NEW YORK STATE BAR ASSOCIATION

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Your Rights as a Crime Victim

NYSBA

You have been the victim of a crime. Perhaps you were injured or had your money or property stolen. An arrest has been made and the police have told you that the case will be going to court. Now what? What is your role from here on? Where can you get help? What rights do you have as a crime victim?

It is the purpose of this booklet to answer these questions.

The victim's role in a criminal prosecution

Initially, it is important to understand the part the victim plays in a criminal case. A criminal prosecution is not the same as a civil suit. In a civil suit the injured party brings a court action for money damages directly against the person who caused the injury. In a criminal prosecution charges can only be brought by the district attorney's office, not by the victim. In a criminal case the victim's testimony is part of the evidence which the district attorney (also called the prosecutor) needs to convict the arrested defendant. The victim's testimony may not even be the most important evidence in the case. For instance, if you had your handbag or briefcase snatched out of your hand but did not see who did it and the defendant was only caught because a bystander witnessed the crime and identified the defendant to the police, then the bystander's testimony is the most important evidence in the case, not your testimony. Also, it is up to the district attorney to decide if enough evidence exists to charge anyone with a crime and, if so, what the appropriate charge should be. This is to prevent unprovable or unfair charges from being brought.

Victim's right to be consulted

Even though a victim cannot order the district attorney to prosecute or not prosecute, the victim of a felony offense should be consulted with by the district attorney before the prosecutor decides to either dismiss the case or allow the defendant to plead guilty or take the case to trial. If the victim is a child or a homicide victim, the district attorney should consult with the victim's family.

Victim's limited right to mediation as an alternative to court

If the victim does not want to pursue a prosecution, the law provides that, except for certain felonies, the court case can be adjourned in contemplation of dismissal if the victim wants to meet with the defendant to try to talk out their disagreement before a mediator at a dispute resolution center. This generally occurs only where the victim and the defendant know each other well. The district attorney must consent to this.

Victim's right to information about the case

A victim is entitled to free copies of police reports documenting the crime. The victim also has a right to be kept informed of judicial proceedings in the case such as

the initial appearance of the accused before a judge and whether the judge set bail or released the defendant.

If the defendant is released on bail or escapes from jail the victim must be notified by the Department of Corrections. When a defendant, who has been convicted of committing a violent felony offense, is sentenced to serve time in a state prison, the victim can request to be notified of the escape, discharge or parole of the defendant from prison. The district attorney must provide the victim or a family member with a "request to be notified" form prior to defendant's sentencing. When an escaped inmate is recaptured, the victim must be notified within 48 hours by prison authorities.

In addition to keeping the victim informed about court proceedings, the district attorney should provide information to the victim about available victim protection, compensation and counseling programs whenever appropriate.

Victim's right to be free from harassment and intimidation

A victim has a right not to be threatened or intimidated; witness intimidation is a crime. Anyone who attempts to stop a victim or a witness from testifying by assaulting them, damaging his or her property or threatening to hurt the victim or a witness is guilty of a felony. Also, if the defendant is out of jail on bail, the bail can be revoked.

When the victim must appear to testify in court, the district attorney should provide a secure waiting area where possible, so that the victim need not have any contact with the defendant or the defendant's family or friends.

The judge has the power to issue an order of protection to the victim to stop the defendant from having any contact with the victim. If the defendant violates the order an arrest can be made or if out on bail the judge can revoke the bail. An order of protection can be issued to protect the victim for a period of time after the defendant has been convicted or has been released from prison.

Finally, in those rare cases where a victim's life may be in danger, the victim may be able to get temporary help from the district attorney to relocate under a witness protection program.

Victim's right to have stolen property returned

Where the crime involves a theft of the victim's property and the police recover the stolen property, the victim has a right to a prompt return of the property unless the district attorney needs to hold onto the property as evidence in the case. Once the case is finished the property must be returned to the victim.

A victim is entitled to free replacement of his or her driver's license, registration or license plates stolen during the commission of a crime.

Victim's right to financial assistance and continued employment

If the victim requests it, law enforcement agencies or the district attorney must contact the victim's employer and explain the need for the victim to miss work because the victim must testify in the grand jury or in court. Also, if as a result of the crime, the victim suffers a financial loss (such as a theft of money or an injury that prevents the victim from working), law enforcement agencies or the district attorney, if the victim requests it, should contact the victim's employer or anyone the victim owes money to and explain that because of the crime the victim is unable to work or to meet all of his or her financial obligations.

It is against the law for an employer to fire or punish a victim or a witness if that person could not be at work because he or she had to testify in court.

Victim's right to be heard at sentencing and parole proceedings

If a defendant is being sentenced for a felony, the victim has the right to make a statement at the time of sentencing. In order to be allowed this opportunity, the victim must make a request to the court at least ten days prior to the date of sentencing. It is suggested that the victim signal an intention to speak at sentencing by sending a written notice to the judge. Assistance in this regard can usually be provided by the prosecutor.

Where the defendant has been charged with a homicide, or where the victim is a child, or is so mentally or physically disabled as to make it impractical for them to appear in court, a member of the victim's family or the victim's legal guardian may make a statement on behalf of the victim.

Additionally, a judge generally cannot pronounce sentence upon a defendant convicted of a felony, or sentence a defendant convicted of any crime to probation, until the judge has received a pre-sentence investigation report prepared by the Probation Department. This report should include information about any injury or economic loss suffered by the victim and the victim's views as to what type of punishment is appropriate. In the case of a homicide, or if the victim is unable to assist in the preparation of the victim impact statement, this information may be acquired from the victim's family. A copy of this victim impact statement must be given to the victim or the victim's family by the prosecutor before the defendant is sentenced.

If the crime was committed by a youth and the youth has been adjudged a juvenile delinquent in Family Court, a victim impact statement must also be prepared for the judge to consider in determining whether the youth needs supervision, treatment or confinement.

Where the defendant has been sentenced to a term of imprisonment, the victim has the right to be notified of any parole release decision involving the defendant. The victim can write to the Parole Board members to express his or her opinion as to whether the defendant should be released on parole.

Victim's right to restitution from the defendant at the judge's discretion

When a judge is deciding what sentence to impose on a convicted defendant, the judge must consider forcing the defendant to make restitution to the victim as part of the sentence. The judge can order the defendant to pay money to the victim as a consequence of the crime (such as reimbursement for the victim's medical expenses). When a judge orders restitution, the victim does not have to deal directly with the defendant. Payments are made by the defendant to a public agency which transfers the money to the victim.

The judge may order the defendant to pay a lump sum amount or to make payments over a period of time. The judge can order the defendant to make restitution to the victim even when the judge also sentences the defendant to a term of imprisonment or a fine. If the defendant is sent to prison, the restitution will be collected from the inmate's earnings while in prison and while on parole.

The fact that the judge has ordered the defendant to make restitution to the victim as part of the defendant's criminal sentence does not prevent the victim from filing a civil suit against the defendant for damages in excess of the amount the defendant has paid in restitution.

Special rights of children and victims of domestic violence

Under New York law, special consideration must be given to child crime victims by all agencies throughout the criminal justice process. Since testifying before a group of strangers can be a particularly frightening experience for a child, special procedures are available to try to lessen the trauma of testifying. When a child who is 12 years old or younger must testify before a grand jury regarding a sexual offense, a homicide or the abandonment or endangering of the child, the district attorney can allow a social worker, psychologist or other professional to be present in the grand jury room to provide emotional support to the child. The district attorney may also videotape a child's testimony and show the videotape to the grand jury instead of having the child appear in person before the grand jurors. The taping can be done at the child's home or anywhere else the child feels secure. The grand jury testimony of a person

over 12 years old can also be videotaped but only if a judge finds that the person is likely to suffer very severe emotional or mental stress if required to testify in person, or the person is ill or incapacitated.

Special procedures may also apply when a child's testimony is needed in court at a hearing or at a trial. If the judge determines that the child is vulnerable and that it is likely that the child will suffer severe harm if required to testify in open court, the judge can have the child testify in a more comfortable room and the testimony will be broadcast to the courtroom by use of two-way closed circuit television. The judge can order that the defendant remain in the courtroom. However, the defendant's attorney is allowed to conduct cross-examination questioning of the child just as it would be done if the child was on the witness stand in the courtroom.

Finally, when a child under 16 years old must testify about a sexual offense, the judge can allow the child to physically identify sexual organs by using anatomical models of boys and girls.

Children or adults who are victims of domestic violence are entitled to written notices advising them of their legal rights and the availability of victim services. Also, a victim of domestic violence can apply to a judge for an order of protection in the county in which he or she lives, not just in the county where the violence took place, since victims of domestic violence are often forced to move away from the community where they were battered.

Victim's right to compensation from the state

The state of New York has established a Crime Victim's Compensation Program. The program is mainly designed to help victims who suffer physical injury as a direct result of a crime. It covers medical expenses and lost wages, where the victim would face financial difficulty without help. The program has been expanded to cover property losses in some cases, and some victims do not need to prove financial difficulty.

A compensation claim can be filed by the victim of a crime; or by the surviving spouse, parent, child or dependent of a victim who dies as a result of a crime; or a person who pays for a victim's burial expenses. A claim can only be filed for costs not reimbursed from some other source.

For physical injury resulting from a crime, a victim can receive compensation for medical and certain other expenses, as well as lost wages. Expenses can include counseling for crime victims and their spouses, and the family of a homicide victim; occupational rehabilitation; and the cost of a shelter for a battered spouse or child.

A claim can also include the cost of lost or damaged property that is essential to the victim's health and welfare.

If the victim is over 60 or disabled, an essential personal property claim can be made without proving physical injury.

Under certain circumstances, a person who is injured or killed aiding a crime victim or a police officer is eligible for compensation similar to other victims. In addition, they can be compensated for lost or damaged personal property (See the section on where to get help).

Enforcing your rights as a victim

The rights that have been outlined in this booklet are not automatic. A victim who wants to be kept informed about the progress of judicial proceedings must keep in contact with the district attorney handling the case. A victim who wishes to be heard regarding parole release decisions must contact the Parole Board. A victim who is interested in obtaining compensation from the state must file a claim with the Crime Victim's Board. Although it is the victim's responsibility to speak up and ask questions, a victim who needs help can find it.

Victim assistance programs

Victim assistance programs exist across the state. They can help a victim get a new door lock; replace stolen papers; help get benefits he or she may be entitled to; help with transportation to and from court and child care; and help the victim get counseling and a variety of other kinds of assistance. They also work with the families of victims.

Some programs assist crime victims in general. Others are set up to help special groups, such as sex crime victims, the elderly, children, domestic violence victims, families of homicide victims, etc.

Where to get help

The New York State Office of Victim Services provides a toll free number which is available Monday–Friday, 9:00 am to 5:00 pm. Call: 1-800-247-8035.

In all counties outside of New York City, you should contact the district attorney's office for information regarding victims assistance programs of all types. As the primary contact, the district attorney's office has available a list of appropriate public and private agencies to which you may be referred.

To get information on how to file a claim for compensation with the New York State Crime Victim's Board call:

1 (800) 247-8035 • www.ovs.ny.gov

(718) 923-4325 (New York City)

(518) 457-8727 (Albany)

(716) 847-7992 (Buffalo)

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Criminal Justice Section.

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