

*A Review of the American Bar
Association's Guidelines for Fair Treatment
of Crime Victims and Witnesses*

By the

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In summer 2005 the Victims Committee of the Criminal Justice Section of the American Bar Association asked the National Crime Victim Law Institute (NCVLI) to review the 1983 Guidelines for Fair Treatment of Crime Victims and Witnesses (Fair Treatment Guidelines). The task was to compare the Fair Treatment Guidelines with the current legal landscape for victims so that the Victims Committee could assess whether the Fair Treatment Guidelines can continue to stand as a guide for the treatment of victims in light of the significant changes that have occurred in the past twenty-three years. It was an honor for NCVLI to be asked to undertake this endeavor and we thank the Victims Co-Chairs, Mary Boland and Raio Krishnayya, for giving us the opportunity.

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I. INTRODUCTION

The Modern Crime Victims' Rights Movement began more than 30 years ago and aspired to improve the treatment of crime victims in the criminal justice system. This Movement has since evolved into "one of the most successful civil liberties movements of recent times."¹ An early part of the evolution occurred in 1983, when the Criminal Justice Section Victims Committee of the American Bar Association published *Guidelines for Fair Treatment of Crime Victims and Witnesses* (Fair Treatment Guidelines).² The Fair Treatment Guidelines set forth 13 Guidelines establishing "courtesies and considerations" owed to victims and witnesses in the criminal justice process, seeking, in part, to remedy the then-existing "non-status" of crime victims.³

The purpose of this document is to examine how the law regarding the treatment of crime victims⁴ has changed in the intervening 23 years since the Fair Treatment Guidelines were adopted, and to examine whether the Fair Treatment Guidelines remain relevant to the treatment of crime victims during the criminal justice process. The conclusion of the authors of this document is that in light of the passage of expansive laws providing for crime victims' rights, the "courtesies and considerations" in the Fair Treatment Guidelines have been rendered obsolete. The document leaves for future discussion whether the Fair Treatment Guidelines should be amended and, if so, the appropriate substance of any such amendment.

A. *General History of the Modern Crime Victims' Rights Movement*

The legal impetus for the Modern Crime Victims' Rights Movement was, in part, the 1973 United States Supreme Court decision in *Linda R.S. v. Richard D.*, 410 U.S. 614 (1972). In *Linda R.S.*, the Supreme Court considered whether an unmarried woman could seek to enjoin the prosecutors' office from discriminately applying a statute criminalizing the non-payment of child support by refusing to prosecute fathers of children born to unmarried women. The Court's narrow holding was that the victim could not demonstrate a nexus between the prosecutor's alleged discriminatory enforcement of the child support statute and the woman's failure to secure child support payments, and as such, the victim did not have standing to seek the relief she requested. In *dicta*, the Court acknowledged the then-prevailing view that a crime victim cannot compel a criminal prosecution because "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." The Court went on to provide a foundation for remedying the above-described situation when it stated that Congress could "enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute."⁵

Nearly ten years after *Linda R.S.*, in 1982, the final report of the President's Task Force on the Victims of Crime issued⁶, and shortly thereafter the Fair Treatment Guidelines were adopted. At this juncture, however, the Modern Crime Victims' Rights Movement remained in its infancy.⁷ Since that time, the Modern Crime Victims' Rights Movement has aggressively aimed to create an independent participatory role for crime victims in criminal justice proceedings. The Modern Crime Victims' Rights Movement has attempted this in a number of ways: in state legislatures and the federal Congress.⁸ Thirty-three states have amended their constitution to address crime victims' rights⁹, and the remaining states have passed crime victims' rights legislation.¹⁰ In the federal system, Congress passed the first of several pieces of crime victims' rights legislation in

1982, the Victim and Witness Protection Act, and subsequently passed a series of laws, successively giving greater legislative recognition to the rights of crime victims.¹¹

In addition to these legislative efforts, the judiciary has recognized aspects of the move toward participatory status for crime victims. For instance, in *Payne v. Tennessee*¹², the United States Supreme Court explicitly recognized that crime victims are not nameless/faceless non-players in criminal justice system. Specifically, in his concurring opinion in *Payne*, Justice Scalia noted “a public sense of justice keen enough that it has found voice in a nationwide ‘victims’ rights movement.”¹³

B. Categories of Crime Victims’ Rights

As noted above, the Modern Crime Victims’ Rights Movement has sought to remedy the non-status of the crime victim by imbuing individual crime victims with enforceable rights in the criminal justice system. The result has been a myriad of rights varying jurisdiction-to-jurisdiction. Despite variation in the rights, contemporary constitutional and statutory crime victims’ rights can be loosely categorized into the following rights:

- * the right to information;
- * the right to be present at criminal justice proceedings;
- * the right to due process, *i.e.*, the right to notice of and opportunity to be heard at important criminal justice proceedings;
- * the right to financial recompense for losses suffered as a result of a crime, such as restitution and/or compensation/reparations;
- * the right to protection; and
- * the right to privacy.

While this categorization of rights is admittedly a blunt instrument by which to examine a complex and nuanced area of law, it provides a framework for this document’s examination of a cross-section of crime victims’ rights.¹⁴

C. Methodology

This document is designed to compare the Fair Treatment Guidelines to the current state of the law with regard to crime victims. A direct comparison is impossible, however, because of the substantial changes that have occurred in the 23 years since the Fair Treatment Guidelines were first adopted. Consequently, rather than a direct comparison this document sets forth the current state of the law in the state and federal systems, and then examines the Fair Treatment Guidelines against that landscape to determine the continued relevance of the Fair Treatment Guidelines.

Sections II and III set forth the modern approach to crime victims' rights in the state and federal systems respectively. These Sections are organized in three parts – identification of the definition of “crime victim,” identification and analysis of the rights in the above-identified categorization, and discussion of enforcement.

It is important to note that a comprehensive identification of federal and state constitutional and statutory provisions that affect the treatment of crime victims of crime is a daunting task. Each year, several hundred new state crime victims' rights laws are enacted and may be codified in scattered sections of each state's code.¹⁵ Therefore, throughout this document, unless otherwise noted, the compilation of crime victims' rights was completed by identification of constitutional crime victims' rights provisions and statutes which are explicitly denoted as “victims' rights” provisions.

Section IV discusses the Fair Treatment Guidelines in light of Sections II and III, identifying which Guidelines continue to be relevant after 23 years. Section IV sets forth the conclusion of the authors: the Fair Treatment Guidelines lag far behind the state of the nation with regard to crime victims' rights and consequently, can no longer be deemed “guidelines.”

II. THE STATES' APPROACH TO THE RIGHTS OF CRIME VICTIMS

Since the early 1980's, 33 states have added victims' rights to their state constitutions; the remainder have passed statutory victims' rights.¹⁶ The breadth and depth of crime victims' participatory rights in each state depends on the interplay of three factors: the definition of who is a crime victim; the number and scope of victims' constitutional and statutory rights; and the enforceability of those rights.¹⁷

A. *Who is a crime victim?*

The definition of “crime victim” varies widely between states. In addition, within each state the definition of “crime victim” often varies depending on which victims' rights are at issue. For example, a person¹⁸ may meet the statutory definition of “crime victim” for purposes of compensation or reparations, but not meet the separate statutory definition of “crime victim” for purposes of the right to notice of post-conviction release proceedings.

Many states define who is a crime victim by reference to the type of crime committed. Within this general approach, states with the broadest definition of “crime victim” include any person harmed by a criminal offense – both felonies and misdemeanors.¹⁹ For example, Hawaii defines a “victim” as “a person against whom a crime has been committed by either an adult or a juvenile.”²⁰ A “crime” is then defined as “an act or omission committed by an adult or juvenile that would constitute an offense against the person under the Penal Code of this State.”²¹

Several states define “crime victim” more narrowly. For instance, some states define “crime victim” to include any person harmed by a felony – but not misdemeanor – offense²²; a handful confine the definition to those who suffer physical injury as the result of a felony and/or misdemeanor²³; and a few provide for a category or type of crime.²⁴ Finally, several states merely list the crimes that trigger inclusion in the definition of crime victim.²⁵

In cases resulting in the death of the victim, a majority of states define the “crime victim” to include immediate family members or the guardian of the deceased.²⁶

A majority of states exclude any person who is responsible for the criminal conduct at issue from the definition of “crime victim.”²⁷

B. Crime Victims’ Rights

1) The Right to Information

The right to information refers to a crime victim’s right to be generally informed about criminal proceedings and available resources. Victims are generally entitled to be provided information in three broad categories: information about victim services – those services the victim can receive from a governmental agency or private organization to address physical, emotional, and financial injuries and loss suffered as a result of the crime; information about the criminal justice process itself, sometimes including information about the victim’s role in that process; and information about the specific criminal justice proceeding or case involving the person accused of the crime against the victim.

a) Information about victim services

An overwhelming number of states require that crime victims be provided with information about victim services.²⁸ This includes information about governmental agencies that provide victim services, information or referrals to private organizations that provide victim services – often including medical services, social services, and crisis or emergency services – and compensation benefits.²⁹ Interestingly, several states require the provision of victim services, but do not require that the victim receive information about those services.³⁰ In most states, either law enforcement personnel or the prosecutor is the government entity required to provide information about victim services.³¹

b) Information about the criminal justice process

At least 20 states require that victims be provided general information about the criminal justice process, sometimes including information about their role in that process.³²

c) Information about the specific case

It is difficult to quantify the number of states that require that victims be provided information about their specific case. Some states require that victims be provided information, upon request, about the status of their case; other states provide that crime victims must be provided that information only at specific points during the proceeding. Several states without rights to information do provide the victim with a right to confer with the prosecutor, presumably for the purpose of providing information about the victim’s case.³³ Finally, those victims who have rights to notice – rights to advance advisement of criminal justice proceedings involving their specific case – are provided information about their case on an ongoing basis. Because a crime

victim's right to information about the specific case is implicated in a multitude of ways, it was not quantified in this document.

2) The Right to be Present

The right to be present refers to the crime victim's right to physically attend trial and other criminal justice proceedings. In many states, victims have the constitutional or statutory right to be present at all criminal justice proceedings at which the defendant has the right to be present. In other states, victims have constitutional or statutory rights to be heard at release and sentencing proceedings, necessarily indicating they also have the right to be present. For purposes of the categorization of the right to be present in this section, focus is on the right to be present at trial.

In a majority of states that have constitutional or statutory provisions guaranteeing crime victims the right to be present at trial, these provisions grant either an absolute or a qualified right. At least 16 states provide crime victims with an unqualified right to be present at trial.³⁴ Though unqualified, because a victim's right to be present at trial is grounded in state law, the right is still subject to the defendant's federal constitutional rights to due process and a fair trial. With a single exception, state courts that have considered this issue have concluded that a defendant's constitutional rights do not require *per se* exclusion of a victim or witness from a criminal trial.³⁵

An additional 11 states give victims the right to be present at trial subject to exclusion for interference with the defendant's constitutional rights, including the rights to due process and a fair trial.³⁶ Because a victim's state constitutional or statutory right to be present is currently subservient to a defendant's federal constitutional rights, this articulation of the right is identical to the unqualified rights compiled in the preceding paragraph.

Approximately 10 states provide crime victims with the right to be present at trial, subject to other qualifications. These qualifications fall into the following categories: 5 states give victims the right to be present unless their testimony is affected³⁷; 2 states give victims the right to be present if practicable³⁸; 2 states give victims the right to be present subject to the discretion of the court³⁹; and 1 state gives victims the right to be present after testifying.⁴⁰

3) The Right to Due Process (i.e. notice and opportunity to be heard)

The right to due process generally refers to the rights to notice and the opportunity to be heard at important criminal justice proceedings. Several states explicitly provide for the right to "due process" in their constitutional or state crime victims' rights provisions.⁴¹ An overwhelming number of states, however, provide victims with the rights to notice and the opportunity to be heard without using the term, "due process."

a) Notice

The right to notice refers to the advance advisement of crime victims' rights or specific events that occur during the criminal justice process.⁴²

Initially, states are split regarding whether a victim must enter a request to trigger the right to notice. The requirement that a victim “request” notice takes numerous forms: some states explicitly require written request⁴³, while others do not include a writing requirement; at least 1 state requires “registration” with the prosecutor⁴⁴, and at least 1 state requires the victim maintain a landline through which the victim can be reached.⁴⁵

Crime victims’ rights to receive notice generally fall into the following categories: notice of victims’ constitutional and/or statutory rights; notice of public court proceedings, including pretrial release proceedings, trial, and sentencing; and notice of post-conviction release proceedings.

- Crime Victims’ Rights

More than 20 states have a constitutional or statutory crime victims’ rights provision requiring comprehensive notice of all constitutional and statutory crime victims’ rights.⁴⁶ This number, however, is misleadingly low. An overwhelming majority of states have notice provisions regarding crime victims’ rights in scattered sections of their constitution or code.

- Pretrial Proceedings/Pretrial Release Proceedings

Most states require notice of all public court proceedings. This general notice requirement provides a victim the right to notice of all pretrial proceedings, including pretrial release hearings that occur as part of a public court proceeding.⁴⁷ At least 32 states require that victims are notified in advance of pretrial proceedings.⁴⁸ While a few states specifically exclude the defendant’s initial appearance from the definition of “pretrial proceeding,” for purposes of notice⁴⁹, the majority of states make no distinction between the types of pretrial proceedings to which their notice requirement arguably applies.⁵⁰ A minority of states do not require any comprehensive notification of pretrial proceedings, and only require that victims receive notice of pretrial proceedings if they have been scheduled or subpoenaed to testify and the date or time of the proceeding is changed.⁵¹ This leaves only 10 states that fail to require notice to crime victims of at least some pretrial proceedings.

- Trial

At least 35 states specifically require that victims receive notice of trial.⁵² In 5 additional states, crime victims have a right to notice of the trial only if they have been scheduled or subpoenaed to testify and the date or time of the trial is changed.⁵³

- Sentencing

An overwhelming majority of states – at least 40 – require that victims receive advance notice of a sentencing proceeding.⁵⁴ Most of these states also require that victims are notified in advance of a hearing regarding sentence modification or reconsideration. In contrast, a handful of states only provide crime victims the right to notice of sentencing proceedings if they have been scheduled or subpoenaed to testify at those proceedings.⁵⁵

- Post-Conviction Release Proceedings

More than 25 states require that victims receive notice of post-conviction release proceedings, such as parole.⁵⁶

b) Opportunity to be Heard

In general, the right to be heard refers to the right to make an oral or written statement – at the victim’s discretion – at the relevant criminal justice proceeding. The right to be heard is a participatory right that is implicated *inter alia* when a plea is being negotiated or presented to the court, at sentencing, and at pre- and post-conviction release proceedings. Included here is a summary of states’ laws regarding the right to be heard prior to acceptance of a plea agreement, and the right to be heard at sentencing.

- Plea

A large majority of states provide victims with a right to confer with the prosecutor or be heard by the court prior to the acceptance of a plea agreement. At least 12 states provide for the right to be heard by the court prior to the acceptance of any proposed plea agreement⁵⁷; 33 states provide for the right to be heard by the prosecutor prior to the presentation of the plea agreement to the court.⁵⁸ A handful of states provide for the victim to be heard both by the prosecutor and the court prior to acceptance of a plea agreement.⁵⁹

- Sentencing

Perhaps the victim’s right to be heard that is most widely provided by states is the right to be heard at sentencing. A minimum of 39 states provide crime victims a constitutional or statutory right to make a statement – or exercise their right of allocution – to the court prior to the imposition of sentence.⁶⁰ An additional 4 states provide crime victims a right to make a verbal statement in the court’s discretion, or to submit a written impact statement that the sentencing court must consider prior to sentencing the defendant.⁶¹

4) The Right to Financial Recompense

Within the confines of the criminal justice system, victims may seek financial recompense in two ways: receive an order of restitution from the defendant, or apply for compensation from the government.⁶²

All states receive funds under the Victims of Crime Act that support some form of compensation or reparations program.⁶³ Recovery under compensation is typically limited: only certain types of losses are compensated, states generally provide a “cap” to the amount of compensation, and victims are required to reimburse the fund from monies received from other sources – such as insurance, a civil settlement, or restitution. In general, victims of crime do not have a right to or expectation of full recovery from their state’s compensation fund for the full amount of losses suffered as a result of the crime committed against them.

A majority of states provide victims with a right to restitution from the defendant for losses suffered as a result of the defendant's criminal conduct.⁶⁴ The Victims Committee of the Criminal Justice Section of the ABA has published *Restitution for Crime Victims: A National Strategy*, which provides a comprehensive overview of crime victims' rights to restitution, impediments to the award and recovery of restitution, and a recommendation to develop a national strategy to streamline and automate restitution.⁶⁵

5) The Right to Protection

The right to protection generally refers to constitutional and statutory provisions that address issues of the victim's physical safety and mental health. States provide for protection in one of two ways: by providing for a right of governmental protection, and/or providing crime victims with sufficient information and/or notice to allow them take measures to ensure their own protection.

At least 9 states provide victims a constitutional right to protection.⁶⁶ In several other states, victims have constitutional and statutory rights to be free from intimidation, harassment, or abuse.⁶⁷

The rights to information and notice discussed previously are also important tools to allow victims to take measures to ensure their protection. For example, more than 20 states require that victims be promptly notified if the defendant has escaped from custody.⁶⁸

Numerous other examples of protective measures pervade state codes, including the availability of civil orders of protection, the right to be heard at bail and other release proceedings regarding the dangerousness of the offender, and the right to a separate waiting area for victims and their families. These rights are not catalogued in this document.

6) The Right to Privacy

The right to privacy refers to freedom from unwarranted governmental intrusion – or the use of governmental authority to provide for intrusion by the defendant – into the victim's personal affairs. A handful of states provide victims with a constitutional right to privacy.⁶⁹ Additional crime victims' rights to privacy are often codified in numerous scattered provisions, such as rape shield laws, and statutes or rules that provide for privileged or confidential communications. A few states have passed statutes to shield victims' communications with victim advocates from disclosure.⁷⁰ Others have explicitly provided that victims have the right to refuse a defense request for an interview.⁷¹

7) Other rights

Most states provide additional rights or protections beyond those categorized here that affect crime victims' treatment in the criminal justice system. Some of those are included here.

A majority of states provide victims the right to be treated with fairness, dignity, and respect.⁷² Utah has taken the unusual step of defining those terms.⁷³

Approximately 25 states provide a victim with some right to a prompt disposition of the criminal proceedings.⁷⁴

Approximately 25 states also provide employer and/or creditor intercession services.⁷⁵ Several states protect the victim from employment termination where the victim chooses to exercise his or her constitutional and statutory rights to participate in the criminal justice process. For example, Arizona has one of the strongest employment protection statutes, and provides that employees generally may not be terminated or lose seniority if the employee-victim misses work to attend criminal justice proceedings related to the victim's case.⁷⁶

Approximately 30 states address the return of the victim's personal property, most requiring that it be returned "promptly" or "expeditiously."⁷⁷

C. Enforcement, Administrative Review, and Compliance of Victims' Rights

In the implementation of victims' constitutional and statutory rights, states have taken three approaches: enforcement, administrative review of rights' violations, and compliance. Enforcement refers to the victim's independent ability to assert his or her rights in the trial court and to seek appellate review of any denial of those rights. Administrative review⁷⁸ refers to governmental programs that monitor and seek to prompt the enforcement of crime victims' rights laws. Compliance refers to government actors voluntarily adhering to constitutional and statutory crime victims' rights provisions. Discussion of administrative review or voluntary compliance efforts is not included in this document.

A 1998 study conducted by the National Institute of Justice (NIJ), concluded that in states with "weak" crime victims' rights protections, the enforcement of crime victims' rights laws was cited as one priority to improve the treatment of crime victims.⁷⁹ The authors of that study observed: "Where legal protection is strong, victims are more likely to be aware of their rights, to participate in the criminal justice system, to view criminal justice system officials favorably, and to express more overall satisfaction with the system."⁸⁰

Meaningful enforcement requires both trial-level standing to assert crime victims' rights and a mechanism for appellate review of a rights violation.

In general, state constitutional and statutory crime victims' rights legislation have no constitutional or statutory provisions explicitly addressing trial level standing, nor do most states have any reported decisions addressing this issue. This is not surprising since state supreme courts have generally established state-specific standing analyses to guide their resolution of any standing inquiry, regardless of the legal context in which it arises.⁸¹ Historically, party-status has not been a pre-requisite to standing to assert constitutional and statutory rights.⁸² Thus, when crime victim standing is at issue, the court's analysis should turn on whether the victim has a legally cognizable interest in the issue raised during the pendency of the criminal justice proceeding.⁸³

Similarly, very few states have explicit provisions that provide for appellate review of crime victims' rights decisions.⁸⁴ This lack of explicit provision for a direct appeal does not preclude the victim from seeking review of a rights violation through a petition for writ of mandamus, prohibition, or certiorari.⁸⁵

Most states prohibit a cause of action for monetary damages based on a violation of crime victims' rights provisions.⁸⁶ Many states explicitly deny the defendant the right to appeal a conviction or sentence based on a denial of crime victims' rights.⁸⁷

III. THE FEDERAL APPROACH TO THE RIGHTS OF CRIME VICTIMS.

Historically, federal crime victims' rights statutes had a fundamental flaw when viewed from the perspective of the crime victim – they were unenforceable in any legal sense. Thus, historically, federal crime victims' rights failed to create “rights.” This failure was keenly demonstrated by *United States v. McVeigh*, 106 F.3d 325 (10th Cir. 1997). In *McVeigh*, a number of the victims of the Oklahoma City bombing sought to exercise their federal statutory right to attend the criminal trial of Mr. McVeigh, and to subsequently testify at the sentencing of Mr. McVeigh if he was convicted. The trial court prohibited the victims' attendance at trial. The victims sought review and the Tenth Circuit Court of Appeals upheld the trial court, pointing to the statute's requirement of only “best efforts,” and finding that the statute did not grant the victims standing to seek review of denials of their rights.⁸⁸

The federal Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771 (CVRA), was drafted, in large part, to remedy this type of unenforceability of crime victims' rights. “The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children – seen but not heard. The [CVRA] sought to change this by making victims independent participants in the criminal justice process.”⁸⁹ Thus, the modern federal approach to crime victims' rights, as embodied in the CVRA, creates individual rights enforceable by crime victims who are imbued with the legal status of participant in the criminal justice system.

A. History Giving Rise to Modern Federal Approach

Between the early 1980s and 1995 numerous state constitutional and state and federal statutory rights for crime victims were passed. Driven by the realization that enforcement of these laws was lacking, in 1995, the leaders of the National Victims Constitutional Amendment Network (a group of pro-victims' rights advocates) called for passage of a federal constitutional amendment.⁹⁰

The result was that on April 22, 1996, during the 104th Congress, a constitutional amendment was introduced.⁹¹ The proposed amendment contained seven core rights, and a subsequent version included crime victim standing to enforce the articulated rights.⁹² While the 104th Congress did not pass the amendment, in the years between 1996 and 2004 resolutions calling for a federal constitutional amendment creating rights for crime victims were introduced in nearly every Congress, and congressional hearings on the resolutions were held numerous times.⁹³

In 2004, advocates in the Crime Victims' Rights Movement, recognizing that the super-majority necessary to close debate on the amendment was lacking, pressed instead for "a far-reaching federal statute protecting crime victims' rights."⁹⁴ The result – passage of the "Scott Campbell, Stephanie Roper, Wendy Preston, Lourarna Gillis, and Nila Lynn Crime Victims' Rights Act" (CVRA).⁹⁵ This law contained the same rights of the proposed amendment, including explicit aggressive enforcement provisions, and was codified in Title 18 – the criminal code – of the United States Code. Thus, the CVRA resides side-by-side with the majority of other provisions governing federal criminal processes.

As one scholar has stated, "The CVRA transforms crime victims into participants in the criminal justice process These new rights will reshape the federal criminal justice system"⁹⁶ Since passage of the CVRA there has been a flood of litigation on the meaning of the rights contained therein.⁹⁷ While the scope of the CVRA's impact on the federal criminal justice system is not yet known, it is clear that with the passage of the CVRA, the modern federal approach has woven crime victims' rights into the basic fabric of our federal criminal justice system, making the victim an integral participant in that system.

B. Definition of Crime Victim

The CVRA has an "intentionally broad definition" of crime victim.⁹⁸ Under the CVRA a "crime victim" is defined as:

a person directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

18 U.S.C. § 3771 (e).

This definition extends to persons regardless of whether the offense committed against the person is charged. It allows multiple family members to qualify as representatives of the victim. It prohibits the defendant from representing the victim or asserting the identified crime victims' rights.⁹⁹

C. The Crime Victims' Rights

While the CVRA is a wide sweeping piece of legislation with strong enforcement provisions, the eight specific rights provided to crime victims under the CVRA generally fit within the categorization set forth above.

1) The Right to Information

The CVRA does not specifically provide crime victims the right to information.

This lack of inclusion is not wholly unpredictable. As is discussed in Section II above, the right to information refers to a crime victim's right to be generally informed about criminal proceedings and about available resources. While information is certainly critical to a crime victim and is useful for participation, information – standing alone – is not a participatory right. Because the CVRA was drafted to create participatory status for crime victims, if crime victims exercise those rights and participate in the criminal justice system, they will necessarily have the same information as other participants, and the separate right to information about criminal proceedings may be viewed as superfluous.

2) The Right to be Present

The right to be present in the CVRA is an expansive right which will rarely, if ever, allow for a crime victim to be excluded from public court proceedings, be those pretrial, trial, or post-conviction proceedings. Subsection (a)(3) provides the crime victim the right “not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.”

The legislative history of the CVRA reveals the breadth of the right. Specifically, Senator Feinstein noted that the right was “intended to grant victims the right to attend and be present throughout all public proceedings.”¹⁰⁰ Senator Kyl stated that the right “allows crime victims in the vast majority of cases to attend the hearings and trial of the case involving their victimization. This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pretrial, trial, or post-trial proceedings.”¹⁰¹

The strongest aspect of the right is the burden it places on the party opposing the victim's presence. Specifically, the right provides that a court must receive “clear and convincing evidence” and determine that the victim's testimony would be “materially altered” if s/he heard other testimony. This language places a high burden on the party seeking the victim's exclusion. Further, even if the high burden is met, “[b]efore making a determination [of exclusion], the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding.” At least one federal court has applied this provision, finding that the defendant failed to make the requisite showing and therefore, holding that the crime victim could be present.¹⁰²

Thus, the plain language of the right to be present in the CVRA, together with its legislative history, ensures that it will be virtually unheard of for the victim to be excluded from public court proceedings ranging from pretrial through post-conviction and specifically including trial.¹⁰³

3) The Right to Due Process (i.e. notice and opportunity to be heard)

At the heart of due process is that “parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified.”¹⁰⁴ The notion that due process is owed to crime victims is incorporated throughout the CVRA both explicitly and implicitly.¹⁰⁵

a) Notice¹⁰⁶

The right to notice in the CVRA is the right to advance notification of specific events that occur during the criminal justice process. Subsection (a)(2) of the CVRA provides that a crime victim has the “right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.” During consideration and passage of the CVRA, the critical role the right to notice plays in participatory status of crime victims was addressed: “The notice provisions are important because if a victim fails to receive notice of a public proceeding the criminal case at which the victim’s right could otherwise have been exercised the right has effectively been denied.”¹⁰⁷

Three specific aspects of the CVRA’s right to notice demonstrate the broad participatory nature of the federal approach. First, the right is a right to *timely* notice. This means that notice must be given “sufficiently in advance of a proceeding to give the crime victim the opportunity to arrange his or her affairs in order to be able to attend that proceeding and any scheduling of proceedings should take into account the victim’s schedule to facilitate effective notice.”¹⁰⁸ Second, the right is a right to *accurate* notice. This requirement ensures that victims are able to use the notice to facilitate the exercise of their other participatory rights. Finally, the breadth of the proceedings that the right applies to demonstrates that the law envisions crime victim participation throughout the criminal justice process.

b) Opportunity to be Heard

Subsection (a)(4) of the CVRA provides a crime victim “[t]he right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.” This right to be heard is the pinnacle of the participatory status of the crime victim under the modern federal approach. “The right to be ‘heard’ joins the rights to ‘notice and ‘not to be excluded’ to form the foundation for the fair treatment of victims in the federal criminal justice system.”¹⁰⁹

The strength and individual nature of the right to be heard were discussed during passage of the CVRA when Senator Kyl stated:

This provision is intended to allow victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. The right is a right independent of the government or the defendant that allows the victim to address the court. To the extent the victim has the right

to independently address the court, the victim acts as an independent participant in the proceedings.¹¹⁰

The strength of the right to be reasonably heard was recently interpreted by the United States Court of Appeals for the Ninth Circuit in *Kenna v. United States District Court for the Central District of California*, No. 05-73467 (9th Cir., filed January 20, 2006).¹¹¹ The *Kenna* Court stated, “Victims now have an infeasible right to speak, similar to that of the defendant, and for good reason”

The breadth of the right is evidenced by the types of proceedings that a victim has the right to be heard at – release, plea, sentencing, or any parole proceeding. Essentially the CVRA affords victims the right to be heard throughout the criminal justice process. This is true because the CVRA does not define release hearings, leaving open the presumption that a crime victim has the right at both pretrial and post-conviction proceedings, and because the other proceedings, plea, sentencing, and parole, cover every stage of the criminal justice process.

4) The Right to Financial Recompense

While the CVRA does not address compensation, it provides crime victims an absolute right to full restitution. Subsection (a)(6) provides crime victims “[t]he right to full and timely restitution as provided in law.” This provision is broader than prior federal restitution law. While the provision of restitution is governed generally by the Mandatory Victims Restitution Act of 1996 and the Victim and Witness Protection Act of 1982, the inclusion of the word “full” ensures a broad application. The breadth of the right was discussed on the Senate Floor where Senator Kyl noted that the provision was meant to specifically “endorse the expansive definition of restitution given by Judge Cassell in *U.S. v. Bedonie* and *U.S. v. Serawop*,” in which the Federal District Court for the District of Utah afforded future lost earnings to a crime victim.¹¹²

5) The Right to Protection

Subsection (a)(1) of the CVRA provides crime victims “[t]he right to be reasonably protected from the accused.” This is a broad right tethered only by the adverb “reasonably.” The limitation was acknowledged during discussion of this provision during final passage on the Senate floor when Senator Kyl stated: “Of course the government cannot protect the crime victim in all circumstances.”¹¹³ Despite this limitation, Senator Kyl noted that the right has concrete meaning, including not only that crime victims be afforded separate and secure waiting areas during proceedings, but also that the conditions of pretrial and post-conviction release include protections for the victim’s safety.¹¹⁴ Thus, the CVRA’s right to protection creates a “substantive right to have the victim’s safety made not simply a consideration in release decisions, but a requirement.”¹¹⁵

6) The Right to Privacy

Subsection (a)(8) of the CVRA provides the crime victim with “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy.” While the right to privacy is not

specifically defined in the CVRA and will likely be defined through litigation, it is clear from the CVRA's legislative history that it is a substantive right, and not merely aspirational.¹¹⁶

7) Other Rights

The CVRA provides two additional rights. First, subsection (a)(5) provides crime victims "the reasonable right to confer with the attorney for the Government in the case." In discussing this right Senator Kyl stated, "This right is intended to be expansive," applying to all critical stages of the case," but is not intended to interfere with prosecutorial discretion.¹¹⁷ Second, subsection (a)(7) provides crime victims "the right to proceedings free from unreasonable delay." In debating this provision on the Senate Floor, Senator Feinstein stated, "This provision should be interpreted so that any decision to continue a criminal case should include reasonable consideration of the rights under this section."¹¹⁸ While neither of these rights gives control of the criminal justice process to the crime victim, they each ensure crime victims presence and independent participation throughout the process.

D. Enforcement, Administrative Review and Compliance of Rights Under the Federal Approach

Crime victims' rights are implemented in three main ways: enforcement, administrative review of rights' violations, and compliance. Enforcement refers to the victim's independent ability to assert his or her rights in the trial court and to seek appellate review of the denial of those rights. While the CVRA certainly promotes compliance and administrative review¹¹⁹, one key goal of the CVRA was to create participant status for crime victims. Thus, this section addresses only individual crime victim enforcement of his or her rights.

To accomplish enforcement the CVRA explicitly provides for both trial level standing to crime victims to assert their rights and sets forth a specific, expedited mechanism for appellate review of any denial of such right.

With regard to trial level standing, subsection (d)(1) of the CVRA provides: "The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights." This statement indicates that a crime victim has standing in federal trial courts to assert the rights under the CVRA. When discussing this provision during debate, Senator Feinstein stated:

This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim, to stand with other counsel in the well of the court, and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way.¹²⁰

A crime victim's trial level standing is bolstered by Subsection (d)(3) which provides the method of assertion, stating, "The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith."¹²¹

If the district court denies the relief sought by the crime victim for violation of the crime victim's rights, the CVRA sets forth a clear, expedited appellate review process. Specifically, subsection (d)(3) provides that a crime victim may petition for a writ of mandamus and that the court of appeals must take up and decide the issue within 72 hours. Generally, under federal mandamus law review is discretionary¹²²; in contrast, the CVRA "contemplates active review of orders denying crime victims' rights claims even in routine cases."¹²³ The CVRA "creates a unique regime that does, in fact, contemplate routine interlocutory review of district court decisions denying rights asserted under the statute."¹²⁴

IV. COMPARATIVE EXAMINATION: THE CURRENT RELEVANCE OF THE FAIR TREATMENT GUIDELINES

In 1983, when first promulgated, the recommendations in the Fair Treatment Guidelines were on the cutting edge of victim treatment in the United States. The Commentary to the Fair Treatment Guidelines acknowledged that, in part, the guidelines might be "seen by some as radical departures from the traditional non-role of the victim."¹²⁵ This section compares the current state and federal constitutional and statutory crime victims' rights provisions with the Fair Treatment Guidelines, identifying where the Guidelines are consistent with or diverge from the current "victims' rights" approaches taken by the federal and state laws.

A. Definition of Crime Victim

The definition of "crime victim" found in the Fair Treatment Guidelines is facially quite broad. However, because the Fair Treatment Guidelines limit the application of this broad definition to only certain Guidelines, the true definition of "crime victim" in the Fair Treatment Guidelines is narrower than most definitions of "crime victim" found in either the federal or state approaches.

The Fair Treatment Guidelines define a victim as "any natural person against whom any crime as defined under state laws or United States law is being or has been perpetrated or attempted to be perpetrated."¹²⁶ While this definition is extremely broad, it does not apply to a majority of the Guidelines, such as those providing for advance notice of certain proceedings including trial and sentencing, notice of release decisions, consultation with the prosecutor prior to dismissal or plea, or the right to make a victim impact statement.¹²⁷ Instead, the Fair Treatment Guidelines provides that such notice and opportunity for participation exists only in the case of "serious crimes."¹²⁸

In contrast, the federal definition of "crime victim" is quite comprehensive: it includes all persons harmed as the result of a federal offense, regardless of whether the offense against the person is charged or dismissed pursuant to a plea agreement.¹²⁹ This broad definition applies to all of the rights provided in the CVRA.

While the definition of “crime victim” varies widely between states, a majority of states include all persons who suffer physical harm as the result of a felony offense.¹³⁰ Numerous states have broader definitions, defining “crime victim” to include misdemeanor offenses that cause serious bodily injury, or categories of offenses – such as sexual offenses or domestic violence – regardless of the severity of the offense.¹³¹

Thus, the limitation on the application on the definition of “crime victim” in the Fair Treatment Guidelines results in a true definition of “crime victim” which is more limited than the federal definition and the majority of state definitions.

B. Crime Victims’ Rights and Requirements of the Fair Treatment Guidelines

1) The Right to Information

The right to information refers to a crime victim’s right to be generally informed about criminal proceedings and available resources. This right is distinct from the right to notice, which is the right to be advised of specific events in the criminal justice proceeding, generally in advance of those events. The Fair Treatment Guidelines provide for relatively comprehensive information to crime victims, which stands in contrast to the federal approach which does not include any right to information, and to the states’ approach which provides some, but not nearly as comprehensive, information to crime victims.

Numerous Guidelines provide that crime victims should be given information. For instance, Guideline 1 provides for information about social and medical services – including emergency services, and information about compensation and restitution.¹³² The Commentary to the Fair Treatment Guidelines explains that pursuant to Guideline 1, essentially a “referral” guideline, governmental employees in the criminal justice system should give victims information about appropriate sources which can provide immediate services (such as medical attention and emergency shelter), or “less urgent but equally important” information (such as compensation).¹³³ Guideline 2 generally provides for information about the victim’s role in the criminal justice process.¹³⁴ Guideline 9 provides that, upon request, victims should be provided information about the status of their case from the time of the commission of the crime to final disposition or release of the defendant.¹³⁵ In addition, the Fair Treatment Guidelines require notification of case disposition at trial and sentencing (Guideline 7), and any decision or action that results in the defendant’s provisional and final release.¹³⁶

The CVRA, with its emphasis on the participatory rights of crime victims, does not include any rights to mere information.

In contrast to the federal approach, and more in-line with the Fair Treatment Guidelines, stand the states. A large majority of states require that criminal justice personnel provide victims with information similar to that provided under Guideline 1.¹³⁷ Few states specifically require that crime victims receive information about their role in the criminal justice process; however, numerous states require that victims be given information about the criminal justice process generally.¹³⁸ In addition, more than 20 states require that victims receive comprehensive notice

of all constitutional and statutory crime victims' rights, and a majority of states require notice of important criminal justice proceedings. Taken together, these notice requirements provide the victim with important information about the status of their case, and convey much of the same information suggested in Guidelines 2 and 9.

Thus, overall the Fair Treatment Guidelines provide more information to crime victims than do either the federal or states' approaches. This disparity is not as stark as it first appears. For information beyond social and medical services, the federal and state approach is to provide participatory rights to crime victims in the criminal justice system. When an individual has a participatory right, the only manner by which that right can be effectuated is to have prior notice of the right and of the proceedings to which the right attaches. Thus, while facially the Fair Treatment Guidelines provide more informational protections to crime victims, the federal and states' approaches implicitly require the conveyance of a considerable amount of information to crime victims.

2) The Right to be Present

The right to be present refers to the crime victim's right to physically attend trial and other criminal justice proceedings. The right to be present at criminal justice proceedings is foundational to the exercise of other participatory crime victims' rights.¹³⁹ Because the Fair Treatment Guidelines lack any reference to whether a victim should be present at trial or other criminal justice proceedings, they fall far short of the right to be present provided in either the federal or states' approaches.

The Fair Treatment Guidelines are devoid of any reference to whether a victim should be present at criminal justice proceedings. Only 2 Guidelines tangentially address a victim's right to be present. Guideline 4 requires that victims be notified of scheduling changes that affect their required attendance at a criminal justice proceeding. Guideline 11 requires that victims have the opportunity to inform the sentencing body of the crimes repercussions on the victim or victim's family. This latter requirement can be met in one of three ways: by submitting a written statement prepared by the victim; by submitting a written statement prepared by the probation department after consultation with the victim; or by oral statement before the sentencing body. Only the last of these methods requires the victim's presence.

In stark contrast stands the federal approach which provides an expansive right to be present; a right which places the burden on the party seeking exclusion rather than the person seeking to be present.¹⁴⁰ Under the CVRA a victim can only be excluded from trial or other public proceedings if the party opposing the victim's presence presents "clear and convincing evidence" that the victim's testimony would be "materially altered" if the victim heard other testimony.¹⁴¹ This provision places a high burden on the party seeking exclusion, and even if the burden is met, the court must employ reasonable alternative to sequestration that would provide for the fullest attendance possible.¹⁴²

Similarly, although not quite as expansive, stands the states' approach to the crime victim's right to be present. An overwhelming number of states give victims the right to be present at trial or other important criminal justice proceedings, subject only to exclusion to protect the defendant's

federal constitutional rights.¹⁴³ A minority of states place any limitation on a victim's right to be present at trial beyond what is necessary to protect the defendant's constitutional rights.¹⁴⁴

Thus, the Guidelines fall far short of both the federal and states' approaches to a crime victim's right to be present. This deficiency is explainable, in part, by the evolution that a crime victim's ability to be present at the trial of the defendant has undergone since the drafting of the United States Constitution.¹⁴⁵ Until the early 1900's, under the system of private prosecution, the victim was routinely present during trial.¹⁴⁶ From 1900 until 1975, with the advent of public prosecution, the victim generally attended trial for the purpose of assisting the prosecutor.¹⁴⁷ Beginning in 1975, the victim was routinely sequestered from the criminal trial.¹⁴⁸ Since the advent of the Modern Crime Victims' Rights Movement, however, a majority of states and Congress have passed constitutional and/or statutory provisions that grant victims the right to be present at trial.¹⁴⁹ The Fair Treatment Guidelines were crafted at the infancy of the Modern Crime Victims' Rights Movement and therefore reflect the then-accepted notion that a crime victim was generally not present for criminal justice proceedings.

3) The Right to Due Process

The right to due process generally refers to the rights to notice and the opportunity to be heard at important criminal justice proceedings, including pretrial hearings, trial, sentencing, and pre- and post-conviction release proceedings. The right to notice refers to a crime victim's right to be initially advised of their constitutional and statutory rights, and to advance advisement of specific events that occur during the criminal justice process. Notice is distinct from information, which requires that victims be provided certain information, but carries no temporal requirement. Due process is at the core of the Modern Crime Victims' Rights Movement's push toward making victims independent participants in criminal justice proceedings. This is true because for victims to exercise their participatory rights, they must be notified they have the right, receive advance notice of the criminal justice proceeding at which the right will be affected, and be given an opportunity to be heard at that proceeding. The Fair Treatment Guidelines fall far short of either the federal or states' approaches to affording due process to crime victims.

a) Notice

The Fair Treatment Guidelines provide that, upon request, victims should be provided advance notice of the following: scheduling changes that affect crime victims' required attendance at criminal justice proceedings (Guideline 4); the defendant's initial appearance (Guideline 6); submission to the court of plea agreements (Guideline 6); trial (Guideline 6); and sentencing (Guideline 6).¹⁵⁰

The federal approach is far broader and places no burden of affirmative request on the crime victim. Specifically, the CVRA provides victims the right to notice of *any* court proceeding or *any* parole proceeding.¹⁵¹ The CVRA goes on to define the quality of notice, requiring that it be reasonable, accurate, and timely.¹⁵²

The states' approach to notice falls on the continuum between the Fair Treatment Guidelines and the federal approach. States are split on whether a victim must request notice.¹⁵³ Several states

provide for notice of crime victims' rights without request, but a victim must request subsequent notice. More than 20 states require that victims receive comprehensive notice about their constitutional and statutory crime victims' rights.¹⁵⁴ A large majority of states require that victims receive advance notice of pretrial proceedings¹⁵⁵, trial¹⁵⁶, sentencing¹⁵⁷, and release proceedings.¹⁵⁸

b) Opportunity to be Heard

The Fair Treatment Guidelines provide for very limited opportunities for crime victims to be heard. These opportunities exist in only 2 Guidelines. Guideline 10 provides that a victim should have the opportunity to confer with the prosecutor prior to dismissal of the case or submission of the plea agreement to the court. Guideline 11 provides that a victim should have the opportunity to inform the sentencing court of the crime's impact, but that opportunity may be limited to submitting a written impact statement or consulting with the probation department in its preparation of a written statement.¹⁵⁹

In complete contrast stands the federal approach. The CVRA provides expansive opportunities for the victim to be heard, including when a plea is being negotiated or presented to the court, at release, plea, sentencing, or any parole proceeding – essentially throughout the criminal justice process.¹⁶⁰ This right to be heard was crafted to allow victims to directly address the court.¹⁶¹

Similar to the federal approach, a majority of states provide expansive opportunities for victims to be heard throughout the criminal justice process. While more than 33 states provide victims a right to confer with the prosecutor prior to the submission of a plea agreement, 12 states grant victims an opportunity to be heard by the court prior to acceptance of the plea agreement.¹⁶² A majority of states provide victims the opportunity to be heard prior to a post-conviction release decision. More than 40 states provide victims with an opportunity to present a victim impact statement to the sentencing court, but 39 of those states provide that victims have a right to personally address the court at sentencing.¹⁶³

In sum, the Fair Treatment Guidelines fall far short of either the federal or states' approaches with regard to providing due process to crime victims. While the Fair Treatment Guidelines provide crime victims notice of a number of criminal justice proceedings, they generally provide this only "upon request," and then provide few opportunities for the crime victim to be heard. The CVRA and state provisions provide due process in the form of explicit rights to be notified and heard, and also often explicitly provide victims the right to "due process."¹⁶⁴

4) The Right to Financial Recompense

The Fair Treatment Guidelines are more advanced than the CVRA with regard to at least providing notice of compensation, but they fall short of both the federal and states' approaches to restitution.

The Fair Treatment Guidelines address financial recompense of victims in two ways. Guideline 1 provides that victims should receive information about the availability of compensation and restitution.¹⁶⁵ Guideline 12 provides that victims "involving economic loss, loss of earnings, or

earning capacity should be able to expect the sentencing body to give priority consideration to restitution as a condition of probation.”¹⁶⁶

The CVRA, while not addressing victims’ compensation, takes the strongest approach regarding restitution owed to the crime victim. The CVRA provides that crime victims have an absolute right to full restitution.¹⁶⁷ “Full” restitution has been expansively interpreted, and includes items such as future lost wages.¹⁶⁸

State constitutional and statutory crime victims’ rights provisions, though not as expansive of that of the CVRA, generally provide victims with a right to restitution.¹⁶⁹ The states with the strongest restitution statutes generally provide for full mandatory restitution.¹⁷⁰ Further, unlike the Fair Treatment Guidelines, restitution under the states’ approach is not limited to being a condition of defendant’s probation, but instead restitution can be part of the defendant’s sentence, and the restitution order is generally enforceable in the same manner as any civil judgment.

Thus, while the Fair Treatment Guidelines at least provide notice of a crime victim’s right to compensation, in all other respects the Fair Treatment Guidelines are deficient in comparison to either the federal or states’ approach to providing financial recompense to crime victims. Importantly, the ABA Victims Committee has already prepared a publication that makes recommendations for restitution that go far beyond those in the Fair Treatment Guidelines, the Report of the Victims Committee of the Criminal Justice Section of the ABA: *Restitution for Crime Victims: A National Strategy* (the Restitution Report). In the Restitution Report, the Committee acknowledged restitution as a “right,” and acknowledged the strong public policy favoring mandatory restitution.¹⁷¹

5) The Right to Protection

The right to protection generally refers to the provisions that address issues of the victim’s physical safety and mental health. The Fair Treatment Guidelines provide far less protection to crime victims than either the federal or states’ approaches.

The Fair Treatment Guidelines provide for protection in only a very limited sense. Guideline 3 provides that victims should be advised of available protections against a specific and limited type of harm – unlawful intimidation.¹⁷²

In contrast, the federal approach goes far beyond the provision of information about protection; the CVRA provides victims with a broad right to protection from the accused,¹⁷³ intended to create a substantive requirement that victims should be provided separate waiting areas during criminal justice proceedings, that victims’ safety be considered in release decisions, that and conditions of release include protections for victims’ safety.¹⁷⁴

The states’ approach, while not as broad as the federal approach, provides crime victims with more than mere information about protection. Specifically, approximately 9 states provide victims with a constitutional right to protection.¹⁷⁵ Numerous other examples of substantive protective measures pervade state codes, including the availability of civil orders of protection,

the right to be heard at bail and other release proceedings, and the right to a separate waiting area.¹⁷⁶

Traditionally, protection can be afforded either by providing a right of governmental protection or by providing crime victims with sufficient information and/or notice to allow them take measures to ensure their own protection. Regardless of which of these types of protection drives the analysis, the Fair Treatment Guidelines provide crime victims little protection in comparison to the substantive rights to protection afforded by the federal and states' approaches.

6) The Right to Privacy

The right to privacy is the right of a crime victim to be free unwarranted governmental intrusion – or the use of governmental authority to provide for intrusion by the defendant – into the victim's private affairs. The Fair Treatment Guidelines do not address a crime victim's privacy interests.

In contrast, the CVRA provides the crime victim with the right to be treated with respect for the victim's privacy. A handful of states provide victims with a similar right in their respective constitutions.¹⁷⁷ Further, both the states and the federal government have passed additional rights that implicate victims' privacy interests, such as rape shield statutes, statutes or rules that provide for privileged or confidential communications, and constitutional or statutory provisions that allow a victim to refuse a defense interview.

7) Other Rights

The six rights discussed above do not represent the universe of rights afforded crime victims under the federal or states' approach, or the treatment standards addressed in the Fair Treatment Guidelines.

The Fair Treatment Guidelines address victims' treatment in two additional areas: victims should be provided with employer or creditor intercession services, and victims should have their property expeditiously returned.¹⁷⁸ While the CVRA does not provide any rights regarding employment protections or return of property, approximately 25 states provide for employer or creditor intercession services,¹⁷⁹ and approximately 30 states provide for the prompt or expeditious return of the victim's personal property.¹⁸⁰

The CVRA and states provide additional rights. For example, a crime victim has the right to reasonably confer with the prosecutor throughout the criminal justice proceeding¹⁸¹, to proceedings that are free from unreasonably delay¹⁸², and "to be treated with fairness and with respect for the victim's dignity and privacy."¹⁸³ In addition, approximately 25 states also provide the victim with some right to prompt disposition of the criminal proceedings.¹⁸⁴ A majority of states also provide that victims should be treated with fairness, dignity, and respect.¹⁸⁵

Thus, even when the additional interests addressed by the Fair Treatment Guidelines and the additional rights afforded under the federal or states' approaches are considered, the Fair Treatment Guidelines provide far less to crime victims than the other approaches.

C. Enforcement and Compliance

Crime victims' rights can be implemented in three main ways: enforcement, administrative review of rights' violations, and compliance. As noted throughout this document, the Modern Crime Victims' Rights Movement is uniformly about enforcement of crime victims' rights through one of these methods – the federal approach is nearly completely enforcement, while the states have each adopted a hybrid approach. In contrast, the Fair Treatment Guidelines were not designed to, and therefore do not, address implementation.¹⁸⁶ In light of these clearly conflicting purposes, comparison of the Fair Treatment Guidelines to either the federal or states' approaches is not appropriate.

V. Conclusion

This document demonstrates that the Fair Treatment Guidelines do not comport with the current state of the law under either the federal or states' approaches with regard to the status and treatment of crime victims. The Modern Crime Victims' Rights Movement, as illustrated by either the federal or state approaches, has evolved over the last 30 years into a civil liberties movement – a movement aimed at creating constitutional and statutory rights that are enforceable by the individual crime victim trial and appellate criminal courts.¹⁸⁷ The Fair Treatment Guidelines, in contrast, were a creation of “courtesies and considerations” for victims and witnesses aimed, in part, at remedying the non-status of crime victims that existed in 1983.¹⁸⁸ In light of the expanse of crime victims' rights and the explicit and implicit standing and enforcement mechanisms for those rights that have come into being since 1983, it is clear that the Fair Treatment Guidelines, as originally conceived, have succeeded – the crime victim is no longer relegated to non-status in the criminal justice system. Instead, the crime victim is a participant at all levels of that system. This success has, however, rendered the current iteration of the Fair Treatment Guidelines obsolete with regard to being a guiding principle for the treatment of crime victims.

¹ See John W. Gillis & Douglas E. Beloof, *The Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts*, 33 McGeorge L. Rev. 689, 690 (2002).

² See Appendix A.

³ See Fair Treatment Guidelines, p. 22.

⁴ Since 1983, with few exceptions, the law regarding the treatment of victims and the treatment of witnesses has diverged. See, e.g., CAL. PENAL CODE § 679.02 (setting forth statutory rights for victims and witnesses), FLA. STAT. § 60.001 (establishing guidelines for fair treatment of victims and witnesses), N.J. STAT. ANN. § 52:4B-36 (establishing rights of victims and witnesses). This document addresses only the development of law regarding the treatment of victims, and leaves for another time the comprehensive review of state and federal laws that address the treatment of witnesses.

⁵ *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973).

⁶ In 1982, President Ronald Reagan established the President's Task Force on Victims of Crime (the President's Task Force). At the end of 1982, the President's Task Force issued its final report setting out 68 recommendations

for how rights and services for crime victims could be substantially improved. *See* PRESIDENT’S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT (1982).

⁷ *See* John W. Gillis, Douglas E. Beloof, *The Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts*, 33 *McGeorge L. Rev.* 689 690 (2002).

⁸ *See* Douglas E. Beloof, *The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review*, 2005 *B.Y.U. L. Rev.* 255 (2005).

⁹ *See* Ala. Const. amend. 557; Alaska Const. art. 1, § 12, art. 2, § 24; Ariz. Const. art. 2, § 2.1; Cal. Const. art. 1, § 28; Colo. Const. art. II, § 16a; Conn. amend. XXIX; Fla. Const. art. I, § 16; Idaho Const. art. 1, § 22; Ill. Const. art. I, § 8.1; Ind. Const. art. 1, § 13(b); Kan. Const. art. 15, § 15; La. Const. art. I, § 25; Md. Const. art. 47; Mich. art. 1, § 24; Miss. Const. § 26A; Mo. Const. art. I, § 32; Mont. Const. art. II, § 28; Neb. Const. art. I, § 28; Nev. Const. art. 1, § 8; N.J. Const. art. I, ¶ 22; N.M. Const. § 24; N.C. Const. art. 1, § 37; Ohio Const. art. I, § 10a; Okla. Const. art. II, § 34; Or. Const. art. I, § 42; R.I. Const. art. 1, § 23; S.C. Const. art. I, § 24; Tenn. Const. art. 1, § 35; Tex. Const. art. 1, § 30; Utah Const. art. I, § 28; Va. Const. art. I, § 8-A; Wash. Const. art. 2, § 35; Wisc. Const. art. I, § 9(m).

¹⁰ *See* ARK. CODE ANN. §§ 16-21-106, 16-90-701 to -719; DEL. CODE ANN. tit. 11, §§ 9401 to 9419; GA. CODE ANN. §§ 17-17-1 to -16; HAW. REV. STAT. §§ 801D-1 to -7; IOWA CODE ANN. §§ 915.1 to .100; KY. REV. STAT. ANN. § 421.500; ME. REV. STAT. ANN. tit. 17-A, §§ 1171 to -75, § 6101; MASS. GEN. LAWS ch. 258B, § 3; MINN. STAT. §§ 611A.01 to .046; N.H. REV. STAT. ANN. § 21-M:8-k; N.Y. EXEC. LAW §§ 640 to 649; N.D. CENT. CODE § 12.1-34-02; PA. STAT. ANN. §§ 11.101 to .216; S.D. CODIFIED LAWS §§ 23A-28C-1 to -6; VT. STAT. ANN. tit. 13, §§ 5301 to 5321; W. VA. CODE §§ 14-2a-1 to -29; WYO. STAT. ANN. § 14-6-502.

¹¹ *See* Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims’ Rights Act*, 2005 *B.Y.U. L. Rev.* 835, 843 (2005) (providing citations for the Victim and Witness Protection Act, the Victims of Crime Act, the Victims Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, and the Victims Rights Clarification Act of 1997).

¹² 501 U.S. 808 (1991).

¹³ *Id.* at 832 (Scalia, J., concurring).

¹⁴ It should be noted that the exclusive focus of this document is on constitutional and statutory crime victims’ rights provisions. This singular focus ignores a number of other factors that affect the treatment of crime victims in the criminal justice process. For example, many states have adopted the VINEs (Victim Information and notification Everyday) system. The notification provided by VINEs or similar notification systems may go beyond what is required by constitution or statute. Similarly, state agencies may voluntarily adopt guidelines that require enhanced treatment of crime victims that also goes beyond what is required by crime victims’ rights constitutional or statutory provisions. This document does not attempt to capture any of the voluntary actions that may enhance the treatment of crime victims, but instead focuses on the state of the law as provided by black letter statutes and constitutional amendments.

¹⁵ *See New Directions from the Field: Victims’ Rights and Services for the 21st Century (“New Directions from the Field”)*, at 2.

¹⁶ *See supra*, n. 10.

¹⁷ For example, a state may have expansive constitutional and statutory victims’ rights, but may explicitly exclude any enforcement mechanism for those rights, leaving the victim subject to “paper promises” that allow for unreviewable violations of victims’ rights, and have no positive effect on the victims’ treatment in the criminal justice system.

¹⁸ Though several states include corporations, homeowner associations, and other organizations in their definition of “crime victim,” *see, e.g.*, ARIZ. REV. STAT. § 13-4401.01 (providing certain rights for neighborhood associations), this document addresses only the rights of individuals who meet the definition of “crime victim.”

¹⁹ *See, e.g.*, CAL. PENAL CODE § 679.01(a), (b); CONN. GEN. STAT. § 54-201(1), (5); HAW. REV. STAT. § 801D-2; IDAHO CODE § 19-5306(5)(a), (b); ME. REV. STAT. ANN. tit. 17-A, § 1171.

²⁰ HAW. REV. STAT. § 801D-2.

²¹ *Id.*

²² *See, e.g.*, IOWA CODE § 915.10(3).

²³ *See, e.g.*, Ariz. Const. art. 2, § 2.1(C) (defining a crime victim as “a person against whom the criminal offense has been committed”), ARIZ. REV. STAT. § 13-4401(6) (defining “criminal offense” as “a felony or misdemeanor involving physical injury, the threat of physical injury, or a sexual offense”).

²⁴ *See, e.g.*, GA. CODE ANN. § 17-17-3(4) (listing categories of crimes such as sexual offenses, and additional individual offenses); 725 ILL. COMP. STAT. 120/3(A), (C) (limiting to and defining “violent” crimes).

²⁵ *See, e.g.*, N.M. Const. art. II, § 24(A). The list of enumerated crimes in the New Mexico Constitution includes only felony offense. *See id.* The New Mexico legislature has since included additional felonies and misdemeanors in the statutory list of enumerated offenses. *See* N.M. STAT. ANN. § 31-26-3(B).

²⁶ *See, e.g.*, ALA. CODE. § 15-23-60(19); Ariz. Const. art. 2, § 2.1(c); MO. REV. STAT. § 595.200(6).

²⁷ *See, e.g.*, COLO. REV. STAT. § 24-4.1-302(5).

²⁸ *See, e.g.*, ALA. CODE § 15-23-62(1) (emergency and crisis services), (2) (compensation); ALASKA STAT. § 12.61.010(5) (compensation); ARIZ. REV. STAT. § 13-4405(A)(3)(b) (c) (emergency, crisis, and medical services), (d) (victim assistance programs, including compensation); COLO. REV. STAT. § 24-4.1-302.5(1)(l) (crisis, medical, mental health, social services, rehabilitative services, and financial assistance); DEL. CODE ANN. tit 11, §§ 9410(2) (social services and other assistance), (4) (victim service unit), (5) (compensation), 9411(4) (compensation); FLA. STAT. § 960.001(1)(a)(1) (compensation), (2) (crisis, counseling, social service support, community-based victim treatment programs); GA. CODE ANN. § 17-17-6(a)(2) (compensation), (3) (community-based victim service programs); HAW. REV. STAT. § 801D-4(a)(4) (financial assistance and other social services); IOWA CODE § 915.13(1)(b) (compensation); KAN. STAT. ANN. § 74-7333(3) (compensation), (9) (social services and other medical, psychological, and social assistance); KY. REV. STAT. ANN. §§ 421.500(3) (emergency, social, medical services, and compensation), (5) (same); ME. REV. STAT. ANN. tit. 17-A, § 6101(1)(A) (victim advocate and compensation); MASS. GEN. LAWS ch. 258B, § 3(e) (social services and financial assistance); MICH. STAT. ANN. §§ 780.753 (emergency and medical services, compensation), 780.782 (same), 780.813 (same); MINN. STAT. § 611A.02 (crisis centers, resources for specific victim populations, and compensation); MISS. CODE ANN. § 99-43-7(a), (b) (emergency and crisis services, and compensation); Mo. Const. art. I, § 32(1)(8) (services), MO. REV. STAT. § 595.209(5)(b) (emergency and crisis services, and compensation); MONT. CODE ANN. § 46-24-201(1) (compensation), (2) (community-based medical, housing, counseling, and emergency services); NEB. REV. STAT. § 81-1848(2)(d) (financial assistance and services); N.H. REV. STAT. § 21-M:8-k(II)(i) (available resources, financial assistance, and social services), (j) (compensation); N.J. STAT. ANN. § 52:4B-36 (available remedies, financial assistance, and social services); N.M. STAT. ANN. § 31-26-8(A) (medical and crisis intervention services); N.Y. EXEC. LAW § 641(1)(a) (compensation), (b) (counseling, victim/witness assistance programs, and services for specific victim populations); N.C. Const. art. 1, § 37(d) (availability of services); N.D. CENT. CODE § 12.1-34-02(5) (counseling, treatment, and support services, including services for specific victim populations); OHIO REV. CODE § 2930.04 (2) (medical, counseling, housing, emergency, and other available services), (3) (compensation); OKLA. STAT. tit. 19, § 215.33(3) (financial and other social services); PA. CONST. STAT. §§ 11.201(1) (basic information concerning services), 11.212(b) (compensation and available services); R.I. GEN. LAWS § 12-28-3(a)(9) (financial assistance and other social services); S.C. CODE ANN. § 16-3-1520(A)(3) (victim assistance and social service

providers), (4) (compensation); TENN. CODE ANN. §§ 40-38-107(b) (referral services), -113 (2) (crisis intervention, emergency, and medical services); TEX. CRIM. PROC. CODE ANN. §§ 56.02(a)(6) (compensation), 56.07(a)(2) (compensation, referrals to social service agencies, crime victim assistance coordinator); VT. STAT. ANN. tit. 13, § 5314(a)(2) (medical, housing, counseling, and emergency services and compensation); VA. CODE ANN. §§ 19.2-11.01(2) (financial assistance, including compensation, and social services); WIS. STAT. §§ 950.04(1v)(t)(u), 950.08(1)(b) (referral to available services, crisis counseling, and emotional support), (2g)(b) (compensation), (2g)(g) (information about local agencies that provide victim assistance); WYO. STAT. ANN. § 14-6-502(a)(iv) (compensation), (v) (services and assistance).

²⁹ Compensation is money received from the government compensation or reparations program that is intended to reimburse the victim for certain types of injuries suffered as a result of the crime. Arguably, several of the state provisions that require that victims receive information about compensation could be characterized as notice provisions – advance identification of the statutory right to compensation and the victim’s right to apply for and receive compensation.

³⁰ See, e.g., ARK. CODE ANN. § 16-21-106(d) (requiring prosecutors to assist victims in applying for financial assistance and other social services, but not requiring prosecutors to provide information about the services or their responsibility to assist the victim); LA. REV. STAT. ANN. § 1844(1) (requiring that law enforcement agencies ensure that victims receive emergency, social, and medical services, but not requiring those agencies to provide information about those services).

³¹ As a practical matter, victims likely experience a delay in receiving crucial information about crisis, emergency, medical, and social services where that information is provided by the prosecutor’s office rather than a victim’s typical first point of contact – law enforcement personnel.

³² See, e.g., ALA. CODE § 15-23-62(4); FLA. STAT. § 960.001(1)(a)(3); GA. CODE ANN. §§ 17-17-6(a)(1), 8(a); KAN. STAT. ANN. § 74-7333(a)(4); KY. REV. STAT. ANN. § 421.500(3)(a); MASS. GEN. LAWS ch. 258B, § 3(a); MICH. STAT. ANN. § 780.816(a); MISS. CODE ANN. § 99-43-7(d); Mo. Const. art. I, § 32(1)(8); MONT. CODE ANN. § 46-24-201(1)(c), (d); N.H. REV. STAT. § 21-M:8-k(II)(b); N.J. STAT. ANN. § 52:4B-44(b)(1); N.M. STAT. ANN. § 31-26-9(4); N.Y. EXEC. LAW § 641(1)(c), (d); N.C. Const. art. 1, § 37(1)(d); N.D. CENT. CODE § 12.1-34-02(2); TENN. CODE ANN. § 40-38-103(a)(1); TEX. CRIM. PROC. CODE ANN. § 56.08(a)(1); UTAH CODE ANN. § 77-37-3(1)(c); WIS. STAT § 950.08(2r)(a).

³³ Because there is no explicit temporal requirement on this right to confer with the prosecutor, it is proper to classify it as a right to information, not a right to notice. See *discussion supra*, n. 42.

³⁴ See Douglas E. Beloof & Paul G. Cassell, *The Crime Victim’s Right to Attend the Trial: The Reascendant National Consensus*, 9 Lewis & Clark L. Rev. 481, 505 (2005) (citing state laws providing for the unqualified right to be present, including Alaska Const. art. I, § 24; Ariz. Const. art. II, § 2.1(A); Colo. Const. art. II, § 16a; Idaho Const. art. I, § 22; La. Const. art. I, § 25; Mich. Const. art. I, § 24; Miss. Const. § 26A, MISS. CODE ANN. § 99-43-21 (2004); Mo. Const. art. I, § 32; MONT. CODE ANN. § 46-24-106(1); Nev. Const. art. I, § 8(2); N.M. Const. art. II, § 24(5); Okla. Const. art. II, § 23(A); Or. Const. art. I, § 42; S.C. Const. art. I, § 24; Tenn. Const. art. I, § 35; Utah Const. art. I, § 28(1)).

³⁵ See *id.* at 527-534 (and cases cited therein, including *People v. Coney*, 98 P.3d 930, 935 (Colo. 2004); *Beasley v. State*, 774 So.2d 649, 669 (Fla. 2000); *State v. Fulminante*, 975 P.2d 75, 92 (Ariz. 1999); *State v. Beltran-Felix*, 922 P.2d 30, 34-35 (Utah Ct. App. 1999); *Brandon v. State*, 776 S.W.2d 345, 346 (Ark. 1989); *State v. Harrell*, 312 S.E.2d 230, 236 (N.C. Ct. App. 1984); *Rucker v. Tollett*, 475 S.W.2d 207, 209 (Tenn. Crim. App. 1971). See also *id.* at 534-44 (citing contrary conclusion in *Martinez v. State*, 664 So.2d 1034 (Fla. Dist. Ct. App. 1995)). For a discussion on the limited circumstances where a victim can forfeit his or her right to be present or where the defendant’s constitutional rights could require sequestration).

³⁶ See *id.* at 507-09 (citing state laws providing for the qualified right to be present, including Ala. Const. art. I, § 6.01(a); Fla. Const. art. I, § 16(b); Ind. Const. art. I, § 13(b); Kan. Const. art. 15, § 15; Neb. Const. art. I, § 28; ARK. STAT. § 16-90-1103 (2004), ARK. R. EVID. 615; CAL. PENAL CODE § 1102.6; N.H. REV. STAT. § 21-M:8-

k(II)(e) (subject to both the constitutional and statutory rights of the accused); OHIO REV. CODE § 2930.09 (2005), OHIO R. EVID. 615; VA. CODE §§ 19.2-11.01(4)(b), -265.01; WIS. STAT. §§ 950.04, 906.15).

³⁷ See *id.* at 510-511 (citing state laws, including Conn. Const. art. I, § 8, CONN. GEN. STAT. § 54-85f (2001); Ill. Const. art. I, § 8.1(a)(8); TEX. CONST. art. I, § 30(b); DEL. CODE ANN. tit. 11 § 9407 (2005); MASS. GEN. LAWS ANN.ch. 258B, § 3 Preamble (2005), MASS. R. CRIM. P. 21).

³⁸ See *id.* at 511-12 (citing state laws, including Md. Const. Decl. of Rights, art. 47, MD. CODE ANN. CRIM. PROC. § 11-302; N.C. GEN. STAT. § 15A-832(e)).

³⁹ See *id.* at 512-13 (citing state laws, including N.J. Const. art. I, § 22, N.J. R. EVID. 615; Wash. Const. art. I, § 35, WASH. REV. CODE § 7.69.030; GA. CODE ANN. § 24-9-61.1; S.D. CODIFIED LAWS § 23A-28C-1; WYO. STAT. ANN. §§ 1-40-203(b), -206).

⁴⁰ See *id.* at 513 (citing state law, including VT. ST. ANN. tit. 11, § 13-5309, VT. RULE EVID. 615 (allowing the victim to remain in the courtroom following his or her testimony, “even if the witness subsequently may be called upon by the other party or recalled in rebuttal, unless a party shows good cause for the witness to be excluded.”)).

⁴¹ See, e.g., Ariz. Const. art. 2, § 2.1(A); COLO. REV. STAT. § 24-4.1-302.5(1); Okla. Const. art. II, § 34(A); S.C. Const. art. I, § 24(A); Utah Const. art. I, § 28(1).

⁴² Although some states sometimes provide a victim with the right to be “informed,” *see* Ala. Const. amend. 557, any requirement of advance advisement of an event or criminal proceeding is categorized in this document as providing a right to notice.

⁴³ See, e.g., ALA. CODE § 15-23-63(a).

⁴⁴ See, e.g., IOWA CODE §§ 915.10(2), 915.12.

⁴⁵ See GA. CODE ANN. § 16-5-93(A).

⁴⁶ The following compilation identifies states that have a single constitutional or statutory provision requiring notice of all constitutional or statutory victims’ rights. Several states have provisions requiring notice of all constitutional rights that are found in scattered statutes; those states’ notice provisions are not compiled here. *See, e.g.,* ALA. CODE § 15-23-62(5), (6) (constitutional rights); Ariz. Const. art. 2, § 2.1(A)(12) (constitutional rights); COLO. REV. STAT. § 24-4.1-302.5(1)(s) (state and federal constitutional rights); FLA. STAT. § 960.021(2) (constitutional rights); IDAHO CODE § 19-5306(2) (statutory rights); 725 ILL. COMP. STAT. 120/4(b) (statutory rights); IND. CODE ANN. § 35-40-5-9 (constitutional and statutory rights); Md. Const. art. 47 (b) (constitutional rights); MASS. GEN. LAWS ch. 258 § 3(a) (statutory rights); MICH. STAT. ANN. § 780.816(1)(b) (statutory rights); MISS. CODE ANN. § 99-43-7(e) (constitutional rights); N.M. STAT. ANN. § 31-26-9 (constitutional and statutory rights); OHIO REV. CODE § 2930.04, 2930.06 (B)(4) (statutory rights); Or. Const. art. I, § 42(1)(g) (constitutional rights); S.C. CODE ANN. § 16-3-1520(A)(1) (constitutional rights); S.D. CODIFIED LAWS § 23A-28C-2 (statutory rights); TENN. CODE ANN. § 40-38-111(d) (constitutional rights); TEX. CRIM. PROC. CODE ANN. § 56.07(a)(6) (statutory rights); VT. STAT. ANN. tit. 13, § 5314(a)(1) (statutory rights); WYO. STAT. ANN. § 14-6-502(a)(iii) (statutory rights).

⁴⁷ Several states provide victims with the right to notice of bail proceedings, but the state laws requiring such notice are often codified outside the constitutional or statutory “victims’ rights” provisions. Those provisions are not reflected in this categorization.

⁴⁸ See, e.g., ALA. CODE §§ 15-23-60(8), -63(a) (criminal proceedings, excluding initial appearance); Ariz. Const. art. 2, § 2.1(a)(3) (“all criminal proceedings where the defendant has the right to be present”); ARK. CODE ANN. §§ 16-21-106(a)(1)(A) (notice of bail hearings or other pretrial release proceedings; no explicit temporal requirement), (F) (defendant’s appearance before a judicial officer); Colo. Const. art. II, § 16a (critical stages of criminal justice process), COLO. REV. STAT. §§ 24-4.1-302(2) (critical stages include preliminary hearing, arraignment, hearings on evidentiary matters); Conn. Const. art. XXIX(4) (court proceedings; no explicit temporal requirement); DEL. CODE

ANN. tit. 11, § 9407(a), (b) (“court proceedings relative to the disposition of the case” at which defendant has a right to be present); FLA. STAT. § 960.001(1)(e) (notice of arraignment and other release proceedings); Idaho Const. art. 1, § 22(3) (trial court proceedings); Ill. Const. art. 1, § 8.1(a)(2) (court proceedings; no explicit temporal requirement), 725 ILL. COMP. STAT. 120/3 (court proceedings include the preliminary hearing); Ind. Const. art. 1, § 13(b) (public hearings; no explicit temporal requirement); Kan. Const. art. 15, § 15 (public hearings; no explicit temporal requirement); La. Const. art. I, § 25 (“reasonable” notice of pre-conviction proceedings; no explicit temporal requirement), LA. REV. STAT. ANN. §§ 1842(2) (critical stage is a “judicial proceeding at which there is a disposition of the charged offense or lesser offense”), 1844(B) (judicial proceedings related to the victim’s case); Md. Const. Decl. of Rights. art. 47(b) (criminal justice proceedings), MD. CODE ANN., CRIM. PROC. § 11-104(e)(1), § 11-1002(b)(3) (court proceedings); Mich. Const. art. I, § 24(1) (court proceedings; no explicit temporal requirement); MICH. STAT. ANN. § 780.816(2) (scheduled court proceedings); MISS. CODE ANN. § 99-43-9 (court proceedings, excluding initial appearance, “as soon as practicable”); Mo. Const. art. I, § 32 (preliminary hearing and bail hearing); Neb. Const. art. I, § 28(1) (criminal court proceedings; no explicit temporal requirement); N.H. REV. STAT. ANN. § 21-M:8-k(II)(d) (court proceedings); N.J. STAT. ANN. § 52:4B-44(b)(5) (initial appearance), § 21-M:8-k(II)(d) (court proceedings; no explicit temporal requirement); N.M. Const. art. II, § 24(A)(5) (court proceedings; no explicit temporal requirement), N.M. STAT. ANN. § 31-26-3(C) (court proceeding is a “hearing, argument or other action scheduled by and held before a court”); N.C. Const. art. 1, § 37(a) (court proceedings), N.C. GEN. STAT. § 15A-832(c) (trial court proceedings); N.D. CENT. CODE § 12.1-34-02(4) (court proceedings); OHIO REV. CODE §§ 2930.06 (scheduled criminal proceedings; no explicit temporal requirement); Or. Const. art. I, § 42(1)(a) (critical stages of criminal proceedings held in open court); R.I. GEN. LAWS § 12-28-3(11) (pretrial hearings); S.C. Const. art. I, § 24(A)(4) (bond or bail hearing; no explicit temporal requirement); S.D. CODIFIED LAWS § 23A-28C-1(1) (scheduled bail hearing; no explicit temporal requirement); Tenn. Const. art. 1, § 35(5) (all proceedings; no explicit temporal requirement); TEX. CRIM. PROC. CODE ANN. §§ 56.02(a)(3)(A) (relevant court proceedings), 56.08(b) (scheduled court proceedings); Utah Const. art. I, § 28(1)(b) (important criminal justice hearings), UTAH CODE ANN. § 77-38-2(5) (important criminal justice hearings include preliminary hearings but not initial appearance; no explicit temporal requirement); Va. Const. art. I, § 8-A(4) (judicial proceedings; no explicit temporal requirement); Wash. Const. art. 2, § 35 (court proceedings); Wis. Const. art. I, § 9(m) (court proceedings; no explicit temporal requirement); WYO. STAT. ANN. § 14-6-502(a)(i)(B) (scheduled hearings; no explicit temporal requirement). While a number of these provisions do not explicitly require that notice be given in advance of the proceeding, because the notice provisions are generally paired with the rights to be present and heard, the only plausible interpretation is that these provisions require advance notice of the identified court proceeding.

⁴⁹ See UTAH CODE ANN. §§ 77-38-2(5), 77-38-3.

⁵⁰ See *supra*, n. 48.

⁵¹ See CAL. PENAL CODE § 679.02(a)(1) (scheduling changes to court proceeding to which victim has been subpoenaed); HAW. REV. STAT. § 801D-4(a)(2) (same); IOWA CODE § 915.13(a) (same, but also requires notice of trial); KY. REV. STAT. ANN. § 421.500(5)(a) (scheduling changes to criminal justice proceedings which victims are required to attend, but also requires notice of judicial proceedings); LA. REV. STAT. ANN. § 1844(F) (scheduling changes affecting victim’s scheduled appearance, but also requires notice of judicial proceedings); MASS. GEN. LAWS ch. 258, § 3(c) (scheduling changes to court proceeding to which victim has been summoned); MINN. STAT. § 611A.033(b) (scheduling changes to court proceeding to which victim has been subpoenaed or requested to testify); OKLA. STAT. tit. 19, § 215.33(A)(1) (scheduling changes to court proceeding to which victim has been subpoenaed); R.I. GEN. LAWS § 12-28-3(4) (court proceedings at which victim’s presence is required and schedule changes of those proceedings, but also requires notice of other proceedings); WASH. REV. CODE § 7.69.030(3) (scheduling changes to court proceeding to which victim has been subpoenaed, along with other court proceedings).

⁵² ALA. CODE §§ 15-23-60(8), -63(a) (criminal proceedings); ALASKA STAT. § 12.61.010(a)(2) (trial); Ariz. Const. art. 2, § 2.1(a)(3) (“all criminal proceedings where the defendant has the right to be present”); ARK. CODE ANN. § 16-21-106 (C) (trial); Colo. Const. art. II, § 16a (critical stages of criminal justice process), COLO. REV. STAT. §§ 24-4.1-302(2) (critical stages include trial); Conn. Const. art. XXIX(4) (court proceedings); DEL. CODE ANN. tit. 11, § 9407(a), (b) (“court proceedings relative to the disposition of the case” at which defendant has a right to be present); FLA. STAT. § 960.001(1)(e)(3) (trial); Idaho Const. art. 1, § 22(3) (trial court proceedings); Ill. Const. art. 1, § 8.1(2) (court proceedings), 725 ILL. COMP. STAT. 120/3 (court proceedings include the trial); Ind. Const. art. 1,

§ 13(b) (public hearings); IOWA CODE § 915.13(a) (trial); Kan. Const. art. 15, § 15 (public hearings); KY. REV. STAT. ANN. § 421.500(5)(b) (trial); La. Const. art. I, § 25 (reasonable notice of critical stages of pre- and post-conviction proceedings), LA. REV. STAT. ANN. §§ 1842(2) (critical stage is a “judicial proceeding at which there is a disposition of the charged offense or lesser offense”); ME. REV. STAT. ANN. tit. 17-A § 1172(1)(C), (D) (trial); Md. Const. Decl. of Rights. art. 47(b) (criminal justice proceedings); Mich. Const. art. I, § 24(1) (court proceedings), MICH. STAT. ANN. § 780.816(2) (scheduled court proceedings); MISS. CODE ANN. § 99-43-9 (court proceedings); Mo. Const. art. I, § 32 (trial); Neb. Const. art. I, § 28(1) (criminal court proceedings); N.H. REV. STAT. ANN. § 21-M:8-k(II)(d) (court proceedings); N.J. STAT. ANN. § 52:4B-44(b)(5) (trial); N.M. Const. art. II, § 24(5) (court proceedings), N.M. STAT. ANN. § 31-26-3(C) (court proceeding is a “hearing, argument or other action scheduled by and held before a court”); N.C. Const. art. 1, § 37(a) (court proceedings); N.D. CENT. CODE § 12.1-34-02(4) (court proceedings); N.Y. EXEC. LAW § 641(3)(d) (trial); OHIO REV. CODE § 2930.06(C) (scheduled criminal proceedings); Or. Const. art. I, § 42(1)(a) (critical stages of criminal proceedings held in open court); R.I. GEN. LAWS § 12-28-3(11) (trial); S.C. Const. art. I, § 24 (hearings that are dispositive of the charges where the defendant has the right to be present); S.D. CODIFIED LAWS § 23A-28C-1(1) (trial); TENN. CODE ANN. §§ 40-38-103(a)(1)(D) (“all pertinent stages in the [criminal] proceedings following presentment or indictment by the grand jury”); TEX. CRIM. PROC. CODE ANN. §§ 56.02(a)(3)(A) (relevant court proceedings), 56.08(b) (“as far as reasonably practical,” scheduled court proceedings); Utah Const. art. I, § 28(1)(b) (important criminal justice hearings), UTAH CODE ANN. § 77-38-2(5) (important criminal justice hearings include trial); Va. Const. art. I, § 8A(4) (judicial proceedings); Wash. Const. art. 2, § 35 (trial); Wis. Const. art. I, § 9(m) (court proceedings); WYO. STAT. ANN. § 14-6-502(a)(i)(B) (scheduled hearings).

⁵³ See CAL. PENAL CODE § 679.02(a)(1) (scheduling changes to court proceeding to which victim has been subpoenaed); HAW. REV. STAT. § 801D-4(a)(2) (same); MASS. GEN. LAWS ch. 258, § 3(c) (scheduling changes to court proceeding to which victim has been summoned); MINN. STAT. § 611A.033(b) (scheduling changes to court proceeding to which victim has been subpoenaed or requested to testify); OKLA. STAT. tit. 19, § 215.33(A)(1) (scheduling changes to court proceeding to which victim has been subpoenaed).

⁵⁴ See ALA. CODE §§ 15-23-60(8), -63(a) (criminal proceedings); ALASKA STAT. § 12.61.010(a)(2) (sentencing); Ariz. Const. art. 2, § 2.1(a)(3) (“all criminal proceedings where the defendant has the right to be present”); ARK. CODE ANN. § 16-21-106(F) (defendant’s appearance before a judicial officer), (I), (J) (sentencing and any reconsideration); CAL. PENAL CODE § 679.02(a)(3) (sentencing); Colo. Const. art. II, § 16a (critical stages of criminal justice process), COLO. REV. STAT. §§ 24-4.1-302(2) (critical stages include sentencing and any modification hearing); Conn. Const. art. XXIX(4) (court proceedings); DEL. CODE ANN. tit. 11, § 9407(a), (b) (“court proceedings relative to the disposition of the case” at which defendant has a right to be present); FLA. STAT. § 960.001(1)(e)(3) (sentencing and any modification hearing); Idaho Const. art. 1, § 22(3) (trial court proceedings); Ill. Const. art. 1, § 8.1(2) (court proceedings), 725 ILL. COMP. STAT. 120/3 (court proceeding includes sentencing or any modification hearing); Ind. Const. art. 1, § 13(b) (public hearings); Kan. Const. art. 15, § 15 (public hearings); KY. REV. STAT. ANN. § 421.500(5)(b) (sentencing); La. Const. art. I, § 25 (reasonable notice of critical stages), LA. REV. STAT. ANN. §§ 1842(2) (critical stage includes sentencing); ME. REV. STAT. ANN. tit. 13, § 1172(1)(D) (sentencing); Md. Const. Decl. of Rights. art. 47(b) (criminal justice proceedings); Mich. Const. art. I, § 24(1) (court proceedings), MICH. STAT. ANN. § 780.816(2) (scheduled court proceedings); MISS. CODE ANN. § 99-43-9 (court proceedings); Mo. Const. art. I, § 32(1)(2) (sentencing); Neb. Const. art. I, § 28(1) (criminal court proceedings); NEV. REV. STAT. 176.015(4) (sentencing); N.H. REV. STAT. ANN. § 21-M:8-k(II)(d) (court proceedings); N.J. STAT. ANN. § 52:4B-44(b)(5) (sentencing); N.M. Const. art. II, § 24(5) (court proceedings), N.M. STAT. ANN. § 31-26-3(C) (court proceeding is a “hearing, argument or other action scheduled by and held before a court”); N.C. Const. art. 1, § 37(a) (court proceedings); N.D. CENT. CODE § 12.1-34-02(4) (court proceedings); OHIO REV. CODE § 2930.06(C) (scheduled criminal proceedings); N.Y. EXEC. LAW § 641(3)(d) (sentencing); Or. Const. art. I, § 42(1)(a) (critical stages of criminal proceedings held in open court); R.I. GEN. LAWS § 12-28-3(11) (disposition proceedings for homicide victims); S.C. CODE ANN. § 16-3-1535(D) (hearing or other proceeding); TENN. CODE ANN. §§ 40-38-103(a)(1)(D) (“all pertinent stages in the [criminal] proceedings following presentment or indictment by the grand jury”); TEX. CRIM. PROC. CODE ANN. §§ 56.02(a)(3)(A) (relevant court proceedings), 56.08(b) (“as far as reasonably practical,” scheduled court proceedings); Utah Const. art. I, § 28(1)(b) (important criminal justice hearings), UTAH CODE ANN. § 77-38-2(5) (important criminal justice hearings include sentencing); VT. STAT. ANN. tit. 13, § 5321 (sentencing); Va. Const. art. I, § 8A(4) (judicial proceedings); Wash. Const. art. 2, § 35 (“court proceedings the

defendant has the right to attend”), WASH. REV. CODE § 7.69.030(12) (sentencing); Wis. Const. art. I, § 9(m) (court proceedings); WYO. STAT. ANN. § 14-6-502(a)(i)(B) (scheduled hearings).

⁵⁵ See CAL. PENAL CODE § 679.02(a)(1) (scheduling changes to court proceeding to which victim has been subpoenaed); HAW. REV. STAT. § 801D-4(a)(2) (same); IOWA CODE § 915.13(a) (same); MASS. GEN. LAWS ch. 258, § 3(c) (scheduling changes to court proceeding to which victim has been summoned); MINN. STAT. § 611A.033(b) (scheduling changes to court proceeding to which victim has been subpoenaed or requested to testify); OKLA. STAT. tit. 19, § 215.33(A)(1) (scheduling changes to court proceeding to which victim has been subpoenaed).

⁵⁶ See, e.g., ALA. CODE §§ 15-23-79(b) (advance notice of parole or pardon hearing); Alaska Const. art. 2, § 24, ALASKA STAT. § 33.16.120(a) (advance notice of parole hearing); ARIZ. REV. STAT. §§ 14-4411(A) (advance notice of post-conviction release proceedings), -4414(B) (advance notice of parole hearing); CAL. PENAL CODE § 679.02(a)(5) (advance notice of parole eligibility hearings); CONN. GEN. STAT. § 54-230a(a) (advance notice of release or sentence reduction review hearings); DEL. CODE ANN. tit. 11, § 9413(a)(3) (parole heard date, no explicit temporal requirement); GA. CODE ANN. § 17-17-13 (advance notice prior to parole consideration); Idaho Const. art. 1, § 22(3) (advance notice of parole proceedings); IOWA CODE §§ 915.18(1)(a) (advance notice of parole proceeding at which victim will be interviewed); KY. REV. STAT. ANN. § 421.500(5) (“prompt” notice of parole board hearing); La. Const. art. I, § 25 (“reasonable” notice of post-conviction proceedings, no explicit temporal requirement), LA. REV. STAT. ANN. § 1844(O) (advance notice of parole hearing); MD. CODE ANN., CRIM. PROC. § 11-505(b) (citing MD. CODE ANN., CORRECTIONAL SERVICES § 7-901(b) (advance notice of parole proceedings); MICH. STAT. ANN. § 780.771 (advance notice of parole proceeding); Mo. Const. art. I, § 32(1)(2) (advance notice of parole hearings); MONT. CODE ANN. § 46-24-212(1)(d) (advance notice of parole proceeding); NEB. REV. STAT. § 18-1848(1)(f) (advance notice of parole proceeding); N.J. STAT. ANN. § 52:4B-44(21)(d) (notice of parole consideration; no explicit temporal requirement); N.M. STAT. ANN. § 31-26-12 (notice of parole proceedings; no explicit temporal requirement); OHIO REV. CODE § 2930.06(D) (“prompt” notice of post-conviction judicial release proceedings); PA. CONST. STAT. § 11.214(b) (advance notice of release proceeding); R.I. GEN. LAWS § 12-28-6(a) (advance notice of parole proceeding); S.C. Const. art. I, § 24(A)(10) (post-conviction release proceedings; no explicit temporal requirement); Tenn. Const. art. 1, § 35(5) (all proceedings; no explicit temporal requirement); TEX. CRIM. PROC. CODE ANN. § 56.02(a)(7) (advance notice of parole proceedings); Utah Const. art. I, § 28(1)(b), UTAH CODE ANN. § 77-38-2(5)(g) (public parole release hearing; no explicit temporal requirement); WYO. STAT. ANN. § 14-6-502(a)(i)(B) (scheduled hearings; no explicit temporal requirement).

⁵⁷ See Ariz. Const. art. 2, § 2.1(4); Conn. Const. art. XXIX(7); Idaho Const. art. I, § 22(A)(6); Mo. Const. art. I, § 32(2); S.C. Const. art. I, § 24(A)(5); COLO. REV. STAT. § 24-4.1-302.5(d); ME. REV. STAT. ANN. tit 17-A, § 1173; MINN. STAT. § 611A.0301; N.H. REV. STAT. ANN. § 21-M:8-k(II)(p); R.I. GEN. LAWS § 12-28-4.1(a); TEX. CRIM. PROC. Code Ann. § 56.02(a)(3)(A)(13) (limited to written input); UTAH CODE ANN. § 77-38-4(1).

⁵⁸ See Ariz. Const. art. 2, § 2.1(A) (6); Or. Const. art. I, § 42(1)(f); S.C. Const. art. I, § 24(A)(7); ALA. CODE § 15-23-64; ARK. CODE ANN. § 16-21-106(b); COLO. REV. STAT. § 24-4.1-302.5(e); DEL. CODE ANN. tit. 11, § 9405; FLA. STAT. § 960.001(g); GA. CODE ANN. § 17-17-11; HAW. REV. STAT. § 801D-4(a)(1); IND. CODE ANN. § 35-40-3(b)(3); KY. REV. STAT. ANN. § 421.500(6); ME. REV. STAT. ANN. tit. 17-A, § 1173; MICH. STAT. ANN. § 780.756(3); MISS. CODE ANN. §§ 99-43-11, -27; MO. REV. STAT. § 595.209(4); MONT. CODE ANN. § 46-24-104(3); NEB. REV. STAT. § 29-120; N.H. REV. STAT. ANN. § 21-M:8-k(II)(f); N.J. STAT. ANN. § 52:4B-44(b)(2); N.Y. EXEC. LAW § 642(1); N.C. GEN. STAT. § 15A-832(f); N.D. CENT. CODE § 12.1-34-02(13); OHIO REV. CODE § 2930.06(A); PA. CONST. STAT. §§ 11.201(4), 11.213(b); S.D. CODIFIED LAWS § 23A-28C-1(5) (limited to written input); TENN. CODE ANN. § 40-38-114(a); TEX. CRIM. PROC. CODE ANN. §§ 56.02(a)(3)(A)(13) (limited to written input); UTAH CODE ANN. § 77-38-2(5)(d); Vt. STAT. ANN. tit. 13, § 5321(e); VA. CODE ANN. § 19.2-11.01(4)(d); W. VA. CODE § 61-11A-6(5); WIS. STAT. § 971.095(2). A handful of states provide victims with the right to confer with the prosecutor, but because there is no explicit temporal requirement attached to that right, it is not included in the states’ laws cited above.

⁵⁹ See Ariz. Const. art. 2, § 2.1(A)(4), (6); S.C. Const. art. I, § 24(A)(5), (7); COLO. REV. STAT. § 24-4.1-302.5(d), (e); ME. REV. STAT. ANN. tit. 17-A, § 1173; MO. REV. STAT. § 595.209(4); TEX. CRIM. PROC. CODE ANN. § 56.02(a)(3)(A)(13); UTAH CODE ANN. §§ 77-38-4(1), 77-38-2(5)(d).

⁶⁰ See Ala. Const. amend. 557, ALA. CODE § 15-23-74; Alaska Const. art. 2, § 24; Ariz. Const. art. 2, § 2.1(A)(4); CAL. PENAL CODE § 679.02(a)(3); Colo. Const. art. II, § 16a, COLO. REV. STAT. § 24-4.1-302.5(10)(g); Conn. Const. art. XXIX(8); Fla. Const. art. I, § 16, FLA. STAT. § 960.01(1)(k); Idaho Const. art. 1, § 22(6); Ill. Const. art. 1, § 8.1(a)(4); IND. CODE ANN. § 35-40-5-5; IOWA CODE § 915.21(1)(b); Kan. Const. art. 15, § 15(a); La. Const. art. I, § 25, LA. REV. STAT. ANN. § 1842(2); ME. REV. STAT. ANN. tit. 17-A, § 1174(1)(A); Md. Const. Decl. of Rights, art. 7(b), MD. CODE ANN., CRIM. PROC. § 11-403; MASS. GEN. LAWS ch. 258B, § 3(p); Mich. Const. art. I, § 24(1); MINN. STAT. § 611A.038(a); Miss. Const. art. 3, § 26A(1), MISS. CODE ANN. § 99-43-33; Mo. Const. art. I, § 32(1)(2); Neb. Const. art. I, § 28(1); Nev. Const. art. 1, § 8(2)(c); N.H. REV. STAT. ANN. § 21-M:8-k(I)(p); N.J. STAT. ANN. § 52:4B-36(n); N.M. Const. art. II, § 24(A)(7); N.C. Const. art. 1, § 37(1)(b); OHIO REV. CODE § 2930.14(A); Okla. Const. art. II, § 34(A); PA. CONST. STAT. § 11.201(5); R.I. GEN. LAWS § 12-28-3(11); S.C. Const. art. I, § 24(A)(5); S.D. CODIFIED LAWS § 23A-28C-1(8); Utah Const. art. I, § 28(1)(b), UTAH CODE ANN. § 77-38-4(1); VT. STAT ANN. tit. 13, § 5321(a)(2); Va. Const. art. I, § 8-A(3); Wash. Const. art. 2, § 35; Wis. Const. art. I, § 9(m); WYO. STAT. ANN. § 14-6-502(a)(xvii).

⁶¹ See ARK. CODE ANN. § 16-21-106(a)(1)(H) (right to submit victim impact statement); N.D. CENT. CODE § 12.1-34-02(14) (provides for oral statement at discretion of the court; otherwise, written statement); TENN. CODE ANN. § 40-38-202 (requiring a sentencing judge to solicit and consider a victim impact statement, but not specifying whether that may be given verbally); TEX. CRIM. PROC. CODE ANN. § 56.02(a)(13) (providing for a victim impact statement, but not specifying whether that statement may be given verbally).

⁶² Also referred to as reparations, compensation is money paid from the government to a crime victim to reimburse the victim for certain losses incurred as a result of the crime. Restitution is the defendant's payment to the victim to reimburse the victim for financial losses caused by the defendant's commission of a crime.

⁶³ See *New Directions from the Field*, *supra*, n. 15, at p. 325.

⁶⁴ See RESTITUTION FOR CRIME VICTIMS: A NATIONAL STRATEGY, Report of the Victims Committee, Criminal Justice Section, American Bar Association, p. 2 (2003).

⁶⁵ See *id.*

⁶⁶ See, e.g., Alaska Const. art. 2, § 24 (right to be reasonably protected); Conn. Const. art. XXIX(3) (same); Ill. Const. art. 1, § 8.1(a)(7) (same); Mich. Const. art. I, § 24(1) (same); Mo. Const. art. I, § 32(1)(6) (same); N.M. Const. art. II, § 24(A)(3) (same); Ohio Const. art. I, § 10a (right to reasonable and appropriate protection); S.C. Const. art. I, § 24(a)(6) (right to be reasonably protected); Wis. Const. art. I, § 9(m) (same).

⁶⁷ See, e.g., Ariz. Const. art. 2, § 2.1(A)(1) (right to be free from intimidation, harassment, or abuse); Okla. Const. art. II, § 34 (same); Tenn. Const. art. I, § 35(2) (same).

⁶⁸ See, e.g., ALA. CODE § 15-23-75(5); Alaska Const. art. 2, § 24; ARIZ. REV. STAT. § 13-4412(B); CAL. PENAL CODE § 679.02(a)(6); COLO. REV. STAT. § 24-4.1-302.5(c); DEL. CODE ANN. tit. 11, § 9413(b); FLA. STAT. § 960.001(1)(p); IDAHO CODE § 19-5306(1)(j); IND. CODE ANN. § 35-40-5-2; IOWA CODE §§ 915.16, 915.17(c); La. Const. art. I, § 25; LA. REV. STAT. ANN. § 1844(N)(3); MICH. STAT. ANN. § 780.769(d); MISS. CODE ANN. § 99-43-35(e); MONT. CODE ANN. § 46-24-212(3); N.J. STAT. ANN. § 52:4B-44(21)(a); N.M. STAT. ANN. § 31-26-11; N.C. Const. art. 1, § 37(1)(f); N.C. GEN. STAT. § 15A-836(a)(4); PA. CONST. STAT. § 11.214(d); S.C. Const. art. I, § 24; S.C. CODE ANN. § 16-3-1530(2); S.D. CODIFIED LAWS § 23A-28C-5; Tenn. Const. art. 1, § 35(5); Va. Const. art. I, § 8-A(6).

⁶⁹ See, e.g., Ill. Const. art. I, § 8.1(a)(1) (right to be treated with respect for privacy); Mich. Const. art. I, § 24(1) (same); N.M. Const. art. II, § 24(A)(1) (same); Wis. Const. art. I, § 9(m) (same).

⁷⁰ See, e.g., ARK. CODE ANN. § 24.65.200; ARIZ. REV. STAT. § 13-4430.

⁷¹ See, e.g., Ariz. Const. art. 2, § 2.1(A)(5) (right to refuse interview, deposition, or other discovery request by the defendant); La. Const. art. 1, § 25 (right to refuse to be interviewed by the accused); Or. Const. art. I, § 42(1)(c) (right to refuse an interview, deposition or other discovery request by defendant).

⁷² See, e.g., Alaska Const. art. 2, § 24 (treated with dignity, respect, and fairness) Ariz. Const. art. 2, § 2.1(A)(1) (treated with fairness, respect, and dignity); CAL. PENAL CODE § 679 (treated with dignity, respect, courtesy, and sensitivity); COLO. REV. STAT. § 24-4.1-302.5(1)(a) (treated with fairness, respect, and dignity); Conn. Const. art. XXIX(1) (treated with fairness and respect); HAW. REV. STAT. § 801D-1 (treated with dignity, respect, courtesy, and sensitivity); Idaho Const. art. 1, § 22(1) (treated with fairness, respect and dignity); Ill. Const. art. 1, § 8.1(a)(1) (treated with fairness and respect for victim’s dignity); Ind. Const. art. 1, § 13(b) (treated with fairness, dignity and respect); KAN. STAT. ANN. § 74-7333(a)(1) (treated with courtesy, compassion, and respect for victim’s dignity); La. Const. art. I, § 25 (treated with fairness, dignity, and respect); Md. Const. Decl. of Rights art. 47(a) (treated with dignity, respect, and sensitivity); Mich. Const. art. I, § 24(1) (treated with fairness and respect for victim’s dignity); Miss. Const. art. 3, § 26A (treated with fairness, dignity and respect); N.H. REV. STAT. ANN. § 21-M:8-k(II)(a) (treated with fairness and respect for victim’s dignity); N.J. Const. art. I, § 22 (treated with fairness, compassion and respect); N.M. Const. art. II, § 24(A)(1) (treated with fairness and respect for victim’s dignity); Ohio Const. art. I, § 10a (accorded fairness, dignity, and respect); Okla. Const. art. II, § 34 (treated with fairness, respect and dignity); Or. Const. art. I, § 42(1) (accorded due dignity and respect); PA. CONST. STAT. § 11.102(1) (treated with dignity, respect, courtesy and sensitivity); R.I. Const. art. 1, § 23 (treated with dignity, respect and sensitivity); S.C. Const. art. I, § 24(A)(1) (treated with fairness, respect, and dignity); TENN. CODE ANN. § 40-38-102(a)(1) (treated with dignity and compassion); Utah Const. art. I, § 28(1)(a) (treated with fairness, respect, and dignity); VT. STAT. ANN. tit. 13, § 5303(a) (treated with dignity and respect); Va. Const. art. I, § 8-A (accorded fairness, dignity and respect); Wash. Const. art. 2, § 35 (accord victims due dignity and respect); Wis. Const. art. I, § 9(m) (treated with fairness and dignity).

⁷³ See UTAH CODE ANN. §§ 77-38-2(2) (defining dignity as “treating the crime victim with worthiness, honor, and esteem”), (3) (defining fairness as “treating the crime victim reasonably, even-handedly, and impartially”), (8) (defining respect as “treating the crime victim with regard and value”).

⁷⁴ See Alaska Const. art. 2, 24 (timely disposition); Ariz. Const. art. 2, 2.1(A)(10) (speedy disposition); COLO. REV. STAT. § 24-4.1-302.5(1)(o) (prosecutor and law enforcement officials seek to achieve a swift and fair resolution of the proceedings); Conn. Const. art. XXIX(2) (timely disposition); DEL. CODE ANN. tit. 11, § 9404 (a) (court should consider victim’s interest in speedy prosecution), (b) (court should expedite proceedings involving child victim); FLA. STAT. § 960.001(1)(a)(7) (prompt disposition); Idaho Const. art. 1, § 22(2) (timely disposition); Ill. Const. art. 1, § 8.1(a)(6) (timely disposition); LA. REV. STAT. ANN. § 1844(J) (speedy disposition and prompt and final conclusion of the case); MD. CODE ANN., CRIM. PROC. § 11-1002(b)(13) (speedy disposition); MASS. GEN. LAWS ch. 258B § 3(f) (prompt disposition); Mich. Const. art. I, § 24(1) (timely disposition); MINN. STAT. § 611A.033(a) (victim can request prosecutor to make request for speedy trial); MISS. CODE ANN. § 99-43-19 (final disposition free from unreasonable delay); Mo. Const. art. I, § 32(1)(5) (speedy disposition); NEB. REV. STAT. § 81-1848(2)(i) (speedy disposition); N.M. Const. art. II, § 24(A)(2) (timely disposition); N.D. CENT. CODE § 12.1-34-02(12) (prompt disposition); S.C. Const. art. I, § 24(A)(11) (reasonable disposition and prompt conclusion of the case); Tenn. Const. art. I, § 35(6) (speedy trial or disposition); UTAH CODE ANN. § 77-38-7 (speedy resolution of the charges); VT. STAT. ANN. tit. 13, § 5312 (victim may object to a delay in prosecution); Wis. Const. art. I, § 9(m) (timely disposition).

⁷⁵ Employer intercession services generally refer to the prosecutor or law enforcement’s responsibility to contact the victim’s employer to seek the employer’s voluntary agreement to minimize loss of pay, benefits, or refrain from taking action detrimental to the victim’s employment. See, e.g., ARK. CODE ANN. § 16-21-106(d)(5). For a compilation of states that provide employer or creditor intercession services, see ARIZ. REV. STAT. § 13-4439 (right to leave work without penalty); ARK. CODE ANN. § 16-21-106(d)(5) (employment intercession services); COLO. REV. STAT. § 24-4.1-302.5(1)(n) (employer intercession services), (1)(o); DEL. CODE ANN. tit. 11, § 9409 (protection from employer termination or discipline based on attendance at criminal justice proceedings that is reasonably necessary to protect the victim’s interests); FLA. STAT. § 960.001(1)(a)(1)(i) (employer and credit intercession services); IOWA CODE § 915.23(1) (victim who is a witness is protected from discharge or other actions to reduce wages or benefits for “service . . . as a witness”); LA. REV. STAT. ANN. § 1844(E) (employer notification); MD. CODE

ANN., CRIM. PROC. § 11-1002(b)(7) (employer intercession services); MASS. GEN. LAWS ch. 258B § 3(k) (employer and creditor intercession services), (l) (protection from discharge or penalty from employer as a result of missed work because of a subpoena to testify); MICH. STAT. ANN. § 780.762 (protection for discharge or discipline from employer a victim who has been subpoenaed or requested to give testimony); MINN. STAT. § 611A.036 (prohibition against employer retaliation where victim is subpoenaed or requested to give testimony); MISS. CODE ANN. § 99-43-45 (protection from loss of employment, intimidation, or threat of loss of employment for responding to subpoena or participating in “the reasonable preparation of criminal proceeding”); MO. REV. STAT. § 595.209(14) (protection from discharge or discipline from employer for honoring subpoena to testify or “participating in the preparation of a criminal proceeding”), (15) (creditor intercession services); MONT. CODE ANN. § 46-24-205 (1) (employer intercession services), (3) (protection from discharge for participation in preparation for attendance), (2) (creditor intercession services); NEB. REV. STAT. § 81-1848(2)(h) (employer intercession services); N.J. STAT. ANN. § 52:4B-44 (employer notification if cooperation with investigation or prosecution causes absences from work); N.M. Const. art. II, § 24(A)(10) (employer intercession services); N.Y. EXEC. LAW § 642(4) (employer intercession services); N.D. CENT. CODE § 12.1-34-02(6) (employer intercession services); OHIO REV. CODE § 2930.18 (protection against discharge, discipline, or other retaliation for participating in a criminal proceeding at the prosecutor’s request); OKLA. STAT. tit. 19 § 215.33(8) (employer intercession services); R.I. GEN. LAWS § 12-28-3(a)(7) (employer intercession services); S.C. CODE ANN. § 16-3-1550(A) (protection against employer retaliation for responding to a subpoena); TEX. CRIM. PROC. CODE ANN. § 56.02(10) (employer intercession services); WASH. REV. CODE § 7.69.030(8) (employer intercession services); WIS. STAT. § 950.04(bm).

⁷⁶ See ARIZ. REV. STAT. § 13-4439.

⁷⁷ See ALA. CODE § 15-23-77 (return of property); ARIZ. REV. STAT. § 13-4429(A) (return of property); COLO. REV. STAT. § 24-4.1-302.5(1)(k) (prompt return of property); DEL. CODE ANN. tit. 11, § 9408 (prompt return of property); FLA. STAT. § 960.001(1)(h) (prompt return of property); HAW. REV. STAT. § 801D-4 (expeditious return of property); IDAHO CODE § 19-5306(1)(i) (expeditious return of property); LA. REV. STAT. ANN. § 1844(L) (expeditious return of property); MD. CODE ANN., CRIM. PROC. § 11-1002(b)(9) (expeditious return of property); MASS. GEN. LAWS ch. 258B § 3(r) (expeditious return of property); MICH. STAT. ANN. § 780.754 (prompt return of property); MISS. CODE ANN. § 99-43-39 (law enforcement must make efforts to return property as soon as possible); MO. REV. STAT. § 595.209(13) (return of property); MONT. CODE ANN. § 46-24-206 (prompt return of property); NEB. REV. STAT. § 81-1848(2)(g) (expeditious return of property); N.H. REV. STAT. ANN. § 21-M:8-k(II)(n) (prompt return of property); N.J. STAT. ANN. § 52:4B-36(l) (prompt return of property); N.M. Const. art. II, § 24(A)(11) (prompt return of property); N.Y. EXEC. LAW § 642(3) (prompt return of property); N.D. CENT. CODE § 12.1-34-02(8) (expeditious return of property); OHIO REV. CODE § 2930.11 (prompt return of property); OKLA. STAT. tit. 19, § 215.33(7) (expeditious return of property); PA. CONST. STAT. § 11.212(g) & 11.213(h) (return of property); R.I. GEN. LAWS § 12-28-3(a)(8) (expeditious return of property); TENN. CODE ANN. § 40-38-105 (recover property as soon as is reasonably possible); TEX. CRIM. PROC. CODE ANN. § 56.02(9) (prompt return of property); VT. STAT. ANN. tit. 13, § 5311 (prompt return of property); WASH. REV. CODE § 7.69.030(7) (expeditious return of property); WIS. STAT. § 950.04(s) (expeditious return of property); WYO. STAT. ANN. § 14-6-502(a)(xi) (prompt return of property).

⁷⁸ See, e.g., Victims’ Rights Compliance Efforts: Experiences in Three States, Bulletin of the U.S. Department of Justice Office, Office of Justice Programs, Office for Victims of Crime. Can be found at: <http://www.ojp.usdoj.gov/ovc/publications/infores/vrce.htm> (last visited 1/27/05).

⁷⁹ See Dean G. Kilpatrick, David Beatty, & Susan Smith Howley, The Rights of Crime Victims – Does Legal Protection Make a Difference?, (NIJ, OJP, U.S. Dept. of Justice Publication, Dec. 1998). at p. 10.

⁸⁰ See *id.*

⁸¹ See, e.g., *N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 847 (N.M. 1998) (setting forth an analysis of standing requirements in New Mexico).

⁸² See, e.g., *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980) (allowing non-party newspaper to petition criminal court for protection of First Amendment rights); *United States v. McVeigh*, 106 F.3d 325, 334 n.7 (10th Cir. 1997) (explaining that non-party status was not a bar to mandamus review).

⁸³ See, e.g., *In re K.P.*, 709 A.2d 315, 320 (N.J. Sup. Ct. 1997).

⁸⁴ See, e.g., ARIZ. REV. STAT. § 13-4437(A); MD. CODE ANN., CRIM. PROC. § 11-103; S.C. Const. art. I, § 24(B)(2) (providing for petition for writ of mandamus to require compliance with victims' rights provisions).

⁸⁵ See, e.g., *Melissa J. v. Superior Ct.*, 190 Cal. App. 3d 476 (Cal. Ct. App. 1987) (allowing victim to file petition for writ of mandamus for review of violation of victims' rights); *Ford v. State*, 829 So.2d 946 (Fla. Dist. Ct. App. 2002) (approving victim's petition for writ of certiorari for review of violation of victims' rights).

⁸⁶ See, e.g., KAN. STAT. ANN. § 74-7333(e); LA. REV. STAT. ANN. § 1844(U).

⁸⁷ See, e.g., N.M. STAT. ANN. § 31-26-14.

⁸⁸ *McVeigh*, 106 F.3d at 335.

⁸⁹ *Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.*, ___ F.3d ___, 2005 WL _____ at *3 (9th Cir., January 20, 2006). See also Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U. L. Rev. 835, 837 (2005).

⁹⁰ See Jon Kyl, Steven Twist, Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581, 589 n. 37 (Fall 2005) (citing LeRoy L. Lamborn, *Victim Participation in the Criminal Justice Process: The Proposals for a Constitutional Amendment*, 34 Wayne L. Rev. 125, 129 (1987)).

⁹¹ *Id.* at 589 n. 40.

⁹² See S.J. Res. 65, 104th Cong., 2d Sess. (1996).

⁹³ For a discussion of the evolution of the constitutional resolutions see Jon Kyl, Steven Twist, Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581 (Fall 2005); Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U. L. Rev. 835 (2005).

⁹⁴ Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U. L. Rev. 835, 850 (2005).

⁹⁵ The CVRA passed with overwhelming bipartisan support. The final vote in the House was 393 to 14, and the final Senate vote was unanimous.

⁹⁶ Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims' Rights Act*, 2005 B.Y.U. L. Rev. 835, 837 (2005).

⁹⁷ See Meg Garvin, "The New Federal Landscape: Snapshots of Change," *NCVLI News* Fall/Winter 2005, available online at <http://www.lclark.edu/org/ncvli/objects/Volume5.pdf>.

⁹⁸ 150 Cong. Rec. S109112 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

⁹⁹ See Jon Kyl, Steven Twist, Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581, 594

(Fall 2005). With regard to the prohibition on defendant's using the victims' rights see also 18 U.S.C. § 3771(d)(1) (providing, "A person accused of the crime may not obtain any form of relief under this chapter.").

¹⁰⁰ 150 Cong. Rec. S4268 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

¹⁰¹ 150 Cong. Rec. S4268 (daily ed. Apr. 22, 2004) (statement of Sen. Kyl).

¹⁰² *United States v. Johnson*, 362 F. Supp. 2d 1043 (N.D. Iowa 2005).

¹⁰³ Douglas E. Beloof and Paul G. Cassell, *The Crime Victim's Right to Attend the Trial: The Reascendant National Consensus*, 9 Lewis & Clark L. Rev. 481 (Fall 2005).

¹⁰⁴ *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal citations omitted).

¹⁰⁵ The idea that basic due process of notice and opportunity to be heard is owed to crime victims is implicit in each grant substantive right under the CVRA. For example, subsection (a)(8) of the CVRA provides that crime victims have the right to be treated with "fairness." The legislative history on this right provides: "Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct government agencies and employees, whether they are executive or judicial branches to treat victims of crime with the respect they deserve and afford them due process." 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹⁰⁶ The CVRA has a specific provision governing what are considered "multiple crime victims" cases. See 18 U.S.C. § 3771(c)(2). If a case qualifies as a multiple victim case the right to notice will likely be affected (i.e. allowing substitute methods of notification). Because the affect of this provision can vary greatly it is not specifically addressed here.

¹⁰⁷ 150 Cong. Rec. S4267-68 (daily ed. April 22, 2004) (statement of Sen. Kyl).

¹⁰⁸ 150 Cong. Rec. S10910 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹⁰⁹ Jon Kyl, Steven Twist, Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581, 601 (Fall 2005).

¹¹⁰ 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹¹¹ Two federal district courts have also interpreted the CVRA's right to be reasonably heard – each coming to different interpretations of whether the right afforded was the right to be heard orally or only in writing in some instances. Compare *United States v. Marcello*, 370 F. Supp. 2d 745 (N.D. Ill. 2005), with *United States v. Degenhardt*, ___ F. Supp. 2d ___, 2005 WL 3485922 (D. Utah 2005).

¹¹² 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹¹³ 150 Cong. Rec. S10910 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹¹⁴ Jon Kyl, Steven Twist, Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581, 596 (Fall 2005).

¹¹⁵ Jon Kyl, Steven Twist, Stephen Higgins, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 Lewis & Clark L. Rev. 581, 596 (Fall 2005).

¹¹⁶ 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹¹⁷ 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

¹¹⁸ 150 Cong. Rec. 24269 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

¹¹⁹ For instance, two provisions of the CVRA itself mandate certain government action to ensure compliance with its terms. First, subsection (c)(1) provides that “[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded the rights described in subsection (a).” Second, subsection (f), entitled “Procedures to Promote Compliance,” requires the Attorney General to promulgate regulations to enforce the rights and ensure compliance. Pursuant to this provision, the Attorney General issued the “Attorney General Guidelines for Victim and Witness Assistance,” in May 2005.

¹²⁰ 150 Cong. Rec. 24261 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein).

¹²¹ Even the United States Attorney General recognizes that the CVRA affords crime victims standing to assert their rights. *See* Attorney General Guidelines for Victim and Witness Assistance, May 2005, p. 8.

¹²² *See Kenna v. United States District Court for the Central District of California*, ___ F.3d ___, 2006 WL 156736 (9th Cir. Jan. 20, 2006).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Fair Treatment Guidelines, *supra* n. 3, at 6.

¹²⁶ Fair Treatment Guidelines, *supra* n. 3, at 1.

¹²⁷ *See* Fair Treatment Guidelines, *supra* n. 3, at 13-18.

¹²⁸ *See id.*

¹²⁹ *See supra* n. 99 and accompanying text p. 11.

¹³⁰ *See supra* nn. 19-25 and accompanying text p.3.

¹³¹ *See supra* nn. 19-25 and accompanying text p.3.

¹³² *See* Appendix A.

¹³³ *See* Fair Treatment Guidelines, *supra* n. 3, at 6.

¹³⁴ *See* Appendix A.

¹³⁵ *See* Appendix A.

¹³⁶ While on their face these Guidelines appear to be “notice” provision, because there is no requirement in the Fair Treatment Guidelines that the “notice” occur prior to the identified event, these are, in practice, merely informational guidelines.

¹³⁷ *See supra* nn. 28-31 and accompanying text p.4.

¹³⁸ *See supra* n. 32.

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- ¹³⁹ See New Directions from the Field, *supra* n. 15.
- ¹⁴⁰ See *supra* n. 102 and accompanying text p. 12.
- ¹⁴¹ See discussion *supra* Part III C (2) p. 12.
- ¹⁴² See *supra* n. 102 and accompanying text p. 12.
- ¹⁴³ See *supra* nn. 34-36 and accompanying text p. 5.
- ¹⁴⁴ See *supra* nn. 37-40 and accompanying text p. 5.
- ¹⁴⁵ See Douglas E. Beloof & Paul Cassell, *The Crime Victim's Right to Attend Trial: The Reascendant National Consensus*, 9 Lewis & Clark L. Rev. 481, 484 (2005).
- ¹⁴⁶ See *id.* at 484-94.
- ¹⁴⁷ See *id.* at 494-97.
- ¹⁴⁸ See *id.* at 498-503. The reason for the shift to routine sequestration of the victim can be traced to Congress' passage of the Federal Rules of Evidence in 1975. See *id.* at 498. As drafted, FRE 615 rendered crime victims subject to mandatory sequestration, with limited exception. See *id.* at 498-99. Nearly four-fifths of the states adopted rules similar to the Federal Rules of Evidence, generally codifying victim sequestration in state court. See *id.* at 498.
- ¹⁴⁹ See *id.* at 503-06.
- ¹⁵⁰ See Fair Treatment Guidelines, *supra* n. 3, at 10 and 12.
- ¹⁵¹ See discussion *supra* Part III C (3)(a) p. 13.
- ¹⁵² See discussion *supra* Part III C (3)(a) p. 13.
- ¹⁵³ See *supra* nn. 43-45 and accompanying text p. 6.
- ¹⁵⁴ See *supra* n. 46 and accompanying text p. 6.
- ¹⁵⁵ See *supra* n. 48.
- ¹⁵⁶ See *supra* nn. 52-53 and accompanying text p. 6.
- ¹⁵⁷ See *supra* nn. 54-55 and accompanying text p. 6.
- ¹⁵⁸ See n. 56.
- ¹⁵⁹ See Fair Treatment Guidelines *supra* n. 3 at 16-18.
- ¹⁶⁰ See discussion *supra* Part III C(3)(b) p. 13.
- ¹⁶¹ See *supra* n. 110 and accompanying text p. 13-14.
- ¹⁶² See *supra* nn. 57-58.
- ¹⁶³ See *supra* nn. 60-61 and accompanying text p. 7.

¹⁶⁴ See discussions *supra* Part III C(3) p. 13-14, and Part II B(3) p. 5-7.

¹⁶⁵ See Appendix A.

¹⁶⁶ *Id.*

¹⁶⁷ See discussion *supra* Part III C(4) p. 14.

¹⁶⁸ See *supra* n. 112 and accompanying text p. 14.

¹⁶⁹ See *supra* n. 64.

¹⁷⁰ See generally, RESTITUTION FOR CRIME VICTIMS: A NATIONAL STRATEGY, Report of the Victims Committee, Criminal Justice Section, American Bar Association (2003).

¹⁷¹ See The Restitution Report, *supra* n. 64.

¹⁷² See Fair Treatment Guidelines, *supra* n. 3, at 1.

¹⁷³ See discussion *supra* Part III C(5) p. 14.

¹⁷⁴ See *supra* n.114 and accompanying text p. 14.

¹⁷⁵ See *supra* n. 66.

¹⁷⁶ See discussion *supra* Part II B(5) p. 8.

¹⁷⁷ See *supra* n. 69.

¹⁷⁸ See Fair Treatment Guidelines, *supra* n. 3, at 1, 3.

¹⁷⁹ See *supra* n.75.

¹⁸⁰ See *supra* n.77.

¹⁸¹ See discussion *supra* Part III C(7) p. 15.

¹⁸² See discussion *supra* Part III C(7) p. 15.

¹⁸³ See discussion *supra* Part III C(6) p. 15.

¹⁸⁴ See *supra* n. 74.

¹⁸⁵ See *supra* n. 72.

¹⁸⁶ The only aspect of the Fair Treatment Guidelines that address implementation is the provision that “[n]othing in the guidelines is to be interpreted as establishing a cause of action against public officials who fail to provide the considerations and opportunities for victims addressed by the guidelines.” This is in line with the federal and states’ approaches which similarly prohibit civil causes of action for monetary damages. Fair Treatment Guidelines, *supra* n. 3, at 6.

¹⁸⁷ See John W. Gillis & Douglas E. Beloof, *The Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts*, 33 McGeorge L. Rev. 689, 690 (2002).

¹⁸⁸ See Fair Treatment Guidelines, *supra* n. 3, at 22.