

## CHAPTER 19

### VICTIM CONSIDERATIONS

#### 19.1 GENERALLY

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#### 19.3 REMEDIES

### 19.1 GENERALLY

A victim means a “person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.” In years past, it was common for many participants in the criminal justice system, prosecutors included, to consider victims “just another witness”. In fact, until recently, victims possessed no greater rights in a criminal case than a third party, uninterested witness. This has, thankfully, changed dramatically.

It is important for prosecutors to realize that a victim of any crime, particularly a crime that caused injury, is quite possibly one of the most important events in that person’s life. With the high rate of injuries and fatalities caused by impaired driving, prosecutors must do more than “be sensitive” to the needs of victims and their families. Prosecutors must be advocates and champions for the needs of victims in general as well as in a particular case.

This is not to say that a prosecutor should consider the victim to be her client, as this would be a violation of the ethical and statutory duties of their office. However, advocating for victims and being responsive to their needs is at the very core of “doing justice”.

### 19.2 VICTIMS BILL OF RIGHTS

In 1987, the Utah State Legislature enacted the Victims Bill of Rights. Keep in mind that, with the exception of the rights specifically enumerated

to victims of sexual violence, these provisions apply to victims of any crime, including impaired driving.

As currently enacted, the bill states in relevant part:

**77-37-1. Legislative intent.**

(1) The Legislature recognizes the duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, the essential nature of citizen cooperation to state and local law enforcement efforts, and the general effectiveness and well-being of the criminal justice system of this state. In this chapter, the Legislature declares its intent to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity, and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law in a manner no less vigorous than protections afforded criminal defendants.

(2) The Legislature finds it is necessary to provide child victims and child witnesses with additional consideration and different treatment than that usually afforded to adults. The treatment should ensure that children's participation in the criminal justice process be conducted in the most effective and least traumatic, intrusive, or intimidating manner.

**77-37-3. Bill of Rights.**

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form that is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be informed and assisted as to their role in the criminal justice

process. All criminal justice agencies have the duty to provide this information and assistance.

(c) Victims and witnesses have a right to clear explanations regarding relevant legal proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All criminal justice agencies have the duty to provide these explanations.

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants. Agencies controlling facilities shall, whenever possible, provide this area.

(e) Victims are entitled to restitution or reparations, including medical costs, as provided in Title 63, Chapter 25a, Criminal Justice and Substance Abuse, and Sections 62A-7-109, 77-38a-302, and 77-27-6. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Utah Crime Victims' Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have a right to be informed of their right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The law enforcement office where the sexual offense s reported shall have the responsibility to inform victims of this right.

(2) Informational rights of the victim under this chapter are based upon the victim providing his current address and telephone number to the criminal justice agencies involved in the case.

#### **77-37-4. Additional rights - Children.**

In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights:

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to a criminal prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

It is vitally important to ensure that your office practices and protocols are in compliance with these provisions. Prosecutors should develop the habit of informing the victims of the status of the case and; most importantly, being honest and forthright with victims of crime.

### **19.3 REMEDIES**

Although the responsibilities toward victims are clearly and concisely spelled out in the bill of rights, there is no truly effective remedy for a breach of those responsibilities. The only true remedy is the victim's right to obtain injunctive relief following a willful and wanton violation of these rights. The exact form of the injunctive relief has yet to be fully explored by the appellate courts, but will no doubt develop as time progresses.

It is a better habit; however, to avoid violations of the bill and to, as justice requires, keep the rights of victims at the top of any list of prosecutorial priorities.

#### **77-37-5. Remedies - Victims' Rights Committee.**

Remedies available are:

(1) In each judicial district, the presiding district court judge shall appoint a person who shall establish and chair a victims' rights committee consisting of:

- (a) a county attorney or district attorney;
- (b) a sheriff;
- (c) a corrections field services administrator;
- (d) an appointed victim advocate;

- (e) a municipal attorney;
- (f) a municipal chief of police; and
- (g) other representatives as appropriate.

(2) The committee shall meet at least semiannually to review progress and problems related to this chapter, Title 77, Chapter 38, and Utah Constitution Article I, Section 28. Victims and other interested parties may submit matters of concern to the victims' rights committee. The committee may hold a hearing open to the public on any appropriate matter of concern and may publish its findings. These matters shall also be considered at the meetings of the victims' rights committee. The committee shall forward minutes of all meetings to the Commission on Criminal and Juvenile Justice and the Office of Crime Victims' Reparations for review and other appropriate action.

(3) The Office of Crime Victims' Reparations shall provide materials to local law enforcement to inform every victim of a sexual offense of the right to request testing of the convicted sexual offender and of the victim as provided in Section 76-5-502.

(4) If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. The failure to provide the rights in this chapter or Title 77, Chapter 38, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney's fees, or the costs of exercising any rights under this chapter.

(5) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter.

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