report. In order to avoid duplication of effort, it is the stated policy of the Office of the State's Attorney to offer the opportunity to make an impact statement to all victims in cases involving murder, attempted murder, and sexual assault. In all other cases, impact statements are to be prepared by the probation department (Memorandum dated 1/23/86).

34 Crime resulting in loss or harm to a victim.

35 If there are more than three victims, the prosecutor can satisfy statutory mandates by notifying the three victims who he believes have suffered the most.

36 IND. CODE 35-35-3-5 directs the prosecuting attorney, whenever a plea recommendation is submitted to the court, to certify that (a) he has offered to show the proposed recommendation to the victim and (b) the victim has been advised of the right to present an oral statement at sentencing concerning the crime and the sentence. If unable to attend the hearing, the victim may mail a written statement to the court for inclusion in the presentence report.

37 Opinion on the plea recommendation.

38 Prior to sentencing, a defendant is entitled to either a copy of the presentence report or an advisement of the factual contents and conclusions of the report. Sources of confidential information need not be disclosed.

39 Criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest.

40 An attorney for the Commonwealth is to make a "reasonable" effort to ensure that requesting victims receive "prompt" notification.

41 If the victim is deceased and the relation is not the defendant, the following persons may be accorded victim status per this legislatively prescribed order: spouse, adult child, parent, sibling, grandparent.

42 If the victim is legally incapacitated.

43 If the court believes that the health, safety, or welfare of a minor or legally incapacitated victim would not otherwise be adequately protected, the court may appoint a special advocate to represent the victim's interests.

44 ME. REV. STAT. ANN. tit. 17-A 1257(3) directs the prosecutor, whenever practicable, to notify a victim of the time and place of sentencing. The prosecutor is not legally required to advise the victim of the right to present an oral or written statement at this proceeding.

45 If unable or unwilling to appear in the courtroom, the victim may submit a written statement to the court which shall become part of the record.

46 ME. REV. STAT. ANN. tit. 17-A 1323 directs the court, whenever practicable, to inquire of a prosecutor, police officer, or victim with respect to the extent of the victim's financial loss, and shall order restitution where appropriate.

47 Enabling statutes are inconsistent. MD. ANN. CODE Art. 27 761, in establishing guidelines for the treatment of and assistance to crime victims and witnesses, encourages the exercise of judicial discretion in permitting victim participation at sentencing. Under this proposal, any victim who suffered direct or threatened physical, emotional, or financial harm as a result of criminal conduct may be allowed to address the judge or jury or have a victim impact statement read by the judge or jury prior to sentencing or at any hearing to consider the modification of an imposed sentence. Although this broader class of victims may be permitted participatory roles, an earlier subsection of this law specifically mentions only victims of violent offenses as the class of victims to whom advance notice of these proceedings is to be provided.

Judicial discretion in permitting victim allocution at sentencing is also the subject of MD. ANN. CODE Art. 27 643D. This statute specifies that oral testimony at sentencing is a possibility in every case resulting in serious physical injury or death; no mention of written statements is made in this section.

Finally, MD. ANN. CODE Art. 10 40A codifies procedures for victim notification of appeals and of hearings to review, modify, or vacate imposed sentences. Notification is mandated only for victims of defendants convicted of and sentenced for crimes of violence.

The recent Supreme Court ruling in Booth v Maryland, No. 86-5020 (June 15, 1987), rules as unconstitutional the Maryland statute that requires the consideration of victim impact statements in capital cases.

48 MD. ANN. CODE Art. 10 40A (see note 47 supra) specifies that victim notice is to be given in writing. Other provisions do not specify the manner by which victims are to be notified of relevant proceedings.

49 MD. ANN. CODE Art. 10 40A (see note 47 supra) preconditions victim notification on the victim's maintenance, with the state's attorney's office, of a current mailing address. Other statutory provisions do not mandate this procedural prerequisite.

50 Enabling statutes are inconsistent. For purposes of being accorded the notification and participatory options outlined in MD. ANN. CODE Art. 27 761 (see note 47 supra), victim standing extends to a spouse, child, sibling, parent, or legal guardian of a victim who is a minor, incompetent, or the victim of a homicide.

Pursuant to MD. ANN. CODE Art. 27 643D, a request for allocution at sentencing may be granted to a family member, personal representative, legal guardian, or committee if the victim is (a) deceased; (b) under a mental, physical, or legal disability; or (c) otherwise unable to provide the required information.

A third perspective on victim representation is presented in MD. ANN. CODE Art. 10 40A. This code provides that written notice of postsentence appeals or hearings is to be given to a designated family member if the actual victim was a homicide victim and if the designee requests such notice. It is unclear how or by whom a specific family member is to be so designated.

51 If the victim or the victim's representative is permitted to allocute at sentencing, the defendant may cross-examine the person giving testimony. The cross-examination is limited to any factual statements presented. It is unclear whether the contents of a written statement would be disclosed to a defendant or if the defendant would have an opportunity to rebut these comments.

52 Excluding any crime for which a sentence of death may be imposed.

53 MASS. GEN. LAWS ANN. ch. 279 4B notes, inter alia, that victim notification is required only in cases involving an identified victim whose "whereabouts are known." It

is not certain what is meant by this clause as victims are not specifically directed to keep the prosecutor apprised of any change in address.

54 A victim's claim to legislated rights may be abrogated by the failure of the victim to report a crime to law enforcement authorities within 5 days of its occurrence or discovery, unless the district attorney finds good cause for not so doing.

55 Enabling statutes are inconsistent. MASS. GEN. LAWS ANN. ch. 279 4B accords victim status to an attorney or a designated family member if the victim is mentally, emotionally, or physically incapacitated, or if the victim is a minor. MASS. GEN. LAWS ANN. ch. 258B 1 includes within the definition of crime victim a spouse, child, sibling, parent, or legal guardian of an actual victim who is a minor, incompetent, or the victim of a homicide.

56 If the court decides to rely upon all or part of such statements in imposing sentence.

57 Prosecutorial notice is to be given to the victim "by any means reasonably calculated to give prompt actual notice."

58 If the victim is physically unable to exercise the rights accorded by the statute, the victim may designate, in writing, one of the following persons to act on his or her behalf for the duration of the physical disability: spouse, adult child, parent, sibling, grandparent. Notice shall continue to be sent only to the victim.

59 Unless exempted from disclosure by the court.

60 In determining whether to order restitution and the amount of that restitution, MICH. COMP. LAWS ANN. 780.767 directs the court to consider the amount of loss sustained by any victim, the current and potential financial resources of the defendant, and the financial needs of the defendant and the defendant's dependents. If so ordered, the probation officer will obtain such information for inclusion in or attachment to the presentence report. All such information will be disclosed to the defendant and subject to rebuttal. The evidentiary standard for dispute resolution shall be a showing of the preponderance of the evidence.

61 MINN. STAT. 611A.03(1) specifies that, prior to the entry of the factual basis for a plea pursuant to a plea recommendation, the prosecutor is to make a "reasonable and good faith" effort to notify a victim of his or her right to attend and participate at sentencing. Where a defendant has been convicted, MINN. STAT. 609.115 (Supp. 1986), amending 609.115 (1983), directs the officer conducting the presentence report to provide the legislatively mandated notice.

62 MINN. STAT. 611A.03(2) specifies that, if there are more than three victims, the prosecutor can satisfy the notification mandate of MINN. STAT. 611A.03(1) by notifying the three victims who he believes have suffered the most. No similar delimiter attaches to the notification provisions of 609.115 (Supp. 1986), amending 609.115 (1983) (see note 61 supra).

63 If the victim is not present in the courtroom when a plea recommendation is considered, but has communicated his or her objections to the prosecutor, the prosecutor shall make these objections known to the court.

64 A copy of a victim's written request for restitution is provided to the defendant at least 24 hours prior to sentencing.

65 If the preparation of a presentence report is ordered by the court, a victim impact statement is to be appended to this report (see jurisdictional entry in Appendix A). If no presentence report is ordered, a victim who, as the result of a felony, has suffered direct or threatened physical, emotional, or financial harm, may present an oral and/or written statement for consideration at sentencing.

66 At least 5 days prior to the sentencing hearing.

67 If there are multiple victims, the court may limit the number of oral victim impact statements.

68 Any person who has had a close personal relationship with a victim may be designated by the court to be a victim representative.

69 A written impact statement is to be submitted to the prosecuting attorney who, in turn, shall present the statement to the trial judge prior to sentencing.

70 Oral statements at sentencing may be permitted with the permission of the trial court.

71 In addition to the above noted opportunities for victim submission of oral or written statements, the Victim Impact Statement Act codifies a victim's right to submit a written statement for judicial consideration in any case where a sentencing hearing is not ordered by the trial judge. It is unclear whether this right is also preconditioned by the nonpreparation of a presentence report.

72 If the court does not order a presentence investigation, the prosecutor may, but is not required to, prepare a victim impact statement to be submitted to the court.

73 The prosecutor is required to notify the victim of the time and location at which the court will hear the guilty plea or impose sentence if the victim supplies the prosecutor with a stamped, self-addressed envelope for this purpose.

74 Enabling statutes are inconsistent. According to MO. REV. STAT. 57.403, a victim may appear personally or by counsel at sentencing to address the court. This right is transferred to a spouse, child, sibling, parent, or legal guardian of a victim who is a minor, incompetent, or the victim of a homicide. In contrast, MO. REV. STAT. 559.036 outlines procedures for the presentation of both oral and written victim statements at sentencing. An unspecified member of the victim's immediate family may appear personally or by counsel if the victim "has died or is otherwise unable to appear as a result of the offense committed by the defendant."

75 Enabling statutes are inconsistent. MO. REV. STAT. 559.036 specifies that any oral or written statement at sentencing "shall relate solely to the facts of the case and any personal injuries or financial loss incurred by the victim." The pertinent provision of MO. REV. STAT. 57.403 suggests greater latitude, stating only that the victim has the right to "reasonably express his or her views concerning the seriousness of the crime and the need for restitution." House Bill 874 notes that a victim impact statement that may be prepared and submitted by the prosecutor in the absence of a court ordered presentence report is to (a) identify the victim, (b) itemize economic

losses, (c) identify physical injuries, (d) describe changes in familial relationships or in the victim's personal welfare, and (e) identify any request for psychological services initiated by the victim or the victim's family.

76 Capital, first degree or second degree murder; attempted murder; aggravated felonious sexual assault; first degree assault; or negligent homicide committed in consequence of being under the influence of alcohol or drugs.

77 N.J. STAT. ANN. 39:4-50.10 et seq., known and cited as the Drunk Driving Victim's Bill of Rights Act, accords participatory rights at sentencing to "a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a motor vehicle accident involving another person's driving while under the influence of drugs or alcohol."

78 The court adjudicating the offense.

79 The statute provides that the victim is to receive "timely advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing..." The report on Interim Attorney General Standards to Ensure the Rights of Crime Victims, available from the Office of Victim-Witness Advocacy, is more definitive about notification time frames; it notes that a victim is to be notified in writing of the date of sentencing at least 5 business days in advance of the hearing.

80 The Attorney General's report (see note 79, supra) states that the "views of victims...should be brought to the attention of the court on bail decisions, continuances, plea agreements, dismissals, sentencing, and restitution" (p. 9).

81 Any attempted or completed crime resulting in direct or indirect physical, emotional, or financial harm to a victim.

82 A victim is entitled to notification "in time to exercise his right to attend."

83 A victim is eligible for the rights enumerated in Senate Bill 98 only if he or she (a) reported the crime to law enforcement officials within 5 days of its occurrence or discovery, or demonstrated good reason for not doing so; and (b) fully cooperates with and responds to reasonable requests from law enforcement and prosecutorial agencies.

84 If the victim is incompetent.

85 Ch. 94 of the Laws of 1984 amends the executive law by creating Fair Treatment Standards for Crime Victims. In part, these standards have been promulgated to ensure that victims are notified of, and allowed participatory roles at, various criminal justice proceedings. The entries in this table reflect the statutory language of these standards. At present, these procedures are not legislatively mandated; enabling proposals have been prepared for introduction during the 1987 legislative session.

86 Violent felony or a felony involving (a) attempted, threatened, or actual physical injury to a victim; (b) attempted, threatened, or actual property loss or damage in excess of \$250; or (c) larceny against the person.

87 Notification is to be provided by the "appropriate official."

88 The victim is to be consulted by the district attorney. It is unclear (a) when, where, or how the victim is to be consulted; (b) whether the victim's comments are to be recorded in any fashion and/or are to be made part of the official court record; or (c) whether the victim's comments, if recorded, are subject to disclosure.

89 The views of the victim regarding (a) disposition of the criminal case by dismissal, plea, or trial; (b) release of the defendant pending judicial proceedings; (c) the availability of sentencing alternatives.

90 N.C. GEN. STAT. 15A-825 establishes the right of a requesting victim to be notified of the opportunity to submit a victim impact statement for judicial consideration at sentencing. While this code does not specify which agency is responsible for providing this notice, correspondence from the Office of the Attorney General indicates that the district attorney's office in each county is performing this function.

91 If a presentence investigation was not ordered, a victim of any crime may submit a written statement, under oath, to the office of the state's attorney which, in turn, will forward the statement to the sentencing court. House Bill 1190 provides that a victim of a violent crime may present an oral statement at sentencing "in appropriate circumstances at the discretion of the judge." The bill does not specify what constitutes an "appropriate circumstance."

92 If the victim is incompetent or incapacitated.

93 A victim's oral statement must be presented under oath and is subject to cross-examination and rebuttal.

94 Aggravated murder, absent certain specifications; murder; voluntary manslaughter; involuntary manslaughter; aggravated vehicular homicide; felonious vehicular homicide; felonious assault; kidnapping; abduction; extortion; rape; felonious sexual penetration; aggravated arson; aggravated robbery; robbery; aggravated burglary; burglary.

95 The prosecutor needs only to make three "good faith" attempts at telephone notification.

96 In order to be notified of the time and place of a sentencing hearing, a victim is legally required to provide (a) a written memorandum with a current mailing address, a home telephone number and, if applicable, a business telephone number of the victim or the person designated to receive notice; and (b) a listing of the days of the week and the general hours of the day at which the designee or victim can be reached at the number(s) provided.

97 The victim may file a written statement with the prosecutor that designates another person as the agent of the victim.

98 If a presentence report is not required, but the court orders a victim impact statement, a separate statement will be prepared by probation staff and submitted to the court within 14 days of the court's request. This statement will be completed pursuant to policies outlining the preparation of presentence reports (see jurisdictional entry in Appendix A).

99 There is no right to allocution. The court, in its discretion, may permit a victim to present an oral statement relative to the victimization and the sentencing of the offender.

- 100 Disclosure of a written impact statement is at the discretion of the trial court.
- 101 Crime resulting in financial, social, psychological, or physical harm to a victim.
- 102 Need for compensatory fine.
- 103 Legislated rights are accorded to each victim who files a timely report of the crime and who cooperates with law enforcement authorities in the investigation and prosecution of the offense.
- 104 If the victim is physically incapacitated.
- 105 Prior to the acceptance of any plea negotiation, the prosecuting attorney will present any written impact statements to the court.
- 106 A victim who has sustained personal injury or loss of property directly attributable to the felonious conduct of which the defendant has been convicted or charged is entitled to make an oral statement prior to (a) imposition of sentence upon a defendant adjudicated guilty at trial, or (b) acceptance of a plea negotiation.
- 107 Notification is the responsibility of the solicitor's victim or witness assistance unit in each judicial circuit or a representative designated by the solicitor or law enforcement agency handling the case.
- 108 If the victim is incompetent or is physically or emotionally incapacitated as a result of the crime.
- 109 A defendant may rebut a victim's written impact statement if the court decides to review any part of the statement before sentencing. The law is silent as to the defendant's opportunity to rebut an oral statement.
- 110 A crime of violence or a sexual offense as defined in S.D. CODIFIED LAWS ANN. 22-22-1 et seq.
- 111 The prosecutor is to advise the victim of the right to comment on a plea recommendation. It is unclear how, when, or by whom the victim is to be informed of the allocutory opportunity at sentencing (see note 113, supra).
- 112 Enabling statutes are inconsistent. For the purpose of being entitled to comment on the terms of any plea agreement, S.D. CODIFIED LAWS ANN. 23A-7-8(4) accords victim status to the actual victim, the victim's designee, the victim's next of kin if the victim is deceased, and to the victim's parent or guardian if the victim is a minor. Pursuant to 23A-27-1.1, allocution at sentencing is a possibility for the actual victim or the parent, spouse, or next of kin of a victim who is deceased, incompetent by reason of age or physical condition, or whom the court shall find otherwise unable to comment.
- 113 S.D. CODIFIED LAWS 23A-27-1.1 provides that the court, in its discretion, may allow a requesting victim to address the court concerning the emotional, physical, and financial impact of the offense, and to comment upon the sentence. The defendant may rebut any oral statements.
- 114 The prosecutor must make a reasonable effort to provide a victim with an opportunity to comment on the terms of any plea agreement. The victim's comments are to be included in the record.

115 Where a specific sentence has been agreed upon by the district attorney and the defendant, and the proposed sentence has been accepted by the court, no presentence report or sentencing hearing is required unless ordered by the court.

116 TENN. CODE ANN. 40-35-209(b) states simply that the victim is to be afforded the opportunity to "testify relevant to the sentencing of the defendant."

117 WASH. REV. CODE 7.69.020 (Supp., 1986), amending 7.69.020 (1981), defines a survivor of a victim to mean a spouse, child, parent, legal guardian, sibling, or grandparent of a victim, and specifies that, if there are multiple survivors, the prosecutor will designate one survivor to represent all survivors for the purpose of notification. This statute does not specify (a) whether only the designated survivor may participate by providing impact information, or (b) the means by which a person becomes a legally recognized survivor, i.e., whether the death of the actual victim is a precondition and, if so, whether the victim's death must be attributable to the defendant's conduct.

118 Notification is to be provided within a "reasonable" time prior to sentencing.

119 In lieu of oral testimony, a victim may submit a written statement to the court.

120 WISC. STATS. ANN. 950.04, .05 (Supp., 1985), amending 950.04, .05 (1983), outline the victim's right to have victim impact information provided to and considered by the court, and encourage the counties to assist victims in providing this information. The statutes do not specify (a) how or by whom the victim is to be made aware of this participatory role, (b) the format of the victim impact statement, (c) whether the statement is to be included in or independent of a presentence report, or (d) whether this information will be disclosed to a defendant.

121 In any case where a person suffers pecuniary damages as a result of a defendant's criminal activities, the court, at the time of sentencing, may order the defendant to pay restitution to the victim. A probation or parole officer is to assist the defendant in preparing a plan of restitution. The entries in this column reflect victim participation in the determination of restitution.

122 The defendant's plan of restitution is to be developed and submitted promptly to the court. While this plan is to contain an assessment of pecuniary damages, it is unclear whether the victim is to be personally contacted in order to obtain this information. The clerk of the court mails a copy of the court's order approving or modifying the plan of restitution to each victim. The enabling statute does not indicate whether, or by what means, a victim may respond to the court's action.

123 For restitution purposes, pecuniary damages encompass all damages which a victim could recover in a civil action, including damages for wrongful death, but excluding punitive damages and damages for pain, suffering, mental anguish, and loss of consortium (WYO. STAT. ANN. 7-13-307).

**ALABAMA**

ALA. CODE 15-18-66, -67, -69

**ARIZONA**

AZ. REV. STAT. ANN. 12-253, 13-702

**CALIFORNIA**

CAL. PENAL CODE 679.01, 1170, 1191.1

**COLORADO**

COLO. REV. STAT. 24-4.1-303

**CONNECTICUT**

CT. GEN. STAT. ANN. 53a-72a, -72b; 54-91c

**DELAWARE**

Memorandum from the State Prosecutor dated 11/14/83

**FLORIDA**

FL. STAT. 921.143, 960.001

FL. R. CRIM. PROC. 3.180, 3.780

**GEORGIA**

GA. CODE 17-10-1.1, -1.2

**IDAHO**

ID. CODE 19-5306

**ILLINOIS**

ILL. REV. STAT. ch. 38 1005-4-1, 1403 to 1407

**INDIANA**

IND. CODE 35-35-3-1, -2, -6

IND. CODE 35-35-3-5 (as amended by P.L. 126 (1985))

IND. CODE 35-38-1-7, -8 (as amended by P.L. 131 (1985))

IND. CODE 35-38-1-12

**KENTUCKY**

KY. REV. STAT. 421.500 - 520

**MAINE**

ME. REV. STAT. ANN. tit. 17-A 1257, 1323

**MARYLAND**

MD. ANN. CODE Art. 27 643D, 760, 761

MD. ANN. CODE Art. 10 40A

**MASSACHUSETTS**

MASS. GEN. LAWS ANN. ch. 258B 1, 2, 3

MASS. GEN. LAWS ANN. ch. 279 4B

**MICHIGAN**

MICH. COMP. LAWS ANN. 780.752 et seq.

**MINNESOTA**

MINN. STAT. 609.115 (Supp., 1986), amending 609.115 (1983); 611A.01, .03, .04

**MISSISSIPPI**

Senate Bill 2373 (Regular Session, 1987)

**MISSOURI**

MO. REV. STAT. 57.403, 559.036  
House Bill 874 (2nd Reg. Sess., 1986)

**NEW HAMPSHIRE**

N.H. REV. STAT. ANN. 651:4-a

**NEW JERSEY**

N.J. STAT. ANN. 2C:43-2.1 (Supp., 1985), amending 2C:43-2.1 (1983); 39:4-50.10 et seq.

**NEW MEXICO**

Senate Bill 98 (1st Sess., 1987)

**NEW YORK**

Ch. 94 of the Laws of 1984

**NORTH CAROLINA**

N.C. GEN. STAT. 15A-824, -825

**NORTH DAKOTA**

House Bill 1190 (1987)

**OHIO**

OHIO REV. CODE ANN. 109.42, 2937.081; 2943.041

**OREGON**

OR. REV. STAT. 137.101  
Ballot Measure 10 (1986)

**PENNSYLVANIA**

Act 96 of 1984  
PA. R. CRIM. PROC., Rule 1405

**RHODE ISLAND**

R.I. GEN. LAWS 12-28-3 (Supp., 1986), amending 12-28-3 (1985); 12-28-4, -4.1, -4.2

**SOUTH CAROLINA**

S.C. CODE 16-3-1510 to -1550

**SOUTH DAKOTA**

S.D. CODIFIED LAWS ANN. 22-22-1 et seq.; 23A-7-8, -9; 23A-27-1.1

**TENNESSEE**

TENN. CODE ANN. 40-35-209

**VERMONT**

VT. STAT. ANN. tit. 13 7006  
VT. R. CRIM. PROC., Rule 32 (Supp., 1985), amending Rule 32 (1982); Rule 49 (Supp., 1985), amending Rule 49 (1982)

**VIRGINIA**

VA. CODE 19.2-299 et seq., as amended by House Bill 1018 (1987)

**WASHINGTON**

WASH. REV. CODE 7.69.020 et seq. (Supp., 1986), amending 7.69.020 et seq. (1981);  
9.94A.110 (Supp., 1986), amending 9.94A.110 (1981)

**WEST VIRGINIA**

W.VA. CODE 61-11A-1 et seq.

**WISCONSIN**

WISC. STAT. ANN. 950.01 et seq. (Supp., 1985), amending 950.01 et seq. (1983)

**WYOMING**

WYO. STAT. ANN. 6-10-110; 7-13-109; -307 et seq.

APPENDIX C

SUMMARY TABLE  
VICTIM IMPACT STATEMENTS AT PAROLE

	AL	AK	AZ	AR	CA	CO
Offense prerequisites						
Any felony		x	x			x
Specific felonies	(1)			(13)	(15)	
Other						
Source of notification of parole hearing						
Parole Board	x	x	x	x	x	x
Dept. of Corrections						
Other						
Unspecified						
Method of notification						
Mail	(2)	(2)	x	x	x	x
Phone						
Other						
Unspecified						
Notification time frame						
30 days prior to hearing	x	x	(10)		x	(18)
Other						(18)
Unspecified				x		
Procedural prerequisites						
Must request notification		x		x	x	(19)
Must update address		x		x	x	x
Other						
Victim representation						
Spouse		(3,4,9)				
Child		(3,4,9)				
Parent	(3)	(3,4,9)				
Sibling		(3,4,9)				
Other family member						
Unspecified family member	(4)		(11)	(4)	(4)	(3,4,9)
Legal guardian	(3)					
Attorney		(3,4,9)			x	x
Other						(20)
Victim presence at hearing						
No		x	x			
Yes	(5)			(14)	x	x
Unspecified						
Statement format						
Written statement	(6)	x	x	x	(16)	x
Oral statement	x		x	x	x	x
Statement from PSR	x			x		
Other					(17)	
Contents						
Objective						
Physical	x					
Emotional/psychological	x					
Financial/economic	x					
Social	(7)					
Other						
Subjective						
Summary of offense					x	x
View of offender					x	x
Opinion on release			x	x	x	x
Other	(8)					(21)
Unspecified		x				(21)
Inmate presence at oral testimony						
No	x	(NA)	x	x		
Yes					x	x
Unspecified						
Disclosure to inmate						
No	x		(12)	x		(22)
Yes		x			x	(22)
Other						
Unspecified						
Inmate rebuttal						
No	(NA)		(12)	(NA)		
Yes		x			x	
Unspecified						x

	CT	DE	FL	GA	HI <sup>37</sup>	ID
Offense prerequisites						
Any felony		(26)		x		x
Specific felonies	(23)	(26)			(38)	
Other			(30)			
Source of notification of parole hearing						
Parole Board	x	(26)	x		(37)	x
Dept. of Corrections		(26)				
Other				(34)		
Unspecified						
Method of notification						
Mail	x	(27)	x		(37)	x
Phone						
Other				(34)		
Unspecified						
Notification time frame						
30 days prior to hearing		x				
Other	(24)		(31)	(34)	(39)	(40)
Unspecified						
Procedural prerequisites						
Must request notification	x		x		x	x
Must update address	x		x	x		x
Other						
Victim representation						
Spouse		(28)				
Child		(28)				
Parent		(28)			(3)	
Sibling		(28)				
Other family member						
Unspecified family member	(4)			(3,9)	(4)	(3,9,28)
Legal guardian					(3)	
Attorney	x	(28)		(3,9)		
Other						
Victim presence at hearing						
No				x	(37)	
Yes	x	x	x			x
Unspecified						
Statement format						
Written statement	x	x	x	x		x
Oral statement	x	(29)	(32)	(35)		x
Statement from PSR			x		x	
Other			(33)			
Contents						
Objective						
Physical				x		
Emotional/psychological				x		
Financial/economic				x		
Social				x		
Other						
Subjective						
Summary of offense						
View of offender						
Opinion on release	x	x				
Other	(21)					
Unspecified			x			x
Inmate presence at oral testimony						
No			x	x	(NA)	(25)
Yes	(25)	(25)				
Unspecified						
Disclosure to inmate						
No	x	x		(36)	(NA)	(25)
Yes			x	(36)		
Other						
Unspecified						
Inmate rebuttal						
No		x	x	(36)	(NA)	x
Yes				(36)		
Unspecified	x					

	IL	IN	IA	KS	KY	LA
Offense prerequisites						(55)
Any felony						(55)
Specific felonies	(41)		(45)		(23)	
Other						
Source of notification of parole hearing						
Parole Board	x		x		(49)	(56)
Dept. of Corrections					(49)	(56)
Other						
Unspecified						
Method of notification						
Mail	x		x		x	x
Phone			x			
Other			(46)			
Unspecified						
Notification time frame						
30 days prior to hearing						
Other	(42)		(47)		(50)	(56)
Unspecified						
Procedural prerequisites						
Must request notification	x		x			
Must update address			x			
Other						
Victim representation						(11)
Spouse	(11,43)					
Child	(11,43)					
Parent	(11,43)				(3)	
Sibling	(11,43)					
Other family member						
Unspecified family member			(3,11,48)		(4,51)	(11)
Legal guardian					(3)	
Attorney			x			
Other						
Victim presence at hearing						
No						x
Yes	x		x		(52)	
Unspecified						
Statement format						
Written statement	x		x		x	x
Oral statement	x		x		x	x
Statement from PSR					x	x
Other						(57)
Contents						
Objective						
Physical			x		x	
Emotional/psychological			x		x	
Financial/economic			x		x	
Social			x			
Other					(53)	
Subjective						
Summary of offense						
View of offender						
Opinion on release			x		x	
Other						
Unspecified	x					x
Inmate presence at oral testimony						
No	x					x
Yes			x		(54)	
Unspecified						
Disclosure to inmate						
No						x
Yes	(44)		x		(54)	
Other					(54)	
Unspecified						
Inmate rebuttal						(NA)
No	x					
Yes			x			
Unspecified					x	

	ME	MD	MA	MI	MN <sup>74</sup>	MS
Offense prerequisites						
Any felony			(65)	x		
Specific felonies		(58)	(65)			
Other					(75)	
Source of notification of parole hearing						
Parole Board		x	x	x		
Dept. of Corrections					x	
Other					(76)	
Unspecified						
Method of notification						
Mail		x	x	x	(74)	
Phone						
Other						
Unspecified						
Notification time frame						
30 days prior to hearing			(66)	x		
Other		(59)	(66)			
Unspecified			(66)		(74)	
Procedural prerequisites						
Must request notification		(60)	(67)	x	x	
Must update address		x	(67)	x	x	
Other			(78)			
Victim representation						
Spouse		(61)	(68)	(72,73)		(4)
Child		(61)	(68)	(72,73)		
Parent		(61)	(68)	(3,43,72,73)		
Sibling		(61)	(68)	(72,73)		
Other family member			(68)	(72,73)		
Unspecified family member		(61)				(4)
Legal guardian		(61)	(68)	(3,43)		
Attorney				x		
Other		(61)				
Victim presence at hearing						
No		x	(65)			
Yes			(65)	x		
Unspecified						x
Statement format						
Written statement		x	x	x		
Oral statement		x	x	x		
Statement from PSR		(62)	x			
Other			(69)			
Contents						
Objective						
Physical		(63)				
Emotional/psychological		(63)	x			
Financial/economic		(63)	x			
Social		(63)	x			
Other			(70)			
Subjective						
Summary of offense						
View of offender						
Opinion on release			x			
Other			(70)			
Unspecified				x		
Inmate presence at oral testimony						
No		x		x	(NA)	
Yes			x			
Unspecified						
Disclosure to inmate						
No		(64)	(71)	x	(NA)	
Yes		(64)	(71)			
Other						
Unspecified						
Inmate rebuttal						
No		x		(NA)	(NA)	
Yes			x			
Unspecified						

	MO	MT	NE	NV	NH	NJ
Offense prerequisites						
Any felony	x		x	x	x	
Specific felonies						(88)
Other						
Source of notification of parole hearing						
Parole Board	x		x	x	x	x
Dept. of Corrections						
Other					(83)	
Unspecified						
Method of notification						
Mail	x		x	x	x	x
Phone						x
Other						
Unspecified						
Notification time frame						
30 days prior to hearing			x	x		
Other	(77)				(84)	(89)
Unspecified	(77)					
Procedural prerequisites						
Must request notification	x		x	x	x	x
Must update address	x			x	x	x
Other	(78)					
Victim representation						
Spouse	(3,28,79)			(11)		
Child	(3,28,79)			(11)		
Parent	(3,28,79)			(11)		
Sibling	(3,28,79)					
Other family member						
Unspecified family member					(4)	(28)
Legal guardian	(3,28,79)					
Attorney					x	
Other						
Victim presence at hearing						
No						x
Yes	x		x	x	x	
Unspecified						
Statement format						
Written statement	x		(16)	x	x	x
Oral statement	x		(16)	x	x	x
Statement from PSR			x		x	
Other						
Contents						
Objective						
Physical						x
Emotional/psychological						x
Financial/economic						x
Social						x
Other						
Subjective						
Summary of offense					(85)	
View of offender					(85)	
Opinion on release						
Other					(85)	
Unspecified	x		x	x		
Inmate presence at oral testimony						
No			(81)			x
Yes	x		(81)	x	(25)	
Unspecified						
Disclosure to inmate						
No	(80)					
Yes	(80)					
Other			(82)	x	(86)	(90)
Unspecified						
Inmate rebuttal						
No	(80)		x			
Yes	(80)			x		
Unspecified					(87)	x

	NM	NY	NC <sup>97</sup>	ND	OH	OK
Offense prerequisites						
Any felony	x	x	(98)	(100)	x	x
Specific felonies				(100)		
Other						
Source of notification of parole hearing						
Parole Board		(95)	(99)	x	x	x
Dept. of Corrections						
Other						
Unspecified	(91)		(99)			
Method of notification						
Mail				x	x	x
Phone					(102)	
Other						
Unspecified	(91)	x	x			
Notification time frame						
30 days prior to hearing			(99)	x	(103)	(108)
Other			(99)			
Unspecified	(91)	x	(99)			
Procedural prerequisites						
Must request notification		x			x	x
Must update address				x	(104)	x
Other	(92)			(101)	(104)	
Victim representation						
Spouse	(3,28,79)		(28)	(3,4,43,79)		
Child	(3,28,79)		(28)	(3,4,43,79)		
Parent	(3,28,79)		(28)	(3,4,43,79)	(3)	
Sibling	(3,28,79)			(3,4,43,79)		
Other family member				(3,4,43,79)		
Unspecified family member		(96)	(28)		(3,4)	
Legal guardian	(3,28,79)	(96)	(28)	(3,4,43,79)	(3)	
Attorney		(96)			x	
Other					(20)	(109)
Victim presence at hearing						
No		x	(97)		x	
Yes				x		x
Unspecified	(91)					
Statement format						
Written statement	(93)	x		(100)	x	x
Oral statement	(93)			(100)	(105)	x
Statement from PSR	(93)			x		
Other					(106)	
Contents						
Objective						
Physical	(63)					
Emotional/psychological	(63)					
Financial/economic	(63)					
Social						
Other						
Subjective						
Summary of offense						
View of offender						
Opinion on release						
Other						
Unspecified		x		x	(107)	x
Inmate presence at oral testimony						
No	x	(NA)	(NA)	x	x	x
Yes						
Unspecified						
Disclosure to inmate						
No		x	(NA)	x	x	x
Yes	(94)					
Other						
Unspecified						
Inmate rebuttal						
No		(NA)	(NA)	(NA)	(NA)	(NA)
Yes						
Unspecified	x					

	OR	PA	RI	SC	SD	TN
Offense prerequisites						
Any felony	x	x	(114)	x	x	(123)
Specific felonies						
Other						
Source of notification of parole hearing						
Parole Board	x	x	x		x	(124)
Dept. of Corrections				x		(124)
Other						
Unspecified						
Method of notification						
Mail	x	x	x	x	x	x
Phone						x
Other						
Unspecified						
Notification time frame						
30 days prior to hearing	x			x		(125)
Other		(110)	(115)		(121)	
Unspecified						
Procedural prerequisites						
Must request notification	x	x			x	(126)
Must update address	x	x		x		
Other		(111)				
Victim representation						
Spouse						
Child						
Parent					(3)	
Sibling						
Other family member						
Unspecified family member	x	(3,11,112)	(28,116)	(3,79,117,118)	(4,51,117)	x
Legal guardian	(3)				(3)	
Attorney	x					
Other	(20)					(127)
Victim presence at hearing						
No		x	x			
Yes	x			x	x	x
Unspecified						
Statement format						
Written statement	x	x	(16)	x	(16)	x
Oral statement	x	x	x	x	(16)	x
Statement from PSR				x	x	(128)
Other					(69)	(128)
Contents						
Objective						
Physical		x		x		
Emtional/psychological		x		x		
Financial/economic		x		x		
Social		x		x		
Other				(119)		
Subjective						
Summary of offense	x					
View of offender	x					
Opinion on release						x
Other		(21)				
Unspecified			x		x	
Inmate presence at oral testimony						
No		x	x	x		
Yes					(122)	(25)
Unspecified	x					
Disclosure to inmate						
No			x	(120)	(122)	
Yes		(113)			(122)	(90)
Other						
Unspecified	x					
Inmate rebuttal						
No			(NA)	(120)	(122)	
Yes		x			(122)	x
Unspecified	x					

	TX	UT	VT	VA	WA	WV
Offense prerequisites						
Any felony				x		x
Specific felonies	(129)					
Other						
Source of notification of parole hearing						
Parole Board	x			x		x
Dept. of Corrections						
Other						
Unspecified						
Method of notification						
Mail	x			x		x
Phone						
Other						
Unspecified						
Notification time frame						
30 days prior to hearing				(132)		(59)
Other	(130)					
Unspecified						
Procedural prerequisites						
Must request notification	x			x		(134)
Must update address	x			x		(134)
Other						
Victim representation						
Spouse	(4)					
Child	(4)					
Parent	(4)					(3)
Sibling	(4)					
Other family member						
Unspecified family member						(3)
Legal guardian	x					
Attorney						
Other				(133)		
Victim presence at hearing						
No	x			x		(135)
Yes						
Unspecified						
Statement format						
Written statement	x			x		x
Oral statement	(131)			x		x
Statement from PSR	x			x		x
Other						(136)
Contents						
Objective						
Physical						
Emotional/psychological						
Financial/economic						
Social						
Other						
Subjective						
Summary of offense						
View of offender						
Opinion on release						
Other						
Unspecified	x			x		x
Inmate presence at oral testimony						
No	x			x		x
Yes						
Unspecified						
Disclosure to inmate						
No	x			x		x
Yes						
Other						
Unspecified						
Inmate rebuttal						
No	(NA)			(NA)		(NA)
Yes						
Unspecified						

	WI	WY
Offense prerequisites		
Any felony		(137)
Specific felonies		(138)
Other		
Source of notification of parole hearing		
Parole Board		x
Dept. of Corrections		
Other		
Unspecified		
Method of notification		
Mail		x
Phone		
Other		
Unspecified		
Notification time frame		
30 days prior to hearing		(139)
Other		(140)
Unspecified		
Procedural prerequisites		
Must request notification		
Must update address		(141)
Other		
Victim representation		
Spouse		
Child		
Parent		
Sibling		
Other family member		
Unspecified family member		
Legal guardian		
Attorney		
Other		
Victim presence at hearing		
No		x
Yes		
Unspecified		
Statement format		
Written statement		x
Oral statement		(140)
Statement from PSR		x
Other		
Contents		
Objective		
Physical		
Emotional/psychological		
Financial/economic		
Social		
Other		
Subjective		
Summary of offense		
View of offender		
Opinion on release		
Other		
Unspecified		x
Inmate presence at oral testimony		
No		(140)
Yes		
Unspecified		
Disclosure to inmate		
No		x
Yes		
Other		
Unspecified		
Inmate rebuttal		
No		(NA)
Yes		
Unspecified		

- 1 Class A felony involving violence, death, physical injury, unlawful sexual assault, sexual abuse of a minor, child abuse, or sodomy.
- 2 Certified mail.
- 3 If the victim is a minor.
- 4 If the victim is deceased.
- 5 Parole hearings are public meetings that are conducted at the Parole Board's central office. The inmate under consideration is never present.
- 6 Although not legislatively mandated, the victim is asked to complete a Victim Impact Report. The Victim Impact Report is a standard form that allows the victim to provide personal commentary for Parole Board consideration.
- 7 Statement is to include "changes in the victim's quality of life."
- 8 Statute specifies only that the victim impact statement is to include the victim's "views".
- 9 If the victim is mentally or physically incapacitated.
- 10 Victim notification is not required where there is imminent danger of the inmate's death or when the inmate is within 210 days of sentence expiration.
- 11 If the victim is dead as a result of the inmate's conduct.
- 12 The issue of the confidentiality of the victim statement has not been legislatively addressed. Current Parole Board policy is one of nondisclosure to the inmate.
- 13 Capital murder; Class Y, A, or B felony.
- 14 An eligible inmate is interviewed during an open meeting at a prison facility. Any interested party may attend this public hearing. Parole hearings involving victim statements are conducted at the Parole Board's administrative offices.
- 15 Due to the state's determinate sentencing structure, parole is an option only for those sentenced to life imprisonment for certain sex offenses.
- 16 May be submitted for Parole Board consideration by any interested party.
- 17 Victim may submit a taped statement for Parole Board consideration.
- 18 Notice is mailed to victims 60 days prior to a release hearing; nonvictims who register with the Board are notified approximately 30 days prior to a hearing.
- 19 Victims of crimes against the person do not have to request notification. Nonvictims and victims of other offenses must request notification.

- 20 Any person designated by the victim.
- 21 Victim may comment on conditions of parole.
- 22 Written statements and oral statements before the Board at its administrative offices are not disclosed to the inmate. The inmate is present during oral testimony at the institutional release hearing.
- 23 Class A, B, or C felony.
- 24 The authorizing statute does not specify a time frame for notification. The Parole Board's policy is to mail notices 2 to 3 months prior to the scheduled hearing.
- 25 If consistent with the wishes of the victim.
- 26 The Department of Corrections notifies victims of all felonies of the date of impending parole hearings. Families of victims of first degree murder receive a second notice from the Parole Board.
- 27 Registered mail.
- 28 If the victim was a homicide victim.
- 29 All victims have the right to submit a written statement. Families of first degree murder victims have the right to appear personally and address the Board. Upon application, and at the discretion of the Board, other victims may present oral statements for Board consideration.
- 30 Defendants sentenced for crimes committed on or after October 1, 1983, are not eligible for parole consideration. They are, however, eligible for good time credit equivalent to one-half the imposed term.
- 31 7 to 10 days.
- 32 Parole hearings are public sessions. Persons in attendance may participate only upon the prior written approval of the chairman of the Parole and Probation Commission.
- 33 A victim's statement at sentencing is available for panel review only if it was transcribed or recorded in some other legal document which is forwarded to the Commission's administrative offices.
- 34 Victims are not entitled to advance notification of parole consideration hearings. The Board of Pardons and Paroles is, however, required to provide written notice of the final release decision within 72 hours of the Board's action.
- 35 Victims have no statutory right to present oral or written statements for Parole Board consideration. It is the policy of the Board, however, to accept written statements at any time. Also, any interested party may speak with a single Board member on an "as available" basis, or may address the full panel upon application.

36 A victim impact statement that is submitted to the prosecutor prior to sentencing, and is subsequently forwarded to the Parole Board, is disclosed to the offender at the time of sentencing and is subject to offender rebuttal. Oral or written statements presented directly to the Parole Board are treated as confidential information. Accordingly, these materials are not disclosed to the inmate.

37 Victims have no statutory right to present oral or written statements for Parole Board consideration. The Board is legally mandated, however, to provide written notice to any requesting victim whenever an inmate is released on parole or a parolee is released from parole supervision.

38 Robbery and any offense against the person as described in HAW. REV. STAT 706.

39 Victims are not notified of impending release consideration hearings. A requesting victim will receive written notice of the inmate's scheduled date of release not less than 10 days prior to the actual release.

40 The time frame for notification is not legislatively specified. The policy of the Commission for Pardons and Parole is to notify victims 3 to 4 weeks in advance of the hearing. .

41 Felony involving force or threatened use of force against the victim; misdemeanor resulting in death or great bodily harm; vehicular offense resulting in personal injury or death.

42 Not less than 15 days prior to the hearing.

43 If the victim is incapacitated and unable to appear.

44 By law, the inmate has access to all evidence considered by the Parole Board unless disclosure would subject any person to the actual risk of physical harm. In practice, decisions about disclosure of written statements are made on a case-by-case basis. Taped oral statements, on the other hand, are routinely made available for the inmate's review.

45 Forcible felony or any other felony or aggravated misdemeanor which involved actual or threatened infliction of physical or emotional injury.

46 Hand-delivered notification.

47 Not less than 5 days prior to hearing.

48 If the victim is incompetent as a result of the offense.

49 For inmates incarcerated before July 15, 1986, notification is by the commonwealth attorney; for inmates incarcerated on or after the above date, notification is by the Parole Board.

50 30 to 90 days prior to hearing.

51 If the victim is disabled.

52 Parole hearings are open to the public unless the victim or victim representative requests closure for reasons of personal safety.

53 The victim may comment on long term consequences of the crime including, but not limited to, the items denoted.

54 The victim can choose to present oral statements outside of the inmate's presence. It is unspecified whether an inmate has access to a victim's written comments and/or to a summary or transcription of a victim's oral testimony.

55 By law, parole is not an option for (a) a person convicted of armed robbery and denied parole eligibility under LA. REV. STAT. 14:64, (b) a person convicted of a violation of the Uniform Narcotic Drug Law and denied parole eligibility under LA. REV. STAT. 40:981, or (c) a person convicted of a third or subsequent felony and committed to the Department of Corrections. The presentation of an oral or written impact statement is permitted whenever parole release is considered.

56 By law, the Parole Board is to notify the spouse or next of kin of a deceased victim when the offender responsible for the death is scheduled for a parole hearing. The current Parole Board notification procedure is implemented in a two-phase process and extends beyond legal prescription. Approximately 90 days before the inmate's release consideration date, the Parole Board formally notifies the Judicial District from which the inmate was sentenced. The district attorney of that district then notifies all victims of record. In addition, Board policy dictates that a parole or probation officer is to conduct a preparole investigation. As part of this investigation, the preparing officer is to extend every effort to (a) contact all victims of record, (b) inform the victim of the date and place of the impending hearing and of the victim's opportunity to present oral or written statements, and (c) elicit victim commentary relevant to the offender's application for release.

57 Preparole investigation.

58 Violent crime as defined in MD. ANN. CODE Art. 27, 643B.

59 At least 90 days prior to hearing.

60 The victim must submit a written request for notification once every 2 years.

61 Conflicting procedures for victim representation have been codified within different sections of the state's penal code. See narrative for details.

62 If so requested by a victim of a violent crime, the Division of Probation and Parole will update the victim impact statement in the presentence report.

63 These pieces of information were to be included in the original victim impact statement that was prepared presentence.

64 An oral or written impact statement that is prepared and submitted at the time of the release hearing is not subject to disclosure. However, an offender may review any impact statement that was included in a presentence report and which is updated at the time of parole consideration.

65 Any felony victim may request notification of an impending parole proceeding and may submit a written statement for Board review, but may not attend the actual hearing. Victims of inmates serving a life sentence, except for inmates confined in certain hospitals and inmates convicted of first degree murder, may appear and testify at an offender's 15-year hearing.

66 Notice of a 15-year hearing is to be provided at least 30 days in advance. The Victim's Bill of Rights does not specify a notification time frame for other victims. Board policy is to send written notice 1 to 2 weeks prior to the hearing.

67 Victims of offenders serving parolable life sentences are not required to request notification. In order to receive advance notice, all other victims must apply for and be granted CORI certification (see narrative).

68 The two enabling statutes are inconsistent. The Victim's Bill of Rights mandates notice of parole release to the actual crime victim or to the spouse, child, sibling, parent, or legal guardian (no prescribed order) of a victim who is of minor status, incompetent, or dead as a result of a homicide.

MASS. GEN. LAWS ch. 127 133A, affecting victims of offenders serving parolable life sentences, specifies that victim status, for the purposes of notification and participation, is to be accorded in the following legislatively prescribed order: mother, father, spouse, child, grandchild, brother or sister, niece or nephew.

69 By law and at the victim's request, the transcription of the victim's oral testimony at sentencing may be submitted to the Parole Board for inclusion in the inmate's file.

70 The victim's oral statement at sentencing is to comment as to the "impact of the crime and as to a recommended sentence."

71 Written statements remain confidential. Oral testimony presented informally at the Board's central office is likewise not subject to disclosure. Any allocution at an inmate's 15-year hearing is presented in the presence of the offender.

72 If the victim is deceased, the rights accorded to the victim under the statute shall be accorded to family members per the legislatively specified order: spouse, adult child, parent, sibling, grandparent.

73 If the victim is physically unable to exercise the rights accorded by the statute, the victim may designate, in writing, one of the following persons to act on his or her behalf for the duration of the physical disability: spouse, adult child, parent, sibling, or grandparent. Notice shall continue to be sent only to the victim.

74 Victims have no statutory right to present oral or written statements prior to release consideration. Effective January 1, 1988, however, the Commissioner of Corrections or other custodial authority is legally mandated to make a good faith effort to notify any requesting victim whenever an inmate is (a) released from imprisonment or incarceration, including release on extended furlough and for work release; or (b) released from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency.

- 75 By law, parole is an option only for those offenders sentenced before the state's adoption of sentencing guidelines on May 1, 1980.
- 76 Custodial authority.
- 77 Notification is rendered to the extent reasonably possible and subject to the available resources.
- 78 By statute, a victim has the right to be notified of, and to appear at, a parole hearing only if the victim reported the crime to law enforcement authorities within 5 days of its occurrence or discovery or had good reason for not doing so.
- 79 If the victim is incompetent.
- 80 An inmate is present during, and has the opportunity to rebut, oral statements. In contrast, written comments are deemed confidential; as such, they are not subject to disclosure.
- 81 Generally, the inmate is present during allocution. If a witness requests to remain anonymous, however, and the Board deems it advisable, testimony may be taken in Executive Session.
- 82 Written materials, unless designated as confidential by the Board, are subject to disclosure. Acts of Executive Sessions are never available for inmate review.
- 83 In some instances, the Parole Board notifies the county attorney who, in turn, notifies the victim.
- 84 At least 15 days but not more than 30 days prior to any parole hearing.
- 85 The victim is entitled to "reasonably express his views concerning the offense and the person responsible."
- 86 Legislation does not address the issue of disclosure. By departmental policy, written statements are generally not included within a release file and, thus, are not subject to inmate review. Oral statements are not recorded in any fashion.
- 87 To date, no inmate has been present during victim testimony. It is unclear whether or to what extent a parole applicant would be allowed to respond to a victim statement made in the inmate's presence.
- 88 Any first degree or second degree crime resulting in injury to the victim.
- 89 At the time public notice is given.
- 90 An inmate has access to all evidence considered by the Parole Board unless disclosure would subject any person to the actual risk of physical harm.
- 91 Senate Bill 98, the Crime Victims' and Witnesses' Bill of Rights Act, codifies the victim's right to be informed of the time and place of any parole hearing. There is no specific mention of who is to provide this notice, when the notice is to be given, or

how the notice is to be communicated. Earlier subsections of this act note that a victim has the right "to be present and to be heard at all critical stages of the criminal justice processes" and that a victim is entitled to receive notice of these hearings and proceedings "in time to exercise his right to attend." It is unclear whether these provisions are to be interpreted collectively as establishing a victim's right to attend release hearings and to address the Parole Board.

92 Pursuant to Senate Bill 98, a victim is entitled to advance notice of parole proceedings only if he or she (a) reported the crime to law enforcement officials within 5 days of its occurrence or discovery, or demonstrated good reason for not doing so; and (b) fully cooperates with and responds to reasonable requests from law enforcement and prosecutorial agencies.

93 If an offender is sentenced to a term of imprisonment, a copy of the presentence report, if one was ordered by the court, is forwarded to the Department of Corrections. A presentence report may or may not include a victim impact statement. At the discretion of the Parole Board, unsolicited written statements will be accepted and requests for personal interviews will be granted.

94 Disclosure is allowed if the Parole Board determines that such action is in the best interest of the inmate.

95 There is no provision for victim notification of parole hearings. Specific victim requests for such notice, however, are accommodated by the Division of Parole.

96 Authorizing statutes are inconsistent on this point. N.Y. Crim. Proc. Law 440.50 (Supp., 1986), amending 440.50 (1978), grants victim status to a victim's family in the case of a "homicide or minor child". Exec. Law 259-i accords victim status to a victim's representative (i.e., "closest surviving relative, the committee or guardian of such person, or the legal representative") where the crime victim is "deceased or is mentally or physically incapacitated."

97 Victims have no statutory right to attend parole sessions or to present oral or written statements for Parole Board consideration.

98 The offender must have been convicted of a Class G or more serious felony.

99 N.C. GEN. STAT. 15A-825 establishes a victim's right to receive advance notice of any proceeding at which the release of the offender from custody is considered. The time frame for notice is unspecified. Moreover, it is unclear whether this legal mandate is intended to apply to parole hearings and, if so, who would be responsible for guaranteeing notice.

Identical bills currently pending in both houses of the North Carolina legislature begin to address these concerns. The proposed amendment to N.C. GEN. STAT. 15A-1371(b)(2) provides that "whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner, the victim whenever possible, and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole."

100 All victims have the right to submit a written statement for Parole Board consideration. Victims of violent crimes may, at the discretion of the Board, personally appear and address the panel.

101 By law, victims and witnesses are legally responsible (a) to make a timely report of the crime; (b) to cooperate with law enforcement authorities throughout the investigation, prosecution, and trial; and (c) to testify at trial. The statute does not suggest that failure to satisfy these procedural prerequisites will abrogate a victim's claim to legislated rights.

102 The Adult Parole Authority needs only to make three "good faith" attempts at phone notification.

103 At least 3 weeks before any action.

104 By law, a victim is required to provide (a) a written memorandum with a current mailing address, a home telephone number and, if applicable, a business telephone number of the victim or the person designated to receive notice; and (b) a listing of the days of the week and the general hours of the day at which the designee or victim can be reached at the number(s) provided.

105 One day each month, the Parole Board conducts an office conference day at its administrative headquarters. At this time, a requesting victim, at the discretion of the Parole Board, may speak with a hearing officer who then summarizes the victim's statements for inclusion in the file.

106 Any oral statement that a victim presents at sentencing is to be transcribed and forwarded to the Parole Board.

107 The victim may submit a written statement "relative to the victimization and the pending action."

108 Two to three weeks prior to the hearing.

109 The Parole Board will consider the observations and comments of any interested party. There is no specific mention of victim notification or input in Oklahoma legislation.

110 Victim notification is to occur at "the time of public notice". Because public notice of parole proceedings was not mandated prior to enactment of this statute, it is unclear what time frame will be implemented. Parole personnel have suggested that victims will receive notification 6 to 7 months prior to a parole hearing.

111 By statute, participatory rights are limited to victims who reported the crime to law enforcement authorities without an unreasonable delay after its occurrence or discovery.

112 If the victim is incapable of testifying.

113 Victim statements are considered nonconfidential and thus available for inmate review unless the victim requests confidentiality and the hearing officer believes that disclosure could compromise the safety of the victim.

114 Any interested party may submit a written statement for Parole Board consideration. The right to personally address the Board is statutorily limited by R.I. GEN. LAWS 12-28-6 to a person who has "sustained personal injury or loss of property directly attributable to the criminal conduct for which the inmate has been incarcerated." While this wording appears to exclude victims of attempted crimes and victims who, although not physically harmed, may have suffered psychological trauma, the Parole Board has interpreted the code to include victims of all felonies.

115 One to three weeks prior to the parole hearing.

116 If the victim is physically incapacitated.

117 If the victim is physically or emotionally incapacitated as a result of the crime.

118 Authorizing statutes are inconsistent. S.C. CODE 24-21-14 grants victim status to a victim's immediate family if the victim is deceased. S.C. CODE 16-3-1520 defines victim as including the family members of a crime victim who was a homicide victim.

119 The statement may include any other information related to the impact of the offense upon the victim.

120 A Victim Impact Statement that is prepared prior to sentencing must be disclosed to the offender at that time. The offender may rebut any statements relied upon by the court in its sentence determination. There is no automatic disclosure of oral or written materials submitted postsentence.

121 At least 10 days prior to the inmate's parole eligibility date.

122 Absent a Parole Board determination of good cause, the inmate is present for and may rebut oral statements. Written statements are not subject to disclosure.

123 Any felony for which the inmate was sentenced to 10 or more years of incarceration.

124 By law, the Parole Board notifies the county sheriff who, in turn, notifies the victim. However, if a victim has contacted the Board and has requested advance notice of parole proceedings, the victim will be notified directly by Board personnel.

125 20 days prior to the hearing.

126 A victim need not formally request notification of an inmate's eligibility for parole. More specific information outlining the precise date and location of the release proceeding will be sent only if requested by the victim.

127 The Rules of the Tennessee Board of Pardons state that the Parole Board is to consider the observations and comments of any interested party. There is no specific mention of victim participation or input.

128 Whenever a defendant is sentenced to the custody of the department of corrections, a copy of the presentence report is forwarded to the commissioner of

correction. If no presentence report was prepared, the court shall order the preparation of a parallel report as the court may deem appropriate to aid correctional personnel during the term of the defendant's incarceration. It is not clear whether a victim would be consulted in the preparation of this postsentence report.

129 Sexual assault, kidnapping, or aggravated robbery; alternately, any criminal conduct causing bodily injury or death to a victim.

130 Administrative rules dictate that notice is to be given at least 10 days prior to a tentative release date.

131 Any interested party can request a personal appearance before the full Board of Pardons and Paroles. Approval of such a request is at the discretion of the Board.

132 Every 3 months, the Department of Corrections generates a list of parole applicants to be interviewed during the following quarter. This list is forwarded to the Parole Board approximately 2 weeks in advance of the quarter. Written victim notification is provided at this time.

133 Any interested party may present a written or oral statement for Parole Board review.

134 The Victim Protection Act of 1984 requires the Parole Board to provide advance notice of impending parole hearings to any victim for whom both a specific request for notification and an updated address are on file. W. VA. CODE 62-12-13, enacted in July 1986, mandates the provision of similar notice to all victims of sexual offenses, regardless of whether or not the victim has requested such notice.

135 Any interested party may attend an inmate's release hearing. Victims have no right to allocution and may not speak except in reply to a direct question posed by a Board member. Any victim who wishes to present an oral statement can schedule an appointment with a Board member for this purpose.

136 A postsentence report, containing (a) a victim impact statement and (b) documentation of a victim's request (or nonrequest) for notice of release proceedings, is to be prepared if (a) no presentence report was prepared or if (b) the prepared presentence report failed to contain the two above noted items.

137 The enabling statute appears to extend application of victims' rights to victims of all crimes. The Parole Board, however, believes that the legislative intent was to restrict statutory application to victims of violent crimes. At the time of this writing, Board personnel were seeking clarification on this issue.

138 By law, parole is not an option for any offender who (a) made an assault with a deadly weapon upon any officer, employee, or inmate of any institution; or (b) escaped, attempted to escape, or assisted others to escape from any institution.

139 Currently, notice is provided 30 to 45 days in advance of an inmate's parole eligibility date. The Board is hoping that, by working with correctional authorities, this notification time frame can be extended to 3 to 4 months prior to the release hearing.

140 If the court desires to require restitution, the court is to fix a reasonable amount at the time of sentencing and is to include this determination as a special finding in the judgment of conviction. Pursuant to WY. STAT. 7-13-421, payment of restitution is to be a condition of every parole unless the Parole Board believes that such payment would work an undue hardship on the parolee or his family. In such a case, the Board may waive the payment of some or all of the court ordered sum. Before granting such a waiver, however, the Board is required by law to exercise due diligence in locating the victim and in giving the victim notice of the proposed action and an opportunity to be heard.

Due to the recency of this legislative provision, the practical applications have not been determined. Although no notification time frame has been established, Board personnel have indicated that policies prohibiting victim attendance at parole interviews will be retained.

141 The victim is not advised to keep the board apprised of address changes until he or she receives the initial preparole notice.

**ALABAMA**

ALA. CODE 15-22-36(e)

**ALASKA**

AK. 33.16.130, .170

**ARIZONA**

AZ. REV. STAT. ANN. 31-411(F)

**ARKANSAS**

ARK. STAT. ANN. 43-2819 to -2819.3 (1983)

**CALIFORNIA**

CAL. PENAL CODE 3043, 3043.5, 11155  
CAL. BOARD. OF PRISON TERMS 2029, 2030

**COLORADO**

COLO. REV. STAT. 17-2-214 to -216

**CONNECTICUT**

CT. GEN. STAT. ANN. 54-126a

**DELAWARE**

DEL. CODE ANN. 4347, 4350

**FLORIDA**

FLA. STAT. ANN. 921.001, 947.06 (1983)

**GEORGIA**

GA. CODE 17-10-1.1(f)  
GA. ADMIN. RULES 475-3-2(1)

**HAWAII**

HAW. REV. STAT. 353-22 (Supp., 1984), amending 353-22; 706-670.5; 708-840

**IDAHO**

ID. CODE 19-5304, -5306

**ILLINOIS**

ILL. REV. STAT. ch.38 1003-3-4, 1401 to 1408  
20 ILL. ADMIN. CODE 1610.40

**IOWA**

IA. CODE ANN. 910A.7 et seq.

**KENTUCKY**

KY. REV. STAT. 421.400; 421.500; 439.340 (Supp., 1986), amending 439.340

**LOUISIANA**

LA. REV. STAT. 15:572.4, 15:574.2, 15:574.4

Rules, Regulations, Criteria, Policies, Procedures and Guidelines of the Louisiana Board of Parole

**MARYLAND**

MD. ANN. CODE Art. 41 110, 124

MD. ANN. CODE Art. 27 643B, 760 to 763

**MASSACHUSETTS**

MASS. GEN. LAWS ANN. ch. 127 133A

MASS. GEN. LAWS ANN. ch. 258B 3, as amended by Chapter 420 of Acts of 1986

**MICHIGAN**

MICH. COMP. LAWS ANN. 780.752, .753, .769 to .771

**MINNESOTA**

MINN. STAT. 611A.01; 611A.06, as amended by Senate File 232 (1987)

**MISSOURI**

MO. REV. STAT. 57.403,12

**NEBRASKA**

NEB. REV. STAT. 29-2261; 84-1408 et seq.

**NEVADA**

NEV. REV. STAT. 178.5698; 209.521; 213.005, .010, .095, .113, .130

**NEW HAMPSHIRE**

N.H. REV. STAT. ANN. 651-A:11, -A:11-a

**NEW JERSEY**

N.J. STAT. ANN. 30:4-123.54 (Supp., 1985) amending 30:4-123.54 (1983); 30:4-123.55.c

**NEW MEXICO**

N.M. STAT. ANN. 31-21-6, -9, -25

**NEW YORK**

N.Y. CRIM. PROC. LAW 440.50 (Supp., 1986), amending 440.50 (1978)

EXEC. LAW 259-i

CORRECTIONS LAW 149-a (as amended by Ch. 73 of the Laws of 1986)

**NORTH DAKOTA**

House Bill 1190 (1987)

**OHIO**

OHIO REV. CODE ANN. 2967.03, .12

House Bill 207 (1987), creating 309.18, 341.011, 753.19, 5120.14

**OKLAHOMA**

OKLA. STAT. ANN. 332.2 (Supp., 1985), amending 332.2 (1981)

**OREGON**

OR. REV. STAT. 144.185

**PENNSYLVANIA**

Act 96 of 1984

Act 134 of 1986, amending the PA Parole Act of 1941

**RHODE ISLAND**

R.I. GEN. LAWS 12-28-3 et seq.; 13-8-6, -9.1, -26

**SOUTH CAROLINA**

S.C. CODE 16-3-1520, -1550; 24-21-14, -50

**SOUTH DAKOTA**

S.D. CODIFIED LAWS ANN. 23A-27-1.1; 24-15-3, -8.2, -8.3

House Bill 1074, amending 23A-27

House Bill 1075, amending 24-15-8.2

**TENNESSEE**

TENN. CODE ANN. 40-28-101, -106, -107; 40-35-209 (Supp., 1985), amending 40-35-209 (1983)

**TEXAS**

TEXAS CODE CRIM. PROC. Art. 42; Art. 56.01

Senate Bill 341 (1987)

**WEST VIRGINIA**

West Virginia Board of Probation and Parole Procedural Rules, 5.06

W. VA. CODE 61-11A-1 et seq., 62-12-13

**WYOMING**

WY. STAT. 7-13-109, -424

Senate File 59 (1987), amending 7-13-302, -402

APPENDIX D

SAMPLING FRAME AND METHODOLOGY  
PROBATION ADMINISTRATORS

## Survey Methodology

Thirty-two states were identified as authorizing, by state statute, the incorporation of victim impact statements within presentence reports. All of the probation offices in those states became the sampling frame. In addition, despite the absence of legislative authorization, Alabama was included because the State Board of Pardons and Paroles has an administrative policy concerning victim impact statements. North Dakota was also included because victim impact statements are sometimes used in exceptional cases without legislative authorization. Kentucky was not included in the sample because responsibility for the preparation of victim impact statements had recently been moved from the probation department to the prosecuting attorney's office. Thus, the total sampling frame consisted of all probation offices that prepare presentence reports and/or victim impact statements in any one of the 33 states.

## Sampling Procedure

The Probation and Parole Directory (College Park, MD: American Correctional Association, 1985) was used to identify all probation offices that conduct presentence investigations in adult criminal cases in each of the 33 states. Where ten or fewer offices were listed for a particular state, all offices were included in the sample. If more than ten offices were listed (or were discovered to exist although not listed), a random sample of ten offices was generated.

A probation administrator or supervisor in each office was contacted by telephone to explain project objectives and to elicit cooperation in the study. Only two refusals were voiced. These offices were randomly replaced by another office in the state. In a few cases, contact with the selected offices proved to be impossible; where this situation was encountered, these offices were also replaced by random selection from the remaining offices in the respective states.

Since most legislation authorizing the preparation of victim impact statements refers specifically to felony actions, the sample was designed to exclude probation offices that prepare presentence reports for misdemeanor cases only. However, during the telephone contact stage, it was discovered that the final sample contained five municipal court probation departments that prepare victim impact statements for misdemeanor actions only. These offices were retained in the sample when departmental contacts expressed a desire to contribute to the project. A later project decision resulted, however, in the exclusion of these responses from the data analysis.

## The Sample

**Alabama** has ten district probation offices administered by the Board of Pardons and Parole and numerous suboffices. The suboffices are supervised by the district offices and were not considered separate offices for our purposes. All ten district offices were chosen for sample inclusion.

**Alaska** has three Adult Probation and Parole regional offices. All were included in the sample.

**Arizona** has 15 county probation departments that are part of the judicial branch of government. The ten county probation departments that were randomly chosen are located in Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Pima, Santa Cruz, and Yuma counties.

**California** has 58 counties that provide their own probation services. The county probation departments that were randomly chosen are located in Calvaras, Imperial, Inyo, Kings, Lake, San Bernardino, San Mateo, Shasta, Tuolumne, and Yolo counties.

**Connecticut** has 20 probation offices administered by the Department of Adult Probation. Randomly chosen were those offices located in Danielson, Middletown, Norwich, New Britain, Bristol, Enfield, Danbury, Norwalk, Stamford, and Meriden.

**Delaware** has three presentence offices serving the three Superior Courts of Kent, Newcastle, and Sussex counties. All were included in the sample.

**Idaho** has seven district offices that are administered by the Division of Probation and Parole and eight satellite offices that are supervised by the district offices. The seven district offices were included in the sample.

**Illinois** has 79 county adult probation departments in 20 judicial districts plus the Cook County Probation Department. Ten departments were randomly chosen from the 80 departments listed. The Cook, Ford, Henry, Lake, Montgomery, Pike, Sangamon, Stephenson, and Vermilion county Probation Departments and the department serving the 16th judicial circuit were sampled.

**Indiana** has 121 adult probation departments that are administered by the 92 counties and supervised by the Judicial Conference of Indiana. The selected departments are located in Bartholomew, Clinton, Fayette, Hancock, Jefferson, Gary, Marion, Parke, Scott, and Vigo counties.

**Iowa** has eight judicial district probation offices that are administered by the Department of Correctional Services. All were included.

**Kansas** has 30 judicial district court services offices and 3 municipal court probation offices that provide probation services in Kansas. The 5th, 6th, 11th, 18th, 21st, 23rd, 24th, 26th, and 30th district offices and the Wichita Court Probation Department were surveyed.

**Louisiana** has 18 district offices administered by the Division of Probation and Parole. The offices that were selected were the Monroe, Shreveport, Tallulah, Alexandria, Lafayette, Baton Rouge, Feliciana, West Baton Rouge, Jefferson Parish, and New Orleans district offices.

**Maryland** has four regional offices administered by the Division of Probation and Parole. All four offices are in the sample.

**Michigan's** Bureau of Field Services has field offices serving 83 counties. Each field office may serve one or more counties. The surveyed offices are located in Detroit, Flint (Genesee County), Flint (counties surrounding Genesee County), Adrian, Midland, Pontiac, Escanaba, Jackson, Grand Haven, Gaylord, and Grand Rapids.

**Minnesota** has seven probation offices administered by the Department of Corrections and 12 community corrections offices. Sampled were the Albert Lea and St. Cloud district offices and the community corrections offices that serve Blue Earth, Crow Wing/Morrison, Dodge/Olmstead/Fillmore, Hennepin, Nobles/Rock, Norman/Polk/Red Lake, Todd/Wadena, and Washington counties.

**Missouri** has 28 Probation and Parole district offices that conduct presentence investigations. The following Districts were randomly selected: 1st (St. Joseph), 4th (Kansas City), 7th (St. Louis), 8th (Richmond Heights), 10th (Springfield), 11th (Rolla), 14th (Kennett), 23rd (Sikeston), 25th (Poplar Bluff), and 28th (Grandview/Kansas City).

**Montana** has four regional Community Corrections Bureau offices. All were included.

**Nebraska** has 17 district offices administered by the Adult Probation Administration and 2 municipal court probation departments. The randomly chosen offices were the 4th, 5th, 8th, 9th, 10th, 11th, 14th, and 15th district offices and the Omaha and Lincoln municipal court probation offices.

**Nevada's** Department of Parole and Probation has four district offices serving all of Nevada. All were sampled.

**New Jersey** has 21 county probation departments administered by the Administrative Office of the Courts. Surveys were distributed to departments in Atlantic, Bergen, Essex, Hunterdon, Middlesex, Monmouth, Salem, Somerset, Union, and Warren counties.

**New Mexico** has four field services division offices administered by the Corrections Department. All were included in the sample.

**New York** has 56 county probation departments, 2 independent city court probation departments, and 4 New York City probation departments. The 10 offices that were initially selected serve Albany, Clinton, Onondaga, Rensselaer, Rockland, Sullivan, Tompkins, Ulster, and Wayne counties and the Queens/Staten Island boroughs. However, the final sample has 11 offices because the Queens/Staten Island region is divided into 2 branch offices, one for each borough.

At the time of survey distribution, **North Dakota** did not have legislation mandating the preparation of victim impact statements. However, because the Parole and Probation Department had, on its own initiative, authorized the inclusion of victim impact statements in some presentence reports, a questionnaire was sent to the main office.

**Ohio** has 40 counties with independent probation services. The 48 remaining counties are served by the 5 regional offices of the Division of Parole and Community Services. A random sample was chosen from these 45 offices. The final sample was comprised of the regional offices in Columbus and Lima, and the Clark, Columbiana, Cuyahoga, Fulton, Holmes, Richland, Sandusky and Shelby County Adult Probation Departments.

**Oklahoma** has six probation districts administered by the Division of Probation and Parole and two municipal court probation departments in Oklahoma City and Tulsa. All eight offices were surveyed.

**Oregon** has 31 probation branch offices administered by the Corrections Division as well as 13 community corrections offices. The randomly selected offices were the Albany, Astoria, Burns, Eugene, LaGrande, Newport, and Ontario branch offices and the Clackamas and Columbia County Community Corrections offices.

**Pennsylvania** has 62 independent probation departments serving 65 counties. The Board of Probation and Parole provides probation services for 2 additional counties. The sample included the local probation departments of Berks, Cambria, Clarion, Clearfield, Huntingdon, Lebanon, Lehigh, Philadelphia, Schuylkill, and Union/Snyder counties.

**Rhode Island** has one adult investigative unit that conducts presentence investigations for all of Rhode Island.

**Tennessee** has nine regional probation offices. All nine offices were included in the sample.

**Utah** has seven regional field operations offices administered by the Department of Corrections. All of these offices were included in the sample.

**Vermont** has five district offices administered by the Division of Probation and Parole Services. All five offices received questionnaires.

**Virginia** has 39 district probation offices administered by the Department of Corrections. The surveyed offices included those in the 1st, 3rd, 7th, 13th, 14th, 18th, 26th, 27th, 35th, and 36th district offices.

**West Virginia** has 30 judicial circuit probation departments administered by the Supreme Court of Appeals. The selected offices are in the 2nd, 5th, 6th, 8th, 11th, 12th, 22nd, 24th, 25th, and 30th judicial circuits.

APPENDIX E

RESEARCH INSTRUMENTS  
SURVEY OF PROBATION ADMINISTRATORS

**THE HINDELANG  
CRIMINAL JUSTICE RESEARCH CENTER**

STATE UNIVERSITY OF NEW YORK AT ALBANY  
135 WESTERN AVENUE  
ALBANY, NEW YORK 12222  
(518)442-5600

September 25, 1986

Dear Probation Personnel:

The Hindelang Criminal Justice Research Center has been funded by the National Institute of Justice to conduct a national study of the authorization and implementation of victim impact statements. As part of this project, we are distributing a detailed questionnaire to a random sample of probation personnel in all 50 states. The purpose of this survey is to gain a better understanding of how authorizing legislation and/or policies are being implemented.

During the summer you were contacted by telephone by one of our staff members. At that time project objectives were explained and you agreed to assist the study. We now request your continuing cooperation. Please read and carefully complete the enclosed survey. You need only complete those sections of the survey that are applicable to your jurisdiction.

We are also interested in obtaining copies of (1) any guidelines for statement preparation that may be used by probation staff; (2) a standard form, if any, that may be used to interview victims; and (3) any other materials that assist probation staff in completing victim statements.

Finally, we are asking probation personnel to provide several copies of completed statements that, in your opinion, represent 'good', 'bad', and 'typical' examples of local preparation. This request is being made so that project staff can better familiarize themselves with variations in document preparation. Because we are interested in these documents for comparison purposes only, we ask that all identifying references (names, addresses, etc.) be deleted.

Please return the completed survey and any other materials in the self-addressed stamped envelope that has been provided. All information that you provide will remain confidential. Data will be reported in aggregate form only. The responses of individual offices and staff members will not be identified.

Thank you for your assistance. If you have any questions about this request, or about the project in general, please contact me.

Sincerely,

Maureen McLeod, Ph.D.  
Project Director

## DIRECTIONS FOR COMPLETING SURVEY

For purposes of this study, we define a victim impact statement as an oral or written statement, introduced at some decision point in criminal proceedings (e.g., pretrial release, plea negotiation, restitution, sentencing), which includes one or both of the following:

- a) an objective assessment of the effects of the crime on the victim and/or
- b) a subjective commentary outlining the victim's feelings on the crime, the criminal, or a particular procedural proposal.

This survey is organized into six sections. The first section gathers general office information. The second section asks questions about the extent of victim impact statement preparation. The third, fourth, and fifth sections focus on the preparation and presentation of victim impact statements at the pretrial, plea negotiation, and sentencing stages, respectively. In particular, questions pertain to victim participation and notification; authorship, verification, content, and format of victim impact statements; and the manner by which statements are introduced into court records. The final section elicits your subjective commentary on a number of related issues.

You may find that some questions do not apply to the situation in your jurisdiction, or that nuances discriminate between your actual practices and the possible answers that have been suggested on the form. Accordingly, the survey has been designed to accommodate varying agency structures and policies by inviting commentary in each section. Please feel free to make additional comments next to any question where you believe an expanded answer would be instructive. Likewise, if there is any aspect of victim impact legislation or policy that may be unique to your office and has not been addressed, please inform us on the reverse side of the questionnaire.

In addition to completing the survey, we have two requests. First, if your office uses a standard questionnaire or form letter to elicit information from victims, we would be interested in receiving a blank copy. Second, we are asking probation personnel to provide several copies of completed victim statements that, in your opinion, represent 'good', 'bad', and 'typical' examples of local preparation. This request is being made so that project staff can better familiarize themselves with variations in document preparation. Because we are interested in these documents for comparison purposes only, we ask that all identifying references (names, addresses, etc.) be deleted or masked.

Please return the completed packet in the self-addressed stamped envelope that has been provided. The confidentiality of your responses is guaranteed. These data will be reported in aggregate form only.

**NOTE: Throughout this survey the following acronyms are used:**

VIS - victim impact statement

PSR - presentence report/investigation

ID \_\_\_\_\_

SECTION 1  
GENERAL OFFICE INFORMATION

1. How many probation officers are currently employed in your local jurisdiction?  
\_\_\_\_\_
2. How many of the above probation officers are responsible for the preparation of presentence reports (PSRs)?  
\_\_\_\_\_
3. Approximately how many PSRs were completed by your agency in 1985?  
\_\_\_\_\_
4. With what type(s) of court(s) do the probation officers work? (Check all that apply.)
  - Municipal
  - Criminal
  - County
  - Superior
  - Other, \_\_\_\_\_
5. What type(s) of actions are handled by these courts? (Check all that apply.)
  - Violations
  - Misdemeanors
  - Felonies
  - Juvenile
  - Other, \_\_\_\_\_
6. Does your jurisdiction have a victim service agency that assists in the preparation of VISs?
  - No [SKIP TO SECTION 2]
  - Yes
7. In what way(s) does the victim service agency assist in the preparation of VISs? (Check all that apply.)
  - Provides addresses and phone numbers of victims
  - Interviews victims for probation report
  - Prepares victim statement to be attached to probation report
  - Prepares victim statement to be introduced independently of probation report
  - Other, \_\_\_\_\_
8. With what agency is the victim service agency affiliated?
  - Probation
  - Prosecuting attorney's office
  - Human services agency
  - Autonomous agency
  - Other, \_\_\_\_\_

ID \_\_\_\_\_

SECTION 2  
EXTENT OF VIS PREPARATION

1. In what year were VISs first prepared in your jurisdiction?  
\_\_\_\_\_
2. For what reason(s) were VISs first prepared? (Check all that apply.)
  - Policy of local probation agency
  - Policy of county probation agency
  - Policy of state probation agency
  - Required by law
  - Other, \_\_\_\_\_
3. Approximately how many VISs were completed by your local agency in 1985?  
\_\_\_\_\_
4. For approximately what percentage of misdemeanor actions are VISs prepared?  
\_\_\_\_\_
5. For approximately what percentage of felony actions are VISs prepared?  
\_\_\_\_\_
6. Based on workload figures for the first 6 months of 1986, how will the extent of VIS preparation in 1986 compare with the extent of VIS preparation in 1985?
  - Extent of preparation will increase in 1986
  - Extent of preparation will decrease in 1986
  - Extent of preparation will remain relatively stable in 1986
  - Don't know
7. VISs are prepared for use at which of the following criminal proceedings? (Check all that apply.)
  - Pretrial release decisions [ PLEASE COMPLETE SECTION 3 ]
  - Plea negotiations [ PLEASE COMPLETE SECTION 4 ]
  - Sentencing hearing [ PLEASE COMPLETE SECTION 5 ]
  - Separate restitution hearing [ PLEASE COMPLETE SECTION 5 ]
  - Other, \_\_\_\_\_
8. Under what circumstances are VISs prepared in your jurisdiction?
  - Mandatory for all offenses (misdemeanor and felony)
  - Mandatory for all felonies
  - Mandatory only when PSR is prepared
  - Mandatory for specific felonies onlyIf so, which ones? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  - Prepared at the discretion of the probation agency
  - Prepared only if specifically ordered by the court
  - Prepared only at victim's request
  - Other, \_\_\_\_\_

9. If the court must specifically order a VIS, how much variability is there between local judges in the frequency of these orders?
- None
  - Very little
  - Some
  - Quite a lot
  - Not applicable, only one judge in jurisdiction [SKIP TO QUESTION 11]
10. In your opinion, what factor(s) contribute to inter-judge variability in the frequency of specific orders for VIS preparation?
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
11. Are VISs prepared in any felony actions for which no PSRs are prepared?
- No
  - Yes, \_\_\_\_\_
12. Does the defendant have a right to a PSR in a felony action?
- No [SKIP TO QUESTION 15]
  - Yes
13. May a defendant waive this right to a PSR in a felony action?
- No [SKIP TO QUESTION 15]
  - Yes
14. If a defendant waives this right to a PSR, may a VIS be prepared and presented independently? (Check all that apply.)
- No
  - Yes, at the request of the victim
  - Yes, at the request of the court
  - Yes, at the request of the prosecutor
  - Yes, \_\_\_\_\_
15. Is a written VIS included in the defendant's permanent file so as to be available for review at future criminal proceedings?
- No
  - Yes
  - Other, \_\_\_\_\_
  - Don't know
  - Not applicable, VIS is not written
16. Is an oral VIS transcribed and included in the defendant's permanent file so as to be available for review at future criminal proceedings?
- No
  - Yes
  - Other, \_\_\_\_\_
  - Don't know
  - Not applicable, VIS is not oral
17. In your opinion, how does the extent of VIS preparation in your local jurisdiction compare with the extent of VIS preparation in other jurisdictions within your state?
- \_\_\_\_\_
- \_\_\_\_\_

ID \_\_\_\_\_

SECTION 3  
VICTIM INVOLVEMENT WITH PRETRIAL RELEASE DECISIONS

PARTICIPATION AND NOTIFICATION

1. Is the victim involved with decisions affecting the defendant's pretrial release status?  
 No [SKIP TO SECTION 4 ]  
 Yes
  
2. In what way(s) may a victim participate in pretrial release decisions?  
(Check all that apply.)  
 Victim is consulted by prosecuting attorney prior to pretrial release hearing  
 Victim may attend pretrial release hearing but may not actively participate  
 Victim may attend and actively participate in pretrial release hearing  
 Victim may submit written statement to be considered by the court prior to pretrial release decisions  
 Victim may present oral statement to be considered by the court prior to pretrial release decisions  
 Other, \_\_\_\_\_
  
3. Who is responsible for notifying the victim of these participatory options?  
 Police  
 Probation officer  
 Prosecuting attorney  
 Victim services advocate  
 Other, \_\_\_\_\_
  
4. How is the victim notified of these opportunities for participation in the pretrial release process? (Check all that apply.)  
 Hand delivered written communication  
 In-person verbal communication  
 Telephone  
 Mail  
 Other, \_\_\_\_\_  
 No formalized notification procedure
  
5. What attempt is made to guarantee victim receipt of this notification?  
 Victim notification must be verified  
 "Good faith" or reasonable effort to notify victim  
 Victim notified when time allows  
 Other, \_\_\_\_\_
  
6. Is victim participation in the pretrial release process actively encouraged?  
 No  
 Yes  
 Other, \_\_\_\_\_

AUTHORSHIP AND VERIFICATION

7. Who is responsible for the preparation of a written VIS to be considered at pretrial release proceedings? (Check all that apply.)

- Victim
- Probation officer
- Prosecuting attorney
- Other, \_\_\_\_\_
- Not applicable, VIS is not written

8. What is the source of the information included in a VIS? (Check all that apply.)

- Direct victim statements
- Probation report summarizing information obtained from the victim
- Independent probation investigation
- Police records
- Prosecution files
- Other, \_\_\_\_\_
- Not applicable, VIS is not written

9. When the VIS is prepared by probation staff, how often is the victim consulted?

- Always
- Most times
- Sometimes
- Rarely
- Never
- Not applicable, VIS is not prepared by probation staff

10. In what way(s) is the victim consulted? To what extent do victims comply with these requests for information?

- |  |                        |
|--|------------------------|
| <input type="checkbox"/> Personal interview    | Compliance rate _____% |
| <input type="checkbox"/> Telephone interview   | Compliance rate _____% |
| <input type="checkbox"/> Form mailed to victim | Compliance rate _____% |
| <input type="checkbox"/> Other, _____          | Compliance rate _____% |

11. If the actual victim is unable to cooperate in the preparation of a VIS, due to death, age, or incapacitation, which of the following individuals is authorized to provide a statement on the victim's behalf?

(Check all that apply.)

- Family member
- Attorney
- Victim advocate
- Other person, \_\_\_\_\_
- No other person

12. If the actual victim is unwilling to cooperate in the preparation of a VIS, which of the following individuals is authorized to provide a written statement on the victim's behalf? (Check all that apply.)

- Family member
- Attorney
- Victim advocate
- Other person, \_\_\_\_\_
- No other person

13. Are probation officers required to verify factual information provided by the victim for inclusion in the VIS?

- No
- Yes, always
- Yes, if time permits
- Yes, under certain circumstances, \_\_\_\_\_

14. In practice, do probation officers verify factual information provided by the victim for inclusion in the VIS?

- No
- Yes, always
- Yes, if time permits
- Yes, under certain circumstances, \_\_\_\_\_

15. If the VIS is authored by probation staff, is there a procedure for victim verification of the summarized information before it is presented to the court?

- No [ SKIP TO QUESTION 17 ]
- Yes
- Not applicable, VIS not authored by probation staff

16. Please provide a brief description of this verification process.

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17. Is the VIS disclosed to the defendant (or attorney) prior to the pretrial release proceeding?

- No
- Yes, in all cases
- Yes, in some cases \_\_\_\_\_
- Not applicable, VIS is not written [ SKIP TO QUESTION 21 ]

18. Does the defendant (or attorney) have an opportunity to challenge statements included in the VIS?

- No
- Yes

19. Please provide a brief description of this challenge procedure.

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20. In your opinion, how does the verification of VISs in your local jurisdiction compare with the verification of VISs in other jurisdictions within your state?

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CONTENT

21. What information and/or assessments are included in the VIS? (Check all that apply.)

	MUST BE INCLUDED	MAY BE INCLUDED	MAY NOT BE INCLUDED
Identification of victim	[ ]	[ ]	[ ]
Subjective commentary			
Victim summary of offense	[ ]	[ ]	[ ]
Victim opinion of offender	[ ]	[ ]	[ ]
Victim fear of revictimization	[ ]	[ ]	[ ]
Victim opinion on pretrial release	[ ]	[ ]	[ ]
Economic impact			
Medical expenses	[ ]	[ ]	[ ]
Value of lost, stolen, or destroyed property	[ ]	[ ]	[ ]
Direct loss of earnings	[ ]	[ ]	[ ]
Indirect loss of earnings	[ ]	[ ]	[ ]
Insurance compensation	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Physical impact			
Seriousness of physical injury	[ ]	[ ]	[ ]
Permanence of physical injury	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Psychological impact			
Emotional or psychological injury	[ ]	[ ]	[ ]
Request for psychological services	[ ]	[ ]	[ ]
Change in personal welfare	[ ]	[ ]	[ ]
Change in familial relationships	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Other			
Letters from employers	[ ]	[ ]	[ ]
Letters from crime witnesses	[ ]	[ ]	[ ]
Letters from family members	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]

22. Is there any information that is specifically prohibited from inclusion in the VIS?

- [ ] No  
 [ ] Yes, \_\_\_\_\_

23. Must the contents of the VIS relate solely to the effects of the crime for which the defendant is being prosecuted?

- [ ] No  
 [ ] Yes  
 [ ] Other, \_\_\_\_\_

24. Optional commentary:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ID \_\_\_\_\_

SECTION 4  
VICTIM INVOLVEMENT WITH PLEA NEGOTIATIONS

PARTICIPATION AND NOTIFICATION

1. Is the victim involved in the plea negotiation process?

- No [SKIP TO SECTION 5 ]  
 Yes

2. In what way(s) may a victim participate in the plea process? (Check all that apply.)

- Victim is consulted by prosecuting attorney prior to plea negotiation  
 Victim may attend plea negotiation sessions but may not actively participate  
 Victim may attend and actively participate in plea negotiation sessions  
 Victim may submit written statement to be considered by the court prior to the acceptance of a negotiated plea  
 Victim may present oral statement to be considered by the court prior to acceptance of negotiated plea  
 Victim may comment on a previously negotiated plea  
 Other, \_\_\_\_\_

3. Who is responsible for notifying the victim of these participatory options?

- Police  
 Probation officer  
 Prosecuting attorney  
 Victim services advocate  
 Other, \_\_\_\_\_

4. How is the victim notified of these opportunities for participation in the plea negotiation process? (Check all that apply.)

- Hand delivered written communication  
 In-person verbal communication  
 Telephone  
 Mail  
 Other, \_\_\_\_\_  
 No formalized notification procedure

5. What attempt is made to guarantee victim receipt of this notification?

- Victim notification must be verified  
 "Good faith" or reasonable effort to notify victim  
 Victim notified when time allows  
 Other, \_\_\_\_\_

6. Is victim participation in the plea negotiation process actively encouraged?

- No  
 Yes  
 Other, \_\_\_\_\_

AUTHORSHIP AND VERIFICATION

7. Who is responsible for the preparation of a written VIS to be considered at plea negotiation sessions? (Check all that apply.)

- Victim
- Probation officer
- Prosecuting attorney
- Other, \_\_\_\_\_
- Not applicable, VIS is not written

8. What is the source of the information included in a VIS? (Check all that apply.)

- Direct victim statements
- Probation report summarizing information obtained from the victim
- Independent probation investigation
- Police records
- Prosecution files
- Other, \_\_\_\_\_
- Not applicable, VIS is not written

9. When the VIS is prepared by probation staff, how often is the victim consulted?

- Always
- Mcst times
- Sometimes
- Rarely
- Never
- Not applicable, VIS not prepared by probation staff

10. In what way(s) is the victim consulted? To what extent do victims comply with these requests for information?

- Personal interview Compliance rate \_\_\_\_\_%
- Telephone interview Compliance rate \_\_\_\_\_%
- Form mailed to victim Compliance rate \_\_\_\_\_%
- Other, \_\_\_\_\_ Compliance rate \_\_\_\_\_%

11. If the actual victim is unable to cooperate in the preparation of a VIS, due to death, age, or incapacitation, which of the following individuals is authorized to provide a statement on the victim's behalf? (Check all that apply.)

- Family member
- Attorney
- Victim advocate
- Other person, \_\_\_\_\_
- No other person

12. If the actual victim is unwilling to cooperate in the preparation of a VIS, which of the following individuals is authorized to provide a written statement on the victim's behalf? (Check all that apply.)

- Family member
- Attorney
- Victim advocate
- Other person, \_\_\_\_\_
- No other person

13. Are probation officers required to verify factual information provided by the victim for inclusion in the VIS?

- No
- Yes, always
- Yes, if time permits
- Yes, under certain circumstances, \_\_\_\_\_

14. In practice, do probation officers verify factual information provided by the victim for inclusion in the VIS?

- No
- Yes, always
- Yes, if time permits
- Yes, under certain circumstances, \_\_\_\_\_

15. If the VIS is authored by probation staff, is there a procedure for victim verification of the summarized information before it is presented to the court?

- No [SKIP TO QUESTION 17]
- Yes
- Not applicable, VIS not authored by probation staff

16. Please provide a brief description of this verification process.

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17. Is the VIS disclosed to the defendant (or attorney)?

- No
- Yes, in all cases
- Yes, in some cases, \_\_\_\_\_
- Not applicable, VIS is not written [SKIP TO QUESTION 21]

18. Does the defendant (or attorney) have an opportunity to challenge statements included in the VIS?

- No
- Yes

19. Please provide a brief description of this challenge procedure.

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20. In your opinion, how does the verification of VISs in your local jurisdiction compare with the verification of VISs in other jurisdictions within your state?

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CONTENT

21. What information and/or assessments are included in the VIS? (Check all that apply.)

	MUST BE INCLUDED	MAY BE INCLUDED	MAY NOT BE INCLUDED
Identification of victim	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subjective commentary			
Victim summary of offense	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim opinion of offender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim fear of revictimization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim opinion on proposed plea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Economic impact			
Medical expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Value of lost, stolen, or destroyed property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Direct loss of earnings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indirect loss of earnings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Insurance compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Physical impact			
Seriousness of physical injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Permanence of physical injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Psychological impact			
Emotional or psychological injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Request for psychological services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Change in personal welfare	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Change in familial relationships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other			
Letters from employers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Letters from crime witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Letters from family members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

22. Is there any information that is specifically prohibited from inclusion in the VIS?

- No  
 Yes, \_\_\_\_\_

23. Must the contents of the VIS relate solely to the effects of the crime for which the defendant is entering a plea?

- No  
 Yes  
 Other, \_\_\_\_\_

24. Optional commentary:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ID \_\_\_\_\_

SECTION 5  
VICTIM INVOLVEMENT WITH SENTENCING

PARTICIPATION AND NOTIFICATION

1. Is the victim involved with sentencing or restitution proceedings?  
 No [SKIP TO SECTION 6]  
 Yes
  
2. In what way(s) may a victim participate in sentencing decisions? (Check all that apply.)  
 Victim is consulted by prosecuting attorney prior to sentencing hearing  
 Victim may attend sentencing hearing but may not actively participate  
 Victim may attend and actively participate in sentencing hearing  
 Victim may submit written statement to be considered by the court prior to sentencing decisions  
 Victim may present oral statement to be considered by the court prior to sentencing decisions  
 Other, \_\_\_\_\_
  
3. In your jurisdiction, is the issue of restitution determined at a hearing that is separate from the sentencing hearing?  
 No [SKIP TO QUESTION 5]  
 Yes
  
4. In what way(s) may a victim participate in restitution decisions? (Check all that apply.)  
 Victim is consulted by prosecuting attorney prior to restitution hearing  
 Victim may attend restitution hearing but may not actively participate  
 Victim may attend and actively participate in restitution hearing  
 Victim may submit written statement to be considered by the court prior to restitution decisions  
 Victim may present oral statement to be considered by the court prior to restitution decisions  
 Other, \_\_\_\_\_
  
5. Who is responsible for notifying the victim of these participatory options?  
 Police  
 Probation officer  
 Prosecuting attorney  
 Victim services advocate  
 Other, \_\_\_\_\_
  
6. How is the victim notified of these opportunities for participation? (Check all that apply.)  
 Hand delivered written communication  
 In-person verbal communication  
 Telephone  
 Mail  
 Other, \_\_\_\_\_  
 No formalized notification procedure

7. What attempt is made to guarantee victim receipt of this notification?  
 Victim notification must be verified  
 "Good faith" or reasonable effort to notify victim  
 Victim notified when time allows  
 Other, \_\_\_\_\_
8. Is victim participation in sentencing and restitution proceedings actively encouraged?  
 No  
 Yes  
 Other, \_\_\_\_\_

AUTHORSHIP AND VERIFICATION

9. Who is responsible for the preparation of a written VIS to be considered at sentencing or restitution proceedings? (Check all that apply.)  
 Victim  
 Probation officer  
 Prosecuting attorney  
 Other, \_\_\_\_\_  
 Not applicable, VIS is not written
10. What is the source of the information included in a VIS? (Check all that apply.)  
 Direct victim statements  
 Probation report summarizing information obtained from the victim  
 Independent probation investigation  
 Police records  
 Prosecution files  
 Other, \_\_\_\_\_  
 Not applicable, VIS is not written
11. When the VIS is prepared by probation staff, how often is the victim consulted?  
 Always  
 Most times  
 Sometimes  
 Rarely  
 Never  
 Not applicable, VIS not prepared by probation staff
12. In what way(s) is the victim consulted? To what extent do victims comply with these requests for information?  
 Personal interview Compliance rate \_\_\_\_\_ %  
 Telephone interview Compliance rate \_\_\_\_\_ %  
 Form mailed to victim Compliance rate \_\_\_\_\_ %  
 Other, \_\_\_\_\_ Compliance rate \_\_\_\_\_ %
13. If the actual victim is unable to cooperate in the preparation of a VIS, due to death, age, or incapacitation, which of the following individuals is authorized to provide a statement on the victim's behalf? (Check all that apply.)  
 Family member  
 Attorney  
 Victim advocate  
 Other person, \_\_\_\_\_  
 No other person

14. If the actual victim is unwilling to cooperate in the preparation of a VIS, which of the following individuals is authorized to provide a written statement on the victim's behalf? (Check all that apply.)
- Family member
  - Attorney
  - Victim advocate
  - Other person, \_\_\_\_\_
  - No other person
15. Are probation officers required to verify factual information provided by the victim for inclusion in the VIS?
- No
  - Yes, always
  - Yes, if time permits
  - Yes, under certain circumstances, \_\_\_\_\_
16. In practice, do probation officers verify factual information provided by the victim for inclusion in the VIS?
- No
  - Yes, always
  - Yes, if time permits
  - Yes, under certain circumstances, \_\_\_\_\_
17. If the VIS is authored by probation staff, is there a procedure for victim verification of the summarized information before it is presented to the court?
- No [SKIP TO QUESTION 19]
  - Yes
  - Not applicable, VIS is not authored by probation staff
18. Please provide a brief description of this verification process.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
19. Is the VIS disclosed to the defendant (or attorney) prior to sentencing?
- No [SKIP TO QUESTION 25]
  - Yes, in all cases
  - Yes, in some cases \_\_\_\_\_
  - Not applicable, VIS is not written [SKIP TO QUESTION 25]
20. Is the entire VIS available for the defendant's inspection?
- No
  - Yes [SKIP TO QUESTION 23]
21. What sections of the VIS are not disclosed? (Check all that apply.)
- Victim's name and address
  - Victim's sentence recommendation
  - Victim's fear of revictimization
  - Other, \_\_\_\_\_

22. Who decides which parts of the VIS are to remain confidential?
- Probation staff
  - Prosecuting attorney
  - Judge
  - Other, \_\_\_\_\_
23. Does the defendant (or attorney) have an opportunity to challenge statements included in the VIS prior to the sentencing hearing?
- No
  - Yes
24. Please provide a brief description of this challenge procedure.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
25. Does the defendant (or attorney) have an opportunity to challenge statements included in the VIS at the sentencing hearing?
- No
  - Yes
26. Please provide a brief description of this challenge procedure.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
27. Does the defendant (or attorney) have the right to cross-examine the victim as to statements included in the VIS?
- No [SKIP TO QUESTION 29]
  - Yes
28. Is this right to cross-examination limited in any way?
- No
  - Yes, \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
29. In your opinion, how does the verification of VISs in your local jurisdiction compare with the verification of VISs in other jurisdictions within your state?
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
30. Optional commentary:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

CONTENT

31. What information and/or assessments are included in the VIS? (Check all that apply.)

	MUST BE INCLUDED	MAY BE INCLUDED	MAY NOT BE INCLUDED
Identification of victim	[ ]	[ ]	[ ]
Subjective commentary			
Victim summary of offense	[ ]	[ ]	[ ]
Victim opinion of offender	[ ]	[ ]	[ ]
Victim fear of revictimization	[ ]	[ ]	[ ]
Victim opinion on restitution determination	[ ]	[ ]	[ ]
Victim opinion on sentence recommendation	[ ]	[ ]	[ ]
Victim's own sentence recommendation	[ ]	[ ]	[ ]
Economic impact			
Medical expenses	[ ]	[ ]	[ ]
Value of lost, stolen, or destroyed property	[ ]	[ ]	[ ]
Direct loss of earnings	[ ]	[ ]	[ ]
Indirect loss of earnings	[ ]	[ ]	[ ]
Insurance compensation	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Physical impact			
Seriousness of physical injury	[ ]	[ ]	[ ]
Permanence of physical injury	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Psychological impact			
Emotional or psychological injury	[ ]	[ ]	[ ]
Request for psychological services	[ ]	[ ]	[ ]
Change in personal welfare	[ ]	[ ]	[ ]
Change in familial relationships	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Other			
Letters from employers	[ ]	[ ]	[ ]
Letters from crime witnesses	[ ]	[ ]	[ ]
Letters from family members	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]

32. Is there any information that is specifically prohibited from inclusion in the VIS?

- [ ] No  
 [ ] Yes, \_\_\_\_\_

33. Must the contents of the VIS relate solely to the effects of the crime for which the defendant is being sentenced?

- [ ] No, VIS may relate to all crimes originally charged.  
 [ ] Yes, VIS must relate only to crimes for which the defendant is currently being sentenced  
 [ ] Other, \_\_\_\_\_

34. For which of the following items might the defendant be required to pay restitution? (Check all that apply.)
- Documented medical expenses
  - Cost of psychological services for victim and/or victim's family
  - Estimated cost of continuing medical or psychological treatment
  - Value of lost or damaged property
  - Loss of victim earnings
  - Funeral expenses
  - Damages for "pain and suffering"
  - Other, \_\_\_\_\_

35. Optional commentary:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FORMAT

36. Is there a standard form for VIS preparation?
- No [SKIP TO QUESTION 41]
  - Yes

37. How would you best describe this form?
- Checklist
  - Numerical rating scale
  - Open ended format
  - Other, \_\_\_\_\_

38. Who was responsible for developing this form? (Check all that apply.)
- State probation department
  - County probation department
  - Local probation department
  - Prosecutor's office
  - Victim service agency
  - Legislature
  - Other, \_\_\_\_\_

39. What problems have you experienced with this form? (Check all that apply.)
- None
  - Doesn't effectively reflect victims' needs or interests
  - Overburdens probation staff
  - Other, \_\_\_\_\_

40. In what way(s) would you alter this form to better serve the needs of both the victim and probation staff?
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

41. Optional commentary:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NATURE OF PRESENTATION

42. What is the standard method for the presentation of a written VIS in your jurisdiction?

- Separate statement attached to the PSR
- Section included within the PSR
- Statement independent of the PSR
- Other, \_\_\_\_\_
- Not applicable, VIS is not written

43. Does the victim have a right to be present at sentencing?

- No [SKIP TO QUESTION 46]
- Yes

44. Approximately what proportion of victims exercise this right?

\_\_\_\_\_

45. Do particular categories of victims exercise this right more so than do others?

- No
- Yes, \_\_\_\_\_
- Not applicable, victim not present at sentencing

46. Does the victim have a right to present a written statement (other than the PSR statement) to the court at sentencing?

- No [SKIP TO QUESTION 49]
- Yes

47. Approximately what proportion of victims exercise this right?

\_\_\_\_\_

48. Do particular categories of victims exercise this right more so than do others?

- No
- Yes, \_\_\_\_\_

49. Does the victim have a right to allocution at sentencing?

- No [SKIP TO QUESTION 52]
- Yes
- Yes, at judge's discretion [SKIP TO QUESTION 52]
- Not applicable, victim not present at sentencing

50. Approximately what proportion of victims exercise this right?

\_\_\_\_\_

51. Do particular categories of victims exercise this right more so than do others?

- No
- Yes, \_\_\_\_\_

52. If the victim-wishes to present an oral statement at sentencing, but does not wish to appear personally, which of the following individuals is authorized to allocute on the victim's behalf? (Check all that apply.)

- Family member
- Attorney
- Victim advocate
- Other person, \_\_\_\_\_
- No other person

53. If both oral and written statements are allowed, which method of presentation is utilized more frequently?

- Written statements presented more frequently
- Oral statements presented more frequently
- Written and oral statements presented equally often
- Other, \_\_\_\_\_

54. If both oral and written statements are allowed, to what extent do victims present both oral and written statements?

- Always
- Most times
- Sometimes
- Rarely
- Never

55. Does the victim receive notification of the final sentencing decision?

- No
- Yes, in all cases
- Yes, if victim specifically requests such notification
- Other, \_\_\_\_\_

56. In your opinion, how does the presentation of VISs in your local jurisdiction compare with the presentation of VISs in other jurisdictions within your state?

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57. Optional commentary:

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ID \_\_\_\_\_

SECTION 6  
GENERAL COMMENTS

1. In your opinion, what is the biggest problem encountered by probation staff in the preparation of VISs?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. In your opinion, what do probation staff perceive to be the victims' primary concerns about their cases?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. In your opinion, are probation staff the most appropriate personnel to prepare VISs? Why or why not?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. If you do not believe that probation staff are most appropriate personnel for VIS preparation, who do you think would be more appropriate?

- Victim advocate  
 Prosecuting attorney's staff  
 Other, \_\_\_\_\_

Why?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. In your opinion, what purposes were intended to be served by legislation authorizing the preparation of VISs?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. In your opinion, have these purposes been satisfied?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. In your opinion, has the introduction of VIS legislation and/or policies had any effect on criminal justice decisionmaking? In what way(s)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. In your opinion, has victim participation in the criminal justice system through the use of VISs had any effect on victim satisfaction with the justice system? In what way(s)?

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9. In your opinion, should increased victim participation be discouraged or encouraged? Why?

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10. In your opinion, what role should victims play in the criminal justice system?

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11. Optional commentary: (Use back of page if necessary.)

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Thank you for your cooperation with this project.

Please return the completed packet in the self-addressed stamped envelope that has been provided. This packet should consist of the following:

1. the completed survey
2. a blank copy of any standardized form that may be used by your agency in the preparation of a victim impact statement
3. one or more copies of completed victim impact statements that, in your opinion, represent 'good', 'bad', and 'typical' examples of victim statements. These are being requested so that project staff can better familiarize themselves with variations in document preparation. Please delete identifying information (e.g., names and addresses) to protect the anonymity of those involved.

APPENDIX F

SAMPLING FRAME AND METHODOLOGY  
PROSECUTING ATTORNEYS

## Survey Methodology

A review of state legislation identified 35 states in which the Office of the Prosecuting Attorney is statutorily responsible for one or more of the following: (a) notification of victims' rights, (b) consultation with the victim about case disposition, or (c) preparation of victim impact statements. In all of the identified states except Texas, the sampling frame included all prosecuting attorneys' offices. The language of the victims' rights legislation in Texas mandates compliance only in counties that have a population of at least 100,000 people. Accordingly, eligibility for sample selection was limited to district attorneys in those counties meeting this requirement.

## Sampling Procedure

The The National Directory of Law Enforcement Administrators and Correctional Institutions (Milwaukee, WI: National Police Chiefs and Sheriffs Information Bureau, 1986) was used to identify all prosecuting attorney offices in each of the 35 states. Where ten or fewer offices were listed for a particular state, all offices were included in the sample. If more than ten offices were listed, a random sample of ten offices was generated.

In some states, one prosecutor has jurisdiction over several counties. In the event that a prosecutor was selected more than once, one listing was deleted. Another office was then randomly selected to take its place.

## The Sample

**California** has one district attorney for each of the 58 counties. Ten counties were selected for sample inclusion: Glenn, Los Angeles, Mariposa, Orange, Placer, Plumas, San Mateo, Sierra, Tehama, and Yolo.

**Colorado** has 22 judicial districts. The ten district attorneys randomly selected were from the 2nd, 4th, 7th, 9th, 13th, 14th, 15th, 18th, 21st, and 22nd judicial districts.

**Connecticut** has one state attorney for each of its eight counties. All eight state attorneys were included in the sample.

**Delaware** has one Attorney General that serves as prosecutor for all Delaware counties.

**Florida** has one state attorney for each of the 67 counties. The randomly selected prosecutors were from Dade, Duval, Escambia, Flagler, Hamilton, Holmes, Leon, Levy, Okeechobee, and Osceola counties.

**Georgia** has 44 judicial circuits. The ten district attorneys randomly selected are from the Augusta, Conasauga, Cordele, Dougherty, Flint, Griffin, Northeastern, Piedmont, South Georgia, and Tifton Judicial Circuits.

**Hawaii** has one prosecuting attorney for each of its four counties. All four are in the sample.

**Idaho** has one prosecuting attorney for each of its 44 counties. Randomly selected were the attorneys from Bear Lake, Caribou, Cassia, Clearwater, Idaho, Lincoln, Minidoka, Owyhee, Shoshone, and Valley counties.

**Illinois** has one state attorney for each of its 102 counties. Attorneys from Calhoun, Jackson, Jasper, Kane, Knox, Lane, McDonough, Schuyler, Tazewell, and Whiteside counties were sampled.

**Indiana** has one prosecuting attorney for each of its 92 counties. Included in the sample were attorneys from Allen, Clark, Greene, Knox, Marshall, Morgan, Randolph, Scott, Vigo and Warren counties.

**Iowa** has one county attorney for each of the 99 counties. Prosecutors from Cass, Clarke, Floyd, Hardin, Henry, Iowa, Lyon, Mitchell, Page, and Wright counties were chosen to receive the survey instrument.

**Kentucky** has 56 judicial districts. The ten Commonwealth Attorneys randomly selected were from the 7th, 12th, 15th, 17th, 19th, 25th, 29th, 42nd, 49th, and 53rd judicial districts.

**Louisiana** has one district attorney for each of its 65 parishes. District attorneys in Avoyelles, Beauregard, Grant, Jackson, Madison, Rapides, Richland, St. Bernard, St. Charles, and St. Helena parishes were sampled.

**Maine** has eight district attorneys serving 16 counties. Because of overlapping prosecutorial responsibilities, surveys were mailed to the district attorneys in Aroostook, Cumberland, Franklin, Hancock, Kennebec, Knox, Penobscot, and York counties.

**Maryland** has one state attorney for each of its 24 counties. Attorneys in Allegany, Calvert, Caroline, Dorchester, Frederick, Garrett, Montgomery, Queen Anne's, Talbot, and Wicomico counties were randomly selected.

**Massachusetts** has one district attorney for each of the 14 counties. However, one district attorney serves two counties and another district attorney serves three counties. Therefore, ten of the remaining eleven district attorney offices were randomly sampled. Included were the district attorney serving Barnstable, Dukes, and Nantucket counties; the district attorney serving Franklin and Hampshire counties; and the district attorneys in Berkshire, Bristol, Essex, Hamden, Middlesex, Plymouth, Suffolk, and Worcester counties.

**Michigan** has one prosecuting attorney for each of its 83 counties. Included in the sample were the prosecuting attorneys in Alcona, Cheboygan, Clare, Delta, Genesee, Gratiot, Hillsdale, Kent, Macomb, and Ottawa counties.

**Minnesota** has one county attorney for each of its 87 counties. Ten were randomly selected. They serve in Brown, Cook, Goodhue, Lake, Lincoln, McLeod, Marshall, Stearns, Swift, and Watonwah counties.

**Mississippi** has 20 judicial districts. The ten district attorneys randomly selected were from the 1st, 4th, 7th, 11th, 12th, 13th, 15th, 17th, 18th, and 20th judicial districts.

**Missouri** has one prosecuting attorney for each of the 114 counties plus a Circuit Attorney for the City of St. Louis. From these 115 offices, attorneys in the following areas were chosen: Buchanan, Clinton, Greene, Laclede, Mississippi, Phelps, Ste. Genevieve, Vernon, and Washington counties; and the City of St. Louis.

**Nebraska** has one county attorney for each of the 93 counties. Attorneys from Cass, Dixon, Frontier, Grant, Greeley, Hitchcock, Holt, Kimball, Richardson, and Thurston counties were randomly selected.

**New York** has one district attorney for each of the 62 counties. District attorneys in Albany, Cattaraugus, Erie, Essex, Greene, Oneida, Rensselaer, St. Lawrence, Schoharie, and Wayne counties were included in the sample.

**North Dakota** has one state attorney for each of its 53 counties. The ten randomly selected attorneys serve in Burleigh, Cass, Divide, Foster, McHenry, Mercer, Pembina, Richland, Sargent, and Stutsman counties.

**Ohio** has one prosecuting attorney for each of its 88 counties. Surveys were distributed to attorneys in Belmont, Clinton, Franklin, Gallia, Highland, Logan, Monroe, Montgomery, Preble, and Putnam counties.

**Oregon** has one county attorney for each of the 36 counties. Chosen were personnel in Crook, Gilliam, Grant, Josephine, Klamath, Lane, Lincoln, Marion, Washington, and Yamhill counties.

**Pennsylvania** has one district attorney for each of the 67 counties. Prosecutors in Beaver, Centre, Erie, Lebanon, Lycoming, Monroe, Montour, Philadelphia, Pike, and Somerset counties were sampled.

**South Carolina** has 16 judicial districts. The ten Solicitors randomly selected were from the 2nd, 4th, 5th, 7th, 8th, 9th, 12th, 14th, 15th, and 16th judicial districts.

**South Dakota** has one state attorney for each of the 66 counties. The sample included those in Buffalo, Douglas, Edmunds, Haakon, Hughes, Jackson, Jerauld, Minnehaha, Tripp, and Union counties.

**Tennessee** has 31 judicial districts. The ten District Attorney Generals randomly selected were from the 6th, 8th, 10th, 12th, 19th, 20th, 21st, 22nd, 25th, and 26th judicial districts.

**Texas** has 23 counties with populations in excess of 100,000. The district attorneys in Bexar, Cameron, Collin, Dallas, El Paso, Harris, Lubbock, McLennan, Tarrant, and Taylor counties were included in the sample.

**Vermont** has one state attorney for each of the 14 counties. Attorneys in Addison, Bennington, Chittendon, Essex, Franklin, Lamoille, Orange, Orleans, Rutland, and Washington counties were sampled.

**Virginia** has one Commonwealth Attorney for each of its 95 counties. The sample included attorneys serving in Bland, Dinwiddie, Essex, Giles, Halifax, Isle of Wight, Lee, Matthews, Powhatan, and Southampton counties.

**Washington** has one prosecuting attorney for each of the 39 counties. Randomly selected were those from Adams, Douglas, Garfield, Grays Harbor, Island, Klickitat, Pierce, Stevens, Thurston, and Whatcom counties.

**West Virginia** has one district attorney for each of the 55 counties. District attorneys from Cabell, Hardy, Lewis, Lincoln, Mason, Mingo, Nicholas, Summers, Wayne, and Wetzel counties were randomly chosen.

Wisconsin has one district attorney for each of the 72 counties. Attorneys serving Columbia, Green Lake, Langlade, Marquette, Monroe, Pepin, Racine, Richland, Rusk, and Taylor counties were surveyed.

APPENDIX G

RESEARCH INSTRUMENTS  
SURVEY OF PROSECUTING ATTORNEYS

**THE HINDELANG  
CRIMINAL JUSTICE RESEARCH CENTER**

STATE UNIVERSITY OF NEW YORK AT ALBANY  
135 WESTERN AVENUE  
ALBANY, NEW YORK 12222  
(518)442-5600

April 15, 1987

Dear Prosecutor:

The Hindelang Criminal Justice Research Center has been funded by the National Institute of Justice to conduct a national study of the authorization and implementation of victim impact statements. As part of this project, we are distributing a detailed questionnaire to a random sample of prosecutorial personnel throughout the United States. The purpose of this survey is to gain a better understanding of how enabling legislation and/or policies are being implemented.

I would like to take this opportunity to request your cooperation with this project. Please read and carefully complete the enclosed survey. You need only complete those sections of the survey that are applicable to your jurisdiction.

In addition to the survey, we are interested in obtaining copies of (1) any guidelines for statement preparation that may be used by prosecutorial staff; (2) a standard form, if any, that may be used to interview victims; and (3) and other materials that assist prosecution staff in completing victim statements.

Finally, we are asking survey participants to provide several copies of completed statements that, in your opinion, represent 'good', 'bad', and 'typical' examples of local preparation. This request is being made so that project staff can better familiarize themselves with variations in document preparation. Because we are interested in these documents for comparison purposes only, we ask that all identifying references (names, addresses, etc.) be deleted.

Please return the completed survey and any other materials in the self-addressed stamped envelope that has been provided. All information that you provide will remain confidential. Date will be reported in aggregate form only. The responses of individual offices and staff members will not be identified.

Upon completion, a copy of the survey results will be made available to persons participating in this study. A request form for this report is included on the final page of the survey.

Thank you for your assistance. If you have any questions about this request, or about the project in general, please contact me.

Sincerely,

Maureen McLeod, Ph.D.  
Project Director

**The Authorization and Implementation of Victim Impact Statements**

Funded by the National Institute of Justice

## DIRECTIONS FOR COMPLETING SURVEY

For purposes of this study, we define a victim impact statement as an oral or written statement, introduced at some decision point in criminal proceedings (e.g., pretrial release, plea negotiation, restitution, sentencing), which includes one or both of the following:

- a) an objective assessment of the effects of the crime on the victim and/or
- b) a subjective commentary outlining the victim's feelings on the crime, the criminal, or a particular procedural proposal.

This survey is organized into five sections. The first section gathers information about the extent of victim impact statement preparation. The second section asks questions about the nature and extent of victim consultation by the prosecuting attorney at various criminal justice decision points. The third and fourth sections focus on the preparation and presentation of victim impact statements at the plea negotiation and sentencing stages, respectively. In particular, questions pertain to victim participation and notification; authorship, verification, content, and format of victim impact statements; and the manner by which statements are introduced into court records. The final section elicits your subjective commentary on a number of related issues.

You may find that some questions do not apply to the situation in your jurisdiction, or that nuances discriminate between your actual practices and the possible answers that have been suggested on the form. Accordingly, the survey has been designed to accommodate varying agency structures and policies by inviting commentary in each section. Please feel free to make additional comments next to any question where you believe an expanded answer would be instructive. Likewise, if there is any aspect of victim impact legislation or policy that may be unique to your office and has not been addressed, please inform us on the reverse side of the questionnaire.

In addition to completing the survey, we have two requests. First, if your office uses a standard questionnaire or form letter to elicit information from victims, we would be interested in receiving a blank copy. Second, we are asking survey participants to provide several copies of completed victim statements that, in your opinion, represent 'good', 'bad', and 'typical' examples of local preparation. This request is being made so that project staff can better familiarize themselves with variations in document preparation. Because we are interested in these documents for comparison purposes only, we ask that all identifying references (names, addresses, etc.) be deleted or masked.

Please return the completed packet in the self-addressed stamped envelope that has been provided. The confidentiality of your responses is guaranteed. These data will be reported in aggregate form only.

**NOTE:** Throughout this survey the following acronyms are used:

VIS - victim impact statement

PSR - presentence report/investigation

SECTION 1  
VIS PREPARATION

In this section, **consultation** refers to an informal exchange of information that occurs between the prosecuting attorney (or designee) and the victim about decisions affecting the victim's case. As used here, a **written VIS** is a written impact statement other than, or in addition to, a statement that may be prepared by probation staff. **Allocution** refers to the oral testimony of a victim in court concerning the impact of the crime.

1. In your jurisdiction, which of the following participatory options are available to crime victims? (Check all that apply.)

- Consultation with prosecutor about whether defendant is to be charged
- Consultation with prosecutor about selection of charge(s)
- Consultation with prosecutor prior to pretrial release decisions
- Consultation with prosecutor prior to plea negotiation sessions
- Consultation with prosecutor prior to acceptance of negotiated plea
- Consultation with prosecutor prior to sentencing
  
- Submission of written VIS prior to pretrial release decisions
- Submission of written VIS prior to plea negotiation sessions
- Submission of written VIS prior to acceptance of negotiated plea
- Submission of written VIS prior to sentencing
  
- Allocution prior to pretrial release decisions
- Allocution prior to plea negotiation sessions
- Allocution prior to acceptance of negotiated plea
- Allocution prior to sentencing
  
- Other participatory option(s), \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Has your jurisdiction developed a standard procedure by which crime victims are to be notified of these participatory options?

- No
- Yes

3. How would you best describe the notification procedure?

- Written brochure/letter provided by law enforcement
- Written brochure/letter provided by the prosecutor's office
- Written brochure/letter provided by the probation department
- Written brochure/letter provided by a victim service agency
- Oral transmission of information by \_\_\_\_\_
- Other notification procedure, \_\_\_\_\_  
\_\_\_\_\_

4. What attempt is made to guarantee victim receipt of this notification?  
 No attempt  
 Victim notification must be verified in some way  
 "Good faith" or reasonable effort to notify victim  
 Victim notified when time allows  
 Other attempt, \_\_\_\_\_
5. Does the prosecutor's office actively encourage victim participation in criminal justice decisionmaking?  
 No  
 Yes, all crime victims are actively encouraged  
 Yes, all victims of violent crime are actively encouraged  
 Yes, all victims of property crime are actively encouraged  
 Yes, in certain circumstances, \_\_\_\_\_
6. In what way(s) does the prosecutor's office encourage victim participation?  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
7. In what year were written VISS first prepared in your jurisdiction?  
 \_\_\_\_\_
8. For what reason(s) were VISS first prepared? (Check all that apply.)  
 Policy of local or county probation agency  
 Policy of state probation agency  
 Policy of prosecutor's office  
 Required by law  
 Other, \_\_\_\_\_
9. Approximately how many VISSs were completed by your local office:  
 in 1985? \_\_\_\_\_ in 1986? \_\_\_\_\_
10. Based on available workload figures for 1986, how will the extent of VIS preparation in 1987 compare with the extent of VIS preparation in 1986?  
 Extent of preparation will increase in 1987  
 Extent of preparation will decrease in 1987  
 Extent of preparation will remain relatively stable between 1986 and 1987  
 Don't know
11. Currently, for approximately what percentage of misdemeanor actions are written VISSs prepared?  
 \_\_\_\_\_
12. Currently, for approximately what percentage of felony actions are written VISSs prepared?  
 \_\_\_\_\_

13. Under what circumstances are VISs prepared in your jurisdiction?
- Mandatory for all offenses (misdemeanor and felony)
  - Mandatory for all felonies only
  - Mandatory-for specific felonies only
- If so, which ones? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Mandatory only when PSR is prepared
  - Prepared at the discretion of the probation agency
  - Prepared only if specifically ordered by the court
  - Prepared only at victim's request
  - Other, \_\_\_\_\_
14. If the court must specifically order a VIS, how much variability is there between local judges in the frequency of these orders?
- None
  - Very little
  - Some
  - Quite a lot
  - Not applicable, only one judge in this jurisdiction
- [SKIP TO QUESTION 16]
15. In your opinion, what factor(s) contribute to inter-judge variability in the frequency of specific orders for VIS preparation?
- \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
16. Is a written VIS included in the defendant's permanent file?
- No
  - Yes
  - Other, \_\_\_\_\_
  - Don't know
  - Not applicable, VIS is not written
17. If a victim allocutes at a hearing, is the oral VIS recorded and/or transcribed and included in the defendant's permanent file?
- No
  - Yes
  - Other, \_\_\_\_\_
  - Don't know
  - Not applicable, VIS is not oral
18. In your opinion, how does the extent of VIS preparation in your local jurisdiction compare with the extent of VIS preparation in other jurisdictions within your state?
- \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

19. Does your jurisdiction have a victim service agency that assists in the preparation of written VISSs?

- No [SKIP TO SECTION 2]
- Yes

20. In what way(s) does the victim service agency assist in the preparation of VISSs? (Check all that apply.)

- Provides addresses and phone numbers of victims
- Interviews victims for PSR
- Prepares victim statement to be attached to PSR
- Prepares victim statement to be introduced independently of PSR
- Assists victim with the completion of a VIS form
- Other, \_\_\_\_\_

21. With what agency is the victim service agency affiliated?

- Law enforcement
- Probation
- Prosecuting attorney's office
- Autonomous agency
- Other, \_\_\_\_\_

22. Please provide a brief description of the victim service agency in your jurisdiction. Comment on staffing levels, unit responsibilities, funding sources, etc.

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SECTION 2  
CONSULTATION WITH VICTIM

Consultation refers to an informal exchange of information that occurs between the prosecuting attorney (or designee) and the victim about decisions affecting the victim's case. For purposes of completing this section, victim consultation is to be distinguished from the preparation of an oral or written VIS. Questions pertinent to VISs are presented in the following sections.

1. How often does the prosecutor consult with a victim prior to recommending a defendant for a pretrial intervention or diversionary program?
  - Never
  - Rarely
  - Sometimes
  - Most times
  - Always
  
2. How often does the prosecutor consult with a victim prior to a decision to nolle prosequi?
  - Never
  - Rarely
  - Sometimes
  - Most times
  - Always
  
3. How often does the prosecutor consult with a victim prior to charge selection?
  - Never
  - Rarely
  - Sometimes
  - Most times
  - Always
  
4. How often does the prosecutor consult with a victim prior to entering into plea negotiations with a defendant?
  - Never
  - Rarely
  - Sometimes
  - Most times
  - Always
  
5. How often does the prosecutor consult with a victim after a plea has been negotiated but prior to the court's acceptance of the plea?
  - Never
  - Rarely
  - Sometimes
  - Most times
  - Always

6. How often does the prosecutor consult with a victim prior to sentencing?  
[ ] Never  
[ ] Rarely  
[ ] Sometimes -  
[ ] Most times  
[ ] Always

7. If a victim is consulted by the prosecutor, are the victim's comments permanently recorded in any fashion?  
[ ] No [SKIP TO QUESTION 9]  
[ ] Yes, always  
[ ] Yes, in certain circumstances, \_\_\_\_\_  
\_\_\_\_\_

8. Please describe the process by which victims' comments are recorded in your jurisdiction.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. When making pretrial or plea decisions, how much weight does the prosecutor give to victims' preferences or recommendations?  
[ ] No weight at all  
[ ] Some weight  
[ ] A lot of weight

10. Optional commentary on the weight given to victims' preferences or recommendations  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. In your opinion, what effect has victim consultation had on the following:  
a. effectiveness of the criminal justice system?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. victim satisfaction with case outcome?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- c. the willingness of a victim to cooperate in the prosecution of his or her case?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Optional commentary/description of the nature or extent of prosecutorial consultation with victims:  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 3**  
**VICTIM INVOLVEMENT WITH PLEA NEGOTIATIONS**

In this section, written VIS refers to a written impact statement other than, or in addition to, a statement that may be prepared by probation staff. Allocution refers to the oral testimony of a victim in court concerning the impact of the crime. A preparing agent is the criminal justice staff person who is responsible for the preparation of a VIS.

1. Does the victim have an opportunity to participate in the plea negotiation process?
  - No [SKIP TO SECTION 4]
  - Yes
  
2. In what way(s) may a victim participate in the plea process? (Check all that apply.)
  - Victim is consulted by prosecuting attorney prior to plea negotiation
  - Victim may attend plea negotiation sessions but may not participate
  - Victim may attend and participate in plea negotiation sessions
  - Victim may submit written statement to be considered by the court prior to the acceptance of a negotiated plea
  - Victim may present oral statement to be considered by the court prior to acceptance of negotiated plea
  - Victim may comment on a previously negotiated plea
  - Other, \_\_\_\_\_

**AUTHORSHIP AND VERIFICATION**

3. The final VIS that is introduced for judicial consideration in conjunction with plea negotiations may be written in part or in whole by a number of persons. Please identify all those who contribute directly to this statement. (Check all that apply.)
  - Victim
  - Probation officer
  - Prosecuting attorney
  - Victim service worker
  - Other, \_\_\_\_\_
  - Not applicable, VIS is not written [SKIP TO QUESTION 14]
  
4. If the preparing agent is someone other than the victim, what sources of information may be used in the preparation of a final VIS? (Check all that apply.)
  - Direct victim statements
  - Statements of family members
  - Case information from police records
  - Case information from prosecution files
  - Insurance receipts
  - Other, \_\_\_\_\_
  - Not applicable, VIS is authored solely by the victim

5. When the VIS is prepared by, or in conjunction with, prosecutorial personnel, how often is the victim personally contacted?
- Never
  - Rarely
  - Sometimes
  - Most times
  - Always
  - Not applicable, VIS not prepared by prosecutorial personnel
6. In what way(s) is the victim personally contacted? To what extent do victims comply with these requests for information?
- |  |                        |
|--|------------------------|
| <input type="checkbox"/> Personal interview    | Compliance rate _____% |
| <input type="checkbox"/> Telephone interview   | Compliance rate _____% |
| <input type="checkbox"/> Form mailed to victim | Compliance rate _____% |
| <input type="checkbox"/> Other, _____          | Compliance rate _____% |
7. If the actual victim is unable to cooperate in the preparation of a VIS, due to death, age, or incapacitation, which of the following individuals is authorized to provide a statement on the victim's behalf? (Check all that apply.)
- Family member
  - Attorney
  - Victim advocate
  - Collateral professional (e.g., social worker, counselor)
  - Legal guardian
  - Probation officer
  - Other person, \_\_\_\_\_
  - No other person
8. If the actual victim is unwilling to cooperate in the preparation of a VIS, which of the following individuals is authorized to provide a written statement on the victim's behalf? (Check all that apply.)
- Family member
  - Attorney
  - Victim advocate
  - Collateral professional (e.g., social worker, counselor)
  - Legal guardian
  - Probation officer
  - Other person, \_\_\_\_\_
  - No other person
9. Are preparing agents required to verify factual information that may be provided by the victim for inclusion in a written VIS?
- No
  - Yes, always
  - Yes, if time permits
  - Yes, under certain circumstances, \_\_\_\_\_
10. In practice, do preparing agents verify factual information that may be provided by the victim for inclusion in a written VIS?
- No
  - Yes, always
  - Yes, if time permits
  - Yes, under certain circumstances, \_\_\_\_\_

11. If the VIS is authored by someone other than the victim, is there a procedure for victim verification of the summarized information before it is presented to the court?
- No [SKIP TO QUESTION 13]
  - Yes, always
  - Yes, in some cases, \_\_\_\_\_
  - Not applicable, VIS is authored solely by the victim  
[SKIP TO QUESTION 13]

12. Please provide a brief description of this verification process.

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13. Is a written VIS disclosed to the defendant (or attorney)?

- No [SKIP TO QUESTION 16]
- Yes, in all cases
- Yes, in some cases, \_\_\_\_\_

Not applicable, VIS is not written

14. Does the defendant (or attorney) have an opportunity to challenge statements included in an oral or written VIS?

- No [SKIP TO QUESTION 16]
- Yes

15. Please provide a brief description of this challenge procedure.

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16. In your opinion, how does the verification of VISs in your local jurisdiction compare with the verification of VISs in other jurisdictions within your state?

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17. Optional commentary/description of victim involvement with plea negotiations:

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CONTENT

18. What information and/or assessments are included in an oral or written VIS? (Check all that apply.)

	MUST BE INCLUDED	MAY BE INCLUDED	MAY NOT BE INCLUDED
Identification of victim	[ ]	[ ]	[ ]
Subjective commentary			
Victim summary of offense	[ ]	[ ]	[ ]
Victim opinion of offender	[ ]	[ ]	[ ]
Victim fear of revictimization	[ ]	[ ]	[ ]
Victim opinion on proposed plea	[ ]	[ ]	[ ]
Economic impact			
Medical expenses	[ ]	[ ]	[ ]
Value of lost, stolen, or destroyed property	[ ]	[ ]	[ ]
Direct loss of earnings	[ ]	[ ]	[ ]
Indirect loss of earnings	[ ]	[ ]	[ ]
Insurance compensation	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Physical impact			
Seriousness of physical injury	[ ]	[ ]	[ ]
Permanence of physical injury	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Psychological impact			
Emotional or psychological injury	[ ]	[ ]	[ ]
Request for psychological services	[ ]	[ ]	[ ]
Change in personal welfare	[ ]	[ ]	[ ]
Change in familial relationships	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Other			
Letters from employers	[ ]	[ ]	[ ]
Letters from crime witnesses	[ ]	[ ]	[ ]
Letters from family members	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]

19. Is there any information that is specifically prohibited from inclusion in the VIS?  
 No  
 Yes, \_\_\_\_\_

20. Must the contents of the VIS relate solely to the effects of the crime for which the defendant is entering a plea?  
 No, VIS may relate to all crimes originally charged  
 Yes, VIS must relate only to those crimes for which the defendant has entered a plea  
 Other, \_\_\_\_\_

SECTION 4  
- VICTIM INVOLVEMENT WITH SENTENCING

In this section, written VIS refers to a written impact statement other than, or in addition to, a statement that may be prepared by probation staff. Allocution refers to the oral testimony of a victim in court concerning the impact of the crime. A preparing agent is the criminal justice staff person who is responsible for the preparation of a VIS.

1. Does the victim have an opportunity to participate in sentencing or restitution proceedings?  
[ ] No [SKIP TO SECTION 5]  
[ ] Yes
  
2. In what way(s) may a victim participate in sentencing decisions? (Check all that apply.)  
[ ] Victim is consulted by prosecuting attorney prior to sentencing hearing  
[ ] Victim may attend sentencing hearing but may not participate  
[ ] Victim may attend and participate in sentencing hearing  
[ ] Victim may submit written statement to be considered by the court prior to sentencing decisions  
[ ] Victim may present oral statement to be considered by the court prior to sentencing decisions  
[ ] Other, \_\_\_\_\_
  
3. In your jurisdiction, is the issue of restitution determined at a hearing that is separate from the sentencing hearing?  
[ ] No  
[ ] Yes
  
4. In what way(s) may a victim participate in restitution decisions? (Check all that apply.)  
[ ] Victim is consulted by prosecuting attorney prior to restitution hearing  
[ ] Victim may attend restitution hearing but may not participate  
[ ] Victim may attend and participate in restitution hearing  
[ ] Victim may submit written statement to be considered by the court prior to restitution decisions  
[ ] Victim may present oral statement to be considered by the court prior to restitution decisions  
[ ] Other, \_\_\_\_\_
  
5. Are sentencing guidelines used in your jurisdiction?  
[ ] No [SKIP TO QUESTION 7]  
[ ] Yes
  
6. Is an assessment of victim impact or harm specifically incorporated into these guidelines?  
[ ] No  
[ ] Yes, \_\_\_\_\_  
\_\_\_\_\_

AUTHORSHIP AND VERIFICATION

7. The final VIS that is introduced for judicial consideration at sentencing or restitution proceedings may be written in part or in whole by a number of persons. Please identify all those who may contribute directly to this statement. (Check all that apply.)

- Victim
- Probation officer
- Prosecuting attorney
- Victim service worker
- Other, \_\_\_\_\_
- Not applicable, VIS is not written [SKIP TO QUESTION 21]

8. If the preparing agent is someone other than the victim, what sources of information may be used in the preparation of a final VIS? (Check all that apply.)

- Direct victim statements
- Statements of family members
- Case information from police records
- Case information from prosecution files
- Insurance receipts
- Other, \_\_\_\_\_
- Not applicable, VIS is authored solely by the victim

9. When the VIS is prepared by, or in conjunction with, prosecutorial personnel, how often is the victim personally contacted?

- Always
- Most times
- Sometimes
- Rarely
- Never
- Not applicable, VIS not prepared by prosecutorial personnel

10. In what way(s) is the victim personally contacted? To what extent do victims comply with these requests for information?

- |  |                        |
|--|------------------------|
| <input type="checkbox"/> Personal interview    | Compliance rate _____% |
| <input type="checkbox"/> Telephone interview   | Compliance rate _____% |
| <input type="checkbox"/> Form mailed to victim | Compliance rate _____% |
| <input type="checkbox"/> Other, _____          | Compliance rate _____% |

11. If the actual victim is unable to cooperate in the preparation of a VIS, due to death, age, or incapacitation, which of the following individuals is authorized to provide a statement on the victim's behalf? (Check all that apply.)

- Family member
- Attorney
- Victim advocate
- Collateral professional (e.g., social worker, counselor)
- Legal guardian
- Probation officer
- Other person, \_\_\_\_\_
- No other person

12. If the actual victim is unwilling to cooperate in the preparation of a VIS, which of the following individuals is authorized to provide a written statement on the victim's behalf? (Check all that apply.)
- Family member
  - Attorney
  - Victim advocate
  - Collateral professional (e.g., social worker, counselor)
  - Legal guardian
  - Probation officer
  - Other person, \_\_\_\_\_
  - No other person
13. Are preparing agents required to verify factual information that may be provided by the victim for inclusion in the VIS?
- No
  - Yes, always
  - Yes, if time permits
  - Yes, under certain circumstances, \_\_\_\_\_
14. In practice, do preparing agents verify factual information that may be provided by the victim for inclusion in the VIS?
- No
  - Yes, always
  - Yes, if time permits
  - Yes, under certain circumstances, \_\_\_\_\_
15. If the VIS is authored by someone other than the victim, is there a procedure for victim verification of the summarized information before it is presented to the court?
- No [SKIP TO QUESTION 17]
  - Yes, always
  - Yes, in some cases, \_\_\_\_\_
  - Not applicable, VIS is authored solely by the victim [SKIP TO QUESTION 17]
16. Please provide a brief description of this verification process.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
17. Is a written VIS disclosed to the defendant (or attorney) at or prior to the sentencing hearing?
- No [SKIP TO QUESTION 21]
  - Yes, in all cases
  - Yes, in some cases \_\_\_\_\_
  - Not applicable, VIS is not written [SKIP TO QUESTION 21]
18. Is the entire VIS available for inspection by the defendant (or attorney)?
- No
  - Yes, always
  - Yes, in some cases, \_\_\_\_\_

19. Which sections of the VIS may be exempted from disclosure? (Check all that apply.)

- Victim's name and address
- Victim's sentence recommendation
- Victim's fear of revictimization
- Other, \_\_\_\_\_

20. Who decides which parts of the VIS are to remain confidential?

- Probation staff
- Prosecuting attorney
- Judge
- Other, \_\_\_\_\_

21. Does the defendant (or attorney) have an opportunity to challenge statements included in an oral or written VIS?

- No [SKIP TO QUESTION 25]
- Yes, always
- Yes, in some cases, \_\_\_\_\_

22. Please provide a brief description of this challenge procedure.

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23. Does the defendant (or attorney) have the right to cross-examine the victim as to statements included in an oral or written VIS?

- No [SKIP TO QUESTION 25]
- Yes

24. Is this right to cross-examination limited in any way?

- No
- Yes, \_\_\_\_\_

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25. In your opinion, how does the verification of VISs in your local jurisdiction compare with the verification of VISs in other jurisdictions within your state?

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26. Optional commentary:

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CONTENT

27. What information and/or assessments are included in an oral or written VIS? (Check all that apply.)

	MUST BE INCLUDED	MAY BE INCLUDED	MAY NOT BE INCLUDED
Identification of victim	[ ]	[ ]	[ ]
Subjective commentary			
Victim summary of offense	[ ]	[ ]	[ ]
Victim opinion of offender	[ ]	[ ]	[ ]
Victim fear of revictimization	[ ]	[ ]	[ ]
Victim opinion on restitution determination	[ ]	[ ]	[ ]
Victim opinion on sentence recommendation	[ ]	[ ]	[ ]
Victim's own sentence recommendation	[ ]	[ ]	[ ]
Economic impact			
Medical expenses	[ ]	[ ]	[ ]
Value of lost, stolen, or destroyed property	[ ]	[ ]	[ ]
Direct loss of earnings	[ ]	[ ]	[ ]
Indirect loss of earnings	[ ]	[ ]	[ ]
Insurance compensation	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Physical impact			
Seriousness of physical injury	[ ]	[ ]	[ ]
Permanence of physical injury	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Psychological impact			
Emotional or psychological injury	[ ]	[ ]	[ ]
Request for psychological services	[ ]	[ ]	[ ]
Change in personal welfare	[ ]	[ ]	[ ]
Change in familial relationships	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]
Other			
Letters from employers	[ ]	[ ]	[ ]
Letters from crime witnesses	[ ]	[ ]	[ ]
Letters from family members	[ ]	[ ]	[ ]
Other, _____	[ ]	[ ]	[ ]

28. Is there any information that is specifically prohibited from inclusion in the VIS?

[ ] No

[ ] Yes, \_\_\_\_\_

29. Must the contents of the VIS relate solely to the effects of the crime for which the defendant is being sentenced?

[ ] No, VIS may relate to all crimes originally charged

[ ] Yes, VIS must relate only to crimes for which the defendant is currently being sentenced

[ ] Other, \_\_\_\_\_

30. For which of the following items might the defendant be required to pay restitution? (Check all that apply.)
- Documented medical expenses
  - Cost of psychological services for victim and/or victim's family
  - Estimated cost of continuing medical or psychological treatment
  - Value of lost or damaged property
  - Loss of victim earnings
  - Funeral expenses
  - Damages for "pain and suffering"
  - Other, \_\_\_\_\_

**FORMAT**

31. What is the procedure by which a VIS gets written and presented for judicial consideration? (Check all that apply)
- Victim writes a letter which is presented in its entirety
  - Victim fills out a standard VIS form which is presented in its entirety
  - Victim writes a letter which is used by the the preparing agent to write the VIS
  - Victim fills out a standard VIS form which is used by the preparing agent to write the VIS
  - Victim is interviewed by the preparing agent who writes the VIS
  - Other, \_\_\_\_\_
32. If a standard form is used by either the victim or the preparing agent, how would you best describe this form?
- Checklist
  - Numerical rating scale
  - Open ended format
  - Other, \_\_\_\_\_
33. Who was responsible for developing this form? (Check all that apply.)
- State probation department
  - County probation department
  - Local probation department
  - Prosecutor's office
  - Victim service agency
  - Legislature
  - Other, \_\_\_\_\_
34. Have you experienced problems with this form?
- No [SKIP TO QUESTION 36]
  - Yes
35. What problems have you experienced with this form? (Check all that apply.)
- Doesn't effectively reflect the needs or interests of the victim
  - Doesn't effectively reflect the needs or interests of the criminal justice system
  - Overburdens staff responsible for VIS preparation
  - Too complicated for some victims to fill out correctly
  - Doesn't elicit sufficient information
  - Other, \_\_\_\_\_

36. In what way(s) would you alter this form to better serve the needs of all interested parties?

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37. Optional commentary:

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**NATURE OF PRESENTATION**

38. What is the standard method for the presentation of a written VIS in your jurisdiction?

- Separate statement attached to the PSR
- Section included within the PSR
- Statement independent of the PSR
- Other, \_\_\_\_\_
- Not applicable, VIS is not written

39. Does the victim have a right to be present at sentencing?

- No [SKIP TO QUESTION 46]
- Yes, always
- Yes, in some cases, \_\_\_\_\_

40. Approximately what proportion of victims exercise this right?

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41. Do particular categories of victims exercise this right more so than do others?

- No
- Yes, victims of personal crimes
- Yes, victims of property crimes
- Yes, \_\_\_\_\_
- Not applicable, victim not present at sentencing

42. Does the victim have a right to allocution at sentencing?

- No [SKIP TO QUESTION 46]
- Yes, always
- Yes, in some cases, \_\_\_\_\_
- Not applicable, victim not present at sentencing

43. Approximately what proportion of victims exercise this right?

---

44. Do particular categories of victims exercise this right more so than do others?

- No
- Yes, victims of personal crimes
- Yes, victims of property crimes
- Yes, \_\_\_\_\_

45. If the victim wishes to present an oral statement at sentencing, but does not wish to appear personally, which of the following individuals is authorized to allocute on the victim's behalf? (Check all that apply.)
- Family member
  - Attorney
  - Victim advocate
  - Collateral professional (e.g., social worker, counselor)
  - Legal guardian
  - Probation officer
  - Other person, \_\_\_\_\_
  - No other person
46. Does the victim have a right to present a written statement (other than the PSR statement) to the court at sentencing?
- No [SKIP TO QUESTION 51]
  - Yes, always
  - Yes, in some cases, \_\_\_\_\_
47. Approximately what proportion of victims exercise this right?
- \_\_\_\_\_
48. Do particular categories of victims exercise this right more so than do others?
- No
  - Yes, victims of personal crimes
  - Yes, victims of property crimes
  - Yes, \_\_\_\_\_
49. If both allocution and written VISs are allowed at sentencing, which method of presentation is utilized more frequently?
- Written statements presented more frequently
  - Oral statements presented more frequently
  - Written and oral statements presented equally often
  - Other, \_\_\_\_\_
50. If both allocution and written VISs are allowed at sentencing, to what extent do victims present both oral and written statements?
- Always
  - Most times
  - Sometimes
  - Rarely
  - Never
51. Does the victim receive notification of the final sentencing decision?
- No
  - Yes, in all cases
  - Yes, if victim specifically requests such notification
  - Other, \_\_\_\_\_
52. In your opinion, how does the presentation of VISs in your local jurisdiction compare with the presentation of VISs in other jurisdictions within your state?
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

ID \_\_\_\_\_

SECTION 5  
GENERAL COMMENTS

1. In your opinion, what is the biggest problem encountered by prosecutorial staff in the preparation of VISSs?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. In your opinion, are prosecutorial staff the most appropriate personnel to prepare VISSs? Why or why not?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. If you do not believe that prosecutorial staff are most appropriate personnel for VIS preparation, who do you think would be more appropriate?

- Victim advocate
- Probation staff
- Other, \_\_\_\_\_

Why?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. In your opinion, what purposes were intended to be served by legislation authorizing the preparation of VISSs?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Have these purposes been satisfied?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Has the introduction of VIS legislation and/or policies had any effect on criminal justice decisionmaking? In what way(s)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Have judicial sentencing practices changed as a result of the implementation of VIS legislation and/or policies? In what way(s)?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Has victim participation in the criminal justice system through the use of VISS had any effect on victim satisfaction with the justice system? In what way(s)?

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9. In your opinion, should increased victim participation be discouraged? Encouraged? Why?

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10. In your opinion, what role should victims play in the criminal justice system?

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Thank you for your cooperation with this project.

Please return the completed packet in the self-addressed stamped envelope that has been provided. This packet should consist of the following:

1. the completed survey
2. a blank copy of any standardized form that may be used by your agency in the preparation of a victim impact statement
3. one or more copies of completed victim impact statements that, in your opinion, represent 'good', 'bad', and 'typical' examples of victim statements. These are being requested so that project staff can better familiarize themselves with variations in document preparation. Please delete identifying information (e.g., names and addresses) to protect the anonymity of those involved.

Upon completion, a copy of the survey results will be made available to all persons/agencies who have participated in this study. If you would like to receive a copy of this report, please indicate below the name and complete mailing address of the person to whom the document is to be mailed.

Please mail to:

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APPENDIX H  
PAROLE NARRATIVES

## ALABAMA

### Legislative Summary

Alabama is one of a growing number of states that conduct public parole hearings. ALA. CODE 15-22-36 provides for victim notification of impending parole and pardon hearings and outlines the victim's right to present a written or oral statement for Parole Board consideration. Although this participatory mechanism has been legislatively mandated only as of 1984, the Parole Board has, on its own initiative, been authorizing a similar procedure for victim notification and participation since 1939.

### Notification

For purposes of this statute, a victim is defined as a victim of a Class A felony (murder, rape, robbery, first degree burglary) or of any felony involving violence, death, physical injury, unlawful sexual assault, sexual abuse of a minor, child abuse, or sodomy. If the victim is deceased, a member of the victim's family will be accorded the rights prescribed by the statute. If the victim is a minor, the legislative provisions extend to a parent or a guardian.

A victim is first informed of the right to participate at parole by probation staff in the process of preparing the presentence report, if such a report is ordered by the court. At that time the victim is mailed a listing of applicable victims' rights and a Victim Impact Report (described below), which the victim can complete and return at any time before the parole release hearing.

Alabama's notification procedure appears to be somewhat unique in two respects. First, the victim does not have to request notification of parole or pardon proceedings; it is presumed that all such notices are desired. Second, while the victim is asked to keep Parole Board personnel apprised of changes in address, the victim is not required to do so. Consequently, when subsequent notices are to be sent, the burden is on the Parole Board to ascertain the victim's current address.

At least 30 days before a docketed parole or pardon hearing, written notice of

the action is delivered by certified mail, return requested, to the last known address of the victim. If the initial notice is returned as undeliverable, staff are directed to canvass local telephone listings, city directories, and utility company records in an effort to either locate the victim (or a relative of the victim) or to determine that, despite due diligence, the victim can not be located. This notice informs the victim of the time and place of the scheduled hearing, and of the right to appear and address the Board. Whether or not the victim chooses to participate in any manner, the victim will receive written notice of the Parole Board's release decision.

### Participation

There are three mechanisms by which information on the impact of the crime may be relayed to the Parole Board. Two of these devices (victim impact statements and oral testimony) are legislatively authorized. A third mechanism, the Victim Impact Report, is a product of Parole Board initiative. These participatory modes are detailed below.

The victim impact statement is a summary statement that is prepared by a probation officer and incorporated within the presentence report. If a presentence report was not court ordered, a victim impact statement is prepared by a parole officer as part of the prerelease investigation.

The Victim Impact Report was introduced by Parole Board initiative in September 1984. It is a standardized form that is provided to the victim prior to the sentencing of the offender (in those cases where a presentence report is prepared) or at the time of the prerelease investigation (if a presentence report was not prepared). This instrument solicits the victim's personal assessment of the physical, financial, psychological, and social impacts of the offense and any other comments the victim may wish to add. If the victim chooses to complete this form and return it to the Parole Board, it is included within the inmate's institutional file. Board personnel estimate that 50 percent of all victims return the Victim Impact Report.

The final mechanism for victim participation is the presentation of an oral statement at the docketed hearing, which is conducted at the Parole Board's central office. There are no limitations on the number of persons who may address the Board at this meeting nor are there any restrictions on what may be said. No record or summary is made of any oral presentations. The inmate under consideration is never present.

There are no legislative provisions for automatic disclosure to the inmate of materials reviewed by the Parole Board.

## ALASKA

### Legislative Summary

AK 33.15.065 (Parole Administration Act), repealed and replaced by AK 33.16.120 (1986), codifies the victim's right to be notified of hearings to consider or review an inmate's release on parole or furlough, to provide written commentary on said release possibility, and to be notified of any release decision. The provisions of the statute apply to victims of offenders sentenced on or after October 3, 1984, for crimes against the person. While there is no formal mechanism for the notification of victims of offenders sentenced prior to this date, the Parole Board will accommodate the wishes of any victims who contact the Board and request notification.

### Notification

At the time of the preparation of the presentence report, the investigating probation officer informs the victim of opportunities to participate post-conviction if the offender is sentenced to a term of incarceration. The victim is given a copy of Department of Corrections Form 20-818.03A, which outlines legislatively authorized notification and participation procedures. The victim is advised to read the sheet carefully and to indicate the release proceedings for which notification is being requested. The authorizing statute specifies, and the departmental form reiterates, that no notices will be sent to victims who fail to register with the Department of Corrections and that victims are responsible for keeping correctional personnel informed of current mailing information. There is no specific time frame during which a request for notification is to be submitted, i.e. registration may be received at any time prior to the offender's release from correctional jurisdiction. If a victim is deceased, a minor, or incapacitated, any of the following persons may register with correctional authorities for purposes of notification and participation: parent, spouse, child, sibling, or legal guardian.

Approximately 30 days before a scheduled hearing to consider or review an

inmate's conditional release, written notice is sent by certified mail to the victim's last known address. The notice contains the name of the prisoner, the date and purpose of the impending hearing, a brief description of any release plan under consideration, and the address to which the victim is to direct any written commentary. Requesting victims receive written notice, via certified mail, of an inmate's release by the Parole Board (in the case of parole release) or by the Department of Corrections (in the case of work or rehabilitation furlough or mandatory release).

### Participation

The Parole Administration Act states simply that "the victim has a right to comment in writing on the proposed action of the board." There are no restrictions on the content of this statement nor are there any limits on the number of persons who may submit statements.

All written comments, minus identifying information, are, by law, presumed to be available for review and rebuttal by the prisoner or the prisoner's attorney. A peripheral parole statute (AK 13.16.170) allows the Parole Board to label as confidential the precise content of a statement if it is believed that the disclosure of this information might endanger the safety of the source. However, in the event of such a determination, the Board would still be required to disclose to the inmate a summary or excised version of the document in question.

### Other Proceedings

Alaskan criminal procedure provides that, at any time during confinement, an inmate can request a hearing to consider the modification of his sentence. Current legislative provisions do not mandate victim notification of these proceedings. Similarly, no advance notice is required when an inmate is considered for release by executive clemency or by emergency executive order to alleviate overcrowding.

## ARIZONA

### Legislative Summary

AZ. REV. STAT. ANN. 31-411(F) legislates a victim's right to receive advance notice of, and to submit a written statement for consideration at, an inmate's parole or commutation hearing. Prior to the statute's effectiveness date in 1983 victim participation, while not actively promoted, was permitted informally upon request. The victim's rights provisions of this statute were recently expanded to include victim notice of and participation at hearings to review an inmate's application for release on work furlough.

### Notification

The relevant legislation is unclear as to how the notification process is to be structured. At present, county court personnel in all but one county have agreed to forward the identities and mailing addresses of all felony victims to the Parole Board; in Maricopa County, Parole Board support staff are themselves researching court records. This information is then computerized to facilitate retrieval for notification purposes.

There is no procedure for victim registration with the paroling authority. Consequently, there is no mechanism by which victim addresses can be verified or updated. Notification of all identified victims is automatic and presumed to be consistent with victim desires.

Thirty days before an inmate's hearing, notice is mailed to the victim at the last known address. This is generally the first time a victim is alerted to the right to participate in the parole release decision. Included in the notice is the date and purpose of the hearing and a recitation of the victim's right to submit a written response for Board consideration.

In 1985, approximately 4,420 prehearing notices were mailed to victims. Written statements were forthcoming from 127 victims.

The Parole Board's release decision is a matter of public record. As such, the Board responds to any inquiries pertaining to an inmate's release hearing. There is, however, no mechanism for notifying individual victims.

#### Participation

The relevant section of the statute indicates that a victim's written statement may reflect his "opinion concerning the release" of the inmate. The Parole Board, in interpreting this phrase, has placed no restrictions on the contents of written statements.

Although neither mandated by law nor generally announced, victims may request to present oral rather than written testimony. This exchange may be conducted in one of two manners. First, the victim may personally appear and address the Board. In-person statements would be received by the Board Chairperson at the Board's administrative office. Alternately, a victim may communicate his or her statement via a telephone interview. Because of the informality of this exchange, no record of the commentary is included in the inmate's file.

At the time of this writing, statutory provisions in Arizona do not address the issue of disclosure of the victim statement to the inmate. In the absence of legislative direction, the Parole Board has adopted a stance of nondisclosure. Current Board policy is to designate the inmate's institutional file, in its entirety, as a confidential document.

#### Other Proceedings

The Administrative Rules of the Board of Pardons and Paroles require that advance notice of any hearing to consider the pardon of an inmate is to be published in a local newspaper. Although no specific notice is given to the victim, any interested party can submit a written statement for inclusion in the prisoner's review file.

If an inmate is released from confinement as a result of having served his maximum sentence, no notice is provided to the victim.

## ARKANSAS

### Legislative Summary

ARK. STAT. ANN. 43-2819 to -2819.3 outline the rights of certain crime victims to present written or oral comments to the Parole Board prior to the release of an offender. As written, the applicable provisions mandate that notification of impending hearings be forwarded to victims (or families of victims) of capital murder and of Class Y, A, and B felonies. The Parole Board, on its own initiative, has expanded the coverage of the victim notification procedures to include victims of manslaughter and carnal abuse.

This legislation affects victims of inmates who have been eligible for parole consideration since 1983. In general, it formalizes procedures that had previously been in operation on a much more informal basis.

### Notification

The statute specifies that, at the time of the inmate's commitment, the victim is to inform the prosecuting attorney whether or not he or she wishes to be notified of future parole proceedings. The prosecutor, in turn, is to forward to the Parole Board a listing of the victims who do not elect to receive future notice along with the most current addresses of the victims who do request further notice. Victims, by law, bear the responsibility for keeping the Parole Board apprised of any address updates. The Parole Board operates on the presumption that, if a victim has not specifically requested non-notification, the victim is to be notified.

No specific timeframe for the provision of notification has been established by the legislature. In practice, the Parole Board mails notice of a docketed institutional hearing to the victim's last known address "as early as possible" but at least 2 weeks before the hearing date. Included in this written notice are the date, time, and place of the hearing and an explication of the victim's right to present oral or written statements for Board consideration. If the victim chooses to address the panel personally, he or she is advised to contact the Board to schedule an appearance.

There is no mechanism for routinely informing victims of the Board's release decision. An attempt is made to send written notice to those victims who, as part of their written commentary, specifically requested such notification. Victims who appear before the Board are advised to call the Board's administrative offices after the institutional hearing to learn of the Board decision.

#### Participation

The Parole Board is authorized to hold two hearings for each inmate applicant. The inmate is to be interviewed during an open meeting at the holding institution. Any interested party may attend this public session. Hearings at which victims testify may not, by law, be conducted at a prison facility. Oral impact statements are received by the Board at its central office in Pine Bluff. Minutes of the statements are kept by the Parole Board but are not included in the applicant's institutional file.

The Board places no restrictions on the content of oral or written statements. Neither the source nor the substance of these statements is disclosed to the inmate.

#### Other Proceedings

Inmate requests for executive clemency trigger the above described panoply of rights.

## CALIFORNIA<sup>a</sup>

### Legislative Summary

Pursuant to California's Determinate Sentencing Law, all offenders who are determinately sentenced (approximately 90 percent of all sentenced) are to be released to parole supervision at the completion of their statutorily mandated court imposed term. For the approximately 10 percent who receive life terms, the Board of Prison Terms periodically reviews an offender's parole suitability and determines an appropriate release date.

Victim participatory rights at parole suitability hearings were established by the adoption of Proposition 8 in June 1982. Pertinent provisions of the initiative, codified as CALIF. PENAL CODE 3043, entitle requesting victims to receive advance notification of impending parole hearings and of their right to participate in these proceedings in one of several manners. Any interested party may submit a written statement. In lieu of, or in addition to, written input, a victim, or a victim's next of kin if the victim is deceased, may submit a taped impact statement for Board consideration and/or may attend and speak at the formal parole release hearing.

Victim notification and participation provisions are mandated only for victims of offenses committed after the code's effective date. Nevertheless, Board policy is to accommodate all requesting victims, regardless of the date of the commission of the offense.

### Notification

In order to activate the victim notification mechanism, a victim must formally request future notices and must agree to keep the Board apprised of any changes in residential status.

Enabling statutes do not establish a statewide procedure by which a victim is to be initially informed of (a) the availability of postconviction participatory options, or

(b) the need to register with the Board of Prison Terms. A study conducted in Fall 1982 by the Center for Research, McGeorge School of Law, University of the Pacific, reported that approximately 20 percent of interviewed victims noted that they had learned of the opportunities for participation from the district attorney. An equal proportion of victims reported having been notified by legal or law enforcement personnel. The Board is currently working with the Office of Criminal Justice Planning in an effort to standardize this notification process.

A request for notification can be completed via telephone or mail contact with the Board of Prison Terms. The Board responds to a victim's registration with a letter advising the victim that he or she will receive written notice of a release proceeding approximately 30 days prior to the scheduled hearing. The notice specifies the date and location of the offender's parole hearing, outlines Board procedures for considering an inmate's application for release, and enumerates a victim's participatory options.

A victim who wishes to appear personally is directed to indicate this intent to the Board at least 7 days in advance of the hearing.

Any victim who requests to be informed of the final outcome of the inmate's release hearing will be so notified by the Board.

### Participation

Parole hearings are conducted at the correctional facility housing the offender. Victims who attend are subject to routine security clearance checks before admission is granted. If one has not already been submitted, a statement certifying that the person in attendance is, in fact, an actual victim of the offense or the next of kin of such a victim must be completed by the victim.

The hearing is a formal proceeding. Those in attendance include a three member parole panel; correctional personnel; the inmate; the inmate's counsel; the district attorney of the county in which the offender was convicted; the victim, if desired; and

others whose attendance has been permitted by the Board. The victim, as well as the offender, are present for the complete proceeding which may last several hours. Acts are taped in their entirety.

The Board also considers any written or taped victim impact statements that may have been submitted. As part of the hearing file, the contents of these materials are subject to inmate review. The address of the victim is not disclosed.

Prior to the presentation of closing statements, the victim is invited to comment. There are no restrictions on the content of oral input and the inmate applicant (or counsel) has an opportunity to respond to this testimony. While enabling legislation does not address the issue of cross-examination, Board policy is to limit the inmate's opportunity for cross-examination to those cases in which the Board initiates the process by directing questions to the person offering testimony.

#### Other Proceedings

CALIF. PENAL CODE 11155 states that a requesting victim (or the victim's next of kin, if the crime was a homicide) is to be notified by the Department of Corrections of an inmate's placement in a reentry or work furlough program, and of any escape. The time frame for said notice is not specified, i.e., it is unclear whether the victim receives this notice prior to or after the actual date of placement.

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Project staff were unable to schedule a telephone interview with parole personnel in this state. An earlier version of this narrative was drafted from legislation and from other available information. The prepared draft was then forwarded to appropriate staff members in California. Parole personnel were instructed to review the document and to return it with revisions and/or comments if the narrative did not accurately describe current policies and procedures within the state. This narrative reflects revisions suggested by parole staff.

## COLORADO

### Legislative Summary

In the past decade, the nature and extent of discretion exercised by the Colorado Parole Board has undergone extensive legislative alteration. For offenders convicted of felonies committed prior to July 1, 1979, parole release was discretionary; the Board exercised wide latitude both in its determination of whether an inmate should be released and, if released, the length and conditions of supervision. During the 5-year period 1979-1984, the state adopted a more structured release policy. Tentative parole release dates were statutorily predetermined. On this date, barring circumstances to the contrary, offenders were released to a mandatory year of parole supervision; the Board's discretion was limited to the setting of parole conditions. Between July 1984 and July 1985, the Board's role in release decisionmaking was expanded. While offenders were still released according to a legislatively created schedule, the Board, in addition to setting conditions, also determined the appropriate length of parole supervision from within an allowable range of 0 to 5 years. A further expansion of the Board's authority took effect July 1, 1985. Responsibility for the release decision is once again a Parole Board function. If parole is to be granted, the Board determines the length of supervision (from 0 to 5 years) and sets any necessary conditions.

Colorado has a multi-tiered mechanism for victim notification and participation which is rooted in offense classification and participant standing. In general, the law provides for advance notice of parole-related proceedings. Any interested party may submit a written statement for Parole Board consideration. As outlined in COLO. REV. STAT. 17-2-214, only victims or their representatives are entitled to appear and address the Board at the public release hearing.

These provisions attach to any parole-related proceeding held on or after July 1, 1985, irrespective of when the offender was sentenced or incarcerated. In view of the changing role of the paroling authority, the effect of legislative mandates on release

decisions is variable. In some cases, victim input is an integral factor in the Board's consideration of an inmate's parole application. In other cases, because the actual date of release is not within the purview of the Board, victim statements are useful only to the extent that they assist the Board in establishing the length and/or conditions of parole.

### Notification

The procedures and criteria for postsentence notification and participation are detailed in COLO. REV. STAT. 17-2-214, -215. At least 60 days in advance of the docketed hearing, written notice of said hearing is to be delivered to all victims of the inmate applicant. This notice is provided automatically (i.e., no victim request is necessary) to victims of offenses against the person as specified in COLO. REV. STAT. 18-3 et seq. Written notice is provided to a victim of an offense other than an offense against the person only if the victim has filed a request for such notification.

Colorado is unique in its statutory specification that any interested person, regardless of victim standing, upon written request to the Parole Board, is similarly entitled to be notified of impending proceedings. By law, this notice is to be mailed at least 30 days before the hearing to the addressee's last known address.

Regardless of offense typology or victim standing, all persons requesting notification are responsible for maintaining an updated address on file with parole authorities.

Despite requirements of notification registration and/or address update, the enabling statute is silent as to how victims are to be alerted to the existence of postsentence opportunities or responsibilities. No agency has been designated to perform this informational function, and Parole Board personnel doubt that victims are informed or encouraged in any systematic fashion.

Each month the Parole Board mails a listing of the offenders eligible for parole consideration the following month to over 200 media and criminal justice agency

personnel. The accompanying notice, like the prehearing notice that is mailed to victims and interested individuals, announces the tentative date, time, and place of an inmate's hearing, and reviews the allowable participatory options. Persons interested in receiving additional information are advised to contact the Board's administrative office.

Actions taken by the Board are public information. As such, any interested party can contact the Board to learn if and when an offender has been released. Although victims are not entitled to receive written notice of release decisions, the Board accommodates victim requests to the extent possible.

### Participation

Legislative measures make no mention of written statements for Parole Board consideration. Nevertheless, it continues to be Board policy to accept written communications from any interested party. All written commentaries are exempt from disclosure to the inmate.

COLO. REV. STAT. 17-2-214 outlines a victim's right to appear at the proceeding and to "reasonably express his or her views concerning the crime, the offender, and whether or not the offender should be released on parole, and if so released under what conditions." Victims who elect to express their concerns orally may do so at the Board's administrative office or at the institutional release hearing. Agency interviews are conducted in the presence of as many Board members as are available. These statements may be recorded and/or notations may be included in the inmate's file; the substance of these comments is not disclosed to the inmate.

Release hearings in Colorado are public meetings that are conducted at the facility housing the inmate applicant. While any interested person may attend these sessions and request to address the Board, only victims (or their representatives) are legally entitled to allocution. The policy of the Board is to accept oral statements from any requesting individual. There are no limitations on the number of persons who may speak.

Because of the public nature of these hearings, the inmate is present during any oral commentary. A victim's request to speak at the hearing absent the inmate would not be granted.

#### Other Proceedings

Victims are not entitled to receive notice of inmate furloughs, escapes, or maximum expiration dates. The Department of Corrections will, however, upon written request from a victim, endeavor to provide notice of specified events.

## CONNECTICUT

### Legislative Summary

In July 1981, Connecticut modified its criminal procedure law, replacing its indeterminate sentencing structure with a determinate plan for sentencing felony offenders. Three years later, CT. GEN. STAT. ANN. 54-126a, legislating a victim's right to present oral or written statements prior to parole release, took effect. This statute was amended in 1985 by Public Act 566 which outlines the requisite procedures for victim notification.

Because parole release is an option only for those offenders committed prior to July 1, 1981, the impact of this legislation on Parole Board operations is expected to diminish over time as decreasing proportions of the prison population are eligible for parole consideration.

### Notification

The prosecuting attorney is responsible for informing the victim of the various participatory rights that attach presentence. It is uncertain how, or with what consistency, information about post-commitment participation was relayed to the victims of offenders sentenced to indeterminate terms.

By law, a victim's right to be notified of and to participate at parole proceedings is contingent upon the filing of a formal request by the victim. The victim is furthermore required to maintain an updated address on file. It is worth noting that victims of parolable inmates (i.e., inmates placed in correctional custody before July 1981) passed through the criminal justice system before the legislation regulating victim input at parole took effect. Thus, while these victims now have a right to participate in parole decisionmaking, they may never have been advised that they are eligible for such participation or that they must formally invoke these rights by registering with paroling authorities. There is no standard format for victim registration; a victim can communicate his or her desire for Parole Board notification in any manner.

A hearing for the purpose of considering an inmate's release is conducted approximately 4 months before an inmate's parole eligibility date. While the relevant legislation does not specify a timeframe for notification, the Parole Board's policy is to mail notice of the impending hearing to requesting victims 2 to 3 months in advance. The notice provides the date, time, and place of the hearing and reviews the victim's participatory options.

The victim is not entitled to formal notification of the Board's release decision. Victims who wish to be informed of the action taken are advised to contact the Parole Board the following day or to speak with a Board member at the conclusion of the hearing.

### Participation

The relevant statute states that a victim may appear before the Board to comment on "whether the inmate should be released on parole or the nature of any terms or conditions to be imposed upon such release." In lieu of a personal appearance, a victim may submit a written statement.

Three formats are available for the presentation of oral statements. A victim may elect to travel to the Board's administrative office in Hartford and speak with a Board member who then summarizes the statement for distribution to other panel members. The victim also has the option of attending the inmate's institutional hearing and addressing the full Board at that time. A third participatory option is to provide a statement via a telephone interview. Regardless of format, there are no limitations placed on the content of a victim statement.

As reported by Parole Board staff, only nine victims personally addressed the Board over a 3-year period; some of these persons also submitted written protests. Nine to eighteen additional victims provided written statements alone.

The legislation does not directly address the issue of disclosure. Thus, the Board has necessarily established policy for dealing with this question. A victim's written

statement is to be made available for inmate review unless the victim requests that the materials remain confidential. Where a victim elects to make an oral statement at the facility, the parole applicant is in attendance only if his presence is requested by the victim. Oral statements are recorded but not transcribed, and the applicant does not have access to these recordings. The inmate is never present during a victim's audience with the Chairperson in Hartford.

#### Other Proceedings

Public Act 85-566, amending CT. GEN. STAT. ANN. 54-126a, directs the Department of Corrections to provide written notice to any victim who requests such notification of the release of any inmate from correctional custody. There is no provision for victim input of any kind at this juncture.

## DELAWARE

### Legislative Summary

DEL. CODE ANN. 4347, effective in 1970, outlines procedures by which the Department of Corrections is to notify felony victims of impending parole hearings. Although not a statutory right, victims are advised that they may submit a written statement for Parole Board consideration. In the mid 1970's, DEL. CODE ANN. 4350 expanded the participatory role for some victims. Under this section, immediate family members of victims of first degree murder are accorded the right to appear personally at the release hearing and to address the Board. At the discretion of the Board, other victims may be permitted this allocutory option.

### Notification

In Delaware, the victim does not have to request notification of parole proceedings nor does the victim bear any responsibility for updating his or her address. Upon commitment of an inmate to the Department of Corrections, the court forwards copies of relevant records to this agency. The Department of Corrections and the Parole Board are responsible for reviewing these documents and identifying aggrieved parties and their last known addresses.

The applicable provision indicates that notice of impending hearings is to be forwarded to victims "whenever feasible and possible". Agency policy is to deliver written notice of parole hearings by registered mail approximately 30 days in advance. This first notice, provided by the Department of Corrections to all felony victims, informs victims of the date and location of the hearing and of the victim's right to submit a written statement and/or to apply to the Parole Board for an opportunity to appear and to address the Board. A second notice, authored by the Parole Board, is delivered only to families of victims of first degree murder. This notice, in addition to providing information on the date and location of the parole hearing, instructs the aggrieved parties that they may, by statutory right, appear and address the Board.

At the time of the telephone interview, it was estimated that 20 percent of victims were responding to the prehearing notification in some way. Of these, nearly half indicated that they did not wish to be involved further, either because they did not want to be reminded of the event, or because they were confident that the Parole Board would review the case responsibly.

Victims who request notification of the action taken by the Board relative to the inmate's release are advised to contact the Board's administrative offices on the day following the scheduled hearing.

#### Participation

Written statements are incorporated within the preparole file. The inmate is not entitled to disclosure of this information.

Oral statements, where permitted by right or by Parole Board discretion, may be conveyed to the Parole Board in one of two manners. The victim may, if he or she chooses, contact the Board and schedule an appearance before the Board chair and the investigator of the Board at the Board's administrative offices. A summary of the statement is then prepared for review by other Board members.

Alternately, the victim may address the full Board at the release hearing which is conducted at the holding facility. The victim may contact the Board in advance to announce his or her intention to testify or may simply appear at the designated time and place with proper identification. Unless specifically requested by the victim, the inmate is not present during this interview. The victim's statement is not taped and no record of it is placed in the inmate's file.

Although the legislation specifies that oral statements are to be structured "with respect to the application for parole being considered," the Parole Board places no restrictions on the content of any written or oral statement.

#### Other Proceedings

Recent legislation passed in Delaware provides for victim notification where an

inmate is released on supervised custody or work furlough. This notice is the responsibility of the Department of Corrections.

## GEORGIA

### Legislative Summary

Effective July 1, 1985, GA. CODE 17-10-1.1 outlines procedures by which a victim of a personal crime (1) may complete a presentence victim impact statement which, if the offender is sentenced to a term of imprisonment, is forwarded to the Board of Pardons and Paroles, (2) may submit an independently authored statement for consideration by the Board prior to the release of any inmate, and (3) is to be notified of the Board's final release decision. Since the Board's inception in 1943, similar modes of victim input had been accommodated on an "as requested" basis.

### Notification

Approximately 4 months after an inmate is committed to a correctional facility, the Board meets to review the inmate's file and to set a tentative release date. As the tentative release date approaches, a second hearing is scheduled at which the Board makes its final decision as to whether or not the inmate should be paroled. Victims are not entitled to advance notice of either hearing and may not be in attendance.

GA. CODE 42-9-47 requires that within 72 hours of the Board's final release decision, written notice of the action is to be mailed to the presiding judge, the district attorney, the sheriff of the county of conviction, the sheriff of the county of the parolee's last residence, and the last known address of any victim of a personal crime. The victim, who does not have to request said notification prior to its receipt, is legally responsible for updating his or her mailing address. The 1985 Rule Book of the Georgia State Board of Pardons and Paroles (p.12) suggests that victim notification of the final release decision is further contingent upon a victim's prior filing of a victim impact statement.

### Participation

The Board of Pardons and Paroles, in establishing a tentative release date and in voting on the final release of the offender, may have available for its consideration

victim commentary derived from a variety of sources. These sources include a victim impact statement, an independently written statement, or an oral statement presented before one or more members of the Board. These three participatory modes are discussed in greater detail below.

The victim impact statement is a standardized form that was devised by the Board of Pardons and Paroles and that has, subsequently, been distributed to prosecutors throughout the state. Prior to an offender's sentencing, and pursuant to GA. CODE 17-10-1.1, the prosecutor "may" provide a copy of this form to any victim of a personal crime or to an appropriate family member if the victim is a minor or is physically, mentally, or emotionally incapacitated. The form documents the physical, economic, social, and psychological impacts of the offense upon the victim and is used by the sentencing court in its determination of restitution. In the event that the offender is sentenced to a term of imprisonment, the victim impact statement is to be forwarded to the Board of Pardons and Paroles for its review at a release hearing. If the victim does not submit a completed victim impact statement to the prosecutor prior to sentencing, he or she may still submit this form to the Board for review at any time prior to the release hearing.

In lieu of, or in addition to, the victim impact statement, a victim may submit a confidential letter to the Board describing the offense or the offender, or expressing any fears the victim may have concerning the inmate. The Board places no limitations on the content of these comments.

On a weekly basis the full Board sits to hear the oral statements of persons speaking for or against any inmate whose final release hearing is pending. This opportunity to appear personally and address the panel is not a statutory right. An interested party may apply for a full Board appointment by submitting a written request to the Board's Director of Central Operations. Meetings are conducted at the Board's central office in Atlanta and are closed to the public. Oral statements are not recorded.

In addition to hearing statements before the full Board on an appointment basis, Board policy allows any interested party who walks into the Board's offices to speak with one of the Board's five full-time members. Any written statements that a party submits for inclusion in an offender's file are also accepted in this manner.

Under the state's confidentiality laws, the Board is to treat as confidential any information that it receives from a victim or from any other interested party. Accordingly, there is no disclosure to the inmate of any written or oral statements.

## HAWAII

### Legislative Summary

Crime victims in Hawaii are not entitled to present oral or written statements for Parole Board consideration. The Hawaiian legislature has, however, codified procedures for victim notification of various postsentence governmental actions. HAW. REV. STAT. 706-670.5, effective June 6, 1983, requires the Parole Board to provide written notice to requesting victims upon the release of an inmate to parole and/or the release of a parolee from parole. Similarly, HAW. REV. STAT. 353-22 (Supp., 1984), amending 353-22, mandates victim notification upon (1) the final unconditional release from a correctional facility of a prisoner who has not been paroled or earlier discharged and (2) the admission of a prisoner to a work furlough program, conditional release program, or other similar program.

### Notification

Any victim of a robbery or of an offense against the person as described in HAW. REV. STAT. 706, 708-840 is to receive written notice of the above mentioned postsentence events if the victim has requested such notification in writing. The enabling statute does not specify how, when, or by whom a victim is to be informed of the right to request such notice. Rather, it notes generally that the legislature "encourages the police, prosecuting attorneys, courts, victim assistance programs in each county, the department of social services and housing, and the paroling authority in providing information and assistance to victims." In practice, the victim is contacted by a victim witness agency that operates out of the city prosecutor's office. Agency personnel advise victims of statutory rights and distribute a standard notification registration form. Completed forms, as well as other written requests for notification, are forwarded to the Department of Social Service and Housing, of which the Parole Board and the Division of Corrections are functional components.

While it is clear that victim notification is contingent upon the victim's filing of a written request, it is not explicit whether the victim bears a legal responsibility for

maintaining a current address on file with the appropriate agency. The applicable clause provides only that notice of conditional and unconditional inmate releases is to be mailed to a victim "at the address given on the request for notice or such other address as may be provided by the victim from time to time."

The time frame for notification is likewise not specified. Statutory language that notice is to be given "upon" release suggests that advance notice need not be necessary. Departmental policy, however, requires that notice specifying the date of impending parole be posted no later than 10 days prior to the scheduled release date.

At this time, Hawaiian law does not address the issue of victim representation. In its stead, Parole Board policy directs that, for purposes of requesting and receiving notification, victim status may be accorded to the parent or legal guardian of a minor victim and to a surviving family member of a deceased victim.

Parole personnel estimate that less than one-fourth of all eligible victims register for release notification. Of those victims who do file such a request, a disproportionate number have been described as being either victims of rape or survivors of victims killed as a result of the offense.

#### Participation

Any victim impact statement that may have been submitted by the victim presentence is generally available for Parole Board review. There are no statutory provisions for active victim participation at parole.

#### Other Proceedings

Thirty days prior to the commencement of a prisoner's work furlough program, conditional release program, or other similar program, the appropriate division within the Department of Social Services and Housing is to notify county prosecutors and police chiefs in writing. This notice is to list the conditions that support an inmate's admission to and maintenance in the program.

Victims, too, are to be notified of an inmate's acceptance into such a program.

However, no time frame for victim notification has been specified and it is unclear what information is to be included in this written notice.

## IDAHO

### Legislative Summary

ID. CODE 19-5306, applicable to persons against whom a criminal complaint was filed on or after October 1, 1985, creates, in part, a statutory right of victims to provide oral or written input for consideration at parole and commutation hearings. The legislated right is accorded to victims of any felony or to an appropriate family member if the victim is a minor, incapacitated, or a homicide victim.

At the discretion of the Idaho Commission for Pardons and Paroles, a nonvictim may be allowed to appear and testify if it can be demonstrated that he or she can provide important information which could not otherwise be obtained.

### Notification

The above referenced victims' rights legislation clearly outlines a procedure by which the victim is to be kept apprised of all aspects of a criminal case as it affects that particular victim. The sheriff, the court, and the Parole Board share responsibility for subsequent phases of victim notification.

The victim is first informed of the opportunities for postsentence participation by the prosecutor. A standard registration form, outlining participatory options and notification procedures to which the victim is entitled, is routinely made available. The victim is advised to return the completed form to the district court clerk who, in turn, will inform the Parole Board of the victim's wishes.

By law, advance notification of parole hearings is contingent upon the victim's request for such notification and the victim's acceptance of the responsibility to keep the Parole Board apprised of a current mailing address.

At the present time, the operational policy of the Parole Board is more expansive than is legislative prescription. Even in the absence of specific requests for notification, written notices of impending hearings are mailed to victims at addresses obtained from court records. The notice details the time, date, and location of the

scheduled hearing, and reiterates the victim's right to participate in the release decision by submitting a written statement or by addressing the Board at the hearing.

Currently, the actions of the Commission for Pardons and Parole are subject to the provisions of the state's modified Open Meeting laws. At the beginning of each calendar year, the dates of the Commission's regular sessions are published in a newspaper with statewide circulation. A month in advance of each hearing, the Executive Secretary of the Commission forwards to the county prosecutors, sheriffs, district court judges, and other criminal justice system personnel, a listing of all of the inmates who are scheduled to appear the following month for parole consideration. In the event that an inmate's application for commutation or pardon is up for review, the name of the applicant, by law, must be published in a newspaper for 4 consecutive weeks prior to the review hearing.

If an offender is to be released from correctional custody to parole supervision, the victims' rights legislation requires that a second letter be mailed to victims, notifying them of the impending release date. No parallel notification process is legislatively mandated if an inmate exits the institution after having served the maximum sentence.

### Participation

Parole release hearings are generally conducted at the state's main adult correctional facility. There are no limitations on the number or identities of persons in attendance. However, due to time constraints, only those persons who have received prior approval may testify. Accordingly, a victim who elects to appear personally is advised to communicate this intention to the Executive Secretary of the Board at least 5 days prior to the hearing.

Inmates are not required to be present at these hearings. However, if the inmate chooses to attend, and the victim specifically requests that he or she be allowed to speak absent the offender, the victim's preferences will be accommodated. Oral

statements are taped, and the recordings are retained for 1 year. While the testimony is not transcribed, a summary of the victim's statement is prepared.

The inmate's parole file is available for review by both the offender and the general public. It includes those documents which have been classified as nonconfidential by Commission personnel. Oral or written statements will be deemed confidential, and thus not available for disclosure, if the author requests this status.

## ILLINOIS

### Legislative Summary

The Bill of Rights for Victims and Witnesses of Violent Crime Act, codified as ILL. REV. STATS. 1401-1408, was passed by the Illinois legislature on September 16, 1984, and took effect on December 27 of that year. This act provides a comprehensive package of participatory and notification rights for victims and witnesses of violent crimes. Among the legislated notification rights that attach postsentence are the rights to be notified of parole hearings, furloughs, escapes, and final releases. The accompanying participatory rights include the right to submit written statements or to orally testify before an offender is released on parole.

The legislated rights attach to victims of any felony involving force or threat of force used against the victim, any misdemeanor resulting in death or great bodily harm, or any vehicular offense resulting in personal injury or death.

If the victim is physically or mentally incapable of exercising these rights, or if the victim has died as a result of the offense, a spouse, parent, child, or sibling may be accorded victim status for the purposes of this legislation.

As it pertains to postsentence proceedings, the victims' rights legislation formalized procedures that had previously been instituted as policy by the Prisoner Review Board. This paroling authority, on its own initiative, was already notifying complaining witnesses of impending parole hearings and was offering victims the opportunity to participate at these proceedings through written or verbal communications.

### Notification

The Victims' Bill of Rights preconditions a victim's receipt of notification on his or her specific request for such notification. While this procedural prerequisite is found in the statutory language of other jurisdictions, its implementation has proven to be somewhat problematic in Illinois. First, it is unclear when, how, or by whom the victim

is to be advised of the need to register for notification. While the Office of the State's Attorney is responsible for informing victims of presentence rights, no office has been designated to perform this function relative to postsentence rights. Second, pursuant to a revision of the Unified Code of Corrections (ILL. REV. STAT. 1983, ch. 38), any offender sentenced to imprisonment on or after February 1, 1978, is to be sentenced to a determinate term. Consequently, parole is not an option for those offenders sentenced since the effective date of the Victims' Bill of Rights. Thus, while the Office of the State's Attorney might assume responsibility for advising recent victims of the need to register for notification of furloughs, escapes, and discharges, it is relatively meaningless to advise these victims of notification or participatory rights that attach at parole; victims of parole eligible offenders interacted with the criminal justice system before these rights were legislated.

Partially in response to the above, the Prisoner Review Board has adopted a liberal interpretation of the law. Even in the absence of a specific request for notification, the Board is taking steps to notify all eligible victims of proceedings. If a current address is not on file (victims are not statutorily required to update their addresses), the Board is directed, by law, to notify the county attorney of the committing county and to request assistance in locating the victim.

The code specifies that the Board is to send written notice of an impending parole hearing not less than 15 days prior to the hearing. Because of anticipated difficulties with locating some victims, the Board generally mails this communication 30 days in advance. The letter details the date, time, and location of the hearing, and advises the victim of the right to express his or her interest in the release decision orally or in writing. The victim is also counseled that any oral statement will, and that any written statement may, at some point, be disclosed to the offender. This forewarning reflects the Board's belief that, despite its current policy of nondisclosure of written materials, future legislative changes may force the Board to reveal the contents of its files.

ILL. REV. STAT. 1404(16), states that the victim "shall be notified immediately after the prisoner has been granted parole and shall be informed of the right to inspect the registry of parole decisions." The statute fails to indicate who is responsible for such notification or whether a similar notice is to be forwarded if parole is denied. In practice, the Prisoner Review Board notifies victims by mail of any Board action within a week of the hearing.

#### Participation

20 ILL. ADMIN. CODE 1610.40 (as amended October 10, 1985) outlines procedures by which a victim may present oral testimony for Board consideration. A victim who elects to address the Board may do so at (1) the facility housing the offender on the day that the panel schedules the applicant's interview; (2) the administrative office of the Board in Springfield; or (3) "some other designated location", defined generally by the Board as another correctional facility which may be closer to the victim's home. The inmate is normally not present during the victim's statement. However, an indication is made on the face sheet of the offender's file that a taped recording of all oral testimony exists in the Board's files and is available for review.

It has been estimated that 75 to 90 percent of all victims who request and receive notification of parole hearings do participate in some manner, either by submitting written statements or by presenting oral testimony.

#### Other Proceedings

Victims are notified of inmate furloughs by means of a two-tiered process. Before an inmate is released, the Department of Corrections is directed to notify the Prisoner Review Board which, in turn, is to notify the victim. Where feasible, this notice is to be provided at least 7 days prior to the actual release date. In practice, victim notification often takes place postrelease because of time delays in interagency communications.

A parallel procedure exists for notifying victims of the escape of an offender from correctional custody. Again, the Department of Corrections notifies the Prisoner Review Board; the Board then makes all reasonable efforts to locate and notify the victim. If and when the offender is reapprehended, the entire process is repeated.

The victim is always to be notified of an offender's final discharge from custody. The burden for such notification, however, lies with different parties depending on the type of sentence. Where an inmate is discharged from state custody, regardless of whether the offender is completing a period of supervised parole or has served a maximum sentence, notice is to be provided by the Prisoner Review Board. The county sheriff is responsible for notifying victims of an offender's discharge from county custody. Responsibility for notification of discharge from a sentence of periodic imprisonment falls to the Office of the State's Attorney.

While the legislation does not address the issue of victim notification in the event of an offender's application for sentence commutation or pardon, the Prisoner Review Board mails advance notice of these hearings to victims and offers them the opportunity to comment orally or in writing.

## IOWA

### Legislative Summary

Iowa, like several other states, has opened its parole hearings to public scrutiny. Recent legislative enactments provide that a victim is to receive advance notification of these public forums and is to be accorded the right to present oral or written statements for Parole Board consideration. Although the Parole Board is obligated to satisfy the provisions of the mandate only as they pertain to victims of offenses committed on or after the statute's effective date of July 1, 1986, the Board has adopted a policy by which it will accommodate, to the extent possible, the participatory wishes of victims regardless of the date of the commission of the offense.

### Notification

IA. CODE ANN. 910A.9 suggests that a victim's claim to legislated rights is contingent upon a number of factors. First, a victim is to be a victim of a violent crime, defined in the penal code as "a forcible felony, or any other felony or aggravated misdemeanor involving actual or threatened infliction of physical or emotional injury." Second, the victim must be formally registered with the Parole Board, i.e., the victim must request notification and must agree to maintain an updated address on file.

Victim status is defined as including the immediate family members of a victim "who has died or was rendered incompetent as a result of the offense..." There is some confusion as to the intent of this clause. One source of confusion centers on the transferability of victim status in the event of a victim's death. On the one hand, the phrase can be interpreted as transferring victim status whenever a victim is deceased, regardless of the cause of death. A narrower reading might limit the extension of victims' rights to family members to those cases in which the victim's death was attributable to the offender's actions. A second source of confusion pertains to the use of the term "incompetent." The absence of descriptive specificity makes it unclear

whether this provision is to refer more generally to incapacitating factors and, if so, if it is to encompass legal and physical, as well as psychological factors.

The prosecutor is legislatively responsible for informing the victim of the need to register with the Board. As part of this initial notification process, the victim is provided a standardized Request for Registration form (devised individually by each county) which can be completed and returned to the county attorney. An alternative method of victim registration is through the completion of a form that is available directly from the Parole Board.

Once a Request for Registration has been received by the Parole Board, the Board responds by mailing a Notice of Victim Registration. This first notice, which is not statutorily required, confirms the victim's registration and provides general information on upcoming proceedings and on agency policy and procedures. Included in this statement is a summary of the Board's disclosure policy (discussed below).

By law, notification of the time, date, and location of the inmate's parole interview is to be provided to registered victims by mail, phone, or hand delivery at least 5 days prior to the hearing. The current practice of the Board is to mail these second notices at least 30 days in advance.

During the first 4 months of the legal mandate, only 16 victims registered for notification. These registrants were drawn primarily from three counties with active victim/witness assistance programs.

#### Participation

The written comments of victims are welcome at any time. There are no restrictions placed on the content of these statements.

The general public is invited to attend parole hearings. Although only the victim of the offender applicant is entitled to speak, other persons may speak at the discretion of the Board. If the victim elects to address the Board but does not, for whatever reasons, wish to do so at the correctional facility, the victim may appear before the Board at its administrative offices.

On the topic of disclosure, the applicable statute notes that "offenders...may be informed of the substance of any opinion submitted by the victim regarding the release of the offender." The disclosure standard drafted by the Parole Board goes beyond what is required by law and provides the inmate with greater access to victim statements. The operational rule states, in part, that "the substance of any opinion submitted by the victim regarding the inmate's release shall be disclosed to the inmate unless withholding the information is requested by the victim and the Board determines that the release of the information would endanger the safety of the person providing the statement or testimony" (emphasis added). As the policy is currently being interpreted, nondisclosure of submitted materials must be grounded in something more than a victim request for confidentiality; there must be an additional determination that detriment to the victim or other person is evident.

The inmate has an opportunity to contest factual statements contained in the victim's commentary. The rebuttal may be in the form of an oral statement before the panel at the hearing or a written communication prepared for Board review. The offender is not permitted to confront or cross-examine the victim.

#### Other Proceedings

IA. CODE ANN. 910A.8 outlines procedures by which the Department of Corrections is to notify registered victims of certain post-commitment events. More specifically, victims are to receive notice of the following: (1) the date on which the offender is expected to be temporarily released from custody on work release or furlough, and the expected location to which the offender is to be released; (2) the offender's escape from custody; and (3) the department's recommendation of the offender for parole consideration.

Where the offender has been sentenced to the custody of the local law enforcement official, the provisions of IA. CODE ANN. 910A.7 are invoked. This code directs the sheriff or other person responsible for the local jail to notify a requesting

victim of (1) the offender's final release from local custody and the expected site of offender residence and (2) the offender's escape from custody.

## KENTUCKY

### Legislative Summary

During the 1986 legislative session, several bills were enacted which amended existent Kentucky procedure and established various avenues for victim participation at criminal justice proceedings. Included were provisions shaping victim notification of and participation at parole release hearings.

Currently, victims of certain crimes are entitled to relay information about the impact of their victimizations to the paroling authority in one of three ways: a written impact statement submitted to the court at the time of sentencing which is then forwarded to the Parole Board, a written impact statement submitted directly to the Parole Board at the time of the release hearing, and an oral impact statement presented before the Parole Board at the institutional release hearing.

### Notification

KY. REV. STAT. 421.500(5) mandates that the Commonwealth Attorney is to make a reasonable effort to provide victims of certain crimes with prompt notification of a panoply of rights, including the victim's right to receive notice of any parole hearings affecting the defendant. For purposes of receiving this initial advisement, the following offenses are legislatively specified: criminal homicide, robbery, rape, assault, sodomy, kidnapping, first or second degree burglary, sexual abuse, wanton endangerment, criminal abuse, and incest.

Authorizing statutes indicate that written notice of the parole hearing will be sent to the actual victim or to the victim's next of kin if the victim is deceased. By law, oral testimony may be given by (a) the actual victim, (b) the next of kin of a victim who is deceased or who is disabled and unable to attend the hearing, and (c) the parent or legal guardian of a minor victim.

As introduced during the 1986 legislative session, House Bill 390 would have preconditioned parole notification on the filing of a specific victim request and the

maintenance of an updated mailing address. Because pertinent subsections were deleted from the enacted legislation, it appears that there is currently no obligation on the part of crime victims to register with the Parole Board for notification of parole hearings, nor is the victim required to keep the Board apprised of any changes in address.

Notice of impending hearings is to be mailed not less than 30 days nor more than 90 days prior to a hearing. For prisoners incarcerated prior to July 15, 1986, victim notification is the responsibility of the Commonwealth Attorney who is to promptly forward the notice he or she receives from the Parole Board. For prisoners incarcerated on or after the above date, KY. REV. STAT. 439.340 states that notice of parole hearings is to be mailed by the paroling authority to the victim at the address that is provided by the Commonwealth Attorney to the Parole Board at the time of the defendant's incarceration. This notice is to (a) include the time, date, and place of the hearing, (b) advise the victim of the right to submit a written statement and/or to appear and address the Board at the institutional hearing, and (c) indicate the name and address of the individual to whom the victim is to write if the victim chooses to participate in the parole process.

Written impact statements are to be submitted at least 7 days in advance of the hearing; a victim's intention to appear and testify must be documented and submitted, in writing, within this same time frame.

#### Participation

Parole hearings in Kentucky are conducted within a correctional facility. In the absence of a victim request to the contrary, these proceedings are open meetings which may be attended by the inmate applicant as well as by members of the general public. A victim may, however, elect to testify absent the prisoner. In addition, the victim may request total closure of the hearing for reasons of personal safety.

Oral and written victim statements may comment upon all issues relating to the

inmate's release application. Letters are retained in the inmate's permanent file; oral statements are recorded and similarly retained.

Enabling legislation does not address the issue of document disclosure.

## LOUISIANA

### Legislative Summary

LA. REV. STAT. 15:574.2(C)(6) requires the state's full-time parole panel to consider "all pertinent information with respect to each prisoner who is incarcerated in any penal or correctional institution... at least one month prior to the parole eligible date.." While this code mandates victim notification of impending hearings, it does not authorize victim participation. The stated policy of the Parole Board extends beyond legislative prescription by requiring the consideration of victim statements prior to any release action.

Victims of all felonies are asked to comment upon the proposed release and are informed of the opportunity to submit additional written commentary. Victims are also advised of the opportunity to request a personal appearance before the panel; any such requests for allocution will be accommodated to the extent possible.

### Notification

LA. REV. STAT. 15:574.2 specifies that the Parole Board is to notify the victim or the victim's next of kin of a scheduled parole hearing. The provision of this notice is not contingent upon a victim's request for such notice. Rather, notice is to be provided routinely and as a matter of law unless the victim specifically advises the Board in writing that notification is not desired. Because the victim is not obligated to register with the Board or to update the Board's address files, attempts at notification are frequently hindered.

Although the statute does not specify a time frame or a method for the requisite notice, the Board has established policies that shape the notification process. Approximately 90 days before an offender's parole hearing, the Parole Board provides formal notice of said hearing to the Judicial District from which the individual was sentenced. The district attorney's office, in turn, is to notify the sheriff's department and all victims of record.

In addition to victim notification by the district attorney, probation and parole officers in that district are responsible for conducting a preparole investigation for each release applicant. The Rules and Regulations of the Board direct these officers to exercise every effort to contact the victim as part of the investigation, to elicit victim commentary on the offender's application for release, and to advise the victim to contact the Board if he or she wishes to schedule a personal appearance before Board members.

The Parole Board does not routinely notify victims of the Board's final release action relative to an offender's parole application. Board personnel will, however, provide this information to any victim who contacts the Board by telephone or in person after the actual release hearing.

#### Participation

Louisiana's full-time Parole Board conducts release consideration hearings at adult correctional facilities at least quarterly. By law, these sessions are open to the public. However, due to spatial constraints, the number of persons in attendance must be limited. Interested parties are directed to contact the institution in which the offender is housed and request to be added to the visitor list for a particular parole hearing. Unlike Board policies in other jurisdictions, the victim and the victim's family are specifically prohibited from attendance at these sessions. Board personnel have acknowledged that this exclusionary practice may be subject to court challenge.

Although the victim may not attend and participate at the actual release hearing, the Board will accommodate any victim request to present an oral statement prior to this hearing. As reported by Board personnel, such requests are infrequent and usually reflect the wishes of victims of assault, rape, and molestation.

Parole Board policy is to permit victim allocution at any correctional facility at which the panel is currently conducting hearings or at the Board's central office in Baton Rouge, if this is more convenient. While there are no stated limitations on the

number or identity of persons the victim may wish to have accompany him or her, the high volume of cases that must be considered by the Louisiana Parole Board does impose time constraints. Consequently, while 3 or 4 members of a victim's family may be allowed to speak, the Board generally asks the family to appoint one of its members to serve as its spokesperson.

Oral statements may be recorded, transcribed, and/or summarized. In any event, some record of these proceedings is always included within the offender's confidential file.

The offender is never present during victim testimony. Furthermore, the parole applicant is never permitted to review any oral or written statements that may have been submitted by a victim or a victim's family.

#### Other Proceedings

In Louisiana, an offender sentenced to a nonparolable term can apply to have his or her sentence commuted to a parolable term. The Board of Pardons reviews all such applications and forwards a recommendation to the Governor. If a commutation is granted, the offender may then apply for release on parole.

Meetings of the Board of Pardons are public sessions at which all interested parties are to be provided a reasonable opportunity to speak. A 1986 amendment to LA. REV. STAT. 15:572.4(B) outlines notification procedures that are to be instituted before any offender's application for pardon is considered. The Board is to give at least 30 day advance written notice of the date and time of the hearing to the following persons: (1) the district attorney and sheriff of the parish in which the applicant was convicted; (2) the applicant; (3) any victim who was physically or psychologically injured by the applicant, and the victim's spouse or next of kin, unless the Board has been advised in writing that such notice is not desired; (4) the spouse or next of kin of a victim who is deceased as a result of the applicant's conduct, unless the Board has been advised in writing that such notice is not desired; and (5) any other interested person.

## MARYLAND

### Legislative Summary

Under Maryland law, and unless the circuit court specifically orders to the contrary in a particular case, a presentence investigation is to be conducted for any defendant convicted of a felony or of a misdemeanor resulting in serious physical injury or death. This presentence report, prepared by the Division of Parole and Probation, is to include a victim impact statement if (1) in the commission of the felony, the victim suffered physical, psychological, or economic injury, or (2) in the commission of the misdemeanor, the defendant caused serious physical injury or death to the victim. Where the court does not order a presentence investigation, the prosecutor may prepare a victim impact statement for submission to the court.

MD. ANN. CODE Art. 41, 110(d), effective July 1, 1985, establishes a mechanism by which certain victims are statutorily entitled to be notified of impending parole proceedings, and to request that the presentence victim impact statement be updated for Parole Commission review.

The following year the Maryland legislature promulgated a series of guidelines for the treatment of, and assistance to, crime victims and witnesses. MD. ANN. CODE Art. 27, 760 to 763 proposes that, effective July 1, 1986, law enforcement, prosecutorial, and correctional personnel adopt new strategies for victim/witness notification and participation. As they apply to postsentence proceedings, the guidelines specify that all requesting crime victims should be contacted by the appropriate agency whenever an inmate (1) is provisionally released, (2) is mandatorily released, and/or (3) escapes.

Postsentence participatory roles are outlined in a third legislative section. Code of MD. Administrative Regulations 12.08.01.09 provides interested parties (not limited to victims) with the opportunity to submit written statements and/or to request appointments with a parole commissioner to personally express sentiments pertaining to the impact of the offense and the release of the offender. Victims are not statutorily

entitled to these participatory options nor is there a specific provision for victim notification of these opportunities. Nevertheless, written statements are routinely accepted by the Parole Commission. Approval of a victim request to schedule a personal appearance is discretionary.

#### Notification

The Department of Public Safety and Correctional Services, of which both the Parole Commission and the Division of Corrections are part, has designed a brochure outlining the provisions of the 1986 guidelines and the agency responsible for each notification or participatory option. These pamphlets have been distributed to law enforcement and prosecutorial offices for dissemination at the time the offense is reported to the police. Crime victims and witnesses are advised to contact the appropriate agency to request notice of any of the listed criminal justice proceedings.

MD. ANN. CODE Art. 41, 110(d) specifies that requesting victims are to receive at least 90 days advance notice of an impending parole release hearing. This notice, mailed to the last known address of the victim or the victim's designated representative, advises the victim of the right to request that an updated victim impact statement be prepared by the Division of Parole and Probation. Such a request is to be in writing and is to be submitted no later than 30 days from the date of the Commission's notice.

The Division of Parole and Probation is directed to complete the updated document at least 30 days prior to the scheduled hearing. The code authorizing this procedure, however, is conspicuous in its failure to provide direction in the event that an original impact statement was not prepared. In view of this legislative silence, the Parole Commission is currently drafting operational policies that would provide qualifying victims with the option of submitting a separate written statement in lieu of a standard victim impact statement.

Following the release hearing, the Commission is to "promptly" notify the victim

of the release decision. The operational policy of the paroling authority is to deliver this notice prior to the actual date of release.

For purposes of being accorded the above described notification rights, the legislation suggests that several established criteria must be satisfied. First, the victim must be a victim of a violent crime as defined by MD. ANN. CODE Art. 27, 643B. Second, the offender must be sentenced to the custody of the state Division of Corrections. Third, the victim must specifically request such notification and must renew the request for notification every 2 years.

This enabling statute provides for the transfer of victim status in certain circumstances. The victim may designate in writing to the Parole Commission, the name and address of a representative who is a resident of Maryland to receive notice for the victim. If the victim is deceased, notification rights are automatically conferred upon a designated family member.

A more recent section of the Maryland Code (Art. 27, 760 to 763) establishes guidelines (rather than legislated rights) for victim notification of and participation at postsentence proceedings. Upon request to the appropriate agency (the paroling authority of the Patuxent Institution, the Parole Commission, or the Division of Corrections), a victim is to be notified of the date of any hearing to consider an offender's temporary or provisional release from custody and of the opportunity to request to have a victim impact statement read into the record at this hearing. In contrast to the 1985 enactment, the 1986 provisions do not specify a timeframe for such notification. Ostensibly, the requirements of the guidelines could be satisfied by immediately responding to the victim's initial request for notification with a letter stating the earliest possible parole date.

The guidelines dictate that victims should also to be informed of the following postsentence events: (1) the date upon which an offender's temporary leave status or provisional release takes effect, (2) an offender's escape, and (3) an offender's mandatory release date.

These 1986 guidelines are both more expansive and more restrictive than the rights codified in 1985. The guidelines are more expansive in (1) the specification of a more comprehensive listing of events of which victims may request notification; (2) the noninclusion of the procedural prerequisite that victims renew their request for notification bi-annually; and (3) the application to victims of any crime, not just violent crime. They are more restrictive in (1) their status as guidelines, rather than as rights; and in (2) the transfer of victim status only to the spouse, child, sibling, parent, or legal guardian of a victim who is a minor, incompetent, or dead as a result of a homicide.

#### Participation

As noted previously, a victim may apply for an opportunity to orally express his or her feelings about the impact of the offense and the release of the offender. All such requests are screened by the Parole Commission; an appointment is scheduled only if it is believed that such an encounter would prove useful (e.g., some new information about the circumstances or impacts of the offense is forthcoming). Informal interviews are conducted at Commission headquarters before a designated parole commissioner who writes a memo to the parole file summarizing the victim's statements. The offender is never present during these meetings.

The extent and nature of disclosure to the inmate is the focus of MD. ANN. CODE Art. 41, 111. This statute notes that, prior to any release hearing, the parole applicant, upon request, shall be allowed to examine any document that will be used by the paroling authority in making the release determination. Stated exceptions to the above rule include diagnostic opinions and information obtained on a promise of confidentiality. At present, oral and written victim impact statements that are prepared and submitted prior to the release hearing are considered to be privileged information and, thus, withheld from inmate review. The offender may, however, review any victim impact statement that was originally included in a presentence report and which is merely updated at the time of the release hearing.

## MASSACHUSETTS

### Legislative Summary

Opportunities for postsentence victim notification and participation are authorized by two distinct statutory codes. As will be seen, victims of certain inmates serving life sentences may play a more active role in decisions affecting the release status of their offenders.

The Victim Bill of Rights, codified as MASS. GEN. LAWS ch. 258B 3 (1983), mandates that notification of any temporary, provisional, or final release is to be provided to a victim or to a member of that victim's family, regardless of offense of conviction. A 1986 amendment to this section entitles victims to request that presentence impact information be forwarded to the Parole Board for inclusion in its confidential files. No participatory mode is authorized.

Participation at parole proceedings is a statutory option for a subset of victims. By law, any offender serving a life sentence for other than first degree murder, unless confined to certain hospitals, is eligible for parole and is entitled to appear before the full Board within 60 days before the expiration of 15 years of the sentence. MASS. GEN. LAWS ch. 127 133A (1985), amending ch. 127 133A (1982), establishes a victim's right to be notified of, to attend, and to actively participate at this 15-year hearing.

### Notification

The language of the Victim Bill of Rights provides little guidance as to how victim notice of parole proceedings is to be effected. In the absence of statutory direction, the Board has instituted policies for procedural implementation.

The victim is generally informed of opportunities for postsentence notification and participation by the district attorney or the victim coordinator following the offender's receipt of an incarcerative term. While the law does not require that notice of parole be mailed prior to the actual release date, the victim is advised that Parole Board will deliver advance notice of release consideration to those persons who have applied for and received clearance from the Criminal History Systems Board.

Four classes of individuals are eligible for certification: (1) actual crime victims; (2) witnesses of crime; (3) the spouse, child, sibling, parent, or legal guardian (no prescribed order) of a victim who is of minor status, incompetent, or dead as a result of a homicide; and (4) persons who successfully file a Citizen Initiated Petition, i.e., individuals who, although not crime victims or witnesses, have reason to fear for their own safety or for the safety of others as a result of the offender's actions.

Once an individual's application for clearance has been approved, the Criminal History Systems Board forwards copies of the certification letter to the Department of Corrections, the Parole Board, and the victim coordinator. Upon receipt of this documentation; the victim coordinator may, but is not required to, advise the victim of the offender's target parole eligibility date.

A person applying for CORI (Criminal Offender Record Information) certification, as it is known, must keep the Board apprised of current telephone and address information and must agree not to share any information received as a result of certification with anyone outside of his or her immediate household.

While no notification time frame is indicated in the statute, Board policy is to provide written notice to certified victims 1 to 2 weeks in advance of a scheduled parole hearing. The requisite notice informs the recipient of the date of the hearing and encourages the victim to submit pertinent information for Board review. Telephone notification is supplied if time constraints do not permit written notice. While victim requests to submit oral testimony are accommodated (discussed below), victims are not routinely advised of this participatory option.

The procedural provisions of MASS. GEN. LAWS ch. 127 133A, affecting victims of offenders serving parolable life sentences, are more explicit than those enumerated in the Bill of Rights and differ in several respects.

This section requires that written notice be mailed at least 30 days in advance of an impending 15-year hearing. This notice includes the date and location of the hearing and a recitation of the victim's right to attend and testify.

Notification is not contingent upon a victim's request for notice nor is a victim obliged to maintain a current address file. Rather, the burden is on the Board to locate and notify all victims whose offenders are eligible for consideration of this type. Because a period of 15 years will have elapsed between sentencing and efforts at victim notice, the Parole Board has experienced difficulty in locating a number of victims.

If the victim is dead at the time of this hearing, victim status, for the purposes of notification and participation, is to be accorded in the following order: mother, father, spouse, child, grandchild, brother or sister, niece or nephew.

The specifications of (a) a notification time frame and (b) a legally prescribed order for the transference of victim status are features that are not included within the Bill of Rights. Furthermore, the conditions under which victim status may be accorded to nonvictims differ between the two statutory sections. The language of the Bill of Rights states that the death of a victim results in family notice if the victim was the victim of a homicide. In comparison, the language of the second code suggests that notice is to be forwarded to the next of kin if the victim is deceased, regardless of cause or time of death.

A victim is always notified of the outcome of the parole hearing. If conditional release is granted, the victim's notice includes the name and address of the supervising parole officer, the date of release, and any conditions of parole that are relevant to the victim. To the extent possible, this notice is provided in advance of the scheduled date of release. If parole is denied, the victim is reminded that the offender may reapply for annual review of his or her custodial status.

#### Participation

With the exception of 15-year parole hearings (discussed below), parole proceedings are not open to the public and there are no formal policies for victim attendance and participation. However, the Board has established informal policies

whereby a victim may submit written commentary for Board review and/or may request a personal appearance before the panel. When a request for a personal interview is received, arrangements are made for the victim to speak with one or more Board members prior to the scheduled hearing date. Neither the substance nor the fact of the victim's testimony is disclosed to the inmate applicant. Similarly, the offender does not have access to any written input.

When a 15-year hearing has been docketed, a victim may submit a written impact statement and/or may attend and actively participate. These hearings are open to the public and are conducted in a formal but nonadversarial manner. Following the introduction of Board personnel, the offender (or his attorney) is invited to make an opening statement, focusing on the crime and responding to any questions posed by members of the panel. At the conclusion of this portion of the session, interested parties speaking for and against the inmate's release are heard. There are no stated restrictions on the content of these statements nor on the number of persons who may address the Board. Finally, the inmate (or his attorney) may present a closing statement in which factual statements vocalized by the public may be rebutted; cross-examination is not permitted.

Board staff have reported that, in every case where notice of an impending 15-year hearing has been delivered, the victim has responded by providing written or oral commentary for panel consideration.

### Other Proceedings

In addition to victim notification of parole proceedings, the Victim Bill of Rights entitles a requesting victim to be informed by the "appropriate custodial authority" whenever an offender is granted a temporary, provisional, or final release from custody, or whenever an inmate escapes. Written notice is provided of any movement due to furlough, work release, or prerelease status, or mandatory release. In the event of an inmate escape, the victim is notified by telephone.

The policy directives of the Department of Corrections (and of the Sheriff's Department where the inmate is being held in local custody) go beyond this legal mandate by also providing written notice of any alteration in an offender's security status.

## MICHIGAN

### Legislative Summary

Pursuant to the Crime Victim's Rights Act, victims of crimes committed on or after October 9, 1985, are entitled to be notified of the following postsentence events: (1) the earliest possible parole eligibility date; (2) an inmate's escape; (3) the transfer of an offender to a minimum security facility; (4) the release or transfer of an offender to a community residential program; (5) any reduction in minimum sentence resulting from prison overcrowding emergency acts; (6) the date of impending parole proceedings; (7) a final parole release decision; (8) the date of release on parole; (9) the date of final discharge from correctional custody; and (10) the date of any public hearing to consider an inmate's application for a reprieve, pardon, or commutation.

In addition to notification rights, victims have participatory rights that attach at parole and clemency consideration hearings. Requesting victims may address the Parole Board and/or may submit a written statement for Board consideration. Similar modes of victim participation had been encouraged by the Board since the mid 1970's. The codification of the procedures did, however, have two discernible effects. It resulted in more systematic recordkeeping and formalized the victim's responsibility for maintaining a current address on file.

### Notification

For the purposes of being accorded participatory rights at parole, MICH. COMPILED LAWS ANN. 780.752 defines a victim as "an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime." The Michigan Parole Board interprets this phrase liberally, extending its purview to victims of any felony.

The statutory language is explicit in its direction that victims are to be informed of their legal rights very soon after their initial interaction with the criminal justice system. Within 24 hours of initial contact between law enforcement personnel and a

victim, the victim is to be provided with the address and phone number of the prosecuting attorney whom the victim is to contact to learn about presentence and postsentence rights.

The prosecuting attorneys association of Michigan has gone beyond the legal mandate in assuming primary responsibility for victim notification. Soon after the passage of the Crime Victim's Rights Act, this organization disseminated to all county prosecutors a model informational packet upon which to pattern local notification efforts. The checklist which is distributed to victims in many counties enumerates the proceedings for which victims may request formal notification. Victims who wish to be so notified are instructed to contact the Department of Corrections, of which the Parole Board is a suboffice, to register these desires; at this time victims are also advised of the need to keep an updated address on file.

MICH. COMPILED LAWS ANN. 780.769 specifies that, within 30 days of the victim's registration with the Department of Corrections, a requesting victim is to receive an informational brochure outlining the Board's notification procedures and stating the earliest parole eligibility date for the offender in question. Pursuant to 780.771, at least 30 days before the scheduled parole consideration hearing, the Board mails another notice to victims. This second notice restates the victim's right to submit a written statement and/or to present oral testimony for official consideration. Within 14 days of the release action, requesting victims are notified of the Board decision and, if applicable, the date on which the offender is to be conditionally released.

If the victim is deceased, the rights accorded to the victim under this Act are conferred upon family members per the following legislatively specified order: spouse, adult child, parent, sibling, and grandparent. If the victim is physically unable to exercise the accorded rights, the victim may designate, in writing, any of the above listed family members (in no specified order) to act on his or her behalf during the duration of the physical disability.

### Participation

A victim who elects to present oral testimony is instructed to contact the Board to schedule a meeting before one of the seven full-time Board members at the Board's administrative office in Lansing. The inmate under consideration is never in attendance. A transcription of the statement, although placed in the inmate's parole file, is exempted from the state's disclosure law.

### Other Proceedings

By Michigan law, a public hearing is conducted prior to the consideration of an inmate's application for sentence commutation. Any interested party may speak at this hearing and/or may submit a written statement which will be read into the record at the time of the hearing. A full transcript of the proceeding is then forwarded to the Governor who renders an executive clemency decision.

In the event that an inmate should escape from correctional custody, the warden of the facility to which the inmate was assigned is to notify a requesting victim of the escape "by any means reasonably calculated to give prompt actual notice."

## MINNESOTA<sup>a</sup>

### Legislative Summary

Crime victims in Minnesota are not entitled to present oral or written statements for Parole Board consideration. The Minnesota legislature has, however, codified procedures for victim notification of various postsentence proceedings. MINN. STAT. 611A.06, as amended by Senate File 232 (1987), effective January 1, 1988, requires the Commissioner of Correction or other custodial authority to notify any requesting victim whenever an inmate is to be released from imprisonment or incarceration, including release on extended furlough and for work release, or release from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency.

### Notification

The provision of written notification is contingent upon the victim's submission of a written request for said notice with the Commissioner of Correction. The applicable statute makes no mention of how, when, or by whom the victim is to be advised of the need to contact the correctional authority if notice is desired.

It is not explicit whether the victim bears a legal responsibility for maintaining a current address on file with the appropriate custodial authority. The authorizing clause provides only that notice of impending hearings is to be mailed to a victim at the most current address provided by the victim.

The time frame for, and the substance of, the written notice are likewise not specified.

### Participation

There are no statutory provisions for active victim participation at parole hearings.

<sup>a</sup> No telephone interview was conducted with parole personnel in Minnesota. This narrative was derived from a review of legislation and other available information.

## MISSOURI

### Legislative Summary

In Missouri any interested party may submit a written statement to be considered by the Parole Board prior to an inmate's release on parole. Requesting crime victims are to be notified of the date of docketed parole eligibility hearings and are to be provided an opportunity to appear and address the Board. MO. REV. STAT. 57.403 codified notification and participatory procedures that had been instituted by the paroling authority approximately 13 months prior to the passage of the enabling statute.

For purposes of being accorded the panoply of rights outlined in the victims' rights legislation, a victim is statutorily defined as any person who (1) suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of any felony, and who (2) reports the offense to law enforcement officials within 5 days of its occurrence or discovery. Parole Board personnel have noted that the specification of this second qualifying standard, while it may have some effect on victims' rights prior to sentencing, does not affect Board operations. The untimeliness of a crime report would probably not be indicated in a parole file. The Board position is that such information, even if known, would not disenfranchise victims.

### Notification

Upon placement of an offender in the custody of the state Department of Corrections, the Parole Board mails a letter to the victim at the address listed in prosecutorial files. This communication informs the victim of the rights to be notified of subsequent proceedings and final release decisions, and to assist in the release decision by presenting oral or written impact statements. Victims are advised that receipt of notice and opportunities for participation are contingent upon the victim's formal request for such action and the maintenance of current mailing information. Victim

registration is facilitated by the inclusion of a reply card. This checklist enumerates the allowable modes of victim involvement. A victim checks the desired level of involvement and returns the preaddressed card to the Board's administrative office.

Board personnel estimate that 70 to 75 percent of victims who receive the Board's initial information packet return the reply card and request some level of case involvement. Of those who participate, most write. On average, there is one personal appearance each week.

The legislation, effective August 13, 1986, requires that advance notice of parole hearings be sent to requesting victims "to the extent reasonably possible and subject to available resources." No notification time frame is specified. In practice, and unless time to be served before parole eligibility is minimal, Board policy is to notify victims approximately 30 days prior to the scheduled session. This notice details the date, time, and location of the release hearing, and designates a parole representative who is to be contacted for additional information and/or to indicate the victim's intent to appear at the session to address the Board.

### Participation

As noted previously, written statements may be submitted by any interested party. This commentary is deemed confidential and, as such, is not subject to disclosure to the offender.

Personal testimony is accepted at the actual release hearing which is conducted at the confining institution. There are no restrictions on the substance of an oral impact statement. There are, however, limitations on the number of individuals who may testify. While all victims are entitled to speak, only one family member of a homicide victim may address the Board. Oral statements are recorded and are kept on file for 2 years.

The parole applicant is in attendance during the presentation of oral statements. Although victim-inmate confrontation is not permitted, the inmate is given the opportunity to rebut the testimony once the presenter has exited the hearing room.

## NEBRASKA<sup>a</sup>

### Legislative Summary

Parole proceedings in Nebraska are public forums. As outlined in 84-1412 of the Public Meeting Laws, any interested party has the right to attend and to speak at this hearing. In addition, 83-1112 and Policy A-14 direct the Parole Board to consider any relevant information which may be submitted by the victim or by any other interested party.

### Notification

Public bodies, of which the Parole Board is one, are required by law to give "reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body..." Board policy B-6 interprets this mandate as requiring that notice of an offender's hearing be sent to county sentencing officials and to an official county newspaper approximately 30 days prior to the scheduled hearing date. Victims and other interested parties who specifically request advance notification will be individually advised of impending parole proceedings within this same time frame.

It is unclear how a victim is to be informed (a) of the right to attend and/or participate in release sessions, and (b) that individual notification is contingent upon prior request for said notice.

### Participation

Interested parties who wish to personally address the Board are directed to attend the actual release hearing which is conducted at the facility housing the offender. Generally, the inmate applicant is present during oral testimony. Upon the request of a witness who wishes to remain anonymous, however, and if the Board deems it advisable, testimony may be taken while the Board is in Executive Session.

An inmate is never permitted to cross-examine any person offering testimony, nor may offenders rebut victim statements. While written materials submitted for panel review are subject to disclosure, unless designated as confidential, acts of Executive sessions are not available for inmate review.

<sup>6</sup> Project staff were unable to schedule a telephone interview with parole personnel in this state. An earlier version of this narrative was drafted from legislation and from other available information. The prepared draft was then forwarded to appropriate staff members in Nebraska. Parole personnel were instructed to review the document and to return it with revisions and/or comments if the narrative did not accurately describe current policies and procedures within the state. This narrative reflects revisions suggested by parole staff.

## NEVADA

### Legislative Summary

NEV. REV. STAT. 178.5698(2), 209.521 provide that victims are to be notified whenever their offenders escape or are released from correctional custody. In addition to these notification rights, other sections of the penal code outline procedures by which victims of any felony are to receive advance written notice of parole and clemency hearings, and are to be advised of their right to participate in these release decisions.

These participatory roles for victims were enacted on July 1, 1983. They have been interpreted to apply to any parole or clemency hearing conducted on or after the above date, regardless of the date of the commission of the offense.

Parole hearings in Nevada are subject to the state's open meeting laws. Thus, even before the passage of the legislation, victims were welcome to attend the public session; they were not, however, personally notified of the date of the hearing nor were they permitted to address the Board.

### Notification

In Nevada, victims are entitled to receive notification of postsentence proceedings only if they have satisfied certain procedural prerequisites. They must (1) specifically request notification from the appropriate agency and (2) agree to keep each of these agencies apprised of any changes in address. In itself, this conditional provision is not unlike provisions in other states. The legislation is notable, however, in its silence as to how a victim is to be made aware of the need to register with the Board of Pardons Commissioners, for notification of clemency hearings; the Board of Parole Commissioners, for notification of parole hearings; and/or the Department of Prisons, for notification of inmate releases or escapes. No individual or agency has been statutorily designated to inform victims of postsentence rights, and Parole Board personnel are unsure who, if anyone, has assumed this responsibility. Not surprisingly, few requests for notification have been received by that agency.

NEV. REV. STAT. 213.130(3) specifies that the Parole Board is not to consider an inmate's parole application until all requesting victims have been notified and have been given the opportunity to provide written or oral commentary. While the statute fails to outline how or when this notice is to be provided, the Board's operational policy is to detail the date, time, and place of the public meeting in a letter mailed to the victim's last known address. This notice is delivered approximately 30 days in advance of the hearing and informs the victim of the legislated right to submit a written statement and/or to testify before the Board at the open meeting.

The Board is not legally required to notify victims of the final release action. Nevertheless, the Board forwards written notice of the release decision as soon as possible after the hearing. Generally, the victim is in receipt of this notice prior to the offender's actual release date.

#### Participation

Parole hearings are conducted at the institution in which the applicant is housed. Attendance at these hearings, while statutorily open to the public, is nevertheless subject to the particular security considerations of the hosting facility. Accordingly, a victim who elects to appear personally is advised to contact the institutional warden to indicate his or her intention to be present.

Only victims may testify at this public session. Oral statements are neither recorded nor summarized, and no indication of the victim's participation is made in the release file. At present, there are no restrictions on the substance of this release commentary.

The legislation authorizing victim participation does not address the issue of disclosure. The policy adopted by the Board is that a victim may not address the Board absent the applicant if the applicant chooses to be in attendance. Following the victim's statement, the inmate has an opportunity to reply. The rebuttal format is nonconfrontational. Also, any written materials submitted by a victim are available for review and rebuttal by the applicant.

## Other Proceedings

The notification and participatory rights that attach prior to the consideration of an inmate's application for clemency are more limited than the procedures established for parole hearings. NEV. REV. STAT. 213.010 requires the Board of Pardons Commissioners to notify any victim of any inmate applying for a sentence commutation or a pardon of the impending consideration hearing. This written notice is to be mailed at least 15 days prior to the hearing, and is to inform the victim of his or her right to submit a written statement. Victims are not accorded an allocutory role in clemency proceedings.

A subsequent section of this chapter (NEV. REV. STAT. 213.095) mandates that the victim is to receive written notice of the Board action if clemency is granted. The law does not indicate when this notice is to be delivered or whether similar notice is required if the application for clemency is denied.

NEV. REV. STAT. 209.521 directs the Department of Prisons to notify requesting victims, in writing, any time an offender (1) is released for the purpose of employment, training, education, or any other reason; or (2) escapes. The statute is unclear as to when this notice is to be sent (i.e., prerelease or postrelease in the case of furloughs); what information is to be included; whether a second notice is required in the case of an escapee who is reapprehended; or whether notice is required when an offender is released upon sentence expiration.

This final concern appears to be addressed by NEV. REV. STAT. 178.5698. It directs the warden of the institution housing the offender to notify requesting victims or witnesses, by mail, when an inmate is released from prison. The time frame for such notification is not specified.

## NEW HAMPSHIRE

### Legislative Summary

In late 1983, the New Hampshire Departments of Probation, Parole, and Corrections were reorganized and placed under a centralized administration. At the same time, state lawmakers codified procedures mandating victim notification of impending parole hearings and establishing a victim's right to appear personally before the Parole Board to comment upon the proceedings. Although the legislation does not specifically allow for submission of written comments, the Parole Board has traditionally accepted these statements from any interested party.

Passage of N.H. REV. STAT. ANN. 651-A:11, -A:11a has not dramatically affected Parole Board operations. Although advance notice was neither required nor routinely provided prior to 1983, the Board had been routinely accommodating all requests for participation in the parole release decision.

### Notification

At sentencing, the County Attorney advises the victim of post-conviction entitlements. The victim is informed that, by law, receipt of notice of upcoming release hearings is contingent upon the victim's request for such notice and the victim's maintenance of an updated mailing address. Victims may register with the Parole Board directly, via written or telephone communication, or indirectly, via the County Attorney. In an effort to safeguard the anonymity of the victim, the County Attorney will oftentimes contact the Parole Board to register a victim's desire for release information. In these cases, the Parole Board will forward the mandated notice to the County Attorney who, in turn, assumes responsibility for notifying the victim.

N.H. REV. STAT. ANN. 651-A:11 specifies that notice is to be mailed 15 to 30 days prior to a scheduled hearing. This notice includes the date of the hearing, a recitation of the victim's right to provide oral or written input into this process, and the identity of a Parole Board staff person who is to be contacted for further

information. At the same time as notice is mailed to requesting victims, a complete listing of all scheduled parole hearings is published for 2 consecutive days in a well distributed newspaper.

The Parole Board is not required to notify victims of the final release decision. As a practical matter, victims who attend the institutional review hearing are informed of the disposition at that time. Victims who are not in attendance will be notified by telephone or by mail only if they have specifically requested such notice.

### Participation

Any interested party, victim or nonvictim, may submit a written statement or may request an appearance before the Board. While victims alone have a legal claim to this participatory mode, Parole Board policy is to accommodate any such request. To date, no person without a direct interest in a particular case (e.g., victim; survivor; employer, friend, or relative of victim; criminal justice system personnel) has registered such a request.

Parole hearings are conducted at the institutional facility in which the offender is housed. Victims may be accompanied by support personnel and/or legal representation. These informal sessions are not, however, open to the public and media personnel may not be in attendance.

The enabling code states that a victim may "reasonably express his views concerning the offense and the person responsible." In implementing this provision, the Board places no restrictions on the content of any oral or written victim commentary. Furthermore, despite an average daily workload of 30 or more release hearings, there are no imposed time limitations on the length of oral presentations nor are there any restrictions as to the number of persons who may address the panel.

Existent legislation fails to address the issue of disclosure of oral or written victim statements to an offender. Current departmental policy observes that, whenever a victim indicates an intention to address the Board, an inquiry is to be made as to

whether he or she wishes to testify absent the offender. Unless otherwise requested by a victim, oral statements are not transcribed or summarized in any fashion; no indication of the victim's presence is recorded in the inmate's parole file. Because the situation has not presented itself, it is unclear whether or to what extent a parole applicant would be allowed to respond to a victim statement made in the applicant's presence. The Board has observed that some response would most likely be permitted.

An offender may request a copy of his parole summary. To avoid disclosure problems that might arise, written impact statements are generally not included within an inmate's release file. Rather, these statements are provided informally to Parole Board members for their review.

#### Other Proceedings

When a victim's request for post-conviction notification is received by the Parole Board, a copy of the request is forwarded to the Division of Corrections. Victim notification of inmate furloughs, escapes, pardons, and final releases is not a legal mandate and it is unknown whether such notice is, in fact, provided.

## NEW JERSEY

### Legislative Summary

With the passage of N.J. STAT. ANN. 30:4-123.54.b(2), 30:4-123.55c, extensive postsentence notification and participatory rights were codified. Certain classes of victims are to be granted an opportunity to present oral or written statements for Parole Board consideration.

In accordance with N.J. STAT. ANN. 30:4-123.54.b(2), prosecutors are required to provide notification of legislated rights only to those victims (1) who were injured as a result of a crime of the first or second degree and (2) whose offenders were sentenced on or after July 11, 1984. The Parole Board has been liberal both in its interpretation of the language of the law and in its expansion of operative policy beyond legal mandates. Victim injury has been operationalized to include psychological, social, and economic harm, in addition to actual or threatened physical injury. Furthermore, the Board has expanded the coverage of the provision by according victims of third degree felonies similar participatory opportunities, and by accommodating a victim's request for notification regardless of the date of sentence imposition.

### Notification

The New Jersey Parole Board has devised a comprehensive system for ensuring that victims are notified of postsentence events. This system entails a series of original and follow-up notices that strive to maximize a victim's awareness of, and participation at, parole proceedings.

When an offender is sentenced to a term of imprisonment, the district attorney mails a letter to the victim, informing him or her of the rights (1) to be notified, in advance, of parole proceedings and (2) to present a written or oral impact statement for Parole Board consideration; or, alternately (3) not to be notified of any proceedings to consider an offender's release status. The communication advises the victim that

accordance of said rights is contingent upon the victim's completion and return of an enclosed registration form. It has been estimated that 10 percent of all eligible victims register for notification (or non-notification) in response to this prosecutorial prompt.

A copy of the above noted letter is forwarded to the paroling authority by the prosecutor. If no response is received from the victim within 60 days, the Parole Board follows up with a second letter describing the process and reminding the victim of legislated rights. A duplicate registration form is enclosed with this correspondence. An additional 10 percent of eligible victims respond to this solicitation, bringing the total proportion of registered victims to 20 percent of those eligible.

Approximately 2 months prior to a release hearing which, in turn, is conducted approximately 6 months in advance of the earliest possible eligibility date, a listing of all the inmates to be considered for parole is mailed to prosecutors, district judges, and to the news media for publication. Any prosecutor or judge who wishes to protest the release of an offender whose name appears on that list may request an appearance before the Board for that purpose.

The enabling statute specifies that, "at the time public notice is given", the Parole Board is also to notify requesting victims of upcoming release hearings. While a written notice is mailed as a backup measure, the preferred method for victim notification is direct telephone contact. This prehearing notice informs the victim that an inmate's parole eligibility date is approaching and that the victim has the right to submit a written statement and/or to present oral testimony for Board review. A victim who chooses to submit a statement is advised to communicate this intention to Board personnel within 30 days.

### Participation

A victim can participate in parole decisionmaking by presenting a written statement or oral testimony for Board review.

If a victim requests a personal appointment, a meeting is scheduled with a senior

hearing officer at least 30 days prior to the eligibility date. The Board's administrative rules state that this meeting is to be conducted "at a time and place and on a date determined by the Chairperson or designee." Generally, these informal sessions are held at the Board's administrative offices in Trenton. If this site selection proves to be inconvenient for the victim, the meeting may be scheduled for a time and/or at a location more agreeable to the victim.

An effort is made to ensure that the victim interview is as informal and nonthreatening as possible. The offender is never present; supportive family members and friends are welcome to accompany the victim, but may not actively participate in the process. Although the victim may be asked to verify information pertaining to objective impacts of the offense (e.g., medical expenses, loss of employment), there are no limitations placed on the content of a victim's recorded testimony. At the conclusion of this informal session, the senior hearing officer is directed, by law, to "prepare a report or a transcript of the testimony for presentation to the board panel at the meeting."

The institutional release hearing is a nonadversarial forum that is closed to the public. The presence at this hearing of any person other than a senior hearing officer or a Parole Board member is subject to the prior approval of the inmate applicant.

While legislation fails to address the issue of disclosure, administrative rules observe that victim statements "shall not be deemed confidential...unless [confidentiality] is requested by the victim and the hearing officer determines that the release of the statements or testimony would endanger the safety of the person providing [the information]." The operational policy of the Board is one of nondisclosure if either condition (i.e., victim request or risk determination) is met. As a means for documenting a victim's position on this topic, the Board's prehearing notice includes an explanatory box which asks if the victim fears his or her personal safety might be jeopardized by statement disclosure to the applicant. This box, if checked by the victim, is interpreted as a request for confidentiality.

Where victim information is disclosed, the inmate has an opportunity for oral rebuttal at the institutional hearing.

#### Other Proceedings

There are no legislative provisions for victim notification of, or presentation of statements at, executive clemency hearings. The Parole Board, on its own initiative, accords victims participatory options at these proceedings.

## NEW MEXICO

### Legislative Summary

The introduction of oral or written victim statements at sentencing was authorized by the passage of Senate Bill 98, the Crime Victims' and Witnesses' Bill of Rights, in 1987. There is no comparable legislation authorizing victim input at postsentence proceedings. Nevertheless, various other manners of victim participation have been instituted by policy initiative. While victims are not statutorily entitled to the following, one or more of these participatory modes may also be permitted: (1) victim impact statements in presentence reports, (2) written comments submitted directly to the Parole Board by victims, and (3) oral statements before the Board.

In accordance with N.M. STAT. ANN. 31-21-9, a presentence report is prepared at the discretion of any district or magistrate court. In 1983, the New Mexico Judicial Council voted to actively promote the inclusion of a victim impact statement in every presentence report involving a human victim. This Council action was not binding on district judges nor did it provide guidelines for deriving or presenting victim information. Consequently, the frequency with which individual judges order the inclusion of victim impact statements is widely variable both between and within judicial districts. Where statements are prepared, there is no uniformity in presentational format.

Senate Bill 98 entitles a victim of any crime to submit a victim impact statements to the court and to be assisted in the execution of any such written statement. The statute also establishes a victim's right to appear at sentencing and to be heard prior to sentence imposition.

If an offender is sentenced to a term of imprisonment, the presentence report, as well as the offender's commitment papers, are forwarded to the Department of Corrections and made available to the Parole Board. It is not clear if any written or oral statement presented at sentencing would similarly be forwarded to correctional personnel.

If no presentence report was prepared, a postsentence investigation is conducted. This investigation is not as comprehensive as its presentence counterpart and may or may not include a victim statement.

Correctional and parole officials in New Mexico are currently dealing with offenders sentenced under two distinct sentencing policies. Prior to July 1979, the operational sentencing structure provided for indeterminate terms of imprisonment; offenders sentenced during that period (approximately one-third of the current prison population) are eligible for parole release. Incarcerative terms imposed on or after that date can be lessened by good time allowances but not by the exercise of Parole Board discretion. For offenders sentenced to determinate terms, the role played by the paroling authority in the release of the inmate is limited to the setting of parole conditions.

#### Notification

Prior to the passage of the Bill of Rights, there was no provision for advance victim notification of release hearings. Pursuant to N.M. STAT. ANN. 31-21-25, the Parole Board was required only to notify the district attorney "promptly" of any Board decision to grant parole. The district attorney, in turn, was responsible for notifying all victims of the impending release. Under the new law, a victim or witness has the right to be informed of the time and place of any parole or probation hearing concerning the offender. The bill fails to address several administrative concerns. In particular, it is unclear (a) whether the victim must specifically request notification and/or maintain an updated address on file, (b) who is to provide the requisite notice, and (c) when or how such notice is to be provided.

#### Participation

There are no legislated participatory rights that attach at parole hearings. Unsolicited written statements to the Parole Board, while not actively encouraged, are accepted and acknowledged. Any interested party can request a personal interview with

the Parole Board to argue for or against an inmate's release. Personal appearances are scheduled at the Board's administrative offices in Santa Fe. For security reasons, victims and other interested persons have not been allowed to be in attendance at the institutional release hearing.

Parole Board policy prohibiting victim presence at parole sessions may be affected by Senate Bill 98 which states that a victim has the right to receive timely notice of all hearings and proceedings concerning his case so that he may exercise his right to attend. Victim attendance at parole proceedings is not specifically cited and it is unknown whether the extension of this provision to release hearings was intended by the New Mexico legislature.

Disclosure of victim input is governed by N.M. STAT. ANN. 31-21-6. Absent additional information, all presentence and preparole information is presumed to be confidential. Disclosure is permitted if the Parole Board determines that such action would be in the best interest of the inmate.

#### Other Proceedings

Prior to the 1987 legislative session, the mechanism for victim notification of other postconviction proceedings was outlined by N.M. STAT. ANN. 31-21-25(E). That statute provides that whenever an inmate is to be released from a correctional facility without parole, the Department of Corrections is directed to notify all state district attorneys at least 20 days prior to the actual release date. The district attorneys are statutorily required to notify "any person known to reside in his district who was a victim of the crime for which the inmate was committed."

As a result of the passage of Senate Bill 98, victims' rights to notification of relevant postcommitment events have been strengthened and expanded. Victims and witnesses are now entitled to be notified "by the appropriate custodial authority whenever the defendant receives temporary, provisional or final release or when he escapes from custody." While this language does not guarantee advance notification, it

does, at a minimum, appear to provide that victims be informed of offender furloughs, mandatory release dates, and parole release dates.

## NEW YORK

### Legislative Summary

In 1984, the Executive Law of New York was amended by the addition of the provisions of the Fair Treatment Standards for Crime Victims (Ch. 94 of the Laws of 1984). In part, the act urged the adoption of procedures to ensure that crime victims who provide appropriate officials with a current address and telephone number are routinely notified of judicial proceedings relating to their case. Each crime victim-related agency was directed to review its "practices, procedures, services, regulations and laws to determine the adequacy and appropriateness of its services with respect to crime victims." The agency was then (1) to prepare a document setting forth recommendations for improving its service delivery to victims, and (2) to expeditiously implement the proposals, subject to available resources and gubernatorial discretion.

In response to this call for procedural reform, several statutory revisions were passed during the 1985 legislative session. N.Y. CRIM. PROC. LAW 440.50, as amended, requires the district attorney to provide written notice, to certain classes of requesting victims, of the final case disposition and of the victim's right to submit a written impact statement to the Division of Parole.

As of the time of this writing, victim input into parole release decisions is limited to written commentary. The attendance of victims at release hearings is prohibited by Board policy. Victims are not entitled to appear personally before the Parole Board and the Board is not mandated to notify a victim of any postsentence proceeding.

The New York State Crime Victims Board is preparing several legislative revisions for introduction during the 1987 legislative session. One proposal expands the current range of participatory roles by establishing a victim's right of allocution at a number of criminal justice proceedings, including parole.

## Notification

Exec. Law 259-i specifies that, in making any parole release decision, the written statement of a victim must be considered. If the victim is deceased or is mentally or physically incapacitated, the Board is to consider any statement submitted by the victim's "closest surviving relative, the committee or guardian of such person, or the legal representative of any such person."

A related statute outlines the manner by which a victim is to be informed of his or her right to submit a written impact statement for Board review. N.Y. CRIM. PROC. LAW 440.50 mandates that, within 60 days of case disposition, the prosecutor is to send written notice of said disposition to any victim who (1) was the victim of an offense committed on or after November 1, 1985, and (2) has specifically requested such notice and (3) has sustained, or has alleged to have sustained, physical or financial injury to person or property; or has sustained, or has alleged to have sustained a sexual offense. If the victim is a homicide victim or a minor, notice of final case disposition will be sent to the victim's family, if so requested. If the offender is committed to the custody of the Department of Correctional Services, the prosecutorial notice is also to inform the victim of the right to submit a written statement for inclusion in the inmate's file.

The above described notification mechanism leaves several questions unanswered. The first problem derives from the procedural prerequisite that a victim must request notice of case disposition before it will be provided. While the enabling statute is precise about this point, it is silent as to how or when a victim is to be alerted of the right to request notification. Furthermore, it appears that failure to request notification of final case disposition necessarily compromises a victim's right to file a written protest because the victim would not be aware of this participatory opportunity.

A second group of questions center around apparent incongruities between the provisions of Exec. Law 259-i and N.Y. CRIM. PROC. LAW 440.50. Despite the fact

that the former law directs the Board to consider statements submitted by the family of a deceased victim, the statutory wording of the latter law suggests that a deceased victim's family might be informed of the right to submit a written statement only if the victim was dead as a result of a homicide. Similarly, the family of a mentally or physically incapacitated victim has the right to submit a statement but may never be made aware of this participatory option. Finally, while it appears that the victim of an offense that resulted in neither physical nor financial injury is entitled to submit a written statement, it is unclear whether such an individual would be in receipt of the mandated prosecutorial communique, even if requested.

As noted previously, the Parole Board is not legislatively mandated to notify victims of impending release hearings or of the Board's release action in any particular case. Agency procedure, however, is to accommodate all victim requests for such notice. There is no formal mechanism for registering victim requests; despite a proposal to the contrary in the Fair Treatment Standards, there is also no procedural prerequisite that the victim maintain an updated address on file.

#### Participation

Victim input into parole release decisions is limited to the submission of written comments. A victim may not attend the institutional release hearing and is not entitled to address Board members at any other location.

There are no guidelines as to the content of any written materials. Victim statements are deemed confidential and are not subject to disclosure to the inmate applicant.

#### Other Proceedings

Correction Law 149-a establishes the right of a victim of a violent crime to receive written notification from the Division of Correctional Services whenever an offender is released from a state facility by means of a court discharge, executive clemency, or maximum expiration of sentence. Additionally, a crime victim is to be

notified when an offender escapes or absconds and, subsequently, upon reappréhension. A 1986 amendment to this statute shortens from 30 days to 48 hours the maximum time limit during which a victim is to be provided notice of an inmate's recapture.

## NORTH CAROLINA

### Legislative Summary

Victims have no statutory right to attend parole sessions or to present oral or written impact statements for Parole Board consideration. N.C. GEN. STAT. 15A-825 does, however, establish a victim's right to be notified in advance of any proceeding at which the offender's release from custody is to be considered. The language of this Fair Treatment Act leaves several questions unanswered. First, the time frame for notification is vague. The code states only that it is to be given "before" the hearing. Second, it is unclear whether this legal mandate is intended to apply to parole hearings and, if so, what agency is responsible for contacting the aggrieved parties.

Senate Bill 92 and House Bill 165, identical bills currently pending in the North Carolina legislature, begin to address these concerns. The proposed legislation would amend N.C. GEN. STAT. 15A-1371(b)(2) by requiring the Parole Commission "whenever possible" to provide 30 day advance notice to victims any time the Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence. If passed, this legislation will take effect October 1, 1987.

### Notification

See above.

### Participation

Victims in North Carolina are not statutorily entitled to any participatory opportunities at parole.

### Other Proceedings

By law, a victim must be notified "if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony." The phrasing of this provision suggests that notice of an offender's release from custody need not be provided in advance of such release.

## NORTH DAKOTA<sup>a</sup>

### Legislative Summary

In April 1987, the Fiftieth Legislative Assembly of the state of North Dakota approved a comprehensive act to provide for the fair treatment of victims and witnesses. In part, this act, codified as N. D. CODE 12.1-34-02 et seq., establishes the right of victims to be notified in advance of parole and pardon proceedings, and to submit a written statement for Board consideration. Victims of violent crimes for which the offender was sentenced on or after July 1, 1987, may also, at the discretion of the Parole Board or Pardon Board, appear personally and address the panel.

### Notification

At the time of sentencing, the prosecuting attorney is responsible for explaining to the victim the parole and pardon processes. The victim is advised that additional information relative to the offender's custody status will be provided to the victim only if a current address is maintained in the files of the custodial authority, the Parole Board, and the Pardon Board. The victim is not required, however, to specifically request notification from any of these agencies.

Advance notice of an impending parole hearing is forwarded to the victim by the Parole Board. While the time frame for receipt of this notice is not specified in the statutory language, recently established policy dictates that notice is be provided 30 days prior to the Board meeting.

By law, the victim must be notified of the action taken by the Board relative to the offender's request for release. If the applicant has been granted parole, victim notification is to include the date of the prisoner's release. By law, the notice must be given within a reasonable time after the Parole Board reaches its decision but prior to the actual release date.

### Participation

For notification and participation purposes, the enabling legislation defines a

victim as an individual who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. All victims are entitled to submit written statements for Parole Board consideration.

Parole hearings in North Dakota are open to the public. Although any interested party may be in attendance, allocution is permitted only with prior Board approval. Board policy is to limit this participatory opportunity to victims of a crime of violence, i.e., any crime in which force or the threat of force was used against the victim. At the discretion of the Board, the mother, father, sibling, or spouse of the actual victim may also be permitted to testify.

If a victim elects to appear personally, this intent is to be communicated to the Board, in writing or by telephone, at least 10 working days in advance of the hearing. Statements may be given at the Board's central offices or at the institution where the actual hearing is conducted. The offender is never present during victim testimony.

N.D. CODE 12-59-04 provides that presentence and preparole reports may be subject to review if the Board or the court believes disclosure is in the best interest or welfare of a particular inmate. The law is silent, however, as to the confidentiality of independently submitted victim statements. The Board's present policy is that written victims statements will not be disclosed to an inmate, nor will an inmate be advised of the substance of any victim's oral statement.

#### Other Proceedings

The notification and participatory opportunities that attach to pardon proceedings parallel those that attach to parole proceedings. The Pardon Board is responsible for the provision of victim notification and is to consider oral or written statements pertinent to a release decision.

The Fair Treatment Act is explicit in its requirement that victims be informed by the appropriate custodial authority whenever a criminal defendant receives a

temporary, provisional, or final release from custody or whenever an inmate escapes from custody. Postconviction proceedings that are encompassed by this mandate include the transfer of a defendant to a work release program or a community residential program, and the transfer of a prisoner to a mental health facility. The notice must be provided within a reasonable time prior to the defendant's release or transfer and can be given by any means reasonably calculated to give prompt notice.

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<sup>a</sup> Project staff were unable to schedule a telephone interview with parole personnel in this state. An earlier version of this narrative was drafted from legislation and from other available information. The prepared draft was then forwarded to appropriate staff members in North Dakota. Parole personnel were instructed to review the document and to return it if it did not accurately describe current policies and procedures within the state. This narrative reflects revisions suggested by parole staff.

## OHIO

### Legislative Summary

OHIO REV. CODE ANN. 2967.12 codifies procedures for the notification and participation of victims prior to the consideration of an offender's application for release on parole or the granting of a pardon. As of September 26, 1984, the victim of any felony in Ohio is to be notified of the right to submit a written statement for consideration by the Adult Parole Authority.

The Parole Board may have access to two sources of victim impact information in addition to this written input. OHIO REV. CODE ANN. 2967.03 indicates that any oral testimony that a victim presents at sentencing is to be transcribed and forwarded to the Parole Board. Furthermore, the Board, on its own initiative, has established a forum by which a victim may present a current oral statement for panel consideration.

When enacted, the pertinent legislation contained a sunset clause which would result in the expiration of postconviction notification and participatory provisions on July 1, 1987. House Bill 207, currently pending in the Ohio legislature, seeks to repeal the sunset clause and to expand the present scope of victims' rights.

### Notification

During the 1986 legislative session, House Bill 657 passed in the General Assembly. This bill requires the Office of the Attorney General to publish and distribute pamphlets listing and explaining various victims' rights. These informational packets are to be provided to victims by law enforcement officials at the time of first contact or at a reasonable time thereafter.

Victims are advised that receipt of the mandated notification is contingent upon a victim's specific request for such notice and the victim's provision to the Parole Authority of a current address and phone number. The registrant is also to indicate the days and hours of availability at the listed number.

The significance of this final precondition can not be overstated. OHIO REV. CODE ANN. 2967.12 specifies that victim notification is to be given at least 3 weeks

in advance of an Adult Parole Authority recommendation of parole or pardon. By law, the required notice may be provided by mail or by telephone. The legal mandate for telephone notice is satisfied if the Parole Board can document three "good faith" attempts at notification, regardless of whether the victim was reached. As reported by parole personnel, notice is generally written.

The notice advises victims of the date of the impending release hearing and of the statutory right to submit a written statement "relative to the victimization and the pending action."

There is no requirement that victims be notified of any action taken by the Parole Board. Nevertheless, the Board accommodates victim initiated requests for such notification.

#### Participation

The Board places no restrictions on the content of written comments. Materials submitted in this fashion are never subject to inmate review.

Although not required by law, the Board conducts an "office conference day" once a month at its central office in Columbus. On this day, any interested party who specifically requests to make a personal statement may, at the discretion of the Parole Board, be invited to speak with a designated hearing officer. While oral statements are neither recorded nor transcribed, the interviewer summarizes the victim's testimony for inclusion in the inmate's file. This summary statement is retained as a confidential document.

By Board policy, the victim may not attend the offender's institutional parole release hearing.

### Other Proceedings

The duties and responsibilities of the Parole Board relative to an offender's application for a pardon or sentence commutation are outlined in OHIO REV. CODE ANN. 2967.03. Before the Board forwards a recommendation to the governor, the victim is to be notified of the impending hearing and is to be informed of the right to file a written statement.

A recently enacted bill, House Bill 207 (1987), creates OHIO REV. CODE ANN. 309.18, 341.011, 753.19, and 5120.14, which mandate victim notification of the escape (and subsequent reaprehension) of any person convicted of or charged with a violent felony from state, county, or municipal custody. Immediately following the defendant's escape (or reaprehension), the appropriate custodial authority (i.e., the Department of Rehabilitation and Correction, the sheriff, or the chief law enforcement official) is directed to (a) cause notice of the escape (or reaprehension) to be published in a newspaper of general circulation, and (b) provide notice of the escape (or reaprehension), by telephone and in writing, to the prosecuting attorney of the county in which the offense was committed. As soon as possible after the receipt of said notice, the prosecutor, in turn, is to notify each victim. Victim notification is to be given by telephone or in person. If attempts at notification by these means are unsuccessful, notice is to be provided by certified mail, return receipt requested.

## OKLAHOMA

### Legislative Summary

Parole hearings in Oklahoma are open to the public. Although victims have no legal claim to active participation in these proceedings, victim input has always been encouraged by the Parole Board.

There are three formats for victim input. The victim may (1) complete a standardized victim impact form that is available from the prosecutor and is to be returned to the Parole Board for inclusion in the inmate's file; (2) submit an independent written statement for Board review; and/or (3) personally address the Board at the release hearing. The mechanism for alerting victims to these participatory options is informal and relies on the continued cooperation of prosecutorial personnel.

Legislation enacted in 1981 directs the Parole Board to notify district attorneys 20 days in advance of any impending parole hearing. Parallel procedures for victim notification of docketed sessions, while not legislatively authorized, have been instituted as a matter of Board policy.

### Notification

The victim/witness coordinator within each prosecutor's office has been provided with informational packets for distribution to crime victims. These written materials outline the postsentence notification and participatory opportunities that have been created by Board policy, and include the standard victim impact form developed by the Parole Board. The victim is informed that advance notice of parole hearings will be provided to any interested party, victim or nonvictim, who has contacted the Parole Board, by mail or by telephone, to formally request such notification. It is the responsibility of the registrant to maintain an updated address on file with the Board.

With the passage of OKLA. STAT. ANN. 332.2 in 1981, the Parole Board is now required to notify the district attorney's office of an inmate's release hearing at least 20 days before the docketed date. In some local jurisdictions, the victim/witness

coordinator then contacts the victims of each of the offenders named on the docket listing; this practice is not, however, required by law.

Approximately 2 to 3 weeks before an offender's scheduled hearing, the Board gives notice to all requesting parties. This letter states the time, date, and location of the hearing, and advises the addressee to contact the Board for additional information.

Any action taken by the Board in response to an inmate's application for parole is public information. Although automatic victim notification of the Board's release decision is not a matter of right, the Board will forward this information to any individual who so requests.

### Participation

Board meetings to consider an application for release are held monthly, on a Friday and Saturday, at one of two state correctional facilities. As these meetings are public forums, any interested party, as well as members of the press, may be in attendance. The files of as many as 17 inmates may be reviewed in a single hour, imposing some temporal constraints. Consequently, except where there are multiple victims, no more than two persons may address the Board to protest the release of any offender. The designation of spokespersons is a function, not of the Board, but of those in attendance. The two individuals selected to speak indicate this intention by signing a register before entering the hearing room.

Typically, citizen protests are heard absent the inmate. When oral presentations have been completed, the applicant is brought into the hearing room to be interviewed by the panel. Members of the public are welcome to remain during this second phase of the hearing. Confrontation is not permitted.

Victim statements are not recorded and no official notation is made of the victim's participation or commentary. Despite this policy of nondisclosure, complete confidentiality can not be guaranteed due to the presence of media personnel.

### Other Proceedings

The granting of commutations and pardons falls within the purview of the Parole Board. As was the case with parole hearings, victims may attend and speak at these public sessions, and/or may file a written statement for Board review. The policy of the Board is to provide advance notice of these proceedings to all identifiable victims, even in the absence of a formal request for such notification.

## OREGON

### Legislative Summary

During the legislative sessions predating the November 1986 general election, the Oregon Parole Board had lobbied for legislation establishing a mechanism for victim input into parole decisionmaking. The proposed bills were routinely rejected as too conservative. A more encompassing package of victims' rights was supported and passed in November 1986 by citizen initiative.

Ballot Measure 10 (known as the Crime Victims' Bill of Rights) creates new provisions that mandate, in part, that advance notification of (1) all impending hearings and (2) the release of an inmate from the physical custody of the Corrections Division be delivered to both requesting victims and the district attorneys of the counties in which the offender was sentenced. Furthermore, victims and district attorneys are accorded the right to submit written or oral statements to be included in an inmate's prehearing file. The provisions of the measure affect all institutional hearings conducted on or after December 4, 1986.

In Oregon, measures that are passed by citizen initiative can not be amended by actions of the legislature; court rulings alone can modify these provisions. Accordingly, procedures codified in this manner are less malleable components of the penal code than are procedures enacted through more traditional legislative processes. Ballot Measure 10, as written, leaves many questions unanswered and could, if liberally interpreted, require procedures that go far beyond the legislated provisions of any other state.

### Notification

The measure specifies that advance notice of all hearings and/or releases is to be forwarded to (1) all victims who have requested such notification and who have furnished the Board with a current address and to (2) the district attorney of the committing county. Without further guidance in the implementation of this provision, several potential administrative problems are evident.

First, there is no mention of when, how, or by whom the victim is to be informed either of the existence of notification and participation rights or of the need to register for them. The Parole Board, in the development of policies for the implementation of these new mandates, does not believe that the responsibility for informing victims of postsentence participatory options lies with it. Earlier sections of the measure refer to the prosecutor's role in informing victims of presentence rights, and the Board presumes that the prosecutor will simultaneously inform victims of other participatory rights.

Second, although advance notice of impending institutional hearings is to be provided by the Parole Board, the range of hearings for which notice is to be given may exceed the purview of paroling authorities. The measure states simply that notice is to be sent at least 30 days prior to (1) "all hearings" and (2) "the release from actual physical custody, whether by work release, institutional leave, or any other means of any convicted person" (emphasis added). If "all hearings" is construed as including administrative reviews in addition to parole consideration hearings, the Parole Board may be required to deliver notice of, and allow participation at, disciplinary hearings, reclassification hearings, emergency furlough hearings, etc., whether or not the Parole Board is typically involved in these decisions. In formulating policy for the implementation of Measure 10, the following issues must necessarily be addressed.

Administrative recordkeeping - The Parole Board does not have access to correctional files indicating when nonparole related hearings are to be conducted. Similarly, the Board is not generally informed of furloughs, escapes, or emergency leaves. How is this informational exchange between paroling and correctional authorities to be realized?

Fiscal constraints - The cost of mailing countless notices to victims and district attorneys (both in terms of postage and salaries of staff personnel to coordinate the notification effort) may be prohibitive.

Furthermore, active victim participation at each of these hearings poses security risks, possibly requiring additional staff. Where will the requisite funds be found? Will other correctional programs be sacrificed in order to fund this initiative?

Administrative discretion - Currently, correctional officials exercise wide latitude in the reclassification of inmates and in the granting of emergency leaves. If officials were required to postpone these decisions for 30 days to satisfy victim notification provisions, flexibility in correctional decisionmaking may be compromised.

Constitutional concerns - While the measure squarely addresses the issue of victims' rights, it creates new concerns for safeguarding the constitutional rights of offenders. If the demand for active victim participation at postcommitment hearings results in a backlog of parole release hearings, possibly delaying such hearings beyond the earliest parole eligibility date, is the inmate's loss of liberty sufficiently grievous to constitute a violation of due process? If district attorneys are invited to be vocal participants at hearings affecting inmates' liberty interests, has the hearing become an adversarial interchange? Consequently, does the inmate have the right to have counsel present? to have counsel appointed?

For purposes of being accorded the postcommitment rights outlined in Measure 10, there is some confusion as to what constitutes "victim" status. ORS 144.120(7) states that a victim means "the actual victim, a representative selected by the victim, or the victim's next of kin." A later section of the measure seems to suggest a different definition when it states that victim means "the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor."

## Participation

The Crime Victims' Bill of Rights outlines two procedures for victim input at postcommitment hearings. First, the victim has the right to attend the hearing and to present any evidence or information, subject to any rules that may be imposed by the hearing officer. A victim may choose to submit a written statement in lieu of a personal appearance. ORS 144.120(7), as amended by Measure 10, states that a victim's written statement may "adequately and reasonably express any views concerning the crime and the person responsible." What this means in practice has not yet been determined.

The legislative provisions do not directly address the issue of disclosure of victim (or district attorney) statements to an inmate. The measure does, however, grant victims (and district attorneys) access to all information that is relied upon by the Parole Board or the Corrections Division relative to the hearing, and specifies that these interested parties are to be given adequate time to rebut this information.

## PENNSYLVANIA

### Legislative Summary

Pennsylvania law providing for victim notification of and participation at parole proceedings is primarily the result of two legislative actions. Act 96 of 1984 entitles victims of certain offenses to request and receive notice, from the district attorney, whenever their assailants are to be "released on parole, furlough or any other form of supervised or unsupervised release from full incarceration."

Although victim participation was not statutorily authorized or actively encouraged prior to October 1986, the Board had routinely accepted written statements submitted by any interested party for its review. Modeled largely after similar legislation in neighboring New Jersey, Act 134 of 1986 has established mechanisms for oral and written victim participation in the parole release process.

The legal scope of the enabling acts is limited to victims of feloniously assaultive crime who have reported the crime to law enforcement authorities without an unreasonable delay after its occurrence or discovery. Administrative policies of the Board of Probation and Parole have, however, have expanded the coverage to include victims of all felonies within the Board's jurisdiction.

### Notification

At the time of sentencing, the prosecutor informs a victim, via a written communication, of the right to be notified of impending parole release hearings and of the associated right to present oral or written statements for Parole Board consideration. The victim is advised that receipt of advance notification is contingent upon the victim's filing of a written request for said notice and the victim's maintenance of an updated mailing address. Included with the informational packet is a modified reply card which lists (a) the defendant's name and case identification number, (b) the county of sentencing, and (c) the various participatory options for which a victim may register. The burden then shifts to the victim to return the completed card to the Parole Board.

If the victim is a minor, is incapable of testifying, or is dead as a result of the offender's conduct, an immediate family member of the victim is entitled to these participatory provisions.

The Pennsylvania Parole Board did not initiate this legislation and implementation of the statute's language has proven to be problematic in at least two respects. First, the legislation is confusing as to when victim notice is to be given. Act 134 states that the Parole Board is to provide advance notice of a release hearing at the same time as public notice is given. In Pennsylvania, no such public notice had previously been mandated. Consequently, the new code could be interpreted in any one of several manners. At the time of this writing, parole officials indicated that department policies had not yet been finalized. Nevertheless, policy drafts recommended that the notice be mailed 6 to 7 months prior to the hearing. The victim would then have 30 days within which to respond in some fashion to indicate an intention to participate in the ensuing proceedings.

Second, regardless of offense of conviction, the new law specifies that responsibility for victim notification lies with the parole authority. In most jurisdictions, this delegation of responsibility would be fairly routine. In this state, however, offenders sentenced to terms of imprisonment ranging from 11.5 to 23 months are considered to be under the jurisdiction of the sentencing judge, not of the Parole Board. For legislative purposes, therefore, is the sentencing judge the legal equivalent of the paroling authority and, thus, subject to statutory mandates? Clearly, this is an issue that must be resolved before any meaningful system of victim notification and participation can be effected.

Any victim who actively participates in the parole process, whether orally or in writing, is statutorily entitled to be notified, by the Board, of the final release decision.

## Participation

In Pennsylvania, a victim may play an active role in the parole process by presenting oral or written impact statements for Board consideration.

Written statements are to be submitted directly to the Board prior to the inmate's institutional hearing.

Oral statements are to be presented before a departmental hearing officer at one of 23 statewide offices. If, for good reason, it would be more convenient to accept testimony in a local courthouse or other location, necessary arrangements will be made. The parole applicant is never present during these sessions and a victim may not attend the applicant's parole interview.

Victim testimony is recorded for agency use only. The hearing officer does, however, prepare a written report of the victim's comments which is subsequently provided to the victim to ensure the accuracy of the summarized statements. The victim is given 10 days to respond to the summary report before it is forwarded to the parole panel.

Victim statements, whether oral or written, are presumed to be nonconfidential unless the victim requests confidentiality and the hearing officer (in the case of oral testimony) believes disclosure might jeopardize victim safety. A proposal before the parole agency recommends the incorporation of a three step system to document victim preference on this issue. First, a check box would be included on the notification reply card asking the victim if he or she would like all future communications to be held in confidence. Second, the prehearing notification letter would reiterate that oral and written victim impact statements may be exempted from disclosure by victim request. Finally, should the victim opt to testify orally, the victim would be asked early on to indicate his or her position relative to statement disclosure.

The statutory language of Act 134 suggests few restrictions on the content of a victim's oral or written statement at parole. Based in large part on similar legislation

in New Jersey, the code observes that victim commentary may pertain to the "continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family." Nevertheless, the paroling authority is primarily interested in any delayed or previously unreported effects of the crime. The victim is not encouraged to reiterate the facts of the crime or to comment upon the propriety of the inmate's application for release consideration.

#### Other Proceedings

Acts 96 and 134 provide no direction relative to victim participation at other postsentence proceedings.

## RHODE ISLAND

### Legislative Summary

Rhode Island law provides that victims are to be notified of and accorded the right to address the Parole Board prior to a release hearing. As will be discussed below, the rights to notification and allocution are limited by statute, but not by practical implication, to certain classes of victims. Any interested party may submit a written impact statement for Parole Board review.

The enabling legislation, R.I. GEN. LAWS 12-28-6 and 13-8-26 took effect in 1983. Prior to this date, victim notification was not mandated and victims were not routinely alerted to participatory opportunities. Nevertheless, victim initiated requests to submit written or oral commentary were generally allowed.

R.I. GEN. LAWS 12-28-6 specifies that, for purposes of being granted the right to address the Board, a victim is one who "has sustained personal injury or loss of property directly attributable to the criminal conduct for which the inmate has been incarcerated." While this language appears to exclude victims of attempted crimes and victims who, although not physically harmed, may have suffered psychological trauma, the Parole Board has chosen to give a more liberal interpretation to the clause, enfranchising victims irrespective of offense severity.

### Notification

At the present time, victims are not required to register with the Board for parole notification nor is there any precondition that victims maintain a current address on file. As is the case in a few other jurisdictions, there is a legislative presumption that victims in Rhode Island desire or deserve notice of impending release actions.

Where the victim is a homicide victim or is physically incapacitated, R.I. GEN. LAWS 12-28-4.2 specifies that written notice is to be forwarded to a member of the victim's immediate family. Board personnel have indicated that, in practice, the transference of victim notification rights is not restricted to the above stated

circumstances. Rather, victim status will be accorded to others in a wide variety of situations.

Approximately 1 month before an applicant's formal consideration hearing, a preparole file is forwarded to the Parole Board. Inter alia, this file includes the original police report which may or may not indicate the victim's address. At some point during the following 3 weeks, written notice of the impending proceedings is mailed to the victim at the address indicated in the police report. If no address is listed or if the listed address is not current, agency staff may, but are not required to, check the telephone directory or contact the Attorney General's office in an attempt to locate the victim.

This contact represents the first time that a victim is informed of postsentence participatory options. The victim is advised that written input must be available to the Board prior to the scheduled hearing if it is to have contributory value in the decisionmaking process. Victims wishing to appear personally to address the panel are directed to call the administrative offices to find out when and where to appear.

Details of the Board's final release action are mailed to all victims for whom an address is available, whether or not the victim actively participated in the release process. Anyone wanting a more immediate recitation of the outcome is asked to phone the Board later in the afternoon of the day of the formal hearing.

#### Participation

Parole proceedings in Rhode Island are not open to the public. Despite the closed nature of these hearings, public input is authorized.

As noted previously, any interested party may submit written input for Board review. There are no limitations on what may be included in these statements. Any written commentary submitted for Board consideration is held in strict confidentiality.

Only victims (or their representatives) are accorded the opportunity to present oral commentary. Any victim who wishes to appear personally is invited to address the

full panel at an informal hearing. Although scheduled for the same date and site as the formal offender interview (i.e., the facility housing the offender), this is a closed session. The offender is never present.

Oral statements may be proffered by the victim and/or by any support person (e.g., family, friends, attorney, psychiatrist) whose presence has been requested by the victim. There are no limitations on the number of persons who may speak or on the content of these remarks. Testimony is not recorded in any fashion. However, should the inmate's application for release be denied, the chairperson is to dictate a statement for the record, citing the general factors upon which the Board relied. A brief notation of the victim's presence and of the content of the victim's testimony is included in the acta.

Due to the confidential nature of the interaction between the Parole Board and the inmate, victims are prohibited from attending the actual parole hearing.

## SOUTH CAROLINA

### Legislative Summary

Since 1981, the South Carolina legislature has enacted two major provisions that have shaped the role of the victim in postsentence proceedings. The first of the provisions was the Community Corrections Act, effective June 15, 1981, which, inter alia, established the Board of Parole and Community Corrections and outlined procedures for Board operations. Another section of the code (S.C. CODE 24-21-50) notes that any individual shall be allowed to attend and to address the Board at any public hearing to consider parole, pardon, or any other form of clemency provided for under law. S.C. CODE 24-21-14 further specifies that a victim who has "suffered damage to his person" as a result of a violent crime is to receive a written notice of pertinent release hearings at least 30 days in advance of the hearing. If the victim is deceased, notice will be mailed to the immediate victim of the family.

The entitlements of the Community Corrections Act were broadened in June 1984 with the passage of the Victim's and Witness's Bill of Rights (S.C. CODE 16-3-1510 to -1560). To the extent reasonably possible and subject to available resources, and in addition to notification of parole and pardon proceedings, victims are now to be informed of inmate escapes; and temporary, provisional, and final releases from correctional custody. The Bill of Rights extends the prehearing notice clause of S.C. CODE 24-21-14 to mandate the provision of advance notice of hearings to any victim who has suffered "direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission" of any offense. Under this updated notification statute, victim status can be conferred upon an immediate family member if the victim is (1) a homicide victim, (2) a minor, (3) incompetent, or (4) physically or emotionally incapacitated as a result of the crime. Despite the apparent restriction of the first contingency, the Parole Board continues to accommodate requests for notification from family members of any deceased victim, regardless of the cause of death.

A victim can participate in release decisions by means other than allocution. S.C. CODE 16-3-1550 states that, prior to the imposition of sentence, the county solicitor is to make a Victim Impact Statement available to any victim who wishes to make a written report. The victim is also entitled to file a separate written protest for official consideration prior to any release action.

#### Notification

As noted above, the county solicitor's office is to provide each victim with a Victim Impact Statement to be used at sentencing and at postincarcerative proceedings affecting the offender's liberty status. This standardized form (1) enumerates victims' participatory options, (2) solicits victim commentary on any physical, psychological, financial, or social impacts of the offense, and (3) advises the victim to maintain documentation of any injuries or harms cited in the victim commentary. While there is no statutory prerequisite that victim notification is contingent upon a specific victim request for such notification, the Victim Impact Statement also asks the victim to indicate whether or not advance notice of postsentence proceedings is desired. The victim is legally required to provide the solicitor's office, the Department of Corrections, and the Department of Parole and Community Corrections with a current address and telephone number. If an offender is incarcerated, copies of the completed form are to be forwarded to the Board of Parole and Community Corrections and to the institution housing the offender.

Approximately 30 days before an offender's release hearing, the Parole Board sends written notice to all identified victims, regardless of the request for notification (or nonnotification) that was indicated on the Victim Impact Statement. The names and addresses of these victims are generated from this presentence document. If there is no Victim Impact Statement included in the applicant's file, an attempt is made to locate the victim during the preparole investigation.

The prehearing notice (1) identifies the offender, the date of sentencing, and the

county of conviction; (2) lists the date, time, and place of the hearing; (3) states the inmate's tentative date of supervised release should parole be granted; (4) reviews the participatory options that are available to the victim; and (5) outlines the institutional security regulations to which the victim will be subject if he or she elects to attend the release hearing. Similar notice is provided to the solicitor who prosecuted the case and to the law enforcement agency responsible for the offender's arrest.

Victims are statutorily entitled to be notified of the Board's release action. A victim who appears at the release hearing is typically informed of the Board's decision at the conclusion of the session. If a victim is not in attendance, the Parole Board will deliver a written notice as soon as possible, generally prior to the applicant's actual release date.

#### Participation

Public parole hearings are conducted every Wednesday at Kirkland Institution. Any interested party (victim or nonvictim) may attend and speak. Victims who wish to be present are encouraged to contact the Board's Victim Advocate to indicate this intention; approximately four-fifths of the victims do so. Failure to make prior contact in no way abrogates an individual's right to appear.

Parole hearings are informal sessions. The victim is met by the Victim Advocate who explains the Board's hearing policies and answers any procedural questions that the victim may have. After the Board has interviewed the inmate applicant and witnesses for the applicant, the victim is brought into the hearing room to express his or her sentiments. The applicant is never present during a victim's presentation. While there are no substantive restrictions placed on an individual's testimony, persons are asked to allocute within a reasonable time frame. (Note: The average duration of victim testimony is 5 minutes or less.)

By law (S.C. CODE 24-21-40), the Parole Board is to maintain a complete record of all of its proceedings. Accordingly, oral arguments are recorded. Acta are not transcribed, however, unless court ordered as part of a subsequent legal action.

The Bill of Rights specifies that a Victim Impact Statement that is prepared prior to sentencing must be disclosed to the offender at that time. If the court reviews any part of the statement in its determination of the appropriate sentence, the offender is to have an opportunity to rebut the reviewed portions. In contradistinction, there is no disclosure of oral or written materials that are submitted to the Board postsentence unless disclosure is required by an appeal or other justifiable legal action.

#### Other Proceedings

The victims' rights that attach at hearings to consider an application for a pardon are similar to the rights that attach as parole hearings. Whenever possible, victims are notified and informed of their right to attend and provide input at the hearing. One difference between parole and pardon proceedings is the location of the session. Whereas parole hearings are conducted at Kirkland Institution, arguments for and against pardon consideration are heard at the Board's administrative office.

Victim notification of inmate escapes, furloughs, and unconditional releases is mandatory and is the responsibility of the Department of Corrections.

## SOUTH DAKOTA

### Legislative Summary

Prior to the conditional release of an inmate, paroling authorities may have access to several sources of victim information. If a presentence report was prepared, this document is forwarded to the Board of Pardons and Parole by the court services agency. If available, the court is also to provide transcripts of oral victim impact statements proffered at sentencing.

In addition to these historical victim statements, South Dakota legislation and departmental policy directives have instituted mechanisms facilitating the review of current victim information. S.D. CODIFIED LAWS ANN. 24-15-3, effective July 1, 1986, outlines procedures for victim notification of, and participation at, parole proceedings. This code establishes a victim's right to attend release hearings and to present oral testimony. While the enabling legislation does not specifically authorize a victim's right to submit written statements, the Board continues to accept these statements. Indeed, both modes of victim participation, oral and written, had been permitted as routine departmental policy for several years prior to procedural codification.

### Notification

Statutory law does not indicate how, when, or by whom a victim is to be initially informed of opportunities for participation at parole. Despite the lack of legal direction, victims in South Dakota generally learn of postsentence participatory options from the prosecuting attorney who is required to contact the victim as part of the presentence investigation. The victim is advised that although any individual, victim or nonvictim, may attend these public sessions, advance notice of impending parole actions will be provided only to those felony victims who have specifically requested such notice. Accordingly, a victim who wishes to be notified of future proceedings is instructed to contact the Parole Board in writing to register this request.

S.D CODIFIED LAWS ANN. 24-15-8.3 specifies that if the actual victim is a minor, the victim's parent or guardian may submit a request for notification on behalf of the victim. Although there is no specific authorization for familial substitution where the victim is deceased, disabled, or otherwise incapacitated, the policy of the Board has been to accommodate any such request.

Parole Board personnel are directed to send written notice to registered victims at least 10 days before the inmate's date of eligibility. As implemented, the required notice is mailed a minimum of 10 days prior to the inmate's release hearing which is held approximately 1 month before the earliest possible release date. This notice is mailed by first class mail to the victim at the address provided at the time of the victim's registration. The requesting victim is not statutorily required to keep the Board apprised of any change in address.

In addition to detailing the precise dates of the applicant's parole eligibility and of the release consideration hearing date, this communication outlines the victim's right to be present at the Board hearing and to "state his opinion regarding the possible parole of the inmate."

Any victim who requests notification of the Board's final release decision will be so notified.

#### Participation

In South Dakota, the Parole Board sits in public session on the third Thursday and Friday of each month. Currently, there are no restrictions either on the number of persons who may attend and speak or on the content of the oral statements.

Any interested party who wishes to personally address the Board may do so at the institutional release hearing. Absent a Parole Board determination of good cause, the parole applicant is in attendance and may rebut oral statements. No cross-examination is permitted.

The Board recognizes the potential for personal distress that arises from the

victim's mere appearance in a correctional facility and, more directly, from the presentation of testimony in the offender's presence. Consequently, the Board encourages victims to submit written statements. At this time, written victim statements are deemed confidential and, thus, are not subject to inmate review.

#### Other Proceedings

Prior to the approval of an inmate's application for any form of executive clemency, the Parole Board is mandated to supply public notice. In addition, the Board mails written notice of this review to any victim who has registered for notification of parole proceedings. A victim may appear and testify at this proceeding.

S.D CODIFIED LAWS ANN. 24-15-8.2, as amended by House Bill 1075 (1987), establishes a victim's right to be notified, by the warden of the institution housing the offender, of the offender's final release from prison, the inmate's escape from custody, and/or the inmate's placement on regularly scheduled furlough or work release. This notice is to be provided to any requesting victim by telephone or by first-class mail. Although notified, there is no mechanism for victim input into these decisions. A victim's written registration for this notification must be filed independently of the victim's registration with the Parole Board.

Other recently enacted legislation further expands the range of events for which victims are to be notified. House Bill 1074, signed by the Governor in February 1987, amends 23A-27 by requiring victim notification whenever a reduction in an offender's sentence is proposed. Under the provisions of this act, the state's attorney in the county where the offense was committed is to notify the victim at the victim's last known address. Upon request to the court, the victim may, at the court's discretion, address the court concerning the emotional, physical, and financial impact of the crime. The victim may also comment upon the proposed reduction in sentence. The defendant may rebut any inaccurate or false statements or charges.

## TENNESSEE

### Legislative Summary

Tennessee legislation establishes a multi-stage process by which certain crime victims receive advance notice of their right to attend public parole hearings.

While there is no explicit mention of victim participation or input at these public sessions, the Rules of the Tennessee Parole Board and the statutory language of pertinent codes state that the Board is to consider the observations and comments of any interested party. These provisions have been interpreted by paroling officials as authorizing the submission of oral and/or written victim impact statements for Board consideration.

Unlike provisions in other jurisdictions that may limit the applicability of victims' rights to specific offense categories, TENN. REV. STAT. ANN. 40-28-107 specifies that victim notification of release hearings is required only in those cases where the offender has been sentenced to a term of ten or more years in the penitentiary, regardless of the committing offense.

### Notification

Procedures for victim notification are enunciated in policy directives and in TENN. REV. STAT. ANN. 40-28-107. In total, a victim may receive three notices relative to parole release. The process is detailed below.

Approximately 4 to 5 months prior to the earliest parole release date, the Department of Corrections forwards the names of all eligible inmates to the Parole Board. Upon receipt of a certified list, the Board provides written notice of the inmate's eligibility to the following persons: the trial judge in whose court the conviction occurred, the district attorney who prosecuted the case, and sheriff of the county in which the crime was committed. The county sheriff, in turn, is legally responsible for notifying the victim, whenever possible, of the impending action. If a victim, on his or her own initiative, had previously contacted the Parole Board to

request notification of parole proceedings, a copy of this initial notice will also be sent directly to the victim from the Board. The notice is to (a) outline the victim's right to submit a written statement for Board review and (b) advise parties who wish to attend the hearing to contact the Board to request the date and location of such hearing.

Victims need not formally request this initial notice. The state presumes that all victims whose offenders are serving lengthy sentences (i.e., sentences of at least 10 years duration) either will want to be informed of impending release considerations or should be informed of these proceedings. The operationalization of such a presumption can be problematic. Because victims, at this time, are not required to register with paroling authorities nor are they required to keep the Board apprised of any residency change, the accuracy of an available mailing address may be questionable. Thus, victim receipt of the initial notice is operationally limited by the maintenance of an updated address file.

Once a victim has received this initial notice, the burden then shifts to the victim to respond accordingly. A victim who wishes to submit a written statement for Board review can simply mail such a statement to the Board's central office. As noted previously, a victim wishing to participate more actively in the parole process (i.e., by attending and/or testifying at the actual hearing) is advised to contact the Board directly to register this request.

At least 20 days in advance of the scheduled hearing, the Parole Board contacts all registered victims to provide notice of the precise time and location of the session. In the event that a victim's request for notification is received by the parole authority less than 20 days in advance of this hearing, the requesting victim is contacted by telephone.

Victims who request notification of the Board's final release decision are contacted a third time by parole personnel to relay this information.

## Participation

The pertinent statute, while establishing the victim's right to appear at a hearing, does not adequately address the issue of whether, or to what extent, a victim may actively participate at this forum. Parole Board directives are more explicit. It is the policy of the paroling authority to permit the presentation of oral statements by any interested party. Interlocutory opportunities are not reserved for victims nor is there any stated limitation on the number of persons who may testify at any one session.

Generally, oral statements are received at the public session which is conducted at the facility housing the offender. The presence of the inmate applicant during public testimony is at the discretion of the Parole Board but usually reflects the preference of the person testifying. If a victim is unable, for good reason, to attend the institutional hearing, a victim statement may be presented before a designated hearing officer at a mutually agreed upon location. In such a situation, a summary report would be prepared by the hearing officer for presentation to the full Board.

In-person statements are recorded and retained for internal agency use. The tapes are not transcribed nor are they otherwise included in an inmate's release file. However, an inmate or his attorney does have an opportunity to rebut any comments vocalized at the public meeting. Cross-examination is not permitted.

Departmental policy specifies that any written victim impact statements shall be disclosed "upon proper inquiry" unless the Board specifically finds that disclosure would create a serious safety risk to the person making such statement. The safety issue is determined on a case-by-case basis. Oftentimes, citizen statements are labeled confidential, even in the absence of a specific request for such action. In contrast, the statements of public officials are always deemed nonconfidential and, thus, subject to review.

### Other Proceedings

Victim notification of and participation at other postincarcerative proceedings is authorized by departmental policy. The operating manual of the Parole Board notes that the Board is to consider victim views prior to any Board action on an inmate's application for clemency. To this end, the Board notifies the victim of the impending action and of the victim's opportunity to submit an oral or written statement.

## TEXAS

### Legislative Summary

In Texas, any interested party may submit a written statement for inclusion in an offender's prerelease file. In addition, certain victims of offenders convicted on or after September 1, 1985, are accorded the right to request and receive advance notice of an offender's tentative release date.

Not all victims are statutorily entitled to notification provisions. TEXAS ANN. C. CRIM. PROC. Art. 56.01 defines an enfranchised victim as a victim of a sexual assault, kidnapping, or aggravated robbery, or, alternately, as a person who has suffered bodily injury or death as a result of the criminal conduct of another. Although victims not meeting these criteria have no legal claim to notification, the practice of the Board is to accommodate as many requesting victims as possible.

A legal guardian of a victim is entitled to all the rights accorded to a victim. If the victim is deceased, victim status can be conferred upon a person who was the spouse of the victim at the time of the victim's death or who is a parent or an adult sibling or child of the victim.

### Notification

A victim is first made aware of postsentence rights by the victim impact statement. This standardized form, designed by the Texas Adult Probation Commission, in conjunction with the Board of Pardons and Paroles, (1) provides a clear statement of applicable presentence and postsentence victims' rights; (2) records the financial, physical, psychological, and social impacts of the offense on the victim; (3) explicates the procedures by which a victim can obtain information pertaining to the offender's release from the custody of the Texas Department of Corrections (TDC); (4) indicates whether the victim wishes to be notified of parole proceedings; and (5) advises the victim that, if future notification is desired, he or she is responsible for keeping the Board of Pardons and Paroles apprised of any change in address.

By law, responsibility for providing a victim impact statement to the victim lies with the victim assistance coordinator or, if a coordinator has not been appointed in the county or judicial district in which the offense occurred, the prosecuting attorney. This same individual is to forward any completed statements to the court for judicial review prior to sentence imposition. The court, if it sentences the defendant to a term of imprisonment, attaches a copy of the victim impact statement to the commitment papers. TDC personnel, in turn, forward a copy of the document to the Board of Pardons and Paroles.

Before ruling on an inmate's application for parole, the Board completes a panel review of the inmate's case. If the panel recommends parole, a tentative release date is scheduled. All trial officials in the county in which the offender was sentenced are notified that the applicant's file has been reviewed and that, absent countervailing protest, the offender will be released on or about the scheduled date.

TEXAS ANN. C. CRIM. PROC. Art. 42.12 15(f) states that the Board is to make a "reasonable effort" to notify a requesting victim that such an application is being considered. In the absence of revised mailing information, this notice, which is similar to the notice given to county officials, is sent to the name and address listed on the victim impact statement. If the notice is delivered to a guardian or a close relative of a deceased victim, the notice is to include a request that the addressee inform other interested parties of the impending release consideration and of the opportunity to submit written statements for Board review.

Although the enabling statute does not specify a time frame for the delivery of this advance notice, the administrative rules of the Board dictate that such notification is to be provided at the same time as notice is given to county officials and at least 10 days prior to the tentative release date. In practice, the Board of Pardons and Paroles attempts to mail all notices (i.e., both to county officials and to requesting victims) 1 month in advance of the release date.

The Parole Board is not obligated to notify victims of the final release action (i.e., whether the written protests were sufficient to reverse the panel's original release decision). Rather, interested parties are directed to call the Board to learn of an offender's parole status. Nevertheless, written notification of this status will be sent upon specific victim request.

#### Participation

The panel review process in Texas is an informal mechanism by which three Board members independently consider an inmate's application for parole. One member conducts a personal interview with the applicant; the other two panelists perform desk reviews of the prerelease file. Before finalizing its release decision, however, the full Board will consider the written statements of any interested party. There are no restrictions on the number of persons who may submit statements for or against the offender's release nor are there any limitations on the substance of any commentary.

While oral statements are not prohibited, they are not a matter of legislated right and are infrequently permitted. Any interested party may request an appearance before the full Board of Pardons and Paroles. Approval of such a request is at the discretion of the Board.

Legislation permits disclosure to the offender of any victim impact statement submitted to and considered by the court prior to sentencing. In contrast, all information contained in the inmate's parole file is deemed to be confidential and privileged material. Presumably, this blanket confidentiality includes written statements submitted by interested parties without victim status. Accordingly, these documents are not subject to inmate review.

#### Other Proceedings

The victim is not entitled to notice of any other postsentence proceedings. An interested party may, however, contact the Board at any time to obtain current information on the inmate's release status.

## VIRGINIA

### Legislative Summary

Although provisions mandating the consideration of victim impact at parole have been introduced, no enabling legislation has thus far been codified. Despite the absence of explicit statutory authorization, the Virginia Parole Board, on its own initiative, has been actively encouraging victim participation for several years.

Since 1984, it has been the policy of the Board to provide advance notice of impending release actions to any person who requests such notification. Any interested party, irrespective of victim status or offense of conviction, may contribute to the decisionmaking process by submitting an oral or written statement for Board review.

### Notification

The Parole Board has devised a victim input form which has been forwarded to prosecutors, judges, and local victim assistance units for distribution to victims and other interested parties at the time of sentencing. This standardized form outlines the right to participate in the parole process and presents a checklist of postconviction release actions for which advance notice may be requested. These include: (1) the projected release date, (2) the inmate's mandatory release date, (3) the date of an inmate's parole consideration hearing, and (4) the date of an inmate's actual release on parole. The requestee is advised that future notices will be mailed to the address indicated on the form and that he or she is responsible for apprising the Board of any changes in residential status.

The victim registers his or her preferences by returning the completed form to the prosecutor or the victim assistance unit, or by mailing it directly to the paroling authority. Upon receipt of this form, parole personnel flag the inmate's institutional file to facilitate agency efforts to respond to all requests in a timely fashion.

As soon as the inmate has been classified by correctional authorities, the victim is notified of the earliest possible parole eligibility date and of the mandatory release

date should the inmate be denied parole. This communication also briefly outlines agency directives relative to parole operations and decisions.

Every three months, the Department of Corrections generates a listing of inmates who are eligible for release consideration during the upcoming quarter. This list is forwarded to the Parole Board approximately 2 weeks in advance of the quarter. A second notice is mailed to requesting victims at this time. This letter states that the inmate's parole interview has been scheduled and that the victim may provide oral or written input.

A third notice, delivered as soon as possible after the Board renders its decision, but before the actual date of release, advises the victim of the final release action.

#### Participation

Any person who wishes to express concerns about or opposition to an offender's application for parole can arrange to do so in writing, in person, or by telephone. Oral statements are generally received by a designated Board member at the agency's administrative offices in Richmond. Where the victim lives beyond a reasonable traveling distance from this location, the meeting may be scheduled at a local site. Victim interviews are not conducted at correctional facilities.

There are no restrictions on either the number of persons who may speak at this session or the content of the statements. This informal presentation is not recorded in any manner. The hearing officer does, however, prepare a summary report for dissemination among the remaining Board members.

Victim input, regardless of form, is never disclosed to the inmate. Because there is no mechanism for inmate rebuttal of submitted materials, Board policy is to attempt to verify any information that may be of determinative value in the release decision.

#### Other Proceedings

Offender furloughs fall within the jurisdiction of the Department of Corrections.

Correctional personnel are required to notify local officials (e.g., judge, prosecutor, sheriff) prior to an inmate's temporary release. There is no concomitant obligation to notify a victim of this action.

## WEST VIRGINIA

### Legislative Summary

The Victim Protection Act of 1984 (W. VA. CODE 61-11A-1 et seq.) mandates that an attempt be made to provide requesting victims with advance notice of the release of an offender from imprisonment. While there is no mention of victim participation at postconviction proceedings, the Board of Probation and Parole has, on its own initiative, instituted informal procedures for the acceptance of victim input prior to an offender's release on parole.

### Notification

In preparing a presentence report, the responsible officer is to (a) include a victim impact statement, (b) document the victim's request (or nonrequest) for notice of future proceedings affecting his or her case, and (c) advise the victim of the need to alert the Parole Board to any changes in residence. If the offender is sentenced to a term of imprisonment, and a presentence report was not prepared (or, if prepared, was deemed insufficient) the Board of Probation and Parole will conduct a postsentence investigation that includes the above cited items.

At least 10 days prior to an inmate's release hearing, written notice is mailed to the sentencing judge and the prosecuting attorney, inviting these officials to comment upon the propriety of granting parole to the identified applicant. Parallel preparole notices are mailed to requesting victims at the last known address approximately 90 days prior to the date of the inmate's interview. This standard letter informs the victim of the date of the scheduled hearing and of the victim's right to submit a written statement for Board review. The victim is not informed that, pursuant to the rules and regulations of the Board of Probation and Parole, (a) attendance at the institutional parole interview is an option or (b) a victim's request for a personal meeting with Board personnel will be accommodated.

Notification of any action taken by the Board relative to an inmate's release application will be mailed to requesting victims shortly after the decision has been rendered.

Legislation enacted in July 1986 (W. VA. CODE 62-12-13) eliminates the need for victims of sexual offenses to request Board notices. These victims are now automatically notified whenever there is an actual or proposed change in the confinement status of their offenders.

### Participation

Although victims are not routinely advised of the full range of participatory modes that are available preparole, victims may (1) submit written statements, (2) attend the actual release hearing, or (3) schedule a personal interview with a Board member at the Board's central offices.

The contents of written statements are unrestricted. By Board policy, these commentaries are deemed confidential and are not subject to disclosure.

West Virginia law provides any inmate, prior to release consideration, with the right to appear in person before the full Board. This right to a personal interview may be waived by the applicant.

Parole interviews are conducted at the facility housing the inmate applicant. Within spatial constraints, and at the discretion of the inmate applicant, these sessions are public forums at which any interested parties may be in attendance. Those present, including victims, have no right to allocution and may not speak except in reply to a question directed by a member of the hearing panel.

If a victim wishes to present an oral statement, an appointment can be scheduled with one or more Board members. With the consent of the victim, this presentation may be recorded and made available for review by other Board personnel. Under no circumstances would the existence or the substance of a victim's statement be revealed to an inmate.

Board personnel have expressed surprise at the apparent lack of victim interest in postconviction events. It has been estimated that only 25 percent of all victims request any Board notification, and that fewer than 1 percent of all victims participate in some manner. Survivors of first degree murder victims were identified as those who disproportionately become involved with Board decisionmaking.

#### Other Proceedings

Correctional authorities are under no legal obligation to notify a victim when an offender is granted a furlough or is released upon completion of a maximum sentence. At the present time, Parole Board personnel are forwarding advance written notice of an inmate's final correctional release to all requesting victims.

## WYOMING

### Legislative Summary

During 1987, several pieces of legislation affecting the nature and extent of victim participation in postconviction processes took effect in Wyoming. Together, these statutes outline notification procedures and provide the Parole Board with three potential sources of victim impact information for their review prior to any release decision.

WY. STAT. ANN. 7-13-302 (1987), amending 7-13-302 (1981), requires the inclusion, in a presentence report, of any victim statement as well as a summary of the impact of the offense on the victim. If the offender is sentenced to a term of imprisonment, a copy of this report is to be forwarded to the penal facility housing the inmate.

Where a determination of restitution is made at the time of sentencing, payment of the court ordered amount is to be included as a condition of parole unless the Parole Board waives some or all of the payment because such payment would work undue hardship on the offender or the offender's family. WY. STAT. ANN. 7-13-421 mandates that, prior to any such Board action, reasonable diligence is to be exercised in notifying the victim of the opportunity to be heard relative to this restitution waiver.

Due to the recency of this enactment, the practical applications of the mandate are unclear. Board personnel have reported that policies prohibiting victim attendance at the institutional parole hearing remain in effect. Whether a victim now has a statutory right to allocution before the panel has yet to be determined.

The third code of interest, WY. STAT. ANN. 7-13-402, as amended by Enrolled Act. No. 61 (1987), provides that no inmate is to be paroled until the Parole Board has made a reasonable effort to notify the victim and to provide an opportunity for the victim to submit written comments to the Board relative to the release application.

Prior to the passage of these three codes, a victim was not routinely notified of

an impending parole proceeding, the opportunity to submit written input at this juncture, or of the final Board action. Nevertheless, unsolicited written victim commentaries were accepted by Board personnel.

While the provisions of the above cited statutes appear to extend to victims of any crime, Parole Board personnel believe that the legislative intent was to limit statutory application to victims of violent crimes. Efforts at clarification are currently underway.

#### Notification

Correctional authorities advise the Parole Board of impending parole consideration hearings approximately 30 to 45 days prior to an inmate's parole eligibility date. As soon as possible after the receipt of this listing, the Board mails a form letter to all relevant crime victims. This letter informs the victim of the date of the scheduled session and of the victim's right to submit a written impact statement.

At the present time, there is no formal presentence mechanism by which victims are alerted to postconviction rights. Consequently, a victim may not be aware of participatory opportunities at parole until the Board's notice has been delivered. Because advance victim notification of parole proceedings is not contingent upon a victim's request for such notice, Board personnel have experienced some difficulties in locating victims within the 45 day time frame. In recognition of this dilemma, the Board is taking several measures to promote victim receipt of Board correspondence. First, where addresses are known to be out-of-date, the Board contacts local law enforcement and probation personnel for informational updates. Second, included within the preparole notice is an advisement that, in the event the inmate's initial application for release is denied, the victim is to keep the Board apprised of address changes. Furthermore, the Board hopes to work with the Department of Corrections to expand the notification time frame so that victim notice may be provided 3 to 4 months before any release session.

In the event that a victim is deceased or of minor status, notice is directed towards the victim's guardian or next of kin.

#### Participation

As noted previously, the victim is legally entitled to provide input for Board consideration in any of three fashions: (1) a victim impact statement in the presentence report, (2) a written statement submitted prior to the institutional hearing, and (3) an as-yet-undefined opportunity to be heard prior to a Board decision to waive an offender's court-ordered restitution obligation.

Parole hearings in Wyoming are not public forums and victims, by Board policy, may not be in attendance. To date, no victim has requested a personal appearance before the parole panel.

There are no restrictions on the content or format of written statements. These commentaries are deemed confidential. They are not disclosed to the inmate applicant, nor are copies sent to correctional authorities.

#### Other Proceedings

There is no existent legislation mandating victim notification of, or participation at, other postconviction proceedings.

APPENDIX I

SAMPLE VICTIM IMPACT STATEMENTS

Nine victim impact statements are reproduced in this appendix. The selection of these forms for presentation is in no way intended to be a reflection of the perceived quality or utility of these materials. Rather, these forms are provided simply as examples of the range of documents that are disseminated by criminal justice personnel for completion by victims or their designees. Individual forms were chosen for presentation because of characteristics that are representative of impact statements in general, or because they include atypical features. A discussion of some of these features follows.

In many respects, Form 1-1 is typical of the impact forms that were submitted for staff review. As was seen with the majority of victim impact statements, financial and physical losses are assessed first. The relevant questions tend to be structured, short answer items that elicit quantifiable and verifiable data such as length and cost of medical treatment; description and value of items lost, stolen, or destroyed; and the nature and extent of insurance compensation. These survey items are followed by others that invite subjective victim commentary on fear of reprisal, alterations in personal and/or family lifestyles, and more generalized social and psychological impacts. Less common but still prevalent is a question or set of questions that ask the victim to advance a sentence recommendation or to comment on conditions that may be imposed if the defendant receives a nonincarcerative term.

Forms 1-2 and 1-3 exemplify alternative formats for recording the impact of an offense upon its victim. The categorical variable design of Form 1-2 has both advantages and disadvantages. Because of its simplicity, the form can be completed quickly and with minimal difficulty by a victim. Furthermore, it allows the judge to quickly scan the sheet to arrive at an estimate of the number of physical, psychological, and social injuries incurred by the victim. The checklist format may, however, restrict the availability, for judicial review, of more detailed information on the nature and extent of these injuries. It is interesting to note that the section of the impact statement which delineates economic impacts is substantially more expansive. Space is provided for an enumeration of both direct and indirect losses and expenses.

Form 1-3 is completely open-ended. This format provides little guidance as to the range of injuries that may be included for judicial consideration. It does, however, permit maximum flexibility in the preparation of the statement. The victim can comment freely on those aspects of the victimization experience that he or she finds most traumatizing or intrusive.

The relative accentuation of subjective commentary in Forms 1-4 and 1-5 is atypical and serves as the basis for the inclusion of these sample forms. Form 1-4 is notable in that survey items eliciting subjective victim commentary on the social, emotional, and psychological effects of the crime precede and are allocated equal copy as the more objective descriptions of physical and financial harms. In striking contrast, there is no provision for subjective expression in Form 1-5. While physical and economic losses are recorded and documented, social and psychological harms are not referenced nor is the victim invited to comment upon the offense, the offender, or sentencing alternatives.

In large part, victim impact statements solicit the victim's opinion on sentencing. Typically, although given no information about statutorily permissible penalties, the victim is asked to comment generally as to the type of sentence that the victim would deem appropriate in his or her particular case. Less common is the impact statement that indicates the recommended or negotiated sentence and then asks the victim to respond specifically to the proposed term.

Forms 1-6, 1-7, and 1-8 represent three fairly unique approaches to this topical area. The first of these forms is utilized when a plea is offered in exchange for a negotiated sentence. It is unusual in that it focuses almost exclusively on the victim's reaction to a recommended sentence.

A recipient of Form 1-7 is not necessarily aware of the range of allowable sentences for the specific crime for which the defendant has been found or has pled guilty. Nevertheless, the victim is presented with a generalized listing of sentencing alternatives from which to select a preferred sentence. The provision of space for a categorical response suggests that the victim is not encouraged to offer more detailed information as to length of sentence nor is the victim encouraged to discuss why he or she feels that the designated sentence is warranted.

Of all the impact statements submitted, Form 1-8 provides the most detailed explanation of legislated sentencing alternatives. The victim is advised of the complete range of incarcerative and amerciable penalties, as well as deferred and suspended judgments, that may be imposed by the judge for the class of offense committed by the defendant. The victim is then given an opportunity to comment on what, in the victim's opinion, would constitute a fair sentence.

The final two impact forms have been included because of their employment with specific offense classifications. Form 1-9 has been designed for dissemination to victims of non-violent crimes. The bank of questions relating to financial losses is highly structured to maximize information necessary for an accurate determination of restitution. The victim is also given ample space in which to comment more generally about crime impacts and sentencing concerns. Form 1-10 is the business crime counterpart of Form 1-7. It recognizes that not all victims are individuals and alters the language of the impact statement questions accordingly.

VICTIM IMPACT STATEMENT

VICTIM - WITNESS ASSISTANCE UNIT  
OFFICE OF THE DISTRICT ATTORNEY, 22nd JUDICIAL DISTRICT  
103 N. Chestnut, P.O. Box 912, Cortez, CO 81321 (303) 565-1147

This form will be used by the District Attorney to express to the Court how this crime affected you, the victim. Please fill it out by \_\_\_\_\_ and return it to the Victim Witness Coordinator at the District Attorney's Office.

DEFENDANT \_\_\_\_\_ COUNTY COURT NO. \_\_\_\_\_  
SENTENCING DATE \_\_\_\_\_ DISTRICT COURT NO. \_\_\_\_\_  
VICTIM'S NAME \_\_\_\_\_ AGE \_\_\_\_\_  
VICTIM'S ADDRESS \_\_\_\_\_  
NAME AND RELATIONSHIP OF PERSON COMPLETING FORM \_\_\_\_\_  
\_\_\_\_\_  
DATE FORM COMPLETED \_\_\_\_\_ VICTIM'S PHONE NO. \_\_\_\_\_

1. Please describe the nature of the incident in which you were involved.  
\_\_\_\_\_  
\_\_\_\_\_
  
2. As a result of this incident, were you physically injured? If yes, please describe the nature and extent of your injuries.  
\_\_\_\_\_  
\_\_\_\_\_
  
3. Did you require medical treatment for your injuries? If yes, please describe the treatment received and the length of time treatment was or is required.  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Indicate the amount of expenses incurred to date as a results of the medical treatment received. \$ \_\_\_\_\_. Indicate the anticipated expenses you will have to pay for future medical treatment for injuries. \$ \_\_\_\_\_

5. Were you psychologically or emotionally injured as a result of this incident? If yes, please described the psychological impact the incident had on you.

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6. Have you received any counseling or therapy as a result of this incident? If yes, please describe the length of time you have been or will be undergoing counseling or therapy, and the type of treatment you have received.

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7. Indicate the amount of expenses incurred to date as a result of counseling or thereapy received. \$\_\_\_\_\_. Indicate the anticipated expenses you will have to pay for future counseling or therapy. \$\_\_\_\_\_

8. Please describe any property losses which you have incurred as a result of this offense. Your description should include the type of property which was damaged or stolen, the value of the property at the time of offense, and an indication of repair costs or estimates.

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9. Describe any other expenses or losses which you have incurred as a result of the offense, including loss of wages, transportation costs, child care costs, burial expenses and other costs directly related. Please attach copies of bills or statements.

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10. Have you incurred any other expenses or losses as a result of this incident? If yes, please describe.

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11. Has this incident affected your ability to earn a living? If yes, please describe your employment and specify how and to what extent your ability to earn a living has been affected, days lost from work, etc.

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12. Did insurance cover any of the expenses you have incurred as a result of this incident? If yes, please specify the amount and nature of any reimbursement.

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13. Was the defendant known to you before this incident occurred? If yes, please indicate your relationship to him/her.

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14. Do you fear reprisals from the defendant? If yes, please explain.

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15. Please describe what being a victim of crime has meant to you and your family.

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16. Has this incident in any way affected your life-style or your family's life-style? If yes, please explain.

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17. Do you feel your life was threatened by this crime? If yes, please explain.

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18. Please indicate your thoughts and feelings about the sentence which the Court should impose. Your description should include recommendations concerning imprisonment, suspension of sentence, probation, and any conditions such as requirements of alcohol, drugs or psychological treatment, community service or other restrictions on the defendant's freedom, which are appropriate for this offense.

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19. Are there any special conditions you would like the Court to impose on the defendant (such as no contact with you or your family, etc.)?

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20. ADDITIONAL COMMENTS:

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I declare and affirm that the foregoing statements are true and correct.

\_\_\_\_\_  
Victim

\_\_\_\_\_  
Signature of person completing form

RETURN TO:

## VICTIM'S IMPACT REPORT

1. Defendant \_\_\_\_\_ County and Case No. \_\_\_\_\_

2. Name of Victim \_\_\_\_\_

3. Bodily or Physical Injury                      Yes \_\_\_\_\_ No \_\_\_\_\_

Physical Impairment                              Yes \_\_\_\_\_ No \_\_\_\_\_

Physical Disfigurement                          Yes \_\_\_\_\_ No \_\_\_\_\_

Medical Treatment                                Yes \_\_\_\_\_ No \_\_\_\_\_

4. Comprehensive Assessment of temporary or permanent injury.

Describe:

5. Psychological Injury                            Yes \_\_\_\_\_ No \_\_\_\_\_

Mental    Yes \_\_\_\_\_ No \_\_\_\_\_

Emotional    Yes \_\_\_\_\_ No \_\_\_\_\_

Social     Yes \_\_\_\_\_ No \_\_\_\_\_

6. Psychological treatment required        Yes \_\_\_\_\_ No \_\_\_\_\_

7. Monetary loss or expenses incurred Yes \_\_\_\_\_ No \_\_\_\_\_
- Burial, Memorial or funeral \$ \_\_\_\_\_
  - Bereavement \$ \_\_\_\_\_
  - Hospital \$ \_\_\_\_\_
  - Doctor \$ \_\_\_\_\_
  - Drugs \$ \_\_\_\_\_
  - Psychiatrist \$ \_\_\_\_\_
  - Psychologist \$ \_\_\_\_\_
  - Counseling \$ \_\_\_\_\_
  - Rehabilitation \$ \_\_\_\_\_
  - Property \$ \_\_\_\_\_
  - Wages and income \$ \_\_\_\_\_
  - Lost contracts \$ \_\_\_\_\_
  - Judicial proceedings \$ \_\_\_\_\_
  - legal fees \$ \_\_\_\_\_
  - other \$ \_\_\_\_\_
8. Total Loss claimed by victim \$ \_\_\_\_\_

9. Compensation awarded by Alabama Crime Victim's Act  
 P.O. Box 1283, 114 North Hull Street, Montgomery, AL 36104  
 Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \$ \_\_\_\_\_

10. Change in victim's lifestyle Yes \_\_\_\_\_ No \_\_\_\_\_

Describe:

11. Victim's opinion of appropriate punishment

12. Victim's Impact Statement

Signed and dated \_\_\_\_\_

\_\_\_\_\_  
Victim's Signature





# VICTIM/WITNESS IMPACT STATEMENT

## GENESEE COUNTY PROSECUTING ATTORNEY'S OFFICE

This statement is an opportunity to insure your input is a part of the sentencing process. The purpose of filling out this statement is to allow the sentencing judge to know and understand what has happened to you and how it has affected you and your family. We request your voluntary cooperation in completing this form and returning it to us.

Sentencing Judge \_\_\_\_\_ Docket # \_\_\_\_\_

People Versus \_\_\_\_\_

Name of Victim \_\_\_\_\_

Present Address \_\_\_\_\_ Zip \_\_\_\_\_

Permanent Address \_\_\_\_\_ Zip \_\_\_\_\_

Telephone - Home \_\_\_\_\_ Work \_\_\_\_\_

Date of Birth \_\_\_\_\_

1a. Has this incident in any way affected your lifestyle or the lifestyle of your family members?

YES ( ) NO ( )

b. If YES, please explain \_\_\_\_\_

\_\_\_\_\_

2. Are there any other aftereffects of this incident which are being experienced by you or members of your family?

YES ( ) NO ( )

If YES, please explain \_\_\_\_\_

\_\_\_\_\_

3a. Are you related to the offender?

YES ( ) NO ( )

If YES, what is the relationship? \_\_\_\_\_

b. Do you fear retaliation from the offender? \_\_\_\_\_

\_\_\_\_\_

4. Describe what being the victim of crime has meant to you and to your family members.

\_\_\_\_\_

\_\_\_\_\_

5. What are your feelings about the criminal justice system? Have they changed as a result of this incident? Please explain.

\_\_\_\_\_

\_\_\_\_\_

6. As a result of this incident, were you physically injured? YES ( ) NO ( )

If YES, have you been under the care of a physician? YES ( ) NO ( )

If YES, the name of the physician? \_\_\_\_\_

and describe the treatment received, the medical facility used (if any), and the length of time treatment is required or anticipated to be required?

\_\_\_\_\_  
\_\_\_\_\_

If YES, amount of expenses incurred to date as a result of medical treatment received?

\$ \_\_\_\_\_ Any anticipated expenses? \$ \_\_\_\_\_

7. Were you psychologically injured as a result of this incident? YES ( ) NO ( )

If YES, have you received any counseling or therapy? YES ( ) NO ( )

If YES, describe the length of time you have been or will be undergoing therapy or counseling, the facility used, the counselor's name, and the type of treatment received. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

If YES, amount of expenses incurred to date as a result of counseling or therapy received?

\$ \_\_\_\_\_ Any anticipated expenses? \$ \_\_\_\_\_

8. Was any property damaged or lost as a result of the incident? YES ( ) NO ( )

If YES, include the value of that property and attach copies of bills or estimate statements of repair and replacement costs.

\_\_\_\_\_  
\_\_\_\_\_

9. Have you incurred any other expenses or losses (including lost wages) as a result of this incident?

YES ( ) NO ( )

If YES, attach any bills or statements already received.

10. Have you applied to agencies, companies, or insurance carriers for the recovery of any losses?

YES ( ) NO ( )

If YES, attach any bills or statements already received.

Do you have any thoughts or suggestions regarding the sentence which the Court should impose? Explain, indicating whether you favor imprisonment. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

Note: You may add to this statement at any time you wish; just notify the Witness/Victim Advocate. At the time of sentencing, please give us any remaining bills/statements pertaining to the incident. Feel free to add additional thoughts on a separate sheet of paper.

FORM I-4 (con't)

The information and thoughts you have provided here are very much appreciated.

Prosecutor File # \_\_\_\_\_  
Defendant Name: \_\_\_\_\_

I. MONEY LOSS DUE TO MEDICAL INJURY:

List the injuries you sustained:

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---

---

Where were you treated?

Clinic/Hospital: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Are you still receiving treatment?

\_\_\_\_\_ yes \_\_\_\_\_ no

Describe the nature of your continuing treatment.

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Where are you receiving treatment?

Clinic/Hospital: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

How long is treatment expected to continue?

---

What is the total of your medical bills, (i.e. rescue unit, physician, clinic/hospital, medication, etc.) at the present time?

---

NOTE: If you have any bills, receipts, and/or estimates, please send copies of them to my office. I can photocopy and return to you any originals that you indicate you need back.

Prosecutor File # \_\_\_\_\_  
Defendant Name: \_\_\_\_\_

II. PHYSICAL LOSS DUE TO PROPERTY DAMAGE OR THEFT (House, Car,  
Clothing, etc.):

Item/Items Damaged:	Cost when purchased	Cost of repair	Cost to replace	Age of item
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

As a result of the losses listed above,

( ) I have not received any repayment, or replacement, from the person mentioned above, or my insurance company.

( ) I have received \$ \_\_\_\_\_ from \_\_\_\_\_  
(person or insurance company)

( ) I have insurance, and have contacted my insurance company, which is \_\_\_\_\_, my agent's name is \_\_\_\_\_  
\_\_\_\_\_. I have submitted a claim for \$ \_\_\_\_\_

( ) I did not suffer any losses for which I would expect repayment.

I hereby declare that the foregoing is true and correct.

Signature: \_\_\_\_\_ Date \_\_\_\_\_

Please print:

Name \_\_\_\_\_ Address \_\_\_\_\_

Phone \_\_\_\_\_

- \* Please return as soon as possible.
- \* Please sign letter.
- \* Please return complete letter.

VICTIM STATEMENT

STATE OF INDIANA

CAUSE NO.: \_\_\_\_\_

COURT: \_\_\_\_\_

VS.: \_\_\_\_\_

CRIME: \_\_\_\_\_

VICTIM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

(1) I have been informed that the Prosecuting Attorney and the Defense Attorney have entered into discussion concerning a sentencing recommendation.

(2) The contents of that recommendation are that the defendant will enter a plea of guilty to the crime of:

\_\_\_\_\_

\_\_\_\_\_

and that the recommended sentence will be: \_\_\_\_\_

\_\_\_\_\_

(3) I understand that the Court will receive a Pre-Sentence report and that I have a right to be present at the sentencing hearing.

( ) A. I do not wish to attend the sentencing hearing.

( ) B. I wish to be present at the sentencing hearing and would like notice of the time of the sentencing hearing.

(4) As a victim of the above crime, I offer the following opinion of the sentencing recommendation:

( ) I have no objections to the sentencing recommendations.

( ) I object to the recommendation for the following reasons:

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
DATE

VICTIM/WITNESS PROGRAM  
STATE ATTORNEY  
FOURTH JUDICIAL CIRCUIT OF FLORIDA  
517 DUVAL COUNTY COURTHOUSE  
JACKSONVILLE, FLORIDA 32202

Telephone: 633-3126  
633-4619

ED AUSTIN, STATE ATTORNEY

Felony Division  
*(Individual)*

VICTIM IMPACT STATEMENT

\*\*\*\*\*

This questionnaire is in reference to the following case:

State of Florida vs. \_\_\_\_\_ SA# \_\_\_\_\_  
Date of Crime \_\_\_\_\_ CCR# \_\_\_\_\_

Please return this form in the self-addressed, stamped envelope within 5 days.

\*\*\*\*\*

Name \_\_\_\_\_ Age \_\_\_\_\_ Phone Hm \_\_\_\_\_ /Wk \_\_\_\_\_  
Home Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_  
Business Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_  
Occupation \_\_\_\_\_

\* \* \* \*

How has this crime affected you or your family personally and what hardships have you had as a result of the crime? (physical injury, emotional stress, financial difficulties) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I. INJURIES

1. Were you physically injured as a result of this crime? Yes \_\_\_\_\_ No \_\_\_\_\_
2. Did you receive medical treatment? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, please give name and address of doctor and/or hospital providing treatment. \_\_\_\_\_
3. Briefly explain the nature of your injury and treatment, if any. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Do you have insurance? Yes \_\_\_\_\_ No \_\_\_\_\_  
Name of insurance company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_
5. Did you file a claim for this injury? Yes \_\_\_\_\_ No \_\_\_\_\_  
Claim number \_\_\_\_\_ Amount of claim \_\_\_\_\_  
Reimbursement: Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \_\_\_\_\_
6. If you did not file a claim, why not? \_\_\_\_\_  
\_\_\_\_\_
7. Crimes Compensation is a state program to assist eligible crime victims with medical and/or funeral expenses. Would you like additional information about this program? Yes \_\_\_\_\_ No \_\_\_\_\_

II. PROPERTY

1. Was any of your property taken or damaged as a result of this crime?  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Is your property in the custody of the Sheriff's Department?  
Yes \_\_\_\_\_ No \_\_\_\_\_

3. List property that was not recovered (use additional paper if necessary)

<u>ITEM</u>	<u>PURCHASE PRICE</u>	<u>LENGTH OF OWNERSHIP</u>	<u>CONDITION PRIOR TO OFFENSE</u>

4. Briefly explain any damage to your property: \_\_\_\_\_

5. Do you have insurance? Yes \_\_\_\_\_ No \_\_\_\_\_  
Name of insurance company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

6. Did you file a claim as a result of this crime? Yes \_\_\_\_\_ No \_\_\_\_\_  
Claim number \_\_\_\_\_ Amount of claim \_\_\_\_\_  
Reimbursement: Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \_\_\_\_\_

7. If you did not file a claim, why not? \_\_\_\_\_

III. RECOMMENDATIONS

I would recommend the defendant receive the following:

- |  |                                  |
|--|----------------------------------|
| _____ Maximum Prison Sentence                      | _____ Probation with Restitution |
| _____ Prison Sentence                              | _____ Probation                  |
| _____ County Jail Sentence<br>(less than one year) | _____ No Recommendations         |
|  | _____ Other _____                |

IV. Victim Witness Services can assist you with the following:  
Please check assistance needed or call us at 633-3126.

- |                              |                            |
|------------------------------|----------------------------|
| Crimes Compensation _____    | Property Return _____      |
| Court Case Information _____ | Home Security Survey _____ |
| Supportive Counseling _____  | Court Transportation _____ |

Signature \_\_\_\_\_ Date \_\_\_\_\_

NOTE: It is very important that you keep this office advised of any changes in your address.

\_\_\_\_\_  
For Office Use Only:  
A.S.A. \_\_\_\_\_  
Div. \_\_\_\_\_  
Victim Advocate \_\_\_\_\_

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

THE STATE OF IOWA, )  
Plaintiff ) No. \_\_\_\_\_  
vs. ) VICTIM IMPACT STATEMENT  
)  
)  
\_\_\_\_\_, )  
Defendant )

Instructions to the victim: This victim impact information is being collected to provide the sentencing judge in this matter with knowledge about the impact of this crime on your life. Please print or type your answers. Feel free to elaborate on another sheet of paper and attach it if you need to.

If you suffered any physical injuries as a result of this crime, describe them and any long-term or permanent effect they have had:

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Any economic losses you may have suffered have been submitted to the court in the form of a Statement of Pecuniary Damages. Please explain the practical and emotional consequences of these losses:

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Describe any changes in your personal welfare, familial relationships, or lifestyle that have occurred as a result of this crime:

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---

What kind of counseling or other psychological services have you or any member of your family or household sought because of this crime?

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(over)

What else would you like the judge to know about the impact of this crime?

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The category under which this crime is classified has been marked on the table below. Please note it and read the explanation beneath the table before answering the next question.

CRIME	MAXIMUM SENTENCE
Class A Felony	Up to life in prison
Class B Felony	Up to 25 years in prison
Class C Felony	Up to 10 years, and/or \$10,000 fine
Class D Felony	Up to 5 years, and/or \$ 7,500
Aggravated Misdemeanor	Up to 2 years, and/or \$ 5,000
Serious Misdemeanor	Up to 1 year, and/or \$ 1,000
Simple Misdemeanor	Up to 30 days, and/or \$ 100

A defendant may also receive a suspended sentence, which consists of a period of probation during which he or she must report to the Department of Corrections. Another possible sentence is a deferred judgement, which can be given to first time offenders or under other special circumstances. A deferred judgement consists of a period of probation at the end of which the offense is removed from the defendant's criminal record. It cannot be given to anyone found guilty of a forcible felony. The sentencing judge has the discretion to impose any sentence within the confines of the law. He or she may take into consideration the recommendations of the county attorney and the presentence investigator, as well as the opinions of the victim, the defendant, and the defense attorney, but is not bound by them.

What are your thoughts about what kind of sentence you would consider fair for the defendant to receive?

---

---

\*\*\*\*\*

CHECK ONE

I understand that the above comments will be entered in the court file as a matter of public record.

I do not wish these comments to be made a matter of public record, if possible. I understand that if my comments can be submitted as part of the pre-sentence investigation they will be read only by the judge, the defendant, the defense attorney, the pre-sentence investigator, the victim witness coordinator and the county attorney.

---

Date Signature

VICTIM IMPACT STATEMENT

VICTIM-WITNESS UNIT, OFFICE OF THE DISTRICT ATTORNEY, EIGHTEENTH JUDICIAL DISTRICT  
 2100 West Littleton Boulevard, Littleton CO 80120 (303) 794-1415

We are investigating an offense in which you are named as a victim. To assist the Court in sentencing, we request your cooperation in completing this form and returning it by in the enclosed envelope. PLEASE BE ACCURATE, COMPLETE and ATTACH ALL SUPPORTING DOCUMENTATION or VERIFICATION. Please attach additional sheets if necessary. FAILURE TO RETURN THIS FORM BY THE ABOVE DATE MAY RESULT IN THE WAIVER OF YOUR RIGHTS TO RESTITUTION.

DEFENDANT'S NAME:  
 SENTENCING DATE:

CASE NUMBER  
 DIVISION

1. PROPERTY LOSS

Description	Recovered Yes / No	Purchase Price	Purchase Date	Current Value or Fair Market Value

2. PROPERTY DAMAGE

Description	Repaired Yes / No	Replaced Yes / No	Repair Cost or Estimate (Attach Receipt or Estimate)

3. BAD CHECKS / CREDIT CARDS

Check Number, Bank Name: Invoice Number, Store Name	Transaction Date	Amount

4. OTHER LOSSES NOT LISTED ABOVE (Including Embezzlement)

Description	Amount

5. INSURANCE INFORMATION

Amount of Loss Covered By Insurance \$	Name of Insurance Company
Amount of Deductible \$	
Agent's Name Telephone	
	Address
	Policy Number Claim Number

I DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.

FORM I-9

Signature

Date

VICTIM IMPACT STATEMENT

PLEASE MAKE ANY STATEMENTS YOU DESIRE CONCERNING THE IMPACT THIS OFFENSE HAS HAD ON YOU.

PLEASE PROVIDE ANY FURTHER INFORMATION OR COMMENTS YOU WOULD LIKE THE COURT TO CONSIDER WHEN IMPOSING SENTENCE IN THIS CASE.

DO YOU PLAN TO ATTEND SENTENCING? \_\_\_\_\_ YES \_\_\_\_\_ NO

---

SIGNATURE

DATE

PLEASE COMPLETE BOTH SIDES OF THIS FORM

VICTIM/WITNESS PROGRAM  
STATE ATTORNEY  
FOURTH JUDICIAL CIRCUIT OF FLORIDA  
517 DUVAL COUNTY COURTHOUSE  
JACKSONVILLE, FLORIDA 32202

ED AUSTIN, STATE ATTORNEY

Telephone: 633-3126  
633-4619

Felony Division

BUSINESS  
VICTIM IMPACT STATEMENT

\*\*\*\*\*

This questionnaire is in reference to the following case:

State of Florida vs. \_\_\_\_\_ SA# \_\_\_\_\_  
Co-Defendant \_\_\_\_\_ SA# \_\_\_\_\_  
DOC \_\_\_\_\_ Offense \_\_\_\_\_ CCR# \_\_\_\_\_

Please return this form in the self-addressed, stamped envelope within 5 days.

\*\*\*\*\*

Business

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_  
Owner/Manager \_\_\_\_\_

\* \* \* \*

How has this crime affected your business or employees and what hardships have you had as a result of the crime? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I. INJURIES

1. Were any of your employees injured as a result of this crime?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
Names \_\_\_\_\_
2. Did they receive medical treatment? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, please give name and address of doctor and/or hospital providing treatment. \_\_\_\_\_
3. Briefly explain the nature of their injury and treatment, if any. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Will insurance or workmen's compensation cover injuries or loss of wages incurred as a result of the crime? Yes \_\_\_\_\_ No \_\_\_\_\_  
Name of insurance company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_
5. Did you file a claim for this injury? Yes \_\_\_\_\_ No \_\_\_\_\_  
Claim number \_\_\_\_\_ Amount of claim \_\_\_\_\_  
Reimbursement: Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \_\_\_\_\_
6. If you did not file a claim, why not? \_\_\_\_\_  
\_\_\_\_\_
7. Crimes Compensation is a state program to assist eligible crime victims with medical and/or funeral expenses. Would you like additional information about this program for your employees? Yes \_\_\_\_\_ No \_\_\_\_\_

II. PROPERTY

- 1. Was any of your property taken or damaged as a result of this crime?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- 2. Is your property in the custody of the Sheriff's Department?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- 3. List property that was not recovered (use additional paper if necessary)

<u>ITEM</u>	<u>PURCHASE PRICE</u>	<u>LENGTH OF OWNERSHIP</u>	<u>CONDITION PRIOR TO OFFENSE</u>

- 4. Briefly explain any damage to your business: \_\_\_\_\_  
\_\_\_\_\_
- 5. Do you have insurance? Yes \_\_\_\_\_ No \_\_\_\_\_  
Name of insurance company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
- 6. Did you file a claim as a result of this crime? Yes \_\_\_\_\_ No \_\_\_\_\_  
Claim number \_\_\_\_\_ Amount of claim \_\_\_\_\_  
Reimbursement: Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \_\_\_\_\_
- 7. If you did not file a claim, why not? \_\_\_\_\_  
\_\_\_\_\_

III. RECOMMENDATIONS

I would recommend the defendant receive the following:

- |  |                                  |
|--|----------------------------------|
| _____ Maximum Prison Sentence                      | _____ Probation with Restitution |
| _____ Prison Sentence                              | _____ Probation                  |
| _____ County Jail Sentence<br>(less than one year) | _____ No Recommendations         |
|  | _____ Other _____                |

IV. Victim Witness Services can assist you with the following:  
Please check assistance needed or call us at 633-3126.

- |                              |                                |
|------------------------------|--------------------------------|
| Crimes Compensation _____    | Property Return _____          |
| Court Case Information _____ | Business Security Survey _____ |
| Supportive Counseling _____  | Court Transportation _____     |

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

NOTE: It is very important that you keep this office advised of any changes in your business address

For Office Use Only:  
A.S.A. \_\_\_\_\_  
Div. \_\_\_\_\_  
Victim Advocate \_\_\_\_\_