OCVS: Victim Rights & Enforcement

Welcome to the Office of Crime Victim Services online learning series on Victim Rights and Enforcement.

This module will cover victim rights and enforcement including what the rights are, how to apply them, and where to go for more information.

Criminal justice professionals and agencies are responsible for ensuring that crime victims are informed of their rights and how to exercise them. We hope this overview will inspire you to learn more and find ways that you can contribute to the effective enforcement of victims’ rights.

A few notes before we get started:

* While crime victims of offenses committed by juveniles also have rights, this presentation is focused on the adult criminal justice system. Additionally, witnesses of crimes also have rights that can be found in Chapter 950 of the Wisconsin statutes.
* The terms victim and survivor are often used interchangeably, depending on the personal preference of the person impacted. While we are mindful of this distinction, throughout this video, we use the term “victim” because it’s the legal term used in Wisconsin’s statutes.

Let’s get started!

We’ll start with answering, “Why are victim rights so important?” Wisconsin legislative intent in chapter 950 states this:

“In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.”

We believe that all victim rights are so important because all victims and witnesses of crime deserve to be treated with dignity, respect, courtesy, and sensitivity; and these rights must be honored and protected by public officials, agencies, and employees in a manner no less vigorous than the protections afforded to criminal defendants.

Wisconsin has led the country in passing victims’ rights laws. We were the first state to pass a victims’ bill of rights in 1980. In 1993, the Wisconsin Constitution was ratified to include victim rights, and Chapter 950 was added in 1997. Over the last few decades, as you can see by looking at this timeline, the federal government have followed suit by passing their own versions of victims' rights protections.

Wisconsin’s laws are in place to elevate the role and improve the experience of victims within the criminal justice system by affording them an expansive list of rights.

While some rights apply throughout the criminal justice process, other rights apply at specific stages. Victims can choose to assert all, some, or none of these rights and their interest in doing so may evolve or change as the case progresses. Some rights are automatically afforded to victims, and some rights require a victim to request or opt-in.

In Wisconsin, we look to four key legal sources for guidance on victims' rights:

* First, there is Chapter 950 of the Wisconsin statutes.
* Second, Article 1 section 9m of the Wisconsin constitution elevates victims' rights to the highest level of legal protections available. While there is a lot of overlap between the rights afforded in this section of the constitution and Chapter 950, the language is not identical.
* Third, the Crime Victims’ Rights Board or CVRB is a statutorily authorized administrative body that is tasked with reviewing victims' rights complaints. The CVRB issues decisions and advisory opinions, which can provide guidance on interpreting and applying victim rights. More information about the CVRB process will be covered later in this presentation.
* Fourth, is case law. Currently, there is very little authoritative precedent interpreting victims’ rights laws, so use of case law is limited.

Wisconsin law protects anyone who is a victim as defined by state statutes and the state constitution. Again, the statutory definition and constitution definition are similar but not identical, which can potentially result in different applicability. So, when you’re working with a victim, it’s important to figure out whether they qualify under each definition:

* The state constitution says that a victim is a person against whom an act, which would constitute a crime, has been committed. Further, the constitution states that victims’ rights take effect at the time of victimization.
* Wisconsin statutes define a victim as a person against whom a crime has been committed and then provides a definition of what crime means.

Both definitions also include direction about who qualifies for these rights by proxy. This includes a victim who is a minor, a deceased victim, or a victim who is unable to exercise their own rights physically or emotionally.

The constitution and statutes also include language about who does not qualify for victims’ rights:

* Chapter 950 states that a person who has been charged with or is alleged to have committed the crime does not qualify for victims’ rights.
* Additionally, the constitutional amendment gives a court the authority to disqualify an individual who the court finds would not act in the best interests of a victim who is deceased, incompetent, a minor, or physically or emotionally unable to exercise his or her rights.

Victims’ rights are the responsibility of public officials, employees, and agencies within the criminal justice system. This includes, but is not limited to law enforcement, prosecutors, victim/witness professionals, clerks of courts, judges, and Department of Corrections staff.

While community-based victim advocates aren’t responsible for providing victims’ rights, they can help victims navigate the criminal justice process. A victim advocate, as defined by statute, is an employee or volunteer with an organization that has the purpose to provide counseling assistance or support services free of charge to a victim. Some examples of support include safety planning, accompanying victims to court proceedings, law enforcement interviews, medical exams, and meetings with prosecutors. They can also facilitate connections with additional community resources.

It’s important to know that a domestic abuse or sexual assault survivor’s communication with a community-based victim advocate is statutorily protected by confidentiality or privilege but a victim’s communication with a victim/witness professional is not.

Law enforcement professionals are often a victim’s first interaction with the criminal justice system. They are responsible for several rights that might apply at any time, including:

* The right to receive written information. No later than 24 hours after a law enforcement agency has that initial contact with the victim of a crime, the investigating law enforcement agency shall make a reasonable attempt to provide the victim with written information on all the following:

1. A list of the victim rights
2. The availability of crime victim compensation
3. The address and telephone number of the intake worker, corporation counsel, or district attorney whom the victim may contact to obtain information concerning the rights of victims and to request notice of court proceedings
4. The address and telephone number of the custodial agency that the victim may contact to obtain information concerning the taking into custody or arrest of a suspect in connection with the crime of which they are the victim
5. The address and telephone number of the custodial agency that the victim may contact for information concerning the release of a person arrested or taken into custody for the crime of which they are the victim
6. Suggested procedures for the victim to follow if they are subject to threats or intimidation arising out of their cooperation with law enforcement and prosecution efforts relating to a crime of which they are a victim
7. The address and telephone number at which the victim may contact the Department of Justice or any local agency that provides victim assistance to obtain further information about services available for victims, including medical services
8. If a victim of an officer-involved death, information about the process by which they may file a complaint and about the process of an inquest under s. 979.05.

The duty of law enforcement to provide written information within 24 hours of initial contact. This ensures that victims receive critical information as soon as possible.

The required information includes victim service contacts that victims may need to access immediately. This information must be provided in writing; however, the duty to provide the required written information is much more than mere passage of paperwork; it helps victims access services, stay safe, and know about their rights long after the initial contact with law enforcement.

To assist agencies in complying with this crucial duty, the Wisconsin Department of Justice (DOJ) created a model Victim Rights Notification Form, which can be downloaded and customized to include agency logos. The form is available on the Wisconsin DOJ website at https://www.doj.state.wi.us/ocvs/law-enforcement. The form is maintained and updated by DOJ to reflect statutory changes.

* The right to request and receive reasonable and timely information about the status of the investigation and the outcome of the case. If a victim requests information about the status of an investigation, law enforcement should respond as quickly as possible and should be providing as much information as possible. However, it is not necessary for law enforcement to provide any information that would compromise the investigation. Advising a victim about the status of interviews, whether evidence has been collected and sent to the crime lab, when results of tests at the crime lab or elsewhere may be expected, and when a case has been sent to a district attorney's office for potential charges are examples of information that can and ought to be shared with a victim.
* The right to a speedy disposition of the case in which they are involved. Victims also have a constitutional right to timely disposition of the case, free from unreasonable delay. The intent of the right to a speedy disposition is to minimize the amount of time a victim is subjected to the stress of their responsibilities connected to the case. Agency workload and case prioritization may impact the length of time it takes to conclude an investigation, but law enforcement can do much to minimize the associated stress by simply communicating with victims about delays. Regular communication with a victim will help set realistic expectations, create relationships of trust, avoid conflict, and lessen the negative impact caused by the delay. Administrative oversight and case follow up should be standard operating procedure for a law enforcement agency, not something that victims of crime should have to consistently initiate. It is demoralizing to victims and erodes confidence in the criminal justice system when victims bear the burden of moving a case along through repeated appeals for action.

There are several additional rights that victims have which apply to law enforcement, including:

* A constitutional right to reasonable protection from the accused throughout the criminal justice process.
* A constitutional right to be treated with dignity, respect, courtesy, sensitivity, and fairness. In Chapter 950, victims also have the right to be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies.
* The right to have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, property subject to preservation and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

There are additional rights of victims that are specific to certain types of crime. One of which is the right to not be the subject of a law enforcement officer’s order, request, or suggestion that he or she submit to a test using a lie detector. This right is specific to victims of sexual assault.

Another right that is specific to victims of sexual assault and human trafficking is the right to be accompanied by a community-based victim advocate at law enforcement interviews.

While an advocate may not obstruct or delay a law enforcement interview, they can provide emotional support, help victims navigate the criminal justice system, and provide additional resources and services. Law enforcement agencies are encouraged to connect with their local sexual assault service provider to discuss these opportunities to collaborate. This discussion must include how the collaborative response can be initiated while respecting and protecting a victim’s privacy and confidentiality.

The prosecutor in a criminal case, often referred to as “district attorney” or “assistant district attorney,” represents the State of Wisconsin and is responsible for affording and enforcing rights of victims and witnesses.

It’s important to note that the prosecutor does not represent the victim in the case. However, every district attorney’s office in Wisconsin has at least one victim/witness professional who can help facilitate contact between the victim and the prosecutor.

While the victim/witness professional can’t give legal advice or represent a victim in court, they can help ensure that a victims' voice is heard, and their rights are effectuated in accordance with the victims' preference. A victim/witness professional in the district attorney’s office is different from a community-based victim advocate.

* Just as victims have the right to receive written notification from law enforcement, they have the right to receive written notification from District Attorneys. Wisconsin state statute outlines the information to be provided by a District Attorney in criminal cases, including a brief statement on the procedure for prosecuting a case, a list of the rights of victims and how to exercise those rights, the person or agency to notify if the victim changes their address, the availability of crime victim compensation, and the person to contact for more information about the prosecution of the case.
* This information should be provided as soon as practicable, but no later than 10 days after the initial appearance or 24 hours before a preliminary examination, whichever comes first. District Attorney’s Offices often refer to this victims’ rights information as the initial packet. It’s important that victims receive the information so that they understand their rights and resources available during the prosecution of a case.
* Upon request, victims have the right to be heard in any proceeding during which a right of the victim is implicated. Because this is an opt-in right, the initial packet referenced earlier usually asks victims whether they would like to receive this notice. Chapter 950 states that District Attorneys can designate somebody who performs their victims’ rights duties, so notice of proceedings is a right that is usually designated to victim/witness professionals to perform.
* Victims have the right to receive notice of the final disposition of a case, the dismissal of charges, and the decision not to issue charges if an arrest was made.
* Upon request, victims have the right to be heard during the prosecution of a case. They also have the right to confer with the district attorney concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. The constitutional amendment makes clear that this is not a right that the prosecutor can designate to victim/witness staff. If the victim requests to do so, they have the right to confer with the attorney for the government.
* While not limited to this stage of a case, the right to be treated with dignity, respect, courtesy, sensitivity, and fairness is critical to the prosecution of a case. This right may be applicable in many scenarios where a prosecutor, victim/witness professional, or other District Attorney Staff interacts with victims on the phone, in meetings, or in other interactions. Neither state statute or the state constitution, define what it means to treat a victim with dignity, respect, courtesy, sensitivity, and fairness. It’s up to the professionals to create best practices for trauma-informed communication and interaction with victims.
* Another right that is not unique to prosecution staff but is important to highlight is the right to privacy. Victims have the constitutional right to privacy. Like treatment, privacy is not defined in statute or the constitution. Prosecutors must create best practices and policies to ensure they are affording victims this right. Chapter 950 states that witnesses have the right to not have their personal identifiers used or disclosed by public officials for purposes unrelated to their official responsibilities, so one can assume that the constitutional right to privacy should expand upon this statutory right. Examples of how prosecutors and District Attorney staff can protect victims’ privacy include, but are not limited to:
* Not using victims’ names in criminal complaints. Instead, use a pseudonym and file a sealed victim identification key
* Not using victims’ names in court hearings
* Not including personal or identifiable detail in criminal complaints or court documents that are unnecessary for the purpose of the filing
* And reviewing their discovery redaction policies

Many victims hold their privacy as the most important aspect of their involvement in a criminal case. Prosecutors should explore the tools in their toolbox to help victims protect their privacy.

* Like the right to the timely disposition of the law enforcement investigation of their case, victims have the right to proceedings free from reasonable delay. It’s not uncommon for victims to experience stress or anxiety over how long a case is taking. Prosecutors should remember this right when they are reviewing cases for charging decisions and communicating scheduling preferences to the Court. Cases may move slower than a victim would like, so it’s important to communicate the reason for any delays. Victims are often more understanding when the reasons are explained to them, preferably before the delay happens. And while delays may be out of the prosecutor’s control, there are actions they can take to help afford victims this right such as filing a motion for a speedy or timely disposition of a case.
* Chapter 950 of the Wisconsin statutes lists several rights that are the responsibility of prosecutors. In addition to the ones already discussed, other victims’ rights that are important to understand are:
* The right (in cases of certain crimes) to be accompanied by an advocate
* The right to not be subject to a lie detector test
* The right to receive employer intercession services
* The right to request an order for, and receive the results of, testing to determine the presence of HIV or other STDs in certain cases.
* And, both witnesses and victims have the right to a separate waiting area, to assist with their privacy and protection when there are court proceedings.

In addition to law enforcement and prosecution, the court also has several responsibilities in the provision of victim rights. These rights include:

* The right to be present at proceedings. This spans from bail hearings to sentencing hearings to post-conviction hearings. The term *proceeding* is not defined in statute, but it should be interpreted liberally.

Once Victim/Witness staff determines the preference by which a victim wants to appear in court (such as in-person, via Zoom, via telephone) all efforts should be made to accommodate that preference. For the best experience of the victims, many courts allow victims to appear via Zoom, to save time and resources. Victim/Witness professionals should accompany victims to proceedings whenever possible to not only ensure these rights are being enforced, but to provide support and information.

If the victim is in custody on a separate case, the court may require they exercise their right to be present by telephone or other audio-visual means that still allows the victim to exercise this right.

Part of the victim’s right to be present is the right to not be excluded from trial. This means that if a victim has been subpoenaed for the trial, they have the right to be in court and watch the trial even before they have testified. This is unless the judge finds that exclusion of the victim is necessary to provide a fair trial for the defendant. The basis for any exclusion can’t simply be a victim’s presence. Because of this non-exclusion right, victims and prosecutors need to have conversations early and often about a victim’s presence during trial.

* Victims have the right to be heard. Victims have the right to be heard at any proceeding during which their rights are implicated. Because of the language used in the constitutional amendment, proceedings should be interpreted broadly and not limited to those put on court record. It’s a best practice for the courts to inquire, at every hearing, whether a victim wishes to be heard, and then allow the time for such. This could include release, plea and sentencing, disposition, parole, revocation, or expungement. The most common example of this right is when a victim provides a victim impact statement.
* Victims also have the right to have information pertaining to the economic, physical, and psychological effect of the offense submitted to the courts and have that information considered. Victims can provide this information in writing, orally, or by having a representative read their statement for them. This statutory right reinforces a victim’s constitutional right to be heard at proceedings.

Like the prosecutor, the court is responsible for a victim’s right to the speedy or timely disposition of the case, free from unreasonable delay and the right to proceedings free from unreasonable delay. Understandably, delays and continuances are very emotionally charged for victims. While some delays are unavoidable, efforts should be made to minimize the length of time a victim must endure the stress of their responsibilities related to participating in the criminal justice system. This includes providing opportunities for victim input, timely notification of any change in court dates, and an explanation of the delay.

This communication and explanation from the court is the court’s responsibility as, again, the victim has the right to be treated with dignity, respect, courtesy, sensitivity, and fairness. Courts are just one of many criminal justice professionals who should ensure that a victim’s rights are enforced in a manner no less vigorous than the protections afforded to the defendant.

Another right that is not exclusive to one professional, but should elicit a collaborative response from many, including the courts, is the right to reasonable protection from the accused. Courts should be developing conditions of bail and responding to actions of the offender as appropriate by keeping victim safety in mind. Not only should the courts be communicating with prosecutors about intimidation and threats, but they are also an extra set of eyes and ears concerning victim protection in a physical court room. They can enhance efforts to make the courtroom experience as safe and trauma-free as possible for the victim. Courtroom set-up can be adjusted to maximize a feeling of security. For example, positioning staff or furniture between where a victim may have to walk to the witness stand and where the offender sits can increase a victim’s sense of safety while in court.

Additionally, for incarcerated victims, identification of where an offender may be housed, where an offender’s cohorts may be housed, and whether there is any risk of a victim encountering the offender or their supporters at the prison, jail or in court are all issues to be addressed proactively. Communication with jail personnel about any “keep separate” order of the court must occur, and its importance emphasized.

The last right to discuss under court responsibilities is the right to restitution. Under the constitution, victims have the right to “full restitution” as well as to assistance in collecting that restitution. As with other rights, there is no specific guidance on what is exactly meant by full restitution nor is there identification of who is responsible for collecting that restitution. For this reason, you will see variation in county practices that may include clerks of circuit courts collecting unpaid restitution for victims, particularly if the defendant is off probation and there remains unpaid restitution.

Victims’ rights do not end when a defendant is convicted, and many victims want to stay informed and be heard on issues that arise post-conviction. Chapter 950 of the statutes and the Wisconsin Constitution outline the rights that victims have post-conviction, most of which are the responsibility of the DOC. Keep in mind that the omnipresent rights to privacy and to be treated with dignity, respect, courtesy, sensitivity, and fairness still apply to the post-conviction stage of the criminal justice process.

One right that applies post-conviction, but pre-sentencing, is a victims’ right to provide input for the court-ordered Pre-Sentence Investigation (PSI). The PSI writer, a probation and parole agent with the DOC, should make a reasonable attempt to contact the victim to gather their input on the impact of a crime because it’s an important part of the PSI. Additionally, the victim has the right to view portions of the PSI, which is usually facilitated by victim/witness staff.

Victims often want to know the status of their offender’s incarceration. To this end, victims have the right, upon request, to timely notice of any release or escape of the accused or death of the accused if the accused in custody or on supervision at the time of death. This notification comes from the DOC’s Office of Victim Services and Programs (DOC-OVSP.) Since this right is afforded upon request, though, victims must enroll in the NOTIS program for Wisconsin state prison notifications and the VINE program for Wisconsin county jail notifications. Information about both notification programs can be found on the DOC-OVSP website at this link: doc.wi.gov/Pages/VictimServices/VictimServices.aspx

Even post-conviction, there are frequent court proceedings that victims have the right to be informed of and attend. When an offender is under DOC custody or supervision, those proceedings can include revocation hearings and parole hearings. Victims have the statutory right to provide direct input in the parole decision-making process, attend parole interviews, and make a statement. Notice of parole hearings also comes from DOC-OVSP.

A quick departure from the DOC responsibilities, but on the topic of post-conviction rights, victims have the right to be notified of a request for a pardon and to give a statement to the pardon board. This notification comes from the Governor’s Office if the offender who applied is eligible for a pardon. The Governor’s Office works closely with victims to help them provide a statement if they choose to.

As a final note for the Department of Corrections and post-conviction rights, as mentioned previously, victims have the right to full restitution and assistance with the collection of restitution. When a defendant is sentenced to prison or probation, restitution is collected and dispersed by the DOC. Probation agents, the DOC cashier’s office, and DOC-OVSP work together to answer victims’ questions about restitution and ensure they are receiving payments from their offender.

Finally, victims have a statutory right to standing to assert, in court, his or her rights as a crime victim. Victims also have a constitutional right to assert and seek in court the enforcement of any right, privilege, or protection afforded to the victim by law. A victim may seek to assert rights on their own, or with the assistance of an attorney representing the victim. Upon request, the prosecutor may also assert a victim’s statutory or constitutional crime victims’ right in a criminal case.

Victims may use a standard court form called the CR-296 to request enforcement of their victims’ rights. This form can be completed by the victim, a victims’ attorney, or the prosecutor. The form is available online at www.wicourts.gov.

Victims also have the right to obtain review of all adverse decisions concerning their rights as victims by courts or other authorities with jurisdiction. They do so by filing petitions for supervisory writ in the court of appeals and supreme court.

Wisconsin also has a victims’ rights complaint process outlined in Chapter 950. Victims have the right to complain to the Department of Justice concerning treatment as a crime victim and request a review of the complaint by the crime victims’ rights board.

This complaint process is two-tiered. The first tier is known as the informal complaint process. This is completed by a Victim Rights Specialist with the Wisconsin Department of Justice, Office of Crime Victim Services. During the informal complaint process, the Victim Rights Specialist works with the victim to address their complaint(s) by contacting public officials, agencies, or employees. Once this tier has been completed, the victim is notified of their right to request a review of the complaint by the Crime Victims’ Rights Board (CVRB). This is the second tier in the complaint process. A victim is required by statute to complete the first tier before moving forward to the second tier.

The CVRB is Wisconsin’s victim rights enforcement body. It’s an independent, fact-finding body with legislative authority to issue sanctions for violations of statutory or constitutional victim rights by public officials, agencies, or employees. The CVRB has authority to review complaints regarding possible violations of the rights of crime victims by public officials, employees, or agencies.

The CVRB may not seek to reverse, appeal, or modify a judgment of conviction. The CVRB may do the following based on its review of a case:

* Issue a Private Reprimand
* Issue a Public Reprimand
* Seek Appropriate Equitable Relief on behalf of a victim.
* Bring a Civil Action to assess a forfeiture, not to exceed $1,000 for an intentional violation. (Forfeiture money does not go to the complainant)
* And refer to the Judicial Commission an allegation involving a judge.

Thank you for taking the time to learn the basics of victims’ rights. For more information, or to discuss victims’ rights concerns about a specific case, please contact the Department of Justice - Office of Crime Victim Services by calling the toll free line Monday - Friday, 7:45AM - 4:30PM at 1-800-446-6564 or emailing ocvs@doj.state.wi.us.