

Chapter 6: Victim Witness

Appendices and Training Memos

Training Memo: Victim Impact Statements

Purpose of Victim Impact Statements

A victim impact statement serves two primary functions. First, it ensures that the judge will have the ability to factor in the victim's perspective when determining the most appropriate sentence for the offender. Occasionally a powerful victim impact statement can influence the disposition and duration of the sentence. Secondly, impact statements may help victims seek emotional closure by describing the psychological and physical effects of the crime on their bodies and their lives. Even if victim impact statements do not directly affect the sentence, they play a valuable role in sentencing by giving victims a voice in a process that otherwise provides very little opportunity for them to articulate their thoughts and feelings to the defendant and the judge.

Victim impact statements can also help the judge determine what if any treatment or counseling programs might be appropriate for a defendant, put a human face on the often impersonal nature of the proceedings, and promote public confidence in the judicial process.

Prosecutors and advocates should talk with victims about what a victim impact statement is and the procedure through which it is presented to the court. Equally important, they should engage the victim in a realistic discussion of what "impact" the statement is likely to have on a proposed sentence, especially in those situations where the victim is in disagreement with the negotiation. It is critical to explore with the victims what they hope will be accomplished by providing the statement and help them think through whether the victim impact statement is the most appropriate and helpful avenue for meeting those goals. Finally, identifying what if any fears a victim has about delivering the statement will provide the opportunity to create a plan that accounts for those fears.

Victim Impact Statements and Minnesota Law¹

Under Minn. Stat. § 611A.038 (a), the State of Minnesota guarantees the right of a crime victim to give an impact statement as follows:

[A] victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing. The impact statement may be presented to the court orally or in writing, at the victim's option. If the victim so requests, the prosecutor must orally present the statement to the court. Statements may include the following, subject to reasonable limitations as to time and length:

- (1) a summary of the harm or trauma suffered by the victim as a result of the crime;
- (2) a summary of the economic loss or damage suffered by the victim as a result of the crime; and
- (3) a victim's reaction to the proposed sentence or disposition.

¹ States other than Minnesota have statutes similar to those cited here. For a more complete study of victim impact statements in Minnesota, see Mary L. Schuster & Amy Proppen, 2006 WATCH Victim Impact Statement Study, <http://www.mincava.umn.edu/documents/victimimpact/watchreport.pdf>

How is an Impact Statement Provided to the Court?

- After a defendant is found guilty or pleads guilty, the judge will schedule a sentencing hearing.
- A probation officer will be assigned to conduct a pre-sentence investigation (PSI) report and will provide the judge with this report for the sentencing hearing.
- In the PSI, the probation officer will gather all information available from the offender, the victim, and other sources, and make a sentencing recommendation.
- The victim may discuss the impact of this crime with the probation officer, with the support of an advocate or another person if she wishes.
- The victim has a right to write an impact statement and mail it to the assigned probation officer prior to the sentencing hearing.
- The victim has a right to make an oral statement before the court at the sentencing hearing. If the victim does not want to make an oral statement, someone can make a statement on her/his behalf. This is often done by an advocate, or sometimes a friend or family member.
- During the sentencing hearing, the judge will ask if the victim has decided to write or read a statement. It may be helpful for the victim to have an advocate or other support person with her/him in court.
- As required by law, the prosecutor must present the statement to the court if the victim so requests.

What Should Be Included in a Victim Impact Statement?

No professional or universal guidelines exist on how judges should handle victim impact statements or precisely what should be included in the statement. There is however, general agreement on some of the elements of an effective victim impact statement.

The statement should provide information for the judge that helps in understanding the victim's circumstances in order to assess the impact the offender's actions have had on the victim.

Some of the factors that a victim might write about include:

- Physical consequences of the crime
 - Does the victim have temporary or permanent injuries?
 - Has the physical impact of the crime affected the victim's day-to-day activities?
- Emotional impact of the crime on the victim
 - Has the victim had difficulty sleeping since the crime or experienced significant emotional trauma?
 - Has the victim sought counseling to help with the emotional aftermath of the crime?
- Financial impact
 - Was the victim dependent upon the defendant for housing, food, or basic needs?
 - Did the defendant control the victim financially?
 - Has the victim lost employment as a result of the crime?
 - Did the victim sustain injuries that require medical care, especially if not reimbursed by insurance?

- History of abuse with the offender
 - Is there a pattern of intimidation, coercion, and manipulation of the victim by the defendant?
 - What sort of incidents in the past are related to the current crime?
- Information about the victim
 - Has the victim changed routines or stopped doing things she/he enjoyed as a result of the crime?
 - Did the victim have to move, drop out of school, change jobs or make other major changes?
 - Does the victim have children? If so, were they present during the incident? How have they been affected?
- Sentencing recommendations
 - Does the victim think the defendant could benefit from substance abuse or mental health treatment?
 - Does the victim believe that incarceration is warranted?
 - Does the victim have feedback about any other element of a proposed sentence?

How to Prepare a Victim with a Victim Impact Statement

The following suggestions can help an advocate or prosecutor work with the victim in creating the impact statement:

- Be aware that the victim may be afraid of the process or intimidated by the prospect of having to speak in the courtroom. Talk with the victim about her/his fear or distrust of the system and explore what the victim expects to gain from the process of writing and/or reading an impact statement.
- Emphasize that providing the victim impact statement is a victim's right, but that it is not required.
- Offer to assist in the writing of the statement if the victim is uncomfortable writing, but be sure to emphasize that the content of the statement is what matters, not punctuation or spelling.
- In exploring the victim's goals for the impact statement, reinforce the idea that the statement is not intended to elicit an explanation or apology for the offense from the defendant. Help the victim focus attention on what information she wants made available to the *judge*.
- Be knowledgeable about any unresolved areas of the proposed sentence where the victim impact statement might be more likely to sway a judge's decision. Talk with the victim about this, but don't make promises about what the judge will do.
- Be clear with the victim that an impact statement rarely changes the elements of a negotiated plea agreement.
- Talk with the victim about the manner in which she/he wants the statement presented. The victim may choose to:
 - Read the statement at sentencing
 - Have the statement read at sentencing by another person, e.g., an advocate, friend, or family member or the prosecutor
- Be willing to read the statement aloud if the victim so requests.

- Be flexible in case the victim changes her/his mind at the last minute.
- If possible, submit the statement in advance of the sentencing hearing to give the judge time to read and react to it.
- Prepare the victim for what the courtroom is going to look like and what will happen in the sentencing hearing. Offer a tour of the courtroom.
- If the victim chooses to read the statement, prepare her/him for talking in open court. Be sure the victim knows that the courtroom is open to the public and that other people, possibly including the defendant's friends or family members, may be present.
- Encourage the victim to address the judge. If the victim is afraid or intimidated, encourage her/him not to look at the defendant.
- Recognize that the victim impact statement belongs to the victim and refrain from criticizing or discouraging her/him from including information or ideas the prosecution might disagree with. Be prepared for the possibility that the victim may recant, ask for a no-contact order to be lifted, or request mercy for the defendant.
- If the prosecution is requesting the imposition of a no-contact order over the objection of the victim, the advocate should help the victim explore how a no-contact order would enhance or undermine her/his safety, and then articulate this in the victim impact statement. Be sure that the victim understands that the judge will make the final decision.

Training Memo: Responding to Persons with Disabilities

Adapted from *First Response to Victims of Crimes Who Have a Disability*, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 2002

The following are general guidelines for responding to people with disabilities:

1. Do not describe the person by his or her impairment. Say, “person with a disability” rather than “disabled person.” Similarly, saying, “the victim has schizophrenia” rather than “the victim is schizophrenic” or “the victim is mentally ill” demonstrates an understanding that the disability is something the person *has*, not something the person *is*.
2. Ask how the person wants to be characterized and how to communicate with him or her most effectively. The presence of family members or others with knowledge of the disability may be helpful in helping the officer communicate appropriately, but be mindful that family members or service providers could be the offenders.
3. Avoid expressions of pity by using phrases such as “suffering from” a disability.
4. Be aware that some disabilities might not be immediately obvious to officers. Unusual behaviors, speech patterns, inappropriate emotional responses or lack of responsiveness to officers’ questions and directives could be an indication of a disability.
5. Speak directly to the person with a disability, even if they are accompanied by another person.
6. Be aware that people who are Deaf do not necessarily regard themselves as having a disability, but rather as a cultural group with a specific identity, language (American Sign Language, or ASL) and culture. Understand that the individual who is Deaf may or may not be fluent in ASL and may or not be proficient in reading or writing English. Be prepared to use a range of techniques to ensure that the officer is able to communicate effectively, including the use of visual aids or gestures, written communication, or ASL interpreters.
7. In general, speak slowly and clearly, not necessarily loudly. Remain calm, even if the individual is agitated. Limit distractions in the room if possible.
8. Document the person’s disability in your report, including their individualized communication, transportation, medication, or other accommodation needs.
9. If the person to be arrested is a caregiver of the victim or another person with a disability in the residence, ask who can be called to arrange for that person’s continued care. Do not leave the scene until arrangements are made.
10. Never assume that victims of crimes with disabilities suffer less physical, emotional, or psychological trauma than other victims.

For more information about law enforcement response to persons with disabilities, see the following resources:

First Response to Victims of Crimes Who Have a Disability, U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 2002

<http://www.ojp.usdoj.gov/ovc/publications/infores/vicdis.htm>

Americans with Disabilities Act, Information for Law Enforcement, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 2006

<http://www.ada.gov/policeinfo.htm>

Training Memo: Victim/Witness Advocacy in Domestic Violence Cases

This training memo is in development.