

NATIONAL SURVEY OF STATE VICTIM IMPACT STATEMENT LAWS AND WHETHER DEFENDANT HAS RIGHT OF CROSS- EXAMINATION WITH RESPECT TO VICTIM IMPACT EVIDENCE

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- Before relying on any of the law contained in this chart, an attorney must perform an independent review and analysis of the case or statute, including its subsequent history.
- Please contact NCVLI with any questions you may have about your jurisdiction's victim impact statement laws by telephone at (503) 786-6819 or by e-mail at ncvli@lclark.edu. For more information about crime victims' rights, please visit www.ncvli.org.

State	Right to Cross - Statute	Right to Cross - Case/Other	Oral/Written VIS
Alabama	<p>Silent</p> <p>Ala. Code § 15-23-73 – victim can make a VIS to probation officer for use in pre-sentence report;</p> <p>Ala. Code § 15-23-74 – victim can present evidence, impact statement, or information that concerns the criminal offense during sentencing. No mention of cross.</p>	<p>Implied right to cross:</p> <p>Right to rebut, which case law seems to interpret as right to cross. <i>McWilliams v. State</i>, 640 So.2d 982 (Ala. Crim. App. 1991) (stating appellant would have been entitled to call any person who could give information about the presentencing report, including its author, but chose not to).</p>	<p>Ala. Code §15-23-73 – oral or written statement to probation officer for use in pre-sentence report;</p> <p>Ala. Code §15-23-74 – “right to present evidence, an impact statement, or information that concerns the criminal offense”</p>

<p>Alaska</p>	<p>Silent</p> <p>Alaska Stat. § 12.55.023 – victim may give sworn or unsworn testimony.</p>	<p>No cross</p> <p><i>Michael v. State</i>, No. A-7890, 2003 Alas. App. LEXIS 21 (Alas. App. Feb. 12, 2003) – where witness gave oral victim impact statement not under oath describing impact of defendant’s conduct, defendant’s right to confrontation was not violated. Court authorized to consider the evidence unless defendant took oath and submitted to cross.</p>	<p>Alaska Stat. § 12.55.023 – written statement, sworn testimony, or unsworn oral presentation.</p>
<p>Arizona</p>	<p>No cross</p> <p>Ariz. Rev. Stat. § 13-4426.01 (passed 2003)</p>	<p>No cross</p> <p><i>State v. Thomas</i>, 211 Ariz. 153 (Ariz. App. 2005)</p>	<p>Ariz. Rev. Stat. § 13-4434 - written impact statement or make an oral impact statement to the probation officer for the officer's use in preparing a presentence report.</p> <p>Ariz. Rev. Stat. § 13-4426 - victim may present evidence; right to be present and to address the court.</p> <p>Ariz. Rev. Stat. § 13-4426 – right to address the sentencing authority and present any information or opinions.</p>
<p>Arkansas</p>	<p>Silent, but D must be given opportunity to respond if new factual info</p> <p>Ark. Code Ann. § 16-90-1112 – Victim may make a statement in writing or orally under oath. The court shall consider the statement, but if it includes new factual information, the court</p>	<p>Unclear.</p> <p>Case law – <i>Copeland v. State</i>, 343 Ark. 327 (2001) - Cross would have been allowed had defendant raised it at trial level</p>	<p>Ark. Code Ann. § 16-90-1112 – written or oral under oath.</p>

	must allow defendant adequate opportunity to respond.		
California	<p>Silent</p> <p>Cal Penal Code § 1191.1 – victim can make statement, silent as to cross. But, under §1191.15, can also submit recorded statement. (see also Cal Penal Code § 679.02, giving victims right to reasonably express views and have the court consider statements)</p>	<p>No cross</p> <p><i>People v. Zikrous</i>, 150 Cal. App. 3d 324 (Cal. App. 1983). Defendant already sentenced, so cross-examination and confrontation not necessary – although proceeding must be fundamentally fair.</p> <p><i>People v Sanders</i>, 11 Cal. 4th 475, n. 33 (1995) – Not factual testimony subject to cross</p>	<p>Cal. Penal Code § 1191.1 - right to appear, personally or by counsel.</p> <p>Cal. Penal Code § 1191.15 – recorded statement.</p> <p>Cal. Penal Code § 679.02 – right to reasonably express views</p>
Colorado	<p>Silent</p> <p>Victim can make statement, no mention of cross</p> <p>Colo. Rev. Stat. §§ 24-4.1-303; 24-4-1-302.5; 16-11-601</p>	<p>No case law identified.</p>	<p>Colo. Rev. Stat. § 24-4-1-302.5 – written, oral, or both.</p>
Connecticut	<p>Silent</p> <p>Conn. Gen. Stat. § 54-91c - Victim can make statement limited to facts of the case, appropriateness of penalty, extent of injuries, financial losses and loss of earnings directly resulting from crime for which D is being sentenced.</p>	<p>No cross</p> <p><i>State v. DeJesus</i>, 10 Conn. App. 591 (Conn. App. 1991) – Citing Sup. Ct. precedent – <i>Williams v. NY</i>, defendant is not entitled to cross examine a witness in a sentencing hearing under the DPC – rests in discretion of sentencing court.</p> <p>-additional reasons in this case where victim was young and wanted to be kept away from defendant.</p>	<p>Conn. Gen. Stat. § 54-91c – appear before the court or make in writing.</p>

<p>Delaware</p>	<p>Silent</p> <p>Del Code. Ann. Tit. 11 sec 4331 – requires victim impact statements.</p> <p>Del. Rules of Ct 32 – Upon request of AG, must afford victim opportunity to submit written statement or give oral statement</p>	<p>No case law identified.</p>	<p>Del. Rules of Ct 32 – oral or written. (Del Code. Ann. Tit. 11 sec 4331 doesn't specify)</p>
<p>Florida</p>	<p>Silent, but statement must be under oath.</p> <p>Fla Stat § 921.143 –</p>	<p>No case law identified.</p>	<p>Fla Stat § 960.0021 –oral or written</p>
<p>Georgia</p>	<p>Can cross</p> <p>Ga. Code Ann. § 17-10-1.2 (amended 2010) – evidence must be given in presence of defendant and subject to cross.</p>	<p>No case law identified.</p>	<p>Ga. Code Ann. § 17-10-1.2 – “evidence” allowed from the victim/family –oral. But if court finds that v would not be able to testify in person without showing undue emotion or causing severe distress, may be in the form of written statement, prerecorded audio or video statement.</p>
<p>Hawaii</p>	<p>Silent</p> <p>Haw. Rev. Stat. § 706-669 (this is for something called a “minimum term hearing”); see also § 706-604, allowing victim to be heard before sentencing.</p>	<p>No case law identified.</p>	<p>Haw. Rev. Stat. § 706-669 (minimum term hearing) – oral or written; Haw. Rev. Stat. § 706-604 – right to be “heard”</p>
<p>Idaho</p>	<p>Silent</p> <p>Idaho Code Ann. § 19-5306(e)</p>	<p>No cross</p> <p><i>State v. Guerrero</i>, 130 Idaho 311 (Idaho App. 1997)</p> <ul style="list-style-type: none"> • Rationale – favors sentencing based on max amount of info about the defendant - to require cross 	<p>Idaho Code Ann. §19-5306(e) – right to be “heard”</p>

		<p>would thwart this goal.</p> <ul style="list-style-type: none"> Defendant should be allowed to rebut 	
<p>Illinois</p>	<p>Silent</p> <p>725 Ill. Comp. Stat. 120/6 Statement must be submitted in writing first</p>	<p>No cross if not sworn</p> <p><i>People v. Abrams</i>, 205 Ill. App. 3d 295 (1990).</p> <p>Any sworn testimony is subject to cross. The oral presentation of the victim's statement is permissive rather than mandatory. Because the statement was presented only as a written statement, it did not constitute sworn testimony and thus was not necessarily subject to cross.</p>	<p>725 Ill. Comp. Stat. 120/6 – Statement must be prepared in writing in conjunction with office of State's Attorney before it can be presented orally or in writing</p>
<p>Indiana</p>	<p>Silent</p> <p>Burns Ind. Code § 35-38-1-8</p> <p>See also Burns Ind. Code Ann § 35-35-3-5 – allowing victim to make a statement concerning the crime and the sentence.</p>	<p>Depends – if substantive, should be able to cross; otherwise, no</p> <p><i>Cloum v. State</i>, 779 N.E.2d 84 (Ind. App. 2002)</p> <ul style="list-style-type: none"> Purpose of VIS is to guarantee interests of victim are fully and effectively represented Statement allows for catharsis Would not want to require victims to make statement under oath with threat of perjury limiting ability to speak, “nor would it be wise, in our view, to subject a victim to cross-examination regarding comments made in a victim 	<p>Ind. Code Ann. § 35-35-3-5 – Allows victim who is present to make a statement concerning the crime and the sentence. If unable to attend, may mail a written statement to the court</p>

		<p>impact statement as a general rule.”</p> <ul style="list-style-type: none"> • But, when victim makes substantive statements, defendant should be able to rebut 	
Iowa	No cross Iowa Code § 915.21.3 (1998, amended 2002)	No case law identified.	Iowa Code § 915.21.1 – written, oral, audio, video
Kansas	No explicit statutory provision. Kansas Victims’ Rights Amendment, Art 15 of § 15 of Kansas’s Constitution, provides victim with right to be heard at sentencing. Kans. Stat. Ann. § 74-7333 requires that victims be told of their rights to participate and that “when the personal interests are affected, the views or concerns of the victim should, when appropriate and consistent with criminal law and procedure, be brought to the attention of the court.”	No case law directly on point, but <i>State v. Parks</i> , 265 Kan. 644 (1998) shows sympathy toward victims (and relatives of victims) who give impact statements.	Art 15 of § 15 of Kansas’s Constitution – right to be “heard”.
Kentucky	Silent Ky. Rev. Stat. Ann. § 421.520 allows for written victim impact statement – no mention of oral; no mention of cross.	Case law suggests only written – no cross concerns <i>Phillips v. Commonwealth</i> , 297 S.W.3d 593 (Ky.App., 2009) – trial court denied D’s motion for an	Ky. Rev. Stat. Ann. § 421.520 – written victim impact statement (which goes to the probation officer for the PSI, or to the court if no PSI b/c it was waived).

	§ 421.500 – allows for victim to make impact statement at sentencing	evidentiary hearing regarding accuracy of statements in VIS. Held no error b/c “nothing in either statute suggests that the rules governing challenges to PSI reports also apply to VIS.” And, no indication court relied on misinformation.	
Louisiana	Silent, but defendant given opportunity to comment La. Rev. Stat. § 46:1844(k) gives right to make oral statement, with certain limitations as to number, relevance, and topics. Defendant is given opportunity to comment. No explicit mention of cross in statute.	<i>State v. Behrnes</i> , 706 So.2d 179 (La. App. 1997) – error not to allow D to rebut when other crime evidence came in through victim impact in the form of D’s statement – but no mention of cross.	La. Rev. Stat. Ann. § 46:1844 – written and oral
Maine	Silent 17-A Me. Rev. Stat. § 1174 – victim must be provided with an opportunity to make an oral statement in open court in connection with sentencing. No mention of cross.	<i>Griffin v. State</i> , No. CR-02-610, 2001 Me. Super LEXIS 289 (Jul. 16, 2001) – D not given a chance to rebut statement; D did not object to statements at trial so no error.	Me. Rev. Stat. Ann. tit. 17-A, § 1174 – oral or written
Maryland	Yes, as to factual statements Md. Crim. Proc. Code Ann. §11-403 (amended 2001)	Right to cross, but not in error to refuse cross <i>Grandison v. State</i> , 341 Md. 175 (1995) - “The right of a defendant to cross-examine witnesses against him	Md. Code Ann., Crim. Proc. §11-1002 – allowed to address the court or jury or have a VIS read by the court or jury

		extends to the sentencing phase of a capital trial and applies to victim impact witnesses as well as factual witnesses.” But not limitless-discovery of irrelevant info not proper.	
Massachusetts	Silent, but defendant must be able to rebut Mass. Gen. Laws ch. 279, § 4B – victim may make oral or written statement. Defendant must have the opportunity to rebut if the court relies upon such statements in imposing sentence.	Case law seems to allow cross. <i>Commonwealth v. Nawn</i> , 394 Mass. 1 (1985) In determining restitution at sentencing, it was error to not allow defendant to cross-examine victim or present rebuttal evidence – only as it related to restitution, not guilt or innocence.	Mass. Gen. Laws ch. 279 – oral or written
Michigan	Silent Mich. Comp. Laws § 780.764 – victim can make or submit oral or written statement, which is given to probation officer for inclusion in PSI report. See also §780.765 – victim has right to appear and make oral impact statement at sentencing	No cross <i>People v. Webb</i> , No. 231978, 2002 Mich App LEXIS 889 (Mich App Jun 18, 2002) – Argument that victim’s impact statement (unsworn, not subject to cross) without merit. Rules of evidence don’t apply to sentencing. Defendant had opportunity to rebut.	Mich. Comp. Laws § 780.764 – oral or written.
Minnesota	Silent Minn. Stat. 611A.038	No cross <i>State v. Feela</i> , C6-93-102, 1993 Minn. App. LEXIS 1161 (Minn. App. Nov. 30, 1993) – no cross because she did not take the oath and her statement was not testimony subject to cross.	Minn. Stat. § 611A.038 – oral or written

<p>Mississippi</p>	<p>Silent</p> <p>Miss. Code Ann. § 99-19-157 – allows for written report that includes statement made by victim – but no oral statements explicitly called for, no cross mentioned, etc. Miss Code. Ann. 99-19-157(2) allows for oral statement.</p>	<p>Silent</p> <p><i>Branch v. State</i>, 882 So. 2d 36 (2004)</p>	<p>Miss. Code Ann. § 99-19-157 – written; Miss. Code Ann. § 99-19-157 (2) – oral.</p>
<p>Missouri</p>	<p>Silent</p> <p>Mo Stat. § 557.041.2 provides that at sentencing, the victim may appear before the court to make a statement. The statement can only relate to the facts of the case and any personal injuries or financial loss incurred by the victim. <i>See also</i> §§ 595.209, stating that victims have right to be heard at sentencing and providing “To the extent reasonably possible and subject to available resources, victims and witnesses of crime. . . shall be afforded the right . . . to appear personally . . .at the sentencing proceeding and to reasonably express his or her views concerning the seriousness of the crime and the need for restitution.”</p>	<p>Silent</p> <p><i>Edwards v. State</i>, 794 S.W. 2d 249 (Mo. App. 1990) – not ineffective counsel when counsel didn’t object to impact testimony.</p>	<p>Mo. Rev. Stat. § 557.041.2 – oral or written</p>

<p>Montana</p>	<p>Silent, but if new material facts, defendant must have adequate opportunity to respond</p> <p>Mont. Code Ann. § 46-18-115 – “The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim’s opinion regarding appropriate sentence. At the victim’s option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both. . . . The court shall consider the victim’s statement along with other factors. However, if the victim’s statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the hearing if necessary.” (Am. 1995)</p>	<p>Balancing</p> <p><i>State v. Legg</i>, 2004 MT 26 (2004) – part of the purpose for amending statute in 1995 to allow for victim impact statements was protection of the victim when imposing restrictions on offender. “Given the Legislature’s concern with protecting victims from repeat offenses . . . we believe the Legislature intended to allow the sentencing court wide latitude in considering any information relevant to the treatment of the offender and the risk he or she poses to the victim or to other children in a community.”</p> <p><i>State v Johnson</i> – CR 92-44, 1993 Mont Dist LEXIS 628 (1993) - Rules of evidence don’t apply to sentencing hearings, but issue of cross is in doubt. D has due process guarantee and must be afforded opportunity to rebut negative info. Here, negative info can only be access to privilege info and cross. “The Court finds that to allow such disclosure and cross-examination would be highly invasive of the minor’s privacy and could be counter-productive to her recovery from the harm that was, in fact, caused by the Defendant’s criminal act upon her.” State</p>	<p>Mont. Code Ann. § 46-18-115 – in writing or orally under oath</p>
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		concedes D can cross the mom; resolve issue of victim by not including her VIS.	
Nebraska	Silent Neb. Rev. Stat. § 81-1848 – victim can submit a written impact statement and read it at sentencing.	No case law identified. No cross. <i>State v. Galindo</i> , 774 N.W.2d 190 (278 Neb. 599), 2009 – adopted Crawford holding, that Sixth Amendment rights are inapplicable during sentencing, applies to VIS.	Neb. Rev. Stat. § 81-1848 – written impact statement or read impact statement submitted pursuant to probation officer’s preparation of PSI
Nevada	Silent Nev. Rev. Stat. § 176.015 does not mention cross examination	In limited circumstances <i>Buschauer v. State</i> , 106 Nev. 890 (1990): <ul style="list-style-type: none"> • If statements refers to facts of the crime, impact on victim, or restitution, victim must be sworn but no cross examination and no prior notice required. In most instances, defense should be aware of and able to rebut statements falling under these categories • If statements includes references to specific prior acts of the defendant, victim should be under oath, and defendant should be given notice and opportunity to cross 	Nev. Rev. Stat. § 176.015 – may appear personally, by counsel, or by personal representative.
New Hampshire	No cross	No case law identified. New statute.	N.H. Rev. Stat. Ann. § 21-M:8-k – written or oral

	<p>N.H. Rev. Stat. Ann. § 21-M:8-k – the victim has “the right to appear and make a written or oral victim impact statement at the sentencing of the defendant . . . No victim shall be subject to questioning by counsel when giving an impact statement.” Statute was amended in 2007 to add this sentence.</p> <p>Legislative history – reasons include – “They are there and they are probably under a lot of stress saying how they have been affected by the crime that has been committed and to be questioned by an attorney just doesn’t seem proper.”</p> <p>Goal is to give them the opportunity to speak – in some instances, they have already been put on the stand and questioned.</p> <p>Impact statement not meant to be about the facts of the case, but the impact on the victim</p> <p>“Victim impact statements historically have been put in place to give that victim the freedom to speak without being cross-examined and without having to justify what they are</p>		
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	<p>saying.”</p> <p>Sentencing hearings generally not subject to cross anyway. Often not sworn in.</p>		
New Jersey	<p>Silent</p> <p>N.J. Stat. Ann. § 52:4B-36 – allows victim “to make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.”</p> <p>NJ Stat. Ann. § 39:4-50.11 (this appears to be for motor vehicle accidents only)– right to submit oral or written statement re sentencing, including nature and extent of physical, psychological, or emotional harm and loss of earnings or work and effect upon family.</p>	<p>Sometimes</p> <p>Cross examination of victim’s mother occurred in <i>State v. Koskovich</i>, 168 NJ 448 (2000), without discussion.</p> <p><i>But see State v. Muhammad</i>, 145 N.J. 23 (1996), which compares victim speaking at sentencing to defendant allocution – “[W]e recognized the right of a capital defendant to make a brief statement in mitigation to the jury at the close of the presentation of evidence in the penalty phase without exposing himself to cross-examination. We observed that brief statement by the defendant would be unlikely to inject a fatal emotionalism into the jury’s deliberations. We believe that a similar brief statement from the victim’s family about how the killing has impacted their lives is also unlikely to inflame the jury. Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.”</p>	<p>N.J. Stat. Ann. § 52:4B-36 – in-person statement in addition to the statement permitted for inclusion in the presentence report</p>

<p>New Mexico</p>	<p>Silent</p> <p>N.M. Stat. Ann. § 31-26-4</p> <p>Victim has the right to make a statement to the court at sentencing</p> <p>See also constitution – N.M. Const art. II § 24 (same)</p>	<p>No case law identified.</p> <p>Other case law says VIS are okay, but must be “brief and narrowly presented,” at least in death penalty cases. Also in death penalty cases, rules of evidence do apply.</p> <p><i>State v. Jacobs</i>, 129 N.M. 448 (2000); <i>State v. Clark</i>, 128 NM 119 (1999)</p> <p>-good language re purpose of impact evidence generally</p>	<p>N.M. Stat. Ann. § 31-26-4 – “make a statement to the court at sentencing”</p>
<p>New York</p>	<p>Silent, but D can rebut</p> <p>N.Y. C.P.L.R. § 380.50 – victim can make statement, defendant can rebut.</p>	<p>No case law identified.</p>	<p>N.Y. C.P.L.R. § 380.50 – “statement”</p>
<p>North Carolina</p>	<p>Silent</p> <p>N.C. Gen. Stat. § 15A-825 – VIS seems to be in writing only</p>	<p>No on point case law identified.</p> <p><i>State v. Phillips</i>, 325 NC 222 (1989) (written VIS okay)</p> <p><i>State v. Jackson</i>, 370 S.E.2d 667 (91 N.C. App. 124), 1988 – ct says ordinarily those giving VIS should be in court and available for cross-examination. But not in error to have them as written statements. In this case D’s objections were “merely to the receipt of the statements.”</p>	<p>N. C. Gen. Stat. § 15-A-825 – have a VIS prepared for consideration by the court</p>
<p>North Dakota</p>	<p>Yes for oral; not specified for written</p>	<p>No case law identified.</p>	<p>N.D. Cent. Code. § 12.1-34-02(14) – written/oral only in appropriate circumstances at the discretion of the judge.</p>

	<p>N.D. Cent. Code. § 12.1-34-02(14)</p> <p>“The victim of a violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the discretion of the judge. The oral statement must be made under oath and is subject to cross-examination.”</p> <p>(1987)</p>		
Ohio	<p>Silent</p> <p>Ohio Rev. Code Ann. § 2930.13;</p> <p>See also § 2929.19(B) – requiring court to consider VIS</p>	<p>No cross needed, but not prohibited</p> <p><i>State v. Wallace</i>, 2003 Ohio 4119 (Ohio App. 2003) – defendant did not need to be present at VIS because it was not a critical stage of the proceeding (if doesn’t need to be present, seems don’t have right to cross)</p> <p><i>In the Matter of Zachary S.</i>, 2002 Ohio 1506 (Ohio App. 2002) – attempt to find error for ineffective counsel failing to ask court to permit cross was “not well taken.”</p>	Ohio Rev. Code Ann. § 2930.13 – written or oral statement or person preparing impact statement
Oklahoma	<p>Depends</p> <p>Okla. Stat. tit. 22, § 984.1 – “Any victim or any member of the immediate family or person designated by the victim or by family members of a victim who appears personally at the formal sentence proceeding</p>	<p>Yes to cross</p> <p><i>Conover v. State</i>, 933 P.2d 904 (Okla. Crim. App. 1997) – in death sentence case, error to not allow cross of family (confrontation)</p>	Okla. Stat. tit. 22, § 984.1 – written or oral

	shall not be cross-examined by opposing counsel; provided, however, such cross-examination shall not be prohibited in a proceeding before a jury or a judge acting as a finder of fact.”		
Oregon	Silent Or. Rev. Stat. § 163.150 Evidence may be presented to any matter deemed relevant to sentencing, including victim impact evidence relating to the personal characteristics of the victim or the impact of the crime on the victim’s family	No case law identified. Because statute was amended in 1995/1997, the cases deal with retroactive application of the law in death sentence cases.	Or. Rev. Stat. § 163.150 – doesn’t specify, “victim impact evidence”
Pennsylvania	Silent 18 Pa. Cons. Stat. Ann. § 11.201 – victims have the right to offer prior comment on sentencing, including submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim’s family. 42 Pa C.S. § 9711 Evidence concerning the victim and the impact that the death of the victim had on the family of the victim is admissible in first degree murder proceedings.	No case law identified. Defense arguments seem to come up in failure to object context, not failure to cross. <i>See, e.g., Commonwealth v. Tedford</i> , 960 A.2d 1 (2008)	18 PA. Cons. Stat. Ann. § 11.201 – written and oral

<p>Rhode Island</p>	<p>Silent</p> <p>R.I. Gen. Laws § 12-28-4 – Right to address the court regarding the impact the defendant’s criminal conduct has had on the victim;</p> <p>Art. 1, § 23 of R.I. Const (same)</p>	<p>No case law identified.</p>	<p>R.I. Gen. Laws § 12-28-4 – “address the court” (same in Art. I, § 23 of R.I. Const).</p>
<p>South Carolina</p>	<p>Silent, but defendant must be given opportunity to respond</p> <p>S.C. Code Ann. § 16-3-1550</p> <p>Court must hear or review any victim impact statement, written or oral , before sentencing. Within a reasonable period of time before sentencing, the pa must make the statement available to the defense and the court must allow the defense an opportunity to respond</p> <p>[See S.C. Code Ann. § 16-3-1550 – court must protect rights of victims as diligently as those of defendant]</p>	<p>No case law identified.</p>	<p>S.C. Code Ann. § 16-3-1550 – written or oral</p>
<p>South Dakota</p>	<p>Silent, but D can respond</p> <p>S.D. Codified Laws 23A-28C-1 – victim</p> <p>S.D. Codified Laws § 23A-27.1.1 – victim, in court’s discretion, may address the</p>	<p>No case law identified.</p>	<p>S.D. Codified Laws § 23A-28C-1 – written or oral</p>

	<p>court concerning the emotional, physical, and monetary impact of the crime upon the victim and the victim’s family and may comment upon the sentence that may be imposed. “The defendant shall be permitted to respond to such statements orally or by presentation of evidence and shall be granted a reasonable continuance to refute any inaccurate or false charges or statements.”</p>		
Tennessee	<p>Silent</p> <p>Tenn. Code Ann. § 40-38-103 – Victims have the right to “whenever possible” submit a VIS to courts and give “impact testimony” at sentencing hearings.</p> <p>§ 40-38-202 – court shall solicit and consider VIS. VIS limited to information about the financial, emotional, and physical effects of the crime on the victim and victim’s family, and specific info about the victim, circumstances surrounding the crime, and manner in which it was perpetrated.</p> <p>§ 40-35-209(b) - victim</p>	<p>Case law presumes ability to cross – <i>State v. Blackhurst</i>, 70 S.W.3d 88 (Tenn Crim App 2001) – Defendant had access to testimony 10 days earlier and victim was available for cross, so D has sufficient notice and a fair opportunity to rebut objectionable testimony</p>	<p>Tenn. Code Ann. § 40-38-103 – “whenever possible” submit a VIS to court and give “impact testimony”</p>

	opportunity to be heard at D's sentencing		
Texas	<p>Tex. Code Crim. Proc. art 56.02 – victims have the right to provide pertinent info to probation dept conducting presentencing investigation concerning impact of offense on the victim and family by testimony, written statement, or any other manner prior to sentencing; and to complete VIS and have it considered</p> <p>Tex. Code Crim. Proc. art 56.03 – contemplates written form</p> <p>Tex. Code Crim. Proc. art 42.03 – victim may appear in person to present statement on offense but must be <i>after</i> sentence pronounced.</p>	<p>Yes to cross</p> <p><i>Aldrich v. State</i>, 296 S.W.3d 225:– “Because various unidentified witnesses stood and read their own statements to the trial court prior to the trial court’s assessment of punishment or pronouncement of sentence... Aldrich had the right to confront and cross-examine them.” Was error for court to not allow Aldrich to respond to or cross the witnesses.</p> <p><i>Enos v. State</i>, 889 SW 2d 303 (Tex Crim App 1994) – VIS should have been discoverable for cross-examination and possible impeachment.</p> <p><i>Johnson v. State</i>, 286 S.W.3d 346 (Tex Crim App 2009) – trial judge does not have discretion to impose jail time as a condition of community supervision immediately after he has heard unsworn, un-cross-examined victim-allocation statements in which victims stated they wanted appellant to go to jail. Statute only allows for victim-allocation after sentence has been imposed. Error was not harmless.</p> <ul style="list-style-type: none"> • Ct concerned about risk that 	<p>Tex. Code Crim. Proc. Ann. art 42.03 –in person to present statement but must be <i>after</i> sentence pronounced.</p> <p>Tex. Code Crim. Proc. Ann. art 56.03 – contemplates written form</p>

		<p>statement might affect partiality of the fact finder: “Only after the entire sentencing procedure is complete – when it is not possible for anyone to think that unsworn, uncross-examined testimony could affect the trial judge’s sentencing -may the victim deliver a statement to the defendant, the court, and the public.”</p> <ul style="list-style-type: none"> • Ct says it is “widely acknowledged by commentators that victim-allocation statement are to have ‘no effect’ upon ...decision making” 	
Utah	<p>Silent</p> <p>Utah Code Ann. § 77-38-4(7) – victim’s right to be heard may be exercised in any appropriate fashion, including oral, written, etc.</p> <p>Utah Const Art I, § 28 – “To have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider, without evidentiary limitation, reliable information concerning the background, character, and conduct of a person convicted</p>	<p>No on point case law identified.</p> <p><i>State v. Elm</i>, 808 P.2d 1097 (1991) defendant objected b/c not able to cross victim in sentencing, but failed to preserve issue for appeal</p> <p><i>State v. Weeks</i>, 2002 UT 98 (2002) – rules of evidence don’t apply to sentencing</p>	<p>Utah Code Ann. § 77-38-4(7) - victim's right to be heard may be exercised at the victim's discretion in any appropriate fashion, including an oral, written, audiotaped, or videotaped statement or direct or indirect information that has been provided to be included in any presentence report</p>

	of an offense [except in capital cases]”		
Vermont	Silent VT Stat. Ann. tit. 13, § 5321 – victim has the right to appear personally to express reasonably his views on the crime, person convicted, and need for restitution	No case law identified.	VT. Stat. Ann. tit. 13, § 5321 – appear personally, but if not present, the court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing, which should be taken into account.
Virginia	Silent Va. Code Ann. § 19.2-11.01 Right to prepare written victim impact statement; upon motion of VA, to testify prior to sentencing regarding the impact of the offense Va. Code Ann. § 19.2-264.4 – testimony limited to certain topics such as victim’s welfare, need for medical services, etc. (see Va. Code Ann. § 19.2-299.1)	Cross not mandatory, but seems to be allowed <i>Smith v. Commonwealth</i> , 660 S.E.2d 691 (Va App 2008) – “A sentencing hearing before a judge is not a criminal trial. When exercising the wide discretion inherent in sentencing, a judge should not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.” Given narrowness of sentencing hearing, D’s inability to cross examine declarant didn’t undermine fundamental fairness of proceeding. – once guilt has been established, can consider responsible unsworn or out of court info. [But see – defendant had adequate opportunity to compel victims to take the stand and submit to cross]	Va. Code Ann. § 19.2-11.01 - right to prepare written victim impact statement; upon motion of VA, to testify prior to sentencing
Washington	Wash. Rev. Code § 7.69.030 – right to submit impact statement	Cross not necessary, but seems to be allowed.	Wash. Rev. Code § 7.69.030 – right to submit impact statement to court and to present a

	<p>to court § 9.94A.500(1) – allows “arguments” from victim</p> <p>Wash Const Art 1, § 35 – right to make a statement at sentencing subject to same rules of procedure that govern D’s rights</p>	<p><i>State v. Bell</i>, 116 Wn. App. 678 (Wash App 2003) – D did not object or request cross. “Crime victim impact reports and risk assessments must be considered by the court, together with argument of the crime victim at the time of sentencing. Notably, the rules of evidence don’t apply to sentencing proceedings. Given this framework, the court did not abuse its discretion by considering the witness statements at the time of sentencing.”</p>	<p>statement personally or by representation.</p>
<p>West Virginia</p>	<p>W.Va. Code § 61-11A-2(b) – victim may make oral statement for the record or written statement. Statement must relate solely to the facts of the case and the extent of any injuries, financial losses and loss of earnings directly resulting from crime for which D is being sentenced. This statement is in addition to victim impact statement described below.</p> <p>W. Va. Code § 61-11A-3 – victim impact statement (report) considered by court. D must get it 10 days before and may introduce testimony or other information related to any alleged factual inaccuracies in</p>	<p>Nothing directly on point.</p> <p><i>State v. Tyler</i>, 211 W. Va. 246 (2002), discusses importance of right to speak, and, quoting Maryland case, says that the right is meant to remedy “what has been perceived as the justice system’s neglect of crime victims.” Also: “an important step toward accomplishing that task is to accept victim impact testimony wherever possible.”</p>	<p>W.Va. Code § 61-11A-2(b) – victim may make oral statement for the record or written statement.</p>

	<p>the statement.</p> <p>See also W. Va. Code § 61-11-A-1(b) - The legislature declares that the purposes of this article are to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process and to ensure that the state and local governments do all that is possible within the limits of available resources to assist victims and witnesses of crimes without infringing on the constitutional rights of the defendant.”</p>		
<p>Wisconsin</p>	<p>Silent</p> <p>Wis. Stat. § 950.04(iv)(m) – provides victims the right to make statements concerning sentencing, disposition, or parole.</p> <p>Wis. Stat. § 972.14(3)(a) – victim may make a statement at sentencing relevant to the sentence.</p>	<p>Cross has been allowed, but it was looked upon unfavorably by appellate court</p> <p><i>State v. Kempf</i>, 163 Wis. 2d 1093 (Wis. Ct. App. 1991) – D appealed in part b/c limited in crossing victim at sentencing. “A convicted defendant has no absolute right to present his own witnesses at sentencing, since such proceedings are not designed to be full-blown evidentiary hearings or mini-trials.” Notes trial court made “significant concession” to Kempf to take formal testimony. Think it “remarkable” that D appealed on this basis.</p>	<p>Wis. Stat. § 950.04(iv)(m) – provides victims the right to make a “statement.”</p> <p>Wis. Stat. Ann. § 972.14(3)(a) - make a statement in court or submit a written statement to be read in court.</p>

		Court has obligation to ensure victims treated with dignity and respect.	
Wyoming	Silent Wyo. Stat. Ann. § 7-21-103 – victim can give written or oral statement limited to explanation of injury, economic loss, need for restitution, recommendation for appropriate disposition.	No case law identified.	Wyo. Stat. Ann. § 7-21-103 – oral or written.

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