

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 23: Minnesota Crime Victim Rights and Services

May 7 and 8, 2015: Lolita Ulloa of the Hennepin County Attorney's Office and Sharon Haas of the Council on Crime and Justice.

Featured Speakers' Topics

For this training session, we cover how Minnesota law protects crime victims and identify the various services that are available to persons who have suffered as a result of a criminal act.

Protecting Crime Victims in Minnesota

1. A Historical Perspective on the Crime Victims' Rights "Movement" Nationally

"Victims' rights" are the legal rights afforded to victims of crime. These include the right to restitution or reparations, the right to access criminal justice proceedings, and the right to safety following a crime.

In general, the Crime Victims' Rights Movement has worked to give victims a more meaningful role in criminal proceedings. The modern push to protect crime victims began in the 1970s partially in response to the 1973 U.S. Supreme Court ruling in *Linda R.S. v. Richard D.* (410 U.S. 614). In *Linda R.S.*, the plaintiff (the mother of an out-of-wedlock child) sought to compel the local county attorney to criminally prosecute the child's father for failure to pay child support. In considering the matter, the lower Texas court ruled that the unmarried mother didn't have legal standing (e.g. a right to assert a legal claim of some type) to prevent the prosecutors' office from discriminately non-applying the state child support statute. The Supreme Court upheld the Texas court's opinion, stating that a crime victim could not compel a criminal prosecution because "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." This ruling raised the ire of many victim rights advocates and served as a high-water mark in the then-prevailing view that crime victims had "no formal legal status beyond that of a witness or piece of evidence."

If the *Linda R.S.* decision was a clear representation of the problem of victim exclusion, it also hinted at a solution to the problem. The Court stated that Congress could "enact statutes creating victims' rights, the invasion of which creates standing, even though no injury would exist without the statute." With this statement, the Court provided a legal foundation for victims' rights legislation.

Along with this legal development, there was a concurrent growth in social consciousness about victims' rights. This was due, in part, to a nexus between disparate, but powerful, social movements. The "law and order" movement, the Civil Rights movement, and the feminist movement all challenged the criminal justice system to think more comprehensively about the role of the victim in criminal proceedings. Supporters of these causes helped form the

grassroots foundation of the modern Victims' Rights Movement, providing educational resources and legal assistance to victims and establishing the country's first crime victim hotlines and shelters.

In 1982, President Ronald Reagan's Task Force on Victims of Crime released its final report which detailed the concerns of victims' rights advocates, detailing that "the innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds - personal, emotional, financial - have gone unattended." The report contained 68 recommendations for service providers and government officials, many of which today are mandated through victims' rights legislation.

In the decades that followed, proponents of victims' rights experienced substantial legislative success. Today, the Crime Victims' Rights Movement continues to promote legislation that guarantees substantive rights for victims, and provides the procedural mechanisms to effectively enforce those rights. Victims' rights organizations also do ground-level advocacy, providing individual victims with legal guidance and support, and educate future legal professionals on issues related to victims' rights.

As of today, thirty-three states have amended their constitutions to address victims' rights, and all states have passed victims' rights legislation. In 1982, Congress passed the first piece of federal crime victims' rights legislation, the Victim and Witness Protection Act. In 1984, the Victims of Crime Act was passed. A decade later, in 1994, the Violence Against Women Act became law. (That law was then reauthorized in 2013.) In 2004, the landmark Crime Victims' Rights Act was passed, granting crime victims eight specific rights, and providing standing for individual victims to assert those rights in court.

2. Minnesota's Protection of Crime Victims

In Minnesota, crime victims have a number of rights. Those rights are summarized below:

A Right to be Notified of Various Proceedings

By law, victims of crime are to be notified of:

- Their rights under state and federal laws;
- The prosecution process and the right to participate in it;
- The contents of any plea agreement and the right to object to the same;
- Changes in court proceeding schedules when a victim has been subpoenaed or requested to testify;
- Final disposition of the case;
- Appeals filed by the defendant; additionally have the right to attend the oral argument or hearing, and the right to be notified of the final disposition;
- Any proposed sentence modifications for the offender, including the date, time, and location of the review and the right to provide input;

- The release or escape of the offender from prison or a custodial institution or transfer to a lower security facility;
- An offender's petition for expungement and of the right to object to the same;
- The right to request restitution (where the offender compensates the victim directly);
- The right to apply for reparations (where the state compensates the victim from a state reparations fund);
- Information on the nearest crime victim assistance program or resource; and
- The right to petition to civilly commit an offender, outcome of that petition, and notice of the offender's possible discharge/release from civil commitment.

A Right to Protection from Harm

Victims of crime have the right to:

- A secure waiting area during court proceedings;
- A victim has the right to request that his/her home and employment address, telephone number, and birth date be withheld in open court;
- Request that law enforcement agencies withhold the victim's identity from the public; and
- Protection against employer retaliation for victims and witnesses called to testify and for victims of violent crimes and their family members who take reasonable time off to attend court proceedings.
- Note: tampering with a witness is a crime and should be reported; this includes attempting to intimidate a crime victim.

A Right to Participate in Prosecution

Victims of crime have the right to:

- Request a speedy trial (although the offender may waive his/her rights to a speedy trial);
- Provide input in a pretrial diversion decision;
- Object orally or in writing to a plea agreement at the plea presentation hearing;
- Object orally or in writing to a proposed disposition or sentence, which includes the right to object to a plea agreement or deal;
- Inform the court of the impact of the crime orally or in writing at the sentencing hearing;
- Inform the court at the sentencing hearing of social and economic impacts of the crime on persons and businesses in the community;
- Be present at the sentencing and plea presentation hearings; and
- Submit a statement regarding the decision to discharge/release the offender from civil commitment.

A Right to Apply for Financial Assistance

Victims of violent crime may:

- Apply for financial assistance (reparations) from the state if they have suffered economic loss as a result of the crime;

- Request the court to order the defendant to pay restitution if the defendant is found guilty or pleads guilty; and
- Request that a probation violation hearing be scheduled 60 days prior to the expiration of probation if restitution has not been paid.

Protection of Criminal Domestic Violence, Sexual Assault, and Harassment Victims

These victims of crime have a right to:

- Be informed of prosecutor's decision to decline prosecution or dismiss the case along with information about seeking a protective or harassment order at no fee;
- Protection against employer retaliation for victims to take reasonable time off to attend order for protection or harassment restraining order proceedings;
- Criminal domestic abuse victims have the ability to terminate a lease (which involves cohabitation with an abuse) without penalty;
- Sexual assault victims can make a confidential request for HIV testing of a convicted offender;
- Sexual assault victims do not have to pay the cost of a sexual assault examination; and
- Sexual assault victims may not be required to undergo a polygraph examination in order for an investigation or prosecution to proceed.

RED FLAG: Most law enforcement agencies give crime victims resource cards (see attached), which list important phone numbers and agency names. The resource card will include the "Case Control Number" (CCN), also known as the "case number." This becomes critical relative to insurance and other purposes—an insurer will want to know the CCN in order to process a loss or theft claim under an insurance policy; likewise, state and community support agencies may ask for the CCN. Thus, making sure a crime victim has this information would be important to explain to callers. Having a CCN may help to protect certain crime victim rights.

Crime Victims Services Offered by the Council on Crime and Justice

The Council on Crime and Justice offers a number of services to crime victims. This includes:

- A **24 Hour Victim Hotline (612-340-5400)** where volunteers will assist metro and state-wide callers and provide crisis counseling. Via the hotline (and direct services), the CC&J may help Twin Cities metro residents secure emergency funds to address urgent issues related to safety and loss, such as lock changes;
- As part of the hotline services, CC&J will advise crime victims on how to navigate the system, including explaining the importance of having a Case Control Number from crime reports;
- Providing free confidential advocacy to crime victims immediately after the crime event or sometime later, **whether or not a report was made or a suspect was charged** (this is a critical difference compared to programs offered by state or local governmental agencies);

- Providing vouchers for gas or other immediate needs; CC&J may also assist in finding other emergency funds;
- In some instances, CC&J will intervene with creditors, landlords, employers and others on a crime victim's behalf; and
- In limited instances, CC&J will accompany crime victims to court appearances.

RED FLAG: CC&J's role relative to crime victims is of a triage nature. Their 24 hour hotline is a great resource; in turn, they often become a referral agent for crime victims. When speaking with a caller, make sure they know that CC&J may end up referring the caller to another resource.

Crime Victim Services Offered by the Hennepin County Attorney's Victim Services Division

The Victim Services Division provides services to victims in a safe and respectful environment. Staff focus on the rights and needs of crime victims and witnesses. This work is crucial to prosecuting a case and ultimately seeking justice for victims.

The office assigns each victim an advocate. The advocate will support the victim and their family as the case moves through the criminal justice process. Advocates provide case updates, explain court procedures, answer questions, make referrals and offer other forms of assistance.

Services for Crime Victims

What each victim needs is different. Advocates provide whatever assistance, information and referrals are needed for victims and their families after a case is "charged" (that is, after the County Attorney has made a decision to formally charge an offender with a crime; this may occur days or weeks after the criminal incident actually took place).

Case Information

The advocate assigned to the case will:

- Notify the victim of their rights under the Minnesota Crime Victims Bill of Rights and provide contact information for the advocate assigned to them;
- Notify the victim of hearing dates and times;
- Keep the victim updated on the status of the case from the charging decision through the appeal process;
- Assist the victim with filing for financial assistance with the Crime Victims Reparations Board;
- Assist with transportation arrangements for out-of-town victims;
- Aid victims as they participate in the criminal justice process and enable them to exercise their rights as crime victims;
- Assist in preparing a Victim Impact Statement as needed; and
- Assist with a return of property held by law enforcement following the crime.

Advocate Support and Referrals

Advocates provide support and assistance for crime victims, children who have witnessed violence, and the surviving family members of homicide victims. Staff provide referrals to community and social services agencies that can provide counseling, crisis management support, help with safe housing and other assistance to crime victims and their families. In addition to outside referrals, advocates can assist victims in areas such as safety planning and obtaining gun locks.

Financial Assistance

Some financial assistance may be available for crime victims. These funds vary based on the type of crime and other circumstances.

Restitution: Restitution is reimbursement from the defendant to the victim(s) for out-of-pocket losses and expenses directly resulting from a crime. A court can order a defendant to pay restitution as part of the sentencing process; a defendant's ability to pay restitution depends on many factors.

Reparations: Victims of violent crimes may be eligible for financial assistance from the Crime Victims Reparations Board. These types of crimes must involve an injury or death, such as homicide, assault, child abuse, sexual assault, robbery, kidnapping, domestic abuse, stalking, criminal vehicular operation and drunk driving. Property damage crimes are not eligible for reparations.

Eligibility criteria for reparations:

- crime must have occurred in Minnesota, or in a foreign country without a compensation program;
- crime must be reported to police within 30 days;
- claim must be filed within 3 years of the crime;
- victim must cooperate fully with police and city or county attorney in the prosecution;
- victim must not have committed a crime or contributed to the incident through their own misconduct; and
- all available collateral sources must be used first, including health insurance, Medical Assistance, vacation/sick leave, short and long term disability and social security benefits.

More information, including the Reparations Claim Form in English, Spanish, Somali and Hmong are available online: [Minnesota Crime Victims Reparations Board](#). A victim advocate can assist with completing these forms.

Interpreter Services

Many victims of crime are new arrivals to this country. Spanish speaking victims work with our bilingual advocates and interpreters are regularly used for other languages. Printed materials in

languages other than English are available. The courtroom is also part of advocacy and includes TTY for deaf or hard of hearing clients. Office of Justice resources are available in multiple languages.

Legal Resources –Twin Cities

1. Crime Victim Resources—Primary Referrals

The local County Attorney’s office or City Attorney’s office: Pursuant to Minnesota law, either office in any of Minnesota’s 87 counties will have information/resources for crime victims.

Council on Crime and Justice, as indicated above. 24 Hour Victim Hotline (612-340-5400) that covers statewide; provides counseling services to metro area residents.

Sexual Violence Center with a 24 hr. Crisis Line: 612-871-5111 or 952-448-5425 (serves all of Minnesota?) Offices located at 3757 Fremont Avenue North, Minneapolis and 500 N. Pine Street, Suite 203, Chaska; serving sexual assault (note: this is defined differently than “domestic violence”; a domestic violence incident may or may not involve sexual assault) victims in Hennepin, Carver, and Scott Counties and the Twin Cities Metro. SVC also provides legal advocacy services including support during a victim’s interview with law enforcement and with filing for a restraining order. Additionally, the Sexual Violence Center maintains a referral relationship with [Mid-Minnesota Legal Aid](#) and [Central Minnesota Legal Services](#) and [Southern Minnesota Regional Legal Services](#) (SMRLS). Through us, income-qualifying victim/survivors have the opportunity to access legal advice and representation with a range of legal issues resulting from situations of sexual assault, stalking, trafficking and etc. Finally, the SVC provides on-site counseling, support groups, and 24 hour medical advocacy following a sexual assault.

OutFront Minnesota: LGBTQ civil rights group and advocacy organization based in Minneapolis. Anti-violence crisis line: (612) 822-0127, option 3.
Toll-free anti-violence crisis line: (800) 800-0350, option 3.

Breaking Free: 651-645-6557. Mailing address: P.O. Box 4366, St. Paul MN 55104. Breaking Free is a program to educate and provide services to women and girls who have been victims of abuse and commercial sexual exploitation (prostitution/sex trafficking) and need assistance escaping the violence in their lives. The program provides services that are victim-centered, trauma-informed and operate within a culturally appropriate, age and gender-specific context.

2. Back-up/Fallback Referrals

LawHelpMN.org: This will be a good back-up for crime victims; it has resources papers on crime victim rights, an application form for reparation funds; an explanation about crime

victims and “U Visas”; and a brochure on Victim Impact Statements. There’s even a Stalking Victim’s Guide.

On the other hand, note:: Minnesota Legal Advice Online is not a good referral since it doesn’t provide advice relative to criminal matters. Similarly, the **Court Self-Help Centers** also aren’t good places for referrals for crime victims; however, if the caller is a victim of harassment relating to restraining orders, they can provide some assistance in filling out forms.

Link to a Crime Victims Information Guide:

https://dps.mn.gov/divisions/ojp/forms-documents/Documents/Crime_Victim_Rights_Information_Guide.pdf

Let us know if you have any questions!

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