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**STATUTORY AND CONSTITUTIONAL PROTECTION OF
VICTIMS' RIGHTS:**

Implementation and Impact on Crime Victims

Cooperative Agreement 93-IJ-CX-K003

EXECUTIVE SUMMARY

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by the
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INTRODUCTION

In February of 1993, the National Institute of Justice entered into a cooperative agreement with the National Victim Center to study the implementation of statutory and constitutional rights for victims of crime. This unprecedented project consisted of a comprehensive statutory analysis of the four core issue areas of crime victims' rights (the rights of victims to be notified, to be present, and to be heard in the criminal justice process, and the right to restitution from the offender), and surveys of crime victims, local criminal justice officials and victim service professionals, and state leaders in four representative states.

This project was designed to test the following hypotheses:

- that the strength of statutory protection of crime victims' rights would have a measurable impact on how crime victims were treated within that state;
- that crime victims within strong protection states would have more favorable experiences, and consequently greater satisfaction with the criminal justice system, than those in weak protection states; and
- that the criminal justice and victim service professionals, as well as state level officials and victim advocates, from the strong protection states would have greater awareness of victims' rights issues than their counterparts in weak protection states.

To a considerable degree, each of these hypotheses was confirmed by the research.

WHY THE RESEARCH WAS UNDERTAKEN

Following the release of the *Final Report* of the President's Task Force on Victims of Crime in 1982, legislatures across the country began in earnest to pass laws to rectify the imbalance of justice that existed between criminal defendants and victims of crime. There are now thousands of laws and twenty-nine constitutional amendments providing rights to crime victims at the state level.

While every state has adopted legal rights for crime victims, the breadth, strength and specificity of those legal provisions vary greatly from state to state and from issue to issue. Prior to this project, there had been no comprehensive analysis of the efficacy of victims' rights laws across the country.

Despite the lack of research confirming the efficacy of the statutes already in force, policy



leaders have continued to expand and amend victims' rights statutes with little guidance and no clear objective sense of whether the original statutes were fulfilling their intended purpose. In a very real sense, victims' rights policy makers, while not quite "flying blind," have been flying on instinct. As this policy making by instinct, aided by anecdotal evidence, has been profoundly changing the criminal justice process, the need for research data has been acute. While attempts had been made to examine victims' rights in a single state, or a few urban jurisdictions, there had been no systematic examination of the application of crime victims' rights laws that would address victims' rights nationally. This project was designed with exactly this goal in mind.

In perhaps the most ambitious statutory examination ever undertaken in the field, the project's legislative analysts examined and compared hundreds of victim-related statutes from all 50 states covering each of the four key issue areas of crime victims' rights. Then, four representative states were selected - two that ranked in the top 25% states with respect to the protection of crime victims' rights, and two from the bottom 25%. Crime victims, criminal justice officials, victim service professionals and state policy leaders in each of the four states were then surveyed to ascertain the actual impact and practical effect of those laws as reflected by their own experiences.

The data composite revealed by this analysis in conjunction with the survey results, provide the most comprehensive and accurate portrait of the state of crime victims' rights as they exist in the United States ever devised to date.

It is the view of the authors that the data, analysis, and lessons learned through this project have important implications for improving victims' rights, both through statutory and constitutional protections and factors related to implementation of such protections. In short, the results of this study will provide both policy makers and policy implementors with a clearer view of where their previous victim policies have led them, so that they might develop a clearer vision of the direction they want to lead victims' rights next.

METHODOLOGY AND RESULTS

This research had the following five sequential phases.

1. Statutory analysis.

The first component of the project involved an analysis of laws providing protections for crime victims' rights and interests. Four issue areas of crime victims' rights were targeted. These were: the right to notice of events and proceedings in the criminal justice process, ranging from notice of the arrest of a suspect to notice of the parole hearing; the right to be heard at various criminal justice proceedings; the right to attend various criminal justice proceedings; and the right to restitution from the offender.



Statutes providing a legal right in one of the four targeted issue areas were evaluated on the basis of their comprehensiveness, strength and specificity. From that evaluation, states were given a score in each issue area of victims' rights and then ranked.

2. State Selection.

A state's ranking in the crime victims' rights scale was only the first consideration in determining which states would be included in this project. Of primary importance was the willingness of officials to subject their programs to the scrutiny that participation would entail by allowing access to crime victim files and to submit themselves to the survey of criminal justice system officials. The quality of a state's record-keeping system was also a factor in determining whether a state's participation was practically feasible.

The four states that participated demonstrated a desire to facilitate the improvement of crime victims' rights, in their own state and across the country, by allowing a survey of the "end-user" of their victims' rights laws — the crime victims.

3. Crime Victim Survey

This survey of over 1300 crime victims was the largest of its kind ever conducted. A very high percentage of victims contacted (83%) agreed to complete the interview.

The crime victim survey demonstrated consistent correlation between strong crime victims' rights laws and the actual observance of the rights enumerated by such laws. A greater percentage of crime victims in strong protection states reported being notified and being given the right to attend and participate throughout the criminal justice system than did those in weak protection states. Conversely, however, victims in the weak protection states more often reported that the offender was ordered to pay restitution to them.

Though victims in the strong protection states more often reported receiving their legal rights, considerable numbers of victims, even in the strong protection states, are apparently denied their rights. Indeed, in many cases, at least one-third of the crime victims surveyed in the strong protection states reported that they did not receive certain rights.

The data from the crime victim survey also revealed a strong correlation between crime victims' legal rights and victims' satisfaction with each branch of the criminal justice system. In addition, crime victims from the strong protection states were much more likely to rate as "more than adequate" each aspect of the criminal justice system, from efforts to apprehend the perpetrator to the fairness of the sentence; crime victims from weak protection states were far more likely to rate those aspects as "completely inadequate." The conclusion here is apparent: crime victims' satisfaction with the criminal justice system is directly influenced by strong victims' rights statutes.



4. Criminal Justice/Victim Service Professionals Survey

One hundred forty-five local criminal justice and victim service professionals completed interviews for the project — 70% of those professionals contacted.

The findings from this survey demonstrated that officials in strong protection states were more likely to provide rights to crime victims. Specifically, respondents from strong protection states were much more likely to say that crime victims were “always” or “usually” provided their legal rights at virtually every point in the criminal justice process. This result was confirmed as it related to dozens of specific victim-related functions examined by the study.

Another highlight of the study was the finding that approximately one-third of all criminal justice and victim service professionals supported various enforcement mechanisms for crime victims’ rights, including civil actions for damages, actions for injunctive relief, and disciplinary proceedings.

Also of significance was the large percentages of respondents from both groups of states who demonstrated a serious lack of knowledge about the existence of crime victims rights and the implementation of those rights. In many cases, those professionals were unsure whether a legal right existed and what the law required of them.

5. State Leaders Survey

The participation rate of state level policy leaders and victim advocates was over 80%. Participants included governors, attorneys general, directors of the departments of corrections, and state legislators, as well as the executive directors of state crime victim organizations.

State leaders were generally very cognizant of where their state stood in comparison to other states in the provision of crime victims' rights. They also demonstrated an understanding of both the need for crime victims' rights and the barriers that exist to the full provision of those rights. When asked about their top priorities to improve crime victims' rights, the most common priorities were: increased funding; better education of officials, crime victims, and the public; and enhancement or enforcement of crime victims' rights laws.

IMPLICATIONS FOR PUBLIC POLICY

The results of the study clearly indicate that the existence and nature of victims’ rights statutes have a considerable impact on the actual benefits victims derive from the criminal justice system and of their perceptions of the fairness of the process. The effectiveness of such provisions was confirmed by those who have primary responsibility



for implementing victims' rights statutes — criminal justice officials, and those who are the intended beneficiaries of the statutes — crime victims.

The study also revealed key factors through which victim policy is translated into practice. Among these key factors were: the statutes themselves, knowledge and motivation of the implementing officials, availability of resources, and motivation of officials. Each of these factors directly influenced the nature and extent to which rights were delivered to crime victims in each of the four states reviewed.

A close examination of these factors and how they related to one another should provide valuable insight to policy makers seeking to enhance the effectiveness of such laws, and for policy implementors seeking to improve the ways in which such laws are effectuated.

Statutes- Few states were demonstrated to have strong victims' rights protections in all four of the issue areas examined, and few states were uniformly weak in all the areas reviewed. Policy makers may wish to reexamine their own laws to determine where weaknesses exist and to remedy them accordingly.

Education- Education is a necessary prerequisite to the provision of crime victims' rights. Unless officials are aware of the legal mandates imposed on them, they cannot be expected to meet those mandates. If crime victims are unaware of their legal rights, they are unlikely to exercise them.

The survey of local criminal justice officials and victim service professionals revealed a lack of awareness of victims' rights and the implementation of those rights. As an example, one-third of all criminal justice officials and victim service professionals surveyed responded incorrectly when asked whether or not their state had a constitutional amendment providing crime victims' rights.

States may wish to consider expanding the training of their criminal justice system professionals and undertaking a public education strategy to better inform their citizens about the rights of crime victims.

Resources- Resource limitations were most commonly cited by officials as the reason they were unable to carry out their duties under the law.

States might consider implementing an information tracking and accounting system, to give a clearer understanding of the current expenditures of time and money related to implementation of victims' rights, to better allocate resources.

Motivation - Criminal justice officials must have the will or the motivation to provide



crime victims' rights. Policy makers and administrators may need to initiate policies and procedures to better track and encourage compliance with the mandates established by victims' right statutes. Such policies and procedures might include certification or other written documentation that rights were provided.

Additionally, for those criminal justice officials who know their duty, yet refuse to carry it out, policy makers might consider the adoption of enforcement mechanisms. Approximately one-third of all respondents supported various listed enforcement mechanisms for victims' rights.

CONCLUSION

Given the relative lack of research into the implementation of victims' rights, the results of this study may raise more questions than they answer. Nevertheless, as the largest study of its kind ever conducted, the authors believe these results provide much important information heretofore unavailable. The results of this study should benefit those for whom the subject is more than a question of academic inquiry — those whose professional lives, as criminal justice officials, victim advocates, or policy leaders, and whose whose personal lives as survivors of crime are directly affected by the questions and answers this study has begun to explore. It is hoped that this research will serve not as the final word on the subject, but only as the first word of what will be a long and enlightening discussion conducted through the many research studies to come.

