



## The History and Evolution of the Crime Victims' Rights Movement

- The United States Supreme Court has acknowledged this private prosecution model as the foundation of our criminal justice system. By the early 20th century, however, the American system had evolved to one in which crime victims were no longer central players in most jurisdictions—a public prosecution system became the norm.
- The victims' role progressively reduced until they essentially had no formal legal status beyond that of witness or piece of evidence. At one point, the United States Supreme Court observed in dicta that “in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”<sup>1</sup>
- Starting in the late 1970s, a strong victims' rights movement developed in response to the observation of many that somewhere along the way, the criminal justice system was out of balance, “serv[ing] lawyers, judges and defendants, [while] treating the victim with institutionalized disinterest.”<sup>2</sup>
- Now, more than 30 states have amended their constitutions to afford victims' rights and all 50 states, along with the District Columbia and the federal government, have enacted statutory and rule-based protections for victims; all are aimed at re-integrating the victim into the criminal and juvenile justice systems in a manner more closely aligned with the more victim-centric approach in existence at the founding of the American justice system<sup>3</sup>
- 1991--In a 7-2 decision in *Payne v. Tennessee* (501 U.S. 808), the U.S. Supreme Court reverses its earlier decisions in *Booth v. Maryland* (1987) and *South Carolina v. Gathers* (1989), allowing statements of victim impact.
- 2004--The the Justice for All Act is enacted, which includes the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn **Crime Victims' Rights Act**, providing substantive rights for crime victims. The law provides mechanisms at the federal level to enforce the rights of crime victims, giving victims and prosecutors legal standing to assert victims' rights, authorizing the filing of writs of mandamus to assert a victim's right, and requiring the U.S. Attorney General to establish a victims' rights compliance program within the Department of Justice.
- 2011--Attorney General Eric H. Holder revises Attorney General Guidelines for Victim and Witness Assistance, the standards for officers and employees of the Department of Justice investigative, prosecutorial, correctional, and parole components in the treatment of victims of and witnesses to crime. The revisions clarified DOJ's responsibilities to provide mandated rights and services enumerated in the Crime Victims' Rights Act (CVRA) and the Victims' Rights and Restitution Act (VRRRA) as well as other statutory requirements.
- 2014—Supreme Court hears arguments in *Paroline v. Amy*.

### KEY FEDERAL VICTIMS' RIGHTS LEGISLATION

1974	Child Abuse Prevention and Treatment Act
1980	Parental Kidnapping Prevention Act
1982	Victim and Witness Protection Act
1982	Missing Children's Act
<b>1984</b>	<b>Victims of Crime Act</b>
1984	Justice Assistance Act
1984	Missing Children's Assistance Act
1984	Family Violence Prevention and Services Act
1985	Children's Justice Act
1988	Drunk Driving Prevention Act
1990	Hate Crime Statistics Act
1990	Victims of Child Abuse Act
1990	Victims' Rights and Restitution Act
1990	National Child Search Assistance Act
1992	Battered Women's Testimony Act
1993	Child Sexual Abuse Registry Act
1994	Violent Crime Control and Law Enforcement Act
<b>1994</b>	<b>Violence Against Women Act</b>
1996	Community Notification Act ("Megan's Law")
1996	Antiterrorism and Effective Death Penalty Act
1996	Mandatory Victims' Restitution Act
1997	Victims' Rights Clarification Act
1998	Crime Victims with Disabilities Awareness Act
1998	Identity Theft and Deterrence Act
2000	Trafficking Victims Protection Act
2001	Air Transportation Safety and System Stabilization Act (established September 11 <sup>th</sup> Victim Compensation Fund)
2003	PROTECT Act ("Amber Alert" law)
2003	Prison Rape Elimination Act
2003	Fair and Accurate Credit Transactions Act
<b>2004</b>	<b>Justice for All Act</b> , including Title I The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act
2006	Adam Walsh Child Protection and Safety Act
2010	Tribal Law and Order Act

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reach out. rise up.

<sup>1</sup> *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (holding that the victim of criminal non-payment of child support lacked standing to challenge the constitutionality of the state's refusal to prosecute the non-paying parent).

<sup>2</sup> 1982 President's Task Force on Victims of Crime, Final Report (1982).

<sup>3</sup> See generally Douglas E. Beloof, Paul G. Cassell, and Steven J. Twist, *Victims in Criminal Procedure* (3d ed. 2010).



### Crime Victims' Rights Act (18 US § 3771):

(a) A crime victim<sup>4</sup> has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) 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.
  - **Filing Entry of Appearances and Demand for Rights as matter of course.**
- (3) 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.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
  - **Inclusion of written and oral VIS.**
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
  - **Filing Request for Restitution and Memorandum in Support—upcoming hearing where the request will be litigated next week.**
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
  - **Filed written motion to redact victim's name from public docket. Have made oral request to remove/not include victims' names.**
  - **Protection of privileged counseling records in Naval Academy rape case.**
  - **Responded to discovery request related to victim's social media communications.**

#### (b) Rights Afforded:

(1) **In general**--In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), 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. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

#### (c) Best Efforts To Accord Rights.

- (1) **Government**--Officers 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).
- (2) **Advice of attorney**--The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

#### (d) Enforcement and Limitations.

- (1) **Rights**--The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter...
- (3) **Motion for relief and writ of mandamus**--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. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

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<sup>4</sup> (e) **Definitions.**—For the purposes of this chapter, the term “crime victim” means 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.