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**National Institute
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Research in Brief

June 1985

The Criminal Justice Response to Victim Harm

Brian E. Forst and Jolene C. Hernon

Interest in victims of crime has increased markedly in recent years. Growth of a body of "victimology" literature and the emergence of numerous grassroots victims' rights organizations reflect the public's continuing

frustration about crime and the criminal justice system's treatment of victims. A common perception among the public is that the criminal justice system cares only about the defendant and his or her rights and that the vic-

tim—viewed by the general citizenry as the truly injured party—is neglected in the process.

Under the U.S. system of jurisprudence, it is easy to understand how the

From the Director

More than 6 million victims of serious crime are caught up in the criminal justice system each year. Victims are the primary reason we have a justice system. While the system was created to be the fairest in history, the consequences for victims have been ironic.

Victims, for the most part, have been excluded from any substantial participation in prosecuting the criminal case. Traumatized at first by the crime, they often suffer a second victimization because of their treatment within the criminal justice system.

Through the President's Task Force on Victims of Crime, we now recognize the inequity. The Task Force report noted, "The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds—personal, emotional, and financial—have gone unattended."

Now it is time to ensure that victims' interests are protected. We will not change the status quo for victims unless a compassionate response is coupled with a clearly structured approach to real changes in their treatment within the criminal justice system.

Knowledge can be a powerful impetus for the changes needed to make vic-

tims more active participants in the decisions of the justice process.

Many officials, legislators, and policymakers are working to instill a more sensitive, balanced approach to the treatment of victims. Research is helping to inform this evolution of a balanced justice program.

As one of several research initiatives we have taken in this area, the National Institute of Justice sponsored research on "The Criminal Justice Response to Victim Harm." The study summarized here addresses how practitioners learn about victim harm, how that knowledge affects their decisions, and how victims view their own experiences within the criminal justice system.

Often, police, prosecutors, and judges are faced with the problem of identifying reliable sources of information to assess victim harm when making decisions about the investigation and prosecution of a criminal case. There are very few points in the processing of a case where the victim has had any direct, personal input to either the police or the courts about the type and degree of harm inflicted.

Victim-witness programs offer the victim the opportunity to communicate clearly to prosecutors the degree of injury inflicted and any derivative conse-

quences of the crime suffered by the victim. Improved social services for victims of crime and frequent use of restitution are suggested as ways to redress the harm done to victims of crime. Developing better communications between criminal justice professionals and victims can improve victims' degree of satisfaction with the outcome of the case.

On a broader scale, the recently enacted Victims of Crime Act of 1984 will collect fines, penalties, and other assessments from those convicted of Federal crimes, making available as much as \$100 million for distribution to States for victim compensation and improved victim services. Research such as the study summarized here will help to target areas where additional resources can improve victim treatment and satisfaction with the criminal justice system.

The National Institute of Justice has made research on crime victims a priority. Our goal is to provide new knowledge to ease the burden on victims and restore them to their proper place, to bring justice for victims into the criminal justice system.

James K. Stewart
Director
National Institute of Justice

victim can be neglected as a case progresses through the various stages of criminal prosecution. Even though the victim might be viewed logically as the criminal offender's adversary, the government, not the victim, is responsible for taking legal action against the offender. The State brings the case, and the victim serves as the witness, not as complainant.

To balance the overwhelming power of the State with the individual's rights and liberties, constitutional safeguards focus on the defendant. Procedural due process guarantees have been developed to protect innocent persons from being wrongly or unfairly prosecuted by the State. There are few procedural guarantees for victims.

Concern about these matters has led to an emergence of grassroots victim organizations and to reforms in several areas. At the State and local levels, legislation in support of rape victims, creation of victim-witness programs, and the increased use of victim compensation and restitution all reflect a significant shift on behalf of the victim. At the Federal level, the President's Task Force on Victims of Crime and the Federal Victim and Witness Protection Act of 1982 have provided a variety of specific recommendations and procedures to improve the plight of victims.

The victim harm issue

An important aspect of the victim issue that has been examined in only a limited way is how the degree of harm inflicted on the victim affects criminal justice decisions. Very little is known, in particular, about how practitioners obtain information about harm to the victim and how such information affects their official decisions.

Does the judge know, for example, that the "simple pursesnatching" resulted in injuries requiring continual medical treatment? And if the judge knows, does she or he take the information into account in sentencing?

The primary purpose of our study, *The Criminal Justice Response to Victim Harm*, initiated and sponsored by the National Institute of Justice, was to gain a clearer understanding of how police officers, prosecutors, and judges

learn about victim harm, how victim harm affects their decisionmaking, and how victims view their experiences with the criminal justice system.

"Victim harm" encompasses the total effect of victimization, including psychological trauma, physical injury, and financial loss. For some victims, the loss, burdens, and adjustments may be merely inconvenient; for others, the crime can be completely disabling; and for victims of homicide, the loss of life and costs to survivors defy measurement.

Certain levels of harm are measurable; e.g., number of days in the hospital, full or partial paralysis; but the lasting trauma, the destructive and damaging psychological effects, are much more difficult to assess. How does one measure the fear an elderly person feels about entering a dark house after a burglary? How can a woman be compensated for her inability to form an intimate relationship with a man because she has been raped? How can we measure the loneliness and grief a parent feels whose child has been murdered?

Victim harm is not just broken arms, black eyes, lost wallets, or medical bills; it is also fear and shame, frustration and anger, depression and despair.

In civil cases, an attempt is made to measure pain and suffering in order to award damages. But in criminal matters the primary concern is to determine guilt or innocence. Criminal statutes make gross distinctions in the degree of harm sustained and the intent of the offenders; some jurisdictions now have enhancement statutes that allow the judge to give a longer sentence if the victim is elderly. Except for these very broad standards, there are no measurable criteria or standards relating to victim harm and how it fits into decisions in criminal cases.

This study has attempted to help fill the information void. Specifically, it has addressed the questions: How do police officers, prosecutors, and judges learn about victim harm? Do they take victim harm into consideration in their decisions to arrest a suspect, to accept the case for prosecution, and to impose sentence? If so, to what extent? How do victims learn about court events and decisions? Who usually keeps them most informed? What de-

termines victim satisfaction, and what can the criminal justice system do to increase it?

Study design: Methodology and population surveyed

The primary data source for the project was interviews with victims, police officers (both uniform officers and detectives), prosecutors, and judges in eight jurisdictions. The interviews focused on five felony crimes: homicide, sexual assault, aggravated assault, robbery, and burglary.¹

Eight jurisdictions were chosen to give the project regional representation, a mix in terms of population size, and variety in the types of victim services offered. The participating sites were: Essex County (Salem), Massachusetts; Baltimore County, Maryland; the Thirteenth Judicial Circuit (Greenville), South Carolina; Orleans Parish (New Orleans), Louisiana; Jackson County (Kansas City), Missouri; Hennepin County (Minneapolis), Minnesota; Santa Clara County (San Jose), California; and Multnomah County (Portland), Oregon.

Two complementary methodologies were used. In Salem and Baltimore, practitioners were asked to describe and explain their actions in recently closed cases. The realism of actual cases is an indisputable advantage; however, the opportunity to interview the victim (or survivor) as well as the responsible police officer, prosecutor, and judge in a case presented itself in few instances.

Therefore, in the other six sites, practitioners were asked a variety of questions about how they obtain and use victim harm information. They also simulated their decisionmaking processes using case scenarios and described their typical interaction with victims. The scenario technique permitted a more systematic measurement of the effects of various aspects of victim harm on practitioners' decision-making.

The two methods for learning how victim harm information affects the deci-

1. In homicide cases, victim harm refers to the harm incurred by close family members who survive the death of the victim.

sions of practitioners were complementary in that the more intensive "real case" interviews helped to explain and validate the responses to the more extensive scenario questions.

In the six "scenario" sites, 47 victims, 48 judges, 101 prosecutors, and 112 police officers were interviewed personally; another 342 victims were surveyed by mail. (Characteristics of the 389 victim respondents in these six sites are shown in Table 1.) Twenty-one victims and thirty-four practitioners were interviewed in the other two sites. The victim-witness program staff was interviewed informally in all eight jurisdictions.

How criminal justice officials learn about victim harm

Practitioners were asked what sources of victim harm information are available to them, how frequently the information is available, and what two or three sources give the most useful information about victim harm; that is, information that can be depended on for making decisions about a case. Table 2 shows the sources that practitioners reported as being most frequently available, the estimated percentage of their availability, and the percentage of respondents who cited the source as useful.

These numbers reflect the nature of each practitioner's role in the adjudication process. Especially noteworthy is the fact that the victim declines as a direct source of information as the case proceeds from police (89 percent), to prosecutor (76 percent), and on to the judge (16 percent).

Judges reported that the presentence investigation report, prepared by a probation officer, is the most useful source of information about victim harm. Much of the presentence report is obtained from second-hand sources—such as the police report, medical reports, and discussion with the prosecutor—not directly from the victim. The presentence report the judge sees is thus largely third-hand information about the victim. So, except for the small minority of cases in which the victim testifies at trial (16 percent), the most important avenue the victim has to the judge is both narrow and indirect.

Table 1.
Characteristics of victim respondents in six sites¹

	Range among six sites	Six-site total
Male	41 to 53 %	46
Black	2 to 50%	24
With household income less than \$20,000	46 to 75%	58
Employed	57 to 67%	61
With less than high school education	18 to 30 %	23
Average age	33 to 38 years	36

1. Thirteenth Judicial Circuit (Greenville), South Carolina; Orleans Parish (New Orleans), Louisiana; Jackson County (Kansas City), Missouri; Hennepin County (Minneapolis), Minnesota; Santa Clara County (San Jose), California; and Multnomah County (Portland), Oregon.

Table 2.
Availability and usefulness of victim harm information sources

Source	Average percentage of cases in which source is available	Percentage of respondents citing source as useful
Police:		
Conversation with victim	89	80
Observation of scene	81	31
Conversation with nonvictim witnesses	64	35
Prosecutors:		
Police report	92	45
Medical report (in assault cases)	81	43
Conversation with victim	76	90
Judge:		
Attorney's arguments	90	56
Presentence investigation report	82	91
Trial testimony	16	38

In the three sites with prosecutor-based victim-witness programs, the responses reveal the victim-witness program plays an important part in communicating to prosecutors the degree of harm to the victim. Sixty-three percent of the prosecutors in Greenville, 32 percent in Portland, and 33 percent in Minneapolis said that the victim-witness program in their offices is an important source of information.

Effect of victim harm on decisions: How information about victim harm is used

While the evidentiary standard of probable cause is a necessary condition for making an arrest, about half (52

percent) of the police officers interviewed said that they also consider victim harm in deciding whether to arrest a suspect.

The police respondents also indicated that victim harm influences the effort put into an investigation. Some police officers explained, however, that victim harm is not always considered. If the evidence is sufficient to show that a crime was committed by a suspect they have apprehended, they will make an arrest regardless of the extent of victim harm.

To systematically measure the effect of victim harm on the screening decision, prosecutors and police officers were asked to estimate the rate at which each of 10 different case types is typi-

cally accepted for prosecution. Each practitioner reviewed 10 case scenarios. They were asked to think of a "typical" distribution of cases similar to each scenario case. Each scenario had from seven to nine case factors, divided into four main categories:

Victim harm variables: (1) physical injury: 10 days hospitalization vs. no physical injury, (2) psychological injury: victim needs psychological counseling as a result of the crime vs. victim does not need counseling, and (3) cash value of property: \$1,000 vs. \$20;

Victim characteristic variables: (1) victim sex, (2) victim age: 65 years old vs. 25 years old and, for sexual assault only, 65 years old vs. 25 years old vs. 10 years old, and (3) relationship between victim and offender: strangers vs. immediate family;

Defendant-related variable: prior record: one prior felony conviction vs. no criminal record; and

Evidence variables: (1) property recovered vs. no property recovered, and (2) one witness other than the victim vs. no witnesses.

The case factors were randomly rotated. Some less common combinations were not included, such as physical injury in burglary cases and male victims in sexual assault cases.

The findings of this analysis were consistent with earlier research on the screening decision. According to both police and prosecutors, evidence variables were consistently more significant than other variables, victim harm variables were marginally important, and the defendant's prior record was not at all significant.

More victim variables were significant for police than for prosecutors. In sexual assault cases, both police and prosecutors consistently regarded old age and injury requiring hospitalization as factors that influence the screening decision.

If victim harm has only a modest impact on the screening decision, what kind of impact does it have on the sentencing decision? To address this question, prosecutors and judges were asked to give an appropriate sentence in each of 10 scenario cases.

The case factors for sentencing scenarios were like those for the screening scenarios, except that a guilty-by-plea vs. guilty-at-trial variable replaced the evidence factors. Respondents were asked to estimate the average sentence they would impose (or recommend) in the typical distribution of 100 cases with characteristics like each sample case.

Analysis of both prosecutors' and judges' responses to these scenarios revealed that injury increases the severity of the sentence in assault cases by about 2 years.

The guilty plea factor had a stronger effect, however. The judges indicated that a plea reduces the sentence by an average of about 3 years in burglary cases, and prosecutors indicated that a plea reduces the sentence by up to 5 years, depending on the offense.

More than any case-related factor, however, the most important variable in determining both the screening and sentencing decisions appears to be the individual practitioner, with his or her own personal views and style of exercising discretion.

Keeping victims informed

Who keeps the victim most informed about case decisions and case progress? Table 3 reports the victims' and practitioners' perceptions of who keeps the victim most informed. Several findings are noteworthy. First is the considerable discrepancy between the perceptions of practitioners and victims. Practitioners generally perceived themselves to be better communicators than victims reported them to be. Second is the discrepancy among the three practitioner groups. Some of this discrepancy is undoubtedly attributable partly to the fact that each group sees a different pool of cases.

The victims may indeed be kept more informed by prosecutors than by police in those cases that are seen by prosecutors and judges. Thus, the police, who see all of the victims, gave responses that came closest to corresponding to victim responses, and the judges, who see the fewest, gave responses that differed the most.

Prosecutor-sponsored victim-witness programs appear to contribute to the process of keeping victims informed.

Table 3.
Perceptions of which practitioner keeps the victim most informed

Practitioner:	Respondent			
	Victim (N = 358)	Police (N = 106)	Prosecutor (N = 100)	Judge (N = 39)
Police	25%	51%	11%	5%
Prosecutor	35	25	60	90
Victim-witness staff	14	13	28	5
No one	21	12	2	0
Other	6	0	0	0
	100%*	100%*	100%*	100%

*Total over 100% due to rounding.

Table 4.
Victim satisfaction with practitioners, six sites

	Victims satisfied with			
	Police	Prosecutor	Judge	Victim assistance staff
Percent satisfied or very satisfied ¹	80	67	54	67
Number of victim respondents	338	290	208	153

1. There were two other categories: "dissatisfied" and "very dissatisfied."

In the sites without such programs, 29 percent of the victims reported that no one kept them informed, compared to only 13 percent of the victims in the sites with such programs.

Determinants of victim satisfaction

Victims were also asked to indicate their level of satisfaction with various aspects of the criminal justice system.

They were asked, first, how satisfied they were with the practitioners involved in their cases. As Table 4 shows, victims were significantly more satisfied with prosecutors than with judges. Satisfaction with the victim assistance staff, 67 percent, was at the same level as with practitioners.

Victims' satisfaction with the various practitioner groups generally parallels their degree of direct contact with each group. Their lessened satisfaction with judges, however, may also be explained in part by the results shown in Table 5.

Six out of seven victims, on average, believe that judges do not punish

guilty offenders enough. Despite their belief that judges are generally fair, most victims think the courts could do better. Only 30 percent believe that the courts care about the needs of victims.

Victims indicated also that they were more likely to be satisfied—both with the way their cases turned out and with the criminal justice system generally—when they knew the outcome of the case, when they perceived that they had influenced that outcome, when they had contact with a victim assistance program, and when the defendant was convicted and incarcerated.

Forty-eight percent of the victims also said they would have been more satisfied had they been better informed about case progress.

Improving relations between victims and the courts

One way to learn how matters can be improved is to ask the persons involved. Victims, police officers, prosecutors, and judges were asked, in an open-ended question, how relations be-

tween victims and the courts could be improved. (See Table 6.)

Only one recommendation was offered by over 20 percent of each of the four groups: keep victims better informed. Another was recommended by over 15 percent of each group: improve social services for victims.

Over 10 percent of each group recommended more frequent use of restitution as a way to improve relations. Harsher treatment of offenders was recommended by more than 35 percent of the victims and police officers, but only 6 percent of the prosecutors and none of the judges.

Obviously, all of the parties involved cannot be expected to see eye-to-eye on every issue. To the extent that there is agreement about anything, however, it is that victims deserve to be kept better informed and to receive improved social services. Keeping victims better informed may be especially feasible because it is less costly to do than many other alternative measures to lessen victim dissatisfaction with the criminal justice system.

Policy implications

It is widely perceived that better dealings with victims and greater sensitivity to their needs implies diminished protection of defendants and their rights. Obviously, acceding to the victim's opinions about a just case outcome or sentence could threaten the rights of defendants. Treatment of victims and sensitivity to their needs can both be improved substantially, however, without jeopardizing the defendant's rights.

The findings of this study suggest that the primary opportunity for improved dealings with victims lies in keeping them better informed. Twenty-one percent of all victims interviewed indicated that no one kept them informed, and another 14 percent indicated that they were informed primarily because they took the initiative in obtaining the information.

The criminal justice practitioners also recognized the problem. Taken collectively, they recommended "keeping victims better informed" more frequently than any other solution to the problem of improving relations between victims and the courts.

Table 5.
Victim attitudes about the court system

(N = 301) Percent who agreed that:	
Guilty offenders are not punished enough	86
In general, judges make fair decisions	63
Courts do about as good a job as we can expect	32
The court system cares about victims' needs	30

Table 6.
Victim and practitioner suggestions to improve relations between victims and the courts

	Respondent			
	Victim (N = 247)	Police (N = 111)	Prosecutor (N = 101)	Judge (N = 48)
Keep victims better informed	30%	25%	25%	21%
Improve social services for victims	19%	18%	16%	17%
Require restitution more frequently	11%	11%	14%	13%
Treat offender more harshly	36%	38%	6%	—

Keeping victims better informed need not be expensive. The process begins by clearly assigning responsibility for providing information to victims, usually within the prosecutor's office, and then following up to ensure that the information gets communicated. Many prosecutors already use computers to inform victims routinely of both forthcoming court events and case outcomes. Others do not and could. This would be especially important in prosecutors' offices that do not have victim-witness units to tend specifically to such matters.

The findings of this study indicate that victims are, indeed, kept better informed in jurisdictions with victim-witness units in the prosecutor's office. Victims in those jurisdictions were found to be generally more satisfied with the handling of their cases. Prosecutors found the victim-witness staffs to be an important source of information about victim harm, as well as a source of support for the victim—something prosecutors themselves are ordinarily ill-equipped to provide.

Legislation to facilitate the implementation of victim-witness units could lead to improved relations between victims and the courts by increasing communication among victims, legal professionals, and community-based victim services agencies.

Improved relations between victims and the criminal justice system could begin with the police. About one-fourth of the victims surveyed indicated that the police were their primary source of information. The systematic transmission of information from the prosecutor to the police about both past and future court events would be of special importance in jurisdictions that rely on the police to provide such information to victims.

A potential side benefit of police having better feedback about what happens to their arrests—improved arrest quality—might in fact turn out to be as important as the benefit of improved communication with victims.

The information flow from victims to criminal justice practitioners appears, by and large, to be better than from practitioners to victims. Prosecutors appear generally to obtain sufficient information about victim harm to establish the elements of the offense beyond a reasonable doubt. Judges, on the other hand, receive details about the victim after the information has been filtered through the prosecutor or the probation officer. The use of victim impact statements could provide the judge with first-hand information about the effects of the crime on the victim.

A victim impact statement is a formal document appended to the presentence investigation report to assist the judge in selecting a sentence. The statement generally describes the extent of injury to the victim, makes an assessment of the effect the crime has had on the victim's life, and sometimes contains the victim's opinion about sentencing. Victim impact statements were recently mandated in Federal courts and are being used increasingly in State courts.

The goal of keeping victims better informed does not pose a threat to either the professionalism of the prosecutor or the integrity of the court. The goal of serving victims and that of doing justice may be more compatible than many criminal justice officials have long presumed.

Jolene C. Hernon and Brian Forst are authors of the 188-page full report Criminal Justice Response to Victim Harm prepared for the National Institute of Justice by INSLAW, Inc., the former Institute for Law and Social Research. The report, NCJ 93664, is available for \$5.80 from the National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850.

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Based on a National Institute-sponsored study, this brief addresses the recent interest in the victims of crime. Data taken from practitioners concerning how victim harm information is gathered and how it affects criminal justice decisions are analyzed. Keeping victims informed, improving relations between victims and the courts, and policy implications are also explored.

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An increasing number of jurisdictions are responding to the serious problem of drunk driving by adopting stricter penalties—including mandatory confinement—to control drunk drivers. Although mandatory imprisonment has strong popular support, little is known about its impact. Researchers analyzed the experiences of criminal justice agencies dealing with mandatory confinement for drunk driving in local jurisdictions in four States.

☐ **Probation and Felony Offenders** NCJ 97349

A Rand Corporation study is summarized exploring the recent trend toward the "felony probation" sentence. The study investigates rearrests and reconvictions of felons on probation, and the courts' criteria for determining a sentence of probation for convicted felons. Predicting recidivism, alternative sanctions, and the issue of public safety are also studied.

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