



Office for Victims of Crime

OVC

Advocating for the Fair

Treatment of Crime Victims

Report

VICTIMS' RIGHTS COMPLIANCE EFFORTS:

EXPERIENCES IN THREE STATES

Message from

The Director

The Office for Victims of Crime has been very pleased to provide funding for Victims' Rights Compliance Efforts: Experiences in Three States. The National Criminal Justice Association has done an excellent job describing innovative programs in three states to improve the enforcement of victims' rights.

During the past decade, states have made extraordinary progress in establishing fundamental rights for crime victims. Every state has passed victims' rights statutes, and 29 states have incorporated victims' rights into their state constitutions. Many victims and their advocates believe that one of the greatest challenges of the criminal justice system is ensuring compliance with these victims' rights laws. A recent study funded by the National Institute of Justice and conducted by the National Victim Center found that in practice many victims are denied their rights.

Recognizing that compliance with victims' rights should be a top priority, a number of states have established innovative agencies to assist victims in securing their rights. Victims' Rights Compliance Efforts reviews these programs in Colorado, Minnesota, and Wisconsin and describes the diverse ways that these states are striving to provide remedies to crime victims whose rights have been disregarded by the system. Their examples provide insights into the benefits of compliance programs as well as some of the challenges in their implementation.

We hope that this study will provide states with important information about these programs and that other states will adopt similar programs to help ensure that the rights of all crime victims are enforced.

Reginald L. Robinson
Acting Director

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Cabell C. Cropper
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Executive Summary

All states have passed laws guaranteeing the rights of crime victims to participate in the criminal justice process, while 29 states have amended their state constitutions to include protections for victims of crime. Examples of these rights include making statements at sentencing and parole hearings; receiving notification of court proceedings and actions concerning case disposition; and applying for financial assistance or compensation from the state.

Although these statutes and amendments mandate the provision of rights and services, they do not mandate procedures by which to implement them. Several states in recent years have developed programs that provide recourse to crime victims who feel that their rights have been violated. In this analysis, the National Criminal Justice Association (NCJA) analyzed the elements of the victims' rights compliance enforcement programs in Colorado, Minnesota, and Wisconsin.

These programs differ from state to state in their structure and scope of activity. Victims of crime in Colorado, for example, are able to file complaints with the state's Victims' Compensation and Assistance Coordinating Committee (coordinating committee) when they feel that their rights have been denied. Wisconsin's Department of Justice, Office of Crime Victims' Services provides a similar function through the Victim Resource Center, which may mediate complaints brought by victims, or act as a liaison between victims and state and local criminal justice agencies. The state of Minnesota has appointed a crime victims' ombudsman to advocate for fairness and impartiality for victims seeking services from the state. The ombudsman's office retains the power to investigate victims' claims of unlawful or inappropriate action on the part of criminal justice and victims' services providers.

Colorado

In Colorado, the coordinating committee, and its Victims' Rights Act (VRA) subcommittee have been charged with the enforcement of victims' rights since 1993. The committee structure helps afford victims their rights by overseeing the actions of local government agencies, while at the same time keeping with the state's tradition of deferring to decentralized policymaking and local autonomy in the provision of services.

Complaints brought before the VRA subcommittee and the full committee must be violations of a victim's rights under the state constitutional amendment. The enabling legislation that accompanied the amendment in 1992 - the VRA - defines specific crimes for which victims are afforded constitutional rights, the stages of the criminal justice process about which they will be informed and may be present, and the responsibilities of criminal justice practitioners in providing victims' protections under Colorado law.

The committee structure relies significantly on staff support provided by the Colorado Department of Public Safety, Division of Criminal Justice (DCJ). Staff members field inquiries from victims concerning the VRA, compile information from both victims and parties alleged to have violated a victim's rights, and review formal complaints for noncompliance before they are presented to the subcommittee. In addition, an important role of DCJ staff in the process is to set the appropriate expectation for what victims can and cannot receive through the VRA and compliance enforcement process.

The subcommittee and the full coordinating committee have the power to investigate VRA violations and are able to recommend action with which the agency must comply to rectify victims' complaints. The subcommittee and full coordinating committee also may monitor the implementation of those suggestions. When identified agencies do not comply with the coordinating committee's directives, the matter may be referred to the governor and/or the

attorney general for review.

A summary of the process is as follows: victims of certain serious crimes must file a formal complaint with the DCJ staff, which reviews the complaints to determine if the allegation falls under the purview of the VRA. If the DCJ staff determines that the VRA subcommittee has jurisdiction, they will contact the agencies whose actions are in question and forward applicable complaints to the subcommittee for review. The subcommittee, which meets monthly, retains the following responsibilities concerning victims' rights compliance:

- * reviewing reports of noncompliance to determine if there is a basis in fact;
- * conducting hearings when appropriate to determine if there is a basis in fact to the complaint;
- * establishing findings and conditions to resolve the complaint if the identified agency is not in compliance with the VRA; and
- * referring any appeals of the subcommittee's decisions to the coordinating committee

In cases in which the subcommittee finds that the victims' allegations have a basis in fact, it may prescribe directives with which the agency must comply. The subcommittee may require that the agency outline the steps that will be undertaken to rectify the violation, and may approve the proposed plan or ask for a revised version when appropriate.

Both victims and agencies may request to appeal a subcommittee finding to the full coordinating committee. Agencies that do not comply with the coordinating committee's directives will be referred to the governor's office, which may require the attorney general to file suit against the agency.

Although the compliance enforcement program in Colorado has been in effect only since 1993, more victims have become aware that they have an avenue by which to assure agency compliance with the VRA. As a result, the number of inquiries received by the DCJ is growing steadily. The DCJ has kept statistics on VRA complaints and inquiries filed with the office since its enabling legislation became effective:

- * In 1993, there was one VRA complaint filed;
- * In 1994, there were 10 inquiries to the DCJ for alleged VRA noncompliance, with two substantiated claims resulting;
- * In 1995, there were 17 inquiries, with seven formal complaints filed, four of which were not considered to fall within the purview of the VRA; and
- * In 1996, there were 40 inquiries, nine of which resulted in a formal complaint being filed.

When considering a victim's allegations, DCJ staff, subcommittee, and full coordinating committee members must discern closely a victim's action and the criminal justice system's response to ensure an appropriate determination of a victim's charge. For example, subcommittee members received similar complaints from victims of domestic violence in two separate and unrelated cases. Both victims attested that the prosecutors trying the cases against their abusers did not inform them of various hearings or notify them of the progression of the case.

In the first instance, the subcommittee found - after reviewing documentation provided by the district attorney's office, law enforcement agency, and victim - that the prosecutor in question had not upheld a victim's right to be present and heard at the critical stages of the proceedings. The subcommittee rectified the situation by requiring the county district attorney to submit

copies of several office policies that help prosecutors ensure a victim's right is met and describe the specific steps to enforce the VRA protections to the individual victim. The subcommittee, upon its review of the submitted information, further required the creation of policies within the office to ensure that victims are consulted when there are changes to the charges originally filed.

In the second case, the victim was upset about an offer to settle the charges against her assailant and frustrated by delays in the proceedings against him. After review of lengthy documentation submitted by the victim and the county district attorney, the subcommittee held that the delays were not the fault of the prosecutor, and that the decision to settle the case was handled appropriately by the county. Although not finding assault, the subcommittee in this latter instance reiterated in its findings that criminal justice practitioners should engage in explicit and overt communications with victims to help them better understand the criminal justice process.

Many factors have contributed to the success of the compliance enforcement mechanism in Colorado. Participants refer to many intra-committee factors that have contributed to this positive beginning - collaborative working relationships among diverse members, an honest discourse on the issues, and a shared approach and dedication to improving the criminal justice system. Another important strength is the role that the DCJ staff plays in the process. The staff collects and disseminates complaint information in a manner that is mindful of both the victim's perspective and the challenges faced by the criminal justice system in providing victims' rights. Finally, participants believe the compliance enforcement process works well within the decentralized political climate of the state.

Although there exists significant support for the current structure of compliance enforcement, participants identify components of the process that could be improved upon. These improvements, however, would most often require resources that are currently unavailable. As a result, participants are struggling to develop effective yet viable alternatives to improve on perceived weaknesses - like outreach to more rural areas and shortening the time required to resolve victim complaints.

In an effort to prepare for the future, the DCJ staff is planning on conducting a satisfaction survey of both victims and agencies charged with providing victims' rights later this year. The survey will be sent to those involved with a VRA compliance case to gauge the opinions of individuals and agencies about the compliance enforcement process. The DCJ hopes to elicit information about both the strengths and the weaknesses of the current program, as well as any suggestions for improving the process for the future.

Minnesota

Since 1986, Minnesota has had in place an oversight function - the Office of the Crime Victims Ombudsman (OCVO) - to help ensure that victims are guaranteed their rights and treated fairly and appropriately by criminal justice practitioners. OCVO officials may investigate both statutory violations of victims' rights laws and alleged mistreatment by criminal justice practitioners. In conducting their work, OCVO officials indicate that they approach the enforcement of victims' rights in a neutral and objective manner. They act not as victims' advocates but as advocates of fair government.

The statute creating the OCVO defined the primary features that make the ombudsman unique as an oversight body:

- ***Nonpartisanship.***

The ombudsman, although created by the legislature and appointed by the governor, acts relatively autonomously. Although appointed by an elected official, the only legislatively mandated reporting requirement of the OCVO is a biennial report to the legislature and governor concerning its activities during the preceding biennium.

- ***Investigative Discretion.***

The ombudsman's power comes from the discretion with which an investigation is pursued. The statute clarifies that the ombudsman may investigate any action of the criminal justice system or a victim assistance program. In addition to responding to requests for investigations by citizens, the ombudsman has the discretion to inspect the actions of administrative agencies on her own initiative and may pursue cases based on reports in the press. The ombudsman may request and examine information from agencies - including records and documents of all agencies of the criminal justice system and victim assistance programs - to fulfill her responsibilities.

- ***Power of Publicity.***

Unlike the courts, the ombudsman has no right to reverse a decision and has no direct control over judicial or executive branch decisionmaking. The ombudsman's reach is limited to investigating alleged abuses and proposing remedies when appropriate. According to Minnesota statute, the ombudsman may make public - to both the press and the legislature - her findings after an investigation.

The OCVO enabling legislation defines appropriate methods of conducting investigations, including acting as a liaison between victim and agency, promoting activities that strengthen criminal justice systems, preventing violations of a victim's right, and establishing procedures for referral to appropriate victims' services agencies.

In response to citizens' complaints, OCVO officials may make recommendations to the agency to rectify the situation. These recommendations range from contacting the agency on behalf of the victim and expressing concern about the issue at hand to voicing concern about the investigation of a case by law enforcement officials or suggesting model policies that the agency can employ to assure victims' rights are honored. If authorities do not accept the recommendations of the ombudsman, however, the OCVO has no enforcement or disciplinary powers. The ombudsman's principal means to secure remedial action is through making public, to both the legislature and the press, the action or inaction of an agency.

Typically, once a complaint is reported, the OCVO staff assesses the needs of the victim, determines whether referrals should be made to other agencies, and informs the complainant of the most appropriate manner for resolving the grievance. The OCVO next gathers information from the agency against which the victim alleges wrongdoing. Based on the information gleaned in the investigation, the investigator must determine whether any statute, policy, or practice was violated, or if mistreatment occurred. The investigator must determine the most appropriate resolution to the problem, plan for any subsequent follow-up with either the agency or the victim, and present the findings to the ombudsman for her review and approval.

With several years of fielding calls from victims and investigating alleged cases of mistreatment and unlawful behavior, OCVO officials have developed a variety of methods in responding to victims' concerns. OCVO officials like to respond to victims' concerns with "assists," or contact with the criminal justice official whose action is in question. Often this contact makes the criminal justice official aware that his action was not well received by the victim. Upon making this realization, most practitioners attempt to rectify their behavior immediately.

Another common method that the OCVO employs to assist victims of crime is to aid in

clarifying for victims why the criminal justice system operates the way it does and why criminal justice practitioners make the decisions they do. For example, in a case where a victim's mother learned the prosecutor was not planning to bring charges against her daughter's assailant, the OCVO staff reviewed the case and the prosecutor's reasoning for declining prosecution. As a result of the OCVO investigation, the prosecutor sent a letter to the victim and explained in detail his reasoning for not bringing charges. While still disappointed in the charging decision, the mother better understood the prosecutor's reasoning in not trying the case.

Finally, the office, through its ability to make recommendations on policies and procedures that dictate the actions of criminal justice agencies, can affect systemic change as well. Once, when receiving three separate complaints involving one county's prosecutor and victim/witness program, OCVO investigators conducted a systemic investigation of the county's program. They recommended a needs assessment to determine if the county should restructure its current services, or if it needed more funding and increased staff. The recommendation was forwarded to the DOC, which conducted the assessment. The DOC has completed its analysis and currently is working with the county to help it meet its goals of improved services to crime victims.

Although the OCVO has been in place since 1986, extensive statistics on the office's caseload have only been available since 1992. Over the past four years, the OCVO has kept data on its activity as well as the types of victims who seek its services. Specifically, the OCVO tracks the number of inquiries made to the office, the end result of its cases, and the number of complaints filed by crime type.

OCVO observers and participants note both strengths and weaknesses of the OCVO structure as it exists currently. The broad investigative powers of the OCVO, for example, are one of its greatest strengths, in addition to its simple, expedient manner of handling complaints. The OCVO staff, however, has expressed concern about the office's ability to provide equal services to citizens in all parts of the state. Officials cite outreach to the citizens, victims of crime, and criminal justice practitioners in more rural areas of Minnesota as a primary concern.

The OCVO staff has developed three primary goals for the next biennium, in addition to continuing the services provided currently by the office and expanding current evaluation efforts. These objectives are to enhance services and outreach to victims, augment relations with other agencies within the criminal justice system and victims' services realms, and become more efficient in day-to-day case management and office operations.

Wisconsin

Policymakers in Wisconsin have created a system of victims' rights and services delivery that defers to county discretion for implementation. Since 1979, with the passage of the state's Bill of Rights for Crime Victims, counties that choose to participate may be reimbursed up to 90 percent for the costs associated with providing these programs.

In an effort to complement county victim and witness services, state policymakers in the early 1990's created a state-level victims' services office - the Wisconsin Victim Resource Center (Victim Resource Center) - to provide victims and witnesses information about and referral to victims' services, crisis counseling, and assistance in securing resources and protection. A second charge of the Victim Resource Center is to act as a liaison between the agency and the victim in resolving complaints concerning unlawful or inappropriate agency action.

Because of its broad statutory authority, the Victim Resource Center provides a myriad of services to crime victims in Wisconsin, including direct services to victims in individual cases in

which the state's Department of Justice (DOJ) has employed a special prosecutor to handle the proceedings for the government; assistance and support to victims of various sex crimes in cases in which the state is considering civilly committing their assailants; and the development of a statewide immediate response service for victims directly following the crime.

In their efforts to help victims of crime exercise their rights, the Victim Resource Center employs

two primary programs: the Victim Assistance Notification Service (VANS) to notify victims of proceedings when an offender appeals his case; and liaison services in which Victim Resource Center officials act as a contact between victim and agency when the victim perceives his rights are not being protected.

Complaints brought to the attention of Victim Resource Center officials may concern poor treatment or unlawful action by criminal justice practitioners and county victim and witness assistance providers. Victim Resource Center officials may not, however, prescribe remedies for violations of a victims' constitutional protections. The scope of their ability to act, under current law, allows them only to investigate these complaints and present the victims' concerns to the official whose actions are in question.

There are several instances where Victim Resource Center officials may intervene on behalf of a victim. For example, Victim Resource Center officials often provide information about the criminal justice system to citizens who do not understand why a case is not being charged or a plea agreement has been entered.

For example, one young woman contacted the Victim Resource Center because she did not understand why the county prosecutor was not filing criminal charges against her estranged partner, who sexually assaulted her and violated a restraining order she placed against him. She also was concerned about the prosecutor's perception of her credibility as a witness due to criminal charges she was facing.

Victim Resource Center officials explained to the complainant about prosecutorial discretion and why the district attorney did not have to file criminal charges against her assailant, and suggested that she contact the victim and witness assistance program in that county to explore how she may work collaboratively with the district attorney to express her concerns about the offender.

In another case, the father of a homicide victim perceived that he was being treated poorly by criminal justice practitioners and was upset that the trial against the alleged assailant had not begun. Further, he was angry that he had minimal contact from the victim and witness assistance coordinator in the county. The Victim Resource Center contacted the county victim and witness coordinator and expressed the victims' concerns. Together, they communicated to the judge, prosecutor, and defense attorney the concerns of the victim, and were able to move up the trial date.

Finally, although Victim Resource Center officials are not able to prescribe recommendations for systemic or procedural change, there are instances when their efforts result in a better articulation of policy or procedure, which benefits victims in the future. For example, when a victim contacted the Victim Resource Center because she was not notified of the offender's date of release from state custody, Victim Resource Center officials contacted the county victim and witness coordinator, who recognized the mis-communication as a recurring one. As a result, the victim and witness assistance coordinator changed the form letter sent to victims to clarify that victims must request notification of release from the corrections officials themselves.

Currently, Victim Resource Center officials approach the day-to-day case management of complaints on an informal, case-by-case basis, which allows the executive director to be

responsive to the individual needs of the victim. Because the Victim Resource Center also provides direct service in the form of crisis counseling and emotional support, officials indicate that it may be difficult to mandate certain procedures by which all cases must be handled. Rather, there are themes that dictate the Victim Resource Center's approach to facilitating the provision of victims' rights:

Acting as an Advocate for Victims.

Although Wisconsin statute currently describes the Victim Resource Center as a source for mediation between victim and agency, officials perceive their role as providing an advocacy and intervention service for all crime victims in the state. Victim Resource Center officials note that a primary reason for the development of the office was to provide direct services at the state level, and the opportunity to hear directly from victims affords them a more complete understanding of the victim's perspective when a question arises about an agency's compliance with victims' rights laws.

Defer to the Local Level First.

According to the Victim Resource Center's annual program report, it has been the practice of the office to rely heavily on local programs in addressing the concerns of victims and encourage victims to defer to local officials for ongoing information and support as a means to remedy a problem. In providing direct victim services, a common practice is to assess the victim's needs before making a referral to assure that the suggested contact agency is the most appropriate.

Collaborative Approach to Enforcement.

Victim Resource Center officials have adopted a collaborative tone in handling their relations with county criminal justice providers. Officials indicate that they prefer to work subtly with county officials and have developed an understanding of the proficiency and dedication of the individuals charged with providing victims' services in many Wisconsin counties. This approach has been effective, observers note, by allowing the Victim Resource Center to affect change in a professional manner that facilitates collaboration and cooperation among criminal justice providers.

Currently, the Victim Resource Center tracks statistical information by crime type and category of service provided. Officials indicate that they document all new contacts coming into the office. The number and nature of the calls received by the Victim Resource Center reflect the broad scope of its responsibilities to provide services, including crisis counseling and victims' rights oversight services, to the citizens of Wisconsin — from July 1995 to June 1996, over 1,000 calls statewide were fielded by the Victim Resource Center staff. Because the Victim Resource Center shares a toll free number with the crime victim compensation program, many of the calls received are related to compensation questions.

Individuals involved in the criminal justice and victims' services profession in Wisconsin are largely supportive of the existence of the oversight function of the Victim Resource Center and of the nonbureaucratic and informal method with which officials are able to aid victims while working collaboratively with criminal justice practitioners. Another benefit of the Victim Resource Center cited by participants and observers is its affiliation with the DOJ and the leadership that the attorney general and OCVS officials bring to the issue of victims' rights.

Officials cite room for improving the process, however. Although a primary charge of the Victim Resource Center is to provide information about crime victims' rights and services, there is concern that victims in some areas of the state are not receiving information about the rights

and services to which they are entitled under Wisconsin law and the availability of the Victim Resource Center to help them exercise those rights.

At the time of this writing, the Wisconsin legislature is debating an initiative that would create a body to prescribe remedies for violating victims' rights laws. The measure enabling legislation for Wisconsin's 1993 victims' rights constitutional amendment would create a crime victims' rights board to review complaints made to the Victim Resource Center after its officials have completed their investigation. In the version of the bill being discussed currently, remedies this board could invoke include: issuing private or public reprimand of public officials or agencies; referring violations by judges to the judicial oversight commission; seeking appropriate equitable relief on behalf of the victim; or bringing civil suit to assess a forfeiture of no more than \$1,000 if an agency is found to have intentionally violated a victim's rights.

Most criminal justice practitioners, victims' advocates, and DOJ officials emphasize that the pending enabling legislation will clarify and further define victims' rights and services, allowing them to achieve a higher, more sophisticated level. Although the executive director of the Victim Resource Center is hopeful she can maintain her role as troubleshooter, affecting change in a quiet and nonbureaucratic way, she and other OCVS officials welcome the enabling legislation as a means to formalize the provision of victims' rights and services in the state.

Suggestions for Replication

The creation of a victims' rights compliance enforcement function affords state policymakers and administrators an opportunity to review and reassess the status of victims' rights implementation, as well as the current delivery of victims' services in the state.

An analysis of this sort may allow officials to assess how a compliance enforcement mechanism will interrelate with current service delivery systems.

When state officials begin planning victims' rights compliance enforcement mechanisms, they may want to consider the following:

- * which agency, individual, or body will accept accountability for the compliance effort;
- * what type of system - a strong state presence or a decentralized board or committee-driven structure - will work most effectively within the current political context of the state;
- * what will be the role and support of other groups active on victims' issues, including various state and local victims' advocacy groups and victims' service providers, as well as criminal justice practitioners who have been active in incorporating the concerns of victims in their daily practice;
- * whether it is appropriate or viable to create remedies for agency violation of victims' rights laws, to identify the scope and circumstances that would trigger remedies, whom and/or what may prescribe them, and if changes to current constitutional and/or statutory language are necessary to reflect these remedies;
- * whether the creation of a victims' rights compliance system is viable under current budget constraints;
- * what, if any, alternative functions and responsibilities a victims' rights compliance program should undertake, such as providing direct counseling to victims or training and technical assistance to promote victims' rights outreach and education; and
- * how evaluation tools and techniques can be built into the liaison program successfully.

INTRODUCTION

Although victims' rights traditionally have not been a component of criminal justice systems — where the proceedings pit the defendant against the state — the creation of state constitutional amendments and the enactment of state and federal legislation in recent years have afforded crime victims certain protections under criminal law. The new legal status of victims in the criminal justice process mandates that the day-to-day practice of criminal justice officials be modified to include a place in the system for crime victims.

In the early 1980's, individuals dedicated to creating a place in the criminal justice process for crime victims called on states and their systems of justice — along with other agencies and institutions — to take responsibility for addressing systematically the needs and concerns of crime victims. In 1980, for example, the American Bar Association (ABA), in a criminal justice improvement manual for state and local bar associations, recognized the roles of the legal profession and the state in modifying criminal justice systems to include concerns and issues faced by victims. In the ABA report, titled *Bar Leadership on Victim Witness Assistance*, the authors recognized that:

By tolerating shabby and indifferent treatment for crime victims and witnesses, the legal profession has contributed to the problem. *It is time for the profession to contribute to a solution.* Indeed, real and long-lasting

reform in the legal system's overall approach to victims and witnesses can be effected *if and only if* the nation's lawyers — through the organized bar — become involved.¹

Further, the report recognized the role of the state in restructuring criminal justice systems to accommodate the needs of crime victims. The authors recommended that lawyers, through their state bar associations, “encourage major state criminal justice institutions and other governmental agencies to participate in a planned and coordinated attack upon a host of practices which have historically complicated the passage of crime victims and witnesses through the criminal justice system.”²

This perspective was reiterated by the findings of former President Reagan's Task Force on Victims of Crime, which were published in 1982. The task force, composed of various state and local criminal justice officials, members of the legal profession, and victims' advocates, recommended that state policymakers amend existing statutes to include provisions to: protect private information about victims of crime; notify victims of criminal proceedings and parole hearings and open to victims these proceedings; and expand services available to citizens after their victimization.³ Further, the task force findings recognized the need for systemic change in the administration of justice on both the state and local levels. It made extensive recommendations for law enforcement, prosecutors, the judiciary, and parole officers to broaden their scope of responsibility to include the concerns and needs of victims in their day-to-day work.⁴

STATUS OF CURRENT STATE LAW

Currently, defining who is responsible for providing protections to victims is left up to each state. All states have created provisions that extend to victims of crime the right to be notified of or participate in criminal proceedings, or to make a statement at sentencing concerning the impact of the crime on their lives. Further, the citizens of 29 states have voted to amend their state

constitutions to provide for victims' rights. In 1996 alone eight states — Connecticut, Indiana, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, and Virginia — passed constitutional amendments guaranteeing victims' rights. The average margin of passage was 80 percent in favor of the proposals.⁵

It appears evident that the trend to expand the statutory rights of victims on the state level is continuing as well. According to an analysis of

¹ AMERICAN BAR ASSOCIATION, *BAR LEADERSHIP ON VICTIM WITNESS ASSISTANCE: A CRIMINAL JUSTICE IMPROVEMENT MANUAL FOR STATE AND LOCAL BAR ASSOCIATIONS*, 3 (1980).

² *Id.* at p. 7.

³ PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME: *FINAL REPORT*, pps. 17–18 (Dec. 1982), [hereinafter *PRESIDENT'S TASK FORCE*].

⁴ *Id.*

⁵ MEMORANDUM FROM JIM TURPIN, AMERICAN CORRECTIONAL ASSOCIATION, TO ALL PARTIES INTERESTED IN CRIMINAL JUSTICE, Nov. 11, 1996 (on file with author).

criminal justice-related legislation enacted by state legislatures during the 1996 legislative sessions across the country, the National Conference of State Legislatures (NCSL) has documented at least 15 states that have expanded statutorily the protections afforded to victims of crime.⁶ For example, the state of Vermont has enacted legislation to provide for victims' assistance and to allow victims to be notified of and participate in criminal proceedings against both adult and juvenile offenders. Six other states in 1996 — Iowa, Kansas, Maine, South Dakota, Tennessee, and Washington — enacted laws to allow judges to order restitution to victims as a part of an offender's sentence. Other initiatives, for example, a new law in Florida, require agency officials to develop guidelines for victim notification of the release from custody of certain juvenile offenders from secure facilities. A similar measure enacted in Kentucky requires the Department of Corrections to manage a system to notify victims of an offender's release from secure adult facilities.

Ongoing research is comparing systematically state laws that extend rights to crime victims. The National Institute of Justice (NIJ), the research and evaluation arm of the U. S. Department of Justice, is working with the National Victim Center (NVC) to analyze the implementation of statutory and constitutional rights for victims of crime. According to information provided by the NVC, a significant component of the project is to undertake a comprehensive statutory analysis of victims' rights in four areas: the right to be notified, present, and heard at criminal

⁶ DONNA LYONS, *ET AL.*, STATE ANTI-CRIME LEGISLATION IN 1996, STATE LEGISLATIVE REPORT, 14 (Dec. 1996).

proceedings, and to receive restitution from the offender.⁷

At the time of this writing, members of the Congress are debating the creation of a federal victims' rights constitutional amendment to provide a minimum standard for victims' rights with which federal, state, and local criminal justice officials would have to comply. Included in the current proposal are provisions that would require that victims be extended the following protections:

- participation in public proceedings, including the right to be heard and submit a written statement;
- notification of an offender's release or escape from custody;
- relief from unreasonable delay in court proceedings;
- receipt of restitution from the offender;
- consideration of their safety when determining an offender's release from custody; and
- notification of their rights under the amendment.⁸

VICTIM SATISFACTION

Assuring that victims are provided their constitutionally and statutorily guaranteed rights has become a growing concern for all those involved in the administration

⁷ NATIONAL VICTIM CENTER, STATUTORY AND CONSTITUTIONAL PROTECTION OF VICTIMS' RIGHTS: IMPLEMENTATION AND IMPACT ON CRIME VICTIMS: SUB-REPORT ON CRIME VICTIM RESPONSES REGARDING VICTIMS' RIGHTS, April 15, 1997, p.1 [hereinafter NATIONAL VICTIM CENTER].

⁸ S.J.R. 6, 105th Cong., 1st Sess. (1997).

of justice. A component of the NIJ/NVC research is to survey crime victims about their satisfaction with the provision of victims' services in the state in which they were victimized. Researchers also plan to interview local criminal justice and victim service professionals, and state policymakers in four representative states to gain a more thorough perspective of their challenges and successes in providing rights to victims.⁹

Preliminary findings of the research focus on crime victims' responses concerning their experiences with the criminal justice system. The NVC staff surveyed more than 1,300 crime victims in four states to participate, and achieved an 83-percent response rate. The project staff chose the states by first ranking all 50 states based on the statutory and constitutional protections for crime victims' they had created. They then selected two of the states that scored in the top 25 percent of all states for the provision of victims' rights, which were considered "strong" states, and two states from the bottom 25 percent of the survey.¹⁰

Generally speaking, the results of the survey demonstrate a consistent correlation between strong victims' rights laws and victims' satisfaction and perception of the provision of victims' rights. In other words, victims in states with extensive statutory protections for victims rights, and/or a state constitutional amendment guaranteeing victims' rights, are much more likely to report that they had been afforded their rights in most of the four issue areas the report addressed. The results also indicate, however, that victims in all states are still often denied their

⁹ NATIONAL VICTIM CENTER, *supra* note 7.

¹⁰ NATIONAL VICTIM CENTER, *supra* note 7.

rights.¹¹ According to the project staff, preliminary results of the interviews with criminal justice officials and victims' service providers corroborate the results of the victims' interviews — large numbers of victims, despite the significance of their states' laws, are not always provided their legal rights.¹²

RECOURSE FOR VICTIMS

As more states create statutory provisions for victims of crime, and victims become aware that they are entitled to certain rights under state law, many are taking proactive steps to seek redress when they perceive that these protections have been denied. The body of case law from state and federal courts relating to victims' rights violations is growing, although the decisions are reflective of the differences in state law. Because of these differences, it is difficult to estimate the success or failure of victims' rights laws and constitutional amendments in the courts. Generally speaking, however, courts have held that victims do not have standing to challenge the sentences of the offenders, and victims have been largely unsuccessful in suing the state for redress.¹³ This may change if a federal constitutional amendment or legislation guaranteeing victims' rights is passed.

In light of the difficulty and expense of obtaining recourse through civil litigation, some states have developed mechanisms by which victims may seek recourse from the state when

they perceive that they have been denied their rights. For example, victims of crime in Colorado are able to file complaints with the state's Victims' Compensation and Assistance Coordinating Committee when they feel that they have been denied an opportunity to exercise their rights. Wisconsin's Department of Justice, Office of Crime Victims' Services provides a similar function through the Victim Resource Center, which may mediate complaints brought by victims, or act as a liaison between victims and state and local criminal justice agencies. The state of Minnesota has appointed a crime victims' ombudsman to advocate for fairness and impartiality for victims seeking services from the state. The ombudsman's office retains the power to investigate victims' claims of unlawful or inappropriate action on the part of criminal justice and victims' services providers.

It is the purpose of this report, *Victims' Rights Compliance Efforts: Experiences in Three States*, to analyze the victims' rights compliance enforcement mechanisms in Colorado, Minnesota, and Wisconsin. An Executive Summary provides a brief introduction to each state's program, and contrasts programmatic features as well as challenges faced by officials in attempting to enforce victims' rights.

Three chapters highlighting the programs in each state follow. Each chapter is an in-depth case study that discusses a state's victims' rights compliance enforcement initiatives. The report addresses all aspects of the three states' victims' rights compliance enforcement functions — from initiation and program development to evaluation and impact analysis, when one had been completed. Further, the project staff tried to elicit, wherever possible, broader perspectives on the political, fiscal, and social context in which the programs were being implemented.

The final chapter, titled "Observations and Themes," examines common themes experienced by state officials in enforcing victims' rights, and offers recommendations for program duplication for officials in other states who plan to establish victims' rights compliance programs.

METHODOLOGY, USES, AND LIMITATIONS

The National Criminal Justice Association (NCJA) staff used a variety of data collection techniques to gather information about state programs. The project staff conducted an in-depth analysis of each of the three states' victims' rights laws and constitutions to gain a comprehensive understanding of the scope of the protections afforded to victims. The staff also reviewed existing program documentation disseminated by officials in each state to better understand the programs' goals, objectives, policies, and procedures.

The project staff conducted in-depth interviews with officials charged with implementing the compliance enforcement function, as well as victims' advocates and state and local criminal justice practitioners, when possible. Interviews with these individuals sought information on the development and expansion of the compliance enforcement process since its inception; factors that impede or facilitate both the provision and enforcement of victims' rights; any evaluation efforts — whether systematic or ad hoc — to determine if and how crime victims and the criminal justice system are responding to the compliance enforcement function; and how the provision and

¹¹NATIONAL VICTIM CENTER, *supra* note 7.

¹²NATIONAL VICTIM CENTER, *supra* note 7, p. 7.

¹³Alex Daniels, *Realigning Victims' Rights*, GOVERNING, p. 44 (Dec. 1995).

enforcement of victims' rights could be improved in the future.

This report is designed for state-level decisionmakers concerned with the provision and enforcement of victims' rights, and should be viewed as a tool for lawmakers and policymakers who are searching for ways to help improve the provision of victims' rights in their states.

This report is not a scientific evaluation of the victims' rights compliance enforcement programs in the three states, and does not seek to rank or make comparative judgments about their efficacy. The social and political contexts of the three states chosen for analysis are unique and would preclude a comparison or rating of this sort among programs.

Rather, the report seeks to document the experiences and challenges faced by state criminal justice systems in providing and enforcing victims' rights; identify common themes that enhance and impede the compliance enforcement process; and suggest general models and cautions for program replication.

COLORADO

Today most state-level programs and policies in Colorado are designed to give great deference to local level decisionmakers, resulting from a history of shaky relations between state and local governments dating back to the early years of the state's history. The General Assembly had this deference in mind when it gave the Colorado Victims Compensation and Assistance Coordinating Committee (coordinating committee), oversight responsibilities in reviewing complaints from crime victims who allege that their statutory and constitutional rights under state law have not been met. The committee structure ensures that crime victims in the state are afforded their rights by deferring to local government agencies to enforce compliance with the state's Victims' Rights Act (VRA), the enabling legislation for the constitutional amendment.¹⁴ The coordinating committee, and its Victims' Rights Act Subcommittee (subcommittee) are composed of volunteer professionals from the law enforcement, legal, social service, and victims' communities.

Complaints brought before the VRA subcommittee and the full committee must be violations of a victim's rights under the state constitutional amendment. The enabling legislation that accompanied the amendment in 1992 — the VRA — defines specific crimes for which victims are afforded constitutional rights, the stages of the criminal justice process about which they will be informed and may be present, and the

responsibilities of criminal justice practitioners in providing victims' protections under Colorado law.

The committee structure relies significantly upon staff support from the Colorado Department of Public Safety, Division of Criminal Justice (DCJ). Staff members field inquiries from victims concerning the VRA, compile information from both victims and parties alleged to have violated a victim's rights, and review formal complaints for noncompliance before they are presented to the subcommittee. In addition, one of the most important roles of DCJ staff in the process is to set the appropriate expectation for what victims can and cannot receive through the VRA and the compliance enforcement process.

The subcommittee and the full coordinating committee have the power to investigate VRA violations, and are able to recommend action with which the agency must comply to rectify victims' complaints. The subcommittee and full coordinating committee also may monitor the implementation of those suggestions. When identified agencies do not comply with the coordinating committee's directives, the matter may be referred to the governor and/or the attorney general for review.

In approaching the future, those involved with victims' rights compliance in Colorado indicate that they view the process as evolutionary, and will continue to modify existing procedures when the current structure does not adequately meet the needs of victims.

LEGISLATIVE HISTORY AND PROGRAM DEVELOPMENT

Colorado law pertaining to victims' rights reflects the decentralized nature of service delivery in the state. A complex committee and subcommittee structure, along with several local boards, oversee compliance with state victims'

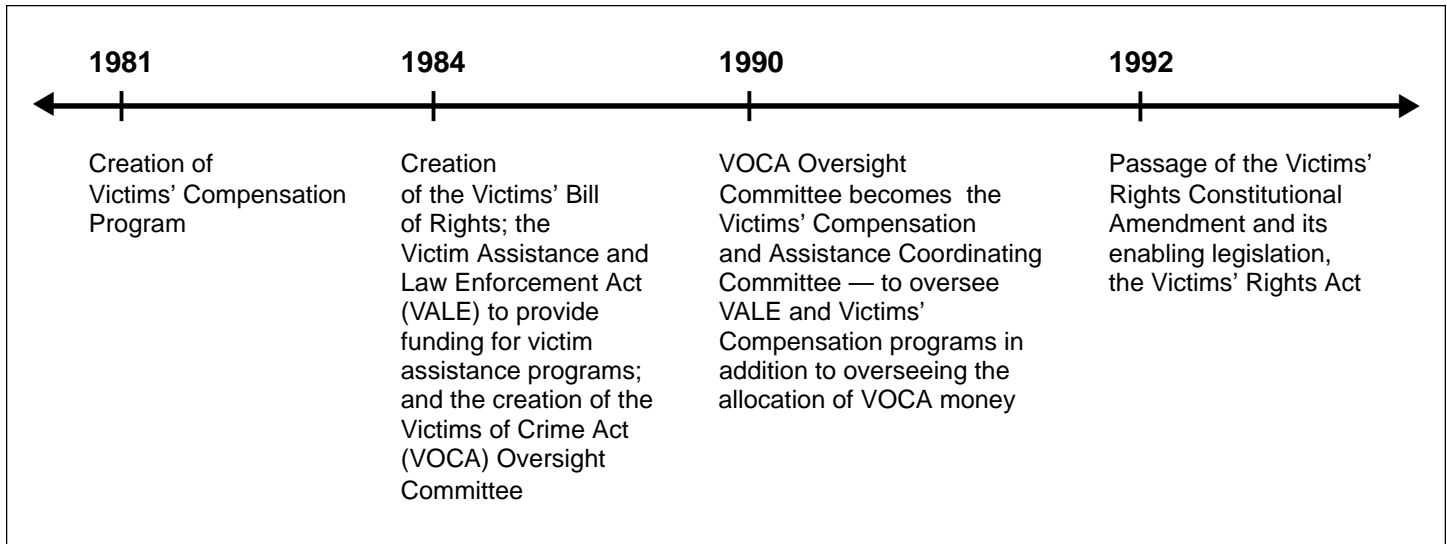
compensation laws, funding for victims' assistance programs, and victims' rights compliance without an obtrusive, or "big brotherish" presence, according to state officials.¹⁵

A series of legislative initiatives were enacted throughout the 1980's that acknowledged the needs of crime victims, although it was not until after the passage of the state constitutional amendment and the

VRA that victims of crime in Colorado were afforded enforceable rights under state law.

¹⁴VICTIMS' COMPENSATION AND ASSISTANCE COORDINATING COMMITTEE, INTERIM EMERGENCY PROCEDURES III, Dec. 3, 1996 [hereinafter PROCEDURES].

¹⁵Interview with Nancy Feldman, Planning and Grants Specialist, Office for Victims' Programs, Colorado Department of Public Safety, Feb. 18, 1997 [hereinafter Feldman Interview].



In 1981, the state created a crime victims' compensation system, one of only two decentralized state programs in the United States. The program allows victims to be compensated for personal and economic losses up to \$10,000, unless the board unanimously agrees that the victim's circumstances are catastrophic. In those situations, it may pay damages to the victim or dependents of up to \$15,000.¹⁶ The compensation program is administered by the district attorney's office in each of the state's 22 judicial districts, with claim review and decisionmaking facilitated by a board of volunteers. A three-member citizen board, appointed by the district attorney and mandated by state statute, is authorized to determine claim eligibility and approve program payments.¹⁷

Victims are eligible for compensation if they can demonstrate that their

claim is reliable and they have "cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant, or the board has found good reason exists for the failure to cooperate."¹⁸ Victims whose requests are fully or partially denied may request the board reconsider their claim, and have the right to present new information. If the board maintains its original decision, the victim has the statutory right to appeal the board's decision in district court.¹⁹

The compensation program is funded primarily through state criminal assessments collected within the judicial district, and in part from federal moneys to help compensate victims of crime. In deference to the tradition of local jurisdiction, assessments collected within a district remain within that district to assist local crime victims.²⁰

In 1984, the U.S. Congress passed the federal Victims of Crime Act

(VOCA),²¹ which established baseline funding mechanisms for victim assistance programs. In that same year, the Colorado legislature augmented the new VOCA assistance by creating the Victim Assistance and Law Enforcement (VALE) Program, a funding mechanism that uses non-general fund moneys to support victims' services programs.

The VALE program authorizes the collection of fees collected in each judicial district for certain criminal dispositions to support implementation and coordination of victims' assistance services at the state and local levels.²² At the local level, the VALE enabling legislation, the Assistance to Victims of and Witnesses to Crimes and Aid to Law Enforcement Act,²³ created a five-person victims' and witnesses' assistance and law enforcement board in each of the state's 22 judicial districts, appointed by the chief judge of the district. The function of these local boards is to administer the victims' and witnesses' assistance and law enforcement fund, which

¹⁶OFFICE FOR VICTIMS PROGRAMS, 1994–1995 ANNUAL REPORT, COLORADO DEPARTMENT OF PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE, MARCH 1, 1996 [hereinafter ANNUAL REPORT].

¹⁷Interview with Bob Bush, Victim Compensation Coordinator, Colorado Department of Public Safety, Feb. 18, 1997 [hereinafter Bush Interview].

¹⁸COLO. REV. STAT. ANN. § 244.1–109 (West Supp. 1996).

¹⁹Bush Interview, *supra* note 17.

²⁰Bush Interview, *supra* note 17.

²¹42 U.S.C. § § 10601–10604.

²²ANNUAL REPORT, *supra* note 16.

²³COLO. REV. STAT. ANN. § 24–4.2–101 (West Supp. 1996).

consists of moneys paid as a surcharge levied on all criminal and traffic fines.²⁴ The state VALE program — funded by 11.7 percent of the criminal assessments collected in each judicial district — helps support victims' programs within the DCJ and grants to statewide victims' services organizations.²⁵

Colorado law requires that most of the fund's allocation — not less than 85 percent — be used to support victims' and witnesses' services programs, including those that provide services for early crisis intervention; educate victims and witnesses of crime about the operation of the criminal justice system; intercede with the employers or creditors of victims or witnesses; provide counseling or assistance during court appearances; protect victims from threats of harm; and develop and manage special advocate services. The remaining funds may be allocated to police departments, sheriffs' departments, and district attorneys for specific programs that serve victims, such as victim assistance training, or additional personnel to assist victims in crisis. This remaining allocation may not be used, however, for routine operating expenses.²⁶

Also in 1984, the Colorado General Assembly passed the Victims' Bill of Rights, acknowledging that the criminal justice system had a

responsibility to extend to victims and their families various protections and services. Although the language of the law encouraged criminal justice agencies and officials to address the concerns of victims in their day-to-day practice, it did not define clearly which agency or officials were responsible for providing specific rights. Further, the legislative declaration emphasized the importance of the victims' role in preserving the integrity of the criminal justice system rather than on the inherent notion that innocent victims deserve to be treated with respect.

The general assembly hereby finds and declares that the full and voluntary cooperation of victims of and witnesses to crimes with state and local law enforcement agencies as to such crimes is imperative for the general effectiveness and well-being of the criminal justice system of this state. It is the intent of part 3, therefore, to assure that all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.²⁷

Finally, in 1990, the Colorado legislature created the coordinating committee to approve standards for the administration of the Crime Victim Compensation Fund and the Victim and Witness Assistance and Law Enforcement Fund. The coordinating committee, whose membership is appointed by the

governor, both establishes standards for the distribution of victims' compensation and VALE funds, and may impose sanctions for the violation of those standards.²⁸

A statutorily-created standards subcommittee acts in an advisory capacity to the coordinating committee. The standards subcommittee recommends to the full coordinating committee standards by which the boards should operate. The standards subcommittee must be composed of the following members: a member of a crime victims' compensation board; a member of a local victims' and witnesses' assistance and law enforcement board; a representative of a local judicial district; an administrator of crime victim compensation in a district attorney's office; a judge; an elected district attorney; and a representative of a statewide victims' organization.²⁹

The Victims Rights Act and Constitutional Amendment

With the infrastructure of the victims' compensation program, the state and local VALE programs, and the coordinating committee and standards subcommittee in place, victims' rights advocates in the late 1980's campaigned to pass a state constitutional amendment to provide victims enforceable rights. It was felt by many victims' advocates and public officials that the "rights" established with the Victims' Bill of Rights in 1984 were merely suggestions of ways that the criminal justice system could be

²⁴COLO. REV. STAT. ANN. §§ 24-4.2-103, 104 (West Supp. 1996).

²⁵ANNUAL REPORT, *supra* note 16.

²⁶COLO. REV. STAT. ANN. § 24-4.2-105 (West Supp. 1996). The 85 percent required to be spent on victims and witnesses services represents 85 percent of the net aggregate fund remaining after administrative costs (13 percent of the funds can be spent by district attorneys' administrative costs).

²⁷COLO. REV. STAT. ANN. § 24-4.1-303 (West 1989).

²⁸COLO. REV. STAT. ANN. § 24-4.1-117.5 (West Supp. 1996).

²⁹COLO. REV. STAT. ANN. § 24-4.1-117.5 (West Supp. 1996).

more responsive to crime victims, and could be superseded by the constitutional rights of a defendant.³⁰

One crucial factor that led to the passage of the victims' rights constitutional amendment in Colorado were the findings of President Reagan's Task Force on Victims of Crime. Charged with developing recommendations to make the voices of victims heard in the criminal justice process, the task force represented the first time that a president addressed formally the notion of victims' rights, and the challenge inherent in "stopping the mistreatment and neglect of the innocent by those who take liberty for license and by the system of justice itself."³¹

The task force proposed numerous changes to the state and federal systems of criminal justice, and outlined roles that other agencies — hospitals, the legal bar, and schools — could undertake to enhance the awareness of victimization. Moreover, the task force findings proposed an amendment to the U.S. Constitution to allow victims to be present and heard at all critical stages of judicial proceedings.³²

Those advocating for victims' rights at the time realized that in order for an amendment to the U.S. Constitution to be credible, they would have to get states to change their laws to provide victims more equal legal standing. Much of the effort at this time was targeted at the victims' movement in Florida, the

first state to amend its constitution to include a victims' rights provisions.

Victims' advocates in Colorado watched closely the events transpiring in Florida. Home of strong victims' assistance organizations like the Colorado Organization for Victim Assistance (COVA) and the National Victims' Constitutional Amendment Network (NVCAN), a movement toward amending the Colorado constitution to provide for victims' rights ensued. Individuals active in the effort in Colorado felt strongly that the united public front, similar to the one presented in Florida, would be necessary for a successful effort. As a result, the COVA, NVCAN, and other groups and policymakers concerned with victims' rights convened a resource group of 50 individuals statewide who represented criminal justice practitioners throughout Colorado, including trial lawyers, public defenders, and representatives from the American Civil Liberties Union. The interests of prosecutors were represented as well; a district attorney and a crime victim served as co-chairs of the resource group.³³

Resource group members spent a significant amount of time debating the language of the amendment, but agreed that it was critical to have all parties at the table during the discussion to encourage support for the measure from those who initially may have been opposed to the amendment. According to the chairperson from NVCAN, by inviting individuals to the table that

represented interests that ordinarily may have opposed a victims' rights constitutional amendment, the resource group did a tremendous job of collaborating on language and assessing the impact of the amendment on the criminal justice process as a whole.³⁴

The resource group also acted on an aggressive and public time line. The group presented publicly a victims' rights resolution on the commencement of Victims' Rights Week in April 1992, having solicited the states' district attorneys' endorsement the week before. To become law, the effort needed either a two-thirds vote to pass in both chambers of the General Assembly, or to be placed on the ballot to be voted on by the electorate in November of that year.

CONSTITUTIONAL AND STATUTORY RIGHTS OF CRIME VICTIMS IN COLORADO

During the November 1992 elections, 81 percent of Colorado voters supported the victims' rights amendment. The Colorado state constitution now provides that:

Any person who is a victim of a criminal act or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed and present at all critical stages of the criminal

³⁰Interview with Bob Preston, Chairperson, Victims' Constitutional Amendment Network, Feb. 18, 1997 [hereinafter Preston Interview].

³¹PRESIDENT'S TASK FORCE, *supra* note 3.

³²PRESIDENT'S TASK FORCE, *supra* note 3.

³³Interview with Mary McGhee, manager of special projects, Colorado Department of Public Safety, Division of Criminal Justice, Feb. 18, 1997 [hereinafter McGhee Interview].

³⁴Preston Interview, *supra* note 30.

justice process. All terminology, including the term “critical stages,” shall be defined by the General Assembly.³⁵

Policymakers and those advocating for the passage of the victims’ rights amendment in Colorado generally thought that the amendment itself should be succinct, with the detail of what rights were to be afforded victims best defined by statute and enacted by the General Assembly. Thus, the enabling legislation that accompanied the amendment in 1992 — the VRA — describes in detail the rights of victims in the state. The series of bills was introduced and moved through the legislature with ease, likely due to the effective coalition-building and strong public support for the victims’ rights effort.³⁶

The VRA defines specific crimes for which victims are afforded constitutional rights, the “critical stages” of the criminal justice process, and the duties and responsibilities of those involved in the administration of justice. Crimes included under the purview of the VRA include the following offenses: murder; manslaughter; homicide; assault and sexual assault; menacing; kidnaping; robbery; incest; child abuse; sexual exploitation of children; crimes against at-risk adults or juveniles; and crimes for which the underlying factor is domestic violence.³⁷ If a victim

is deceased or incapacitated, these rights may be exercised by the victim’s immediate family, significant other, or other lawful representative.³⁸

The “critical stages” of the criminal justice process set forth in the constitutional amendment are defined explicitly in the VRA and subsequent amendments to include: any of the trial proceedings, from the filing of charges to any appellate review; a hearing regarding subsequent modification of a sentence; parole application hearings; hearings regarding discharge or release from secure confinement; parole revocation hearings; the transfer to or placement of a person convicted of a crime in a non-secured facility; and the transfer, release, or escape of a person charged with or convicted of a crime from any state hospital.³⁹

The VRA and subsequent amendments define precisely the rights of crime victims in the state. They include the right to:

- be treated with fairness, respect, and dignity;
- information about what steps can be taken by a victim if he is subjected to intimidation or harassment;
- information regarding the filing of charges;

- notification of any change in the status of the accused;
- make a victim impact statement;
- input into decisions regarding plea bargains, sentencing, parole hearings, restitution, or civil remedies;
- release of property after a case is settled and the property is no longer needed as evidence;
- employer intercession;
- notification of all case dispositions;
- timely notification of all court dates; and
- instruction on community resources and other information that will assist recovery.⁴⁰

Colorado law spells out the responsibilities of agencies charged with providing victims their rights under the VRA. Law enforcement agencies and district attorneys’ offices are responsible for providing most victims’ rights, while other information is available upon request from state and local corrections officials, state hospitals, and mental health facilities. In the following chart, responsibilities that are shared by prosecutors and law enforcement officials are indicated in italics.

³⁵COLO. CONST. ART. II, § 16A (1992).

³⁶McGhee Interview, *supra* note 33.

³⁷COLO. REV. STAT. ANN. § 24–4.1–302 (West Supp. 1996).

³⁸GOVERNOR’S VICTIMS’ COMPENSATION AND ASSISTANCE COORDINATING COMMITTEE, THE RIGHTS OF CRIME VICTIMS IN COLORADO, (1996) [hereinafter RIGHTS SUMMARY].

³⁹*Id.*

⁴⁰*Id.*

VRA Rights, By Agency⁴¹

	Notification of Rights, Available Services	Participation in the Criminal Justice Process	Other
Law Enforcement	<p>Give the following to the victim in writing: statement of victims' rights and information concerning victims' compensation, access to the offender's records, and the availability of protective services</p> <p>Forward to the victim or his family the business address of the district attorney, the officer investigating the case and the case number.</p> <p><i>Discuss with the victim the availability of follow-up support and victim assistance, including information about crisis intervention, legal resources, mental health and medical services, and services for victims with special needs</i></p>	<p><i>Provide information concerning: transportation and household assistance available to victims to facilitate their participation in the criminal proceeding; translation services in languages other than English; child care services for victims or victims' families when they are cooperating with the prosecution of the defendant</i></p>	<p><i>Provide reasonable effort to minimize contact between the victim and the victim's family and the defendant and the defendant's family</i></p> <p><i>Return property no longer needed as evidence within five days</i></p> <p><i>Provide assistance dealing with credit agencies if financial setbacks have occurred as a result of the crime</i></p>
District Attorneys' Offices	<p>Inform the victim of the filing of charges and the time and place of all "critical stages" of the trial</p> <p>If practicable, inform the victim of any motion that would delay substantially the prosecution, and consult with the victim concerning plea agreements, diversion, and case dismissal</p> <p>Inform the victim of the defendant's right to view a victim impact statement and presentence report</p> <p>Notify the victim of the status of the case if a defendant seeks appellate review</p> <p><i>Discuss with the victim the availability of follow-up support and victim assistance, including information about crisis intervention, legal resources, mental health and medical services, and services for victims with special needs</i></p>	<p>The victim may be present at all "critical stages" of the trial, and may attend and express an opinion at a sentencing hearing</p> <p>The victim may request to submit, either orally or in writing, a victim impact statement during the criminal proceedings</p> <p><i>Provide information concerning: transportation and household assistance available to victims to facilitate their participation in the criminal proceeding; translation services in languages other than English; child care services for victims or victims' families when they are cooperating with the prosecution of the defendant</i></p>	<p><i>Provide reasonable effort to minimize contact between the victim and the victim's family and the defendant and the defendant's family</i></p> <p><i>Return property no longer needed as evidence within five days</i></p> <p><i>Provide assistance dealing with credit agencies if financial setbacks have occurred as a result of the crime</i></p>

⁴¹COLO. REV. STAT. ANN. § 24-4.1-303 (West Supp. 1996).

VRA Rights, By Agency⁴¹

	Notification of Rights, Available Services	Participation in the Criminal Justice Process	Other
Corrections Officials, Department of Human Services, State Hospital Officials	Notify victim at which institution the offender is being held; his projected date of release; if and when he participates in a work release/furlough program; of parole hearings and subsequent confinement decisions; transfer to a nonsecured facility; and of his escape or death	The victim may address the parole board at parole hearings Victims must request in writing to be provided the participatory opportunities and notification services in this section (post-conviction).	Keep confidential personal information (name, address, phone number) of the victim

The final provision of the VRA mandates that the coordinating committee shall review any report of noncompliance, and may refer legitimate noncompliance claims to the governor if the complaint cannot be resolved, who may request that the attorney general file suit to enforce compliance.⁴²

COMPLIANCE ENFORCEMENT — PROGRAM AND PROCESS

Building on the existing coordinating committee oversight structure, the state established a compliance enforcement process to enable victims who believe that their VRA rights have been denied to seek recourse from the agencies they believe to be in violation. As indicated above, the coordinating

committee, established to oversee the VALE and victims' compensation programs, also retains the authority to impose requirements on various state and local agencies for any proven violations of a victims' rights.

The goal of the coordinating committee with respect to victims' rights compliance is to provide an unbiased assessment of whether a victim has been afforded his rights under state law. It is the role of the coordinating committee, according to its procedures, "to act as an impartial fact finding and disseminating entity. The coordinating committee is committed to follow[ing] all complaints to resolution and to engage in a process that is accurate, thorough, and responsive to crime victims and to the citizens of Colorado."⁴³

Although the VRA and constitutional amendment have been effective only since January of 1993, there have been several modifications to the complaint review procedure in an effort to meet most effectively the

needs of crime victims in the state while deferring to local control. A theme that emerges in the approach to victims' rights compliance in Colorado is that it is evolutionary — those individuals involved in the process are continually looking for new ways to be more responsive to the needs of crime victims.

Program Process

The DCJ staff acts as the first point of contact for victims when they have questions concerning their rights under the VRA. The DCJ staff initiates communication with the agencies identified by victims to either resolve the alleged noncompliance with the VRA, or access the necessary documentation from all parties to file a formal complaint.⁴⁴

The role of the DCJ staff in the compliance review process cannot be understated. According to statistics

⁴¹COLO. REV. STAT. ANN. § 24-4.1-303 (West Supp. 1996).

⁴²COLO. REV. STAT. ANN. § 24-4.1-303 (West Supp. 1996).

⁴³PROCEDURES, *supra* note 14.

⁴⁴COLORADO VICTIM COMPENSATION AND ASSISTANCE COORDINATING COMMITTEE, VICTIMS RIGHTS AMENDMENT SUBCOMMITTEE BY-LAWS, n.d. [hereinafter BY-LAWS].

compiled by the DCJ, 31 of 40 inquiries to the agency in 1996 were resolved by DCJ staff intervention, precluding the filing of a formal report. In the four years that the DCJ has been reviewing complaints, the staff has been able to resolve many of them before they enter the committee and subcommittee review process. According to an article in *Connections*, the tri-yearly publication of the DCJ Office for Victims Programs:

As the subcommittee and DCJ staff handle more of these cases, they have gained a better understanding and have been able to simplify the process. Through evolution, we have found that a majority of inquiries can be resolved at the staff level. Part of the response to any inquiry is to give the complainant the option to work with a DCJ staff person to attempt to resolve the issue to the satisfaction of all the parties. Most of the time, this option is utilized. The agency that has been identified by the victim as not providing a certain right(s) is contacted to try to work out a satisfactory resolution. However, the victim always has the right to file a formal Request for Compliance.⁴⁵

Another primary responsibility of the DCJ staff is to set the appropriate expectations for what victims may get back from the process. Too often, according to DCJ officials, victims have concerns that fall outside of what rights or benefits the VRA extends to the citizens of Colorado, and therefore what types of

participatory and notification rights the committee structure can enforce.⁴⁶

To activate the compliance enforcement process, a victim must provide information on the nature of the crime committed against him, as well as a brief summary of the constitutional right the victim believes he has been denied.⁴⁷ The information — provided on a standard form — is reviewed by the DCJ staff to determine if the complaint falls within the purview of the VRA. If so, the subcommittee will send to the agencies identified by the victim the appropriate information concerning the complaint. If DCJ staff is uncertain whether the complaint falls within the purview of the act, the information provided by the victim will be reviewed by subcommittee.⁴⁸

Victims may bring a complaint before the subcommittee and coordinating committee only after the matter has been pursued at the local level and remains unresolved. However, some victims are apprehensive about reporting VRA violations by law enforcement officials and prosecutors due to fears of intimidation or their need to rely on those agencies for information concerning their case. As a result, the DCJ staff maintains some flexibility when assessing a victim's effort to resolve their complaints at the local level.⁴⁹

The subcommittee serves in an advisory capacity to the coordinating committee in evaluating complaints brought by victims. The subcommittee meets monthly, and is responsible for:

- reviewing reports of noncompliance to determine if there is a basis in fact;
- conducting hearings when appropriate to determine if there is a basis in fact to the complaint;
- establishing findings and conditions to resolve the complaint if the identified agency is not in compliance with the Victims Rights Act; and
- referring any appeals of the subcommittee's decisions to the coordinating committee.⁵⁰

If the subcommittee finds that a complaint falls within the purview of the VRA, it notifies the identified parties, forwards to them the documents relevant to the complaint, and asks for a written response to the alleged violations. According to the procedures governing the subcommittee, a response is required from agencies identified by the victim within 45 calendar days after the DCJ has mailed the initial notification.⁵¹ The complainant then has an opportunity to comment on the response of the agency before it is reviewed by the subcommittee. The DCJ staff sends a copy of the complainant's comments to the agency, but it does not have another opportunity to respond to those comments before the complaint is reviewed by the subcommittee.⁵²

Once the agency response is received and reviewed, it is forwarded to the subcommittee within 45 calendar days. The DCJ staff sends to the complainant and the identified agencies information concerning the date, time, place, and format of the

⁴⁵Colorado Division of Criminal Justice, *Victim Rights: Does It Make a Difference?*, CONNECTIONS, Feb. 1997, 9 [hereinafter CONNECTIONS].

⁴⁶Feldman Interview, *supra* note 15.

⁴⁷RIGHTS SUMMARY, *supra* note 38.

⁴⁸BY-LAWS, *supra* note 44.

⁴⁹Feldman Interview, *supra* note 15.

⁵⁰BY-LAWS, *supra* note 44.

⁵¹PROCEDURES, *supra* note 14.

⁵²Feldman Interview, *supra* note 15.

review. If no response is received by the subcommittee from the agency, the complaint review process still goes forward.⁵³

The subcommittee findings are mailed within 45 days to the complainant and all identified agencies, along with a notice of the right to request an appeal when the complaint falls within the purview of the VRA. The subsequent steps taken are based upon the subcommittee findings:

◆ **Subcommittee finds that the complaint does not have a basis in fact.**

If the subcommittee finds that the complaint does not have a basis in fact, and the complainant does not appeal, the case is closed. If the victim maintains that his rights were indeed violated, he may appeal to the full coordinating committee to review the complaint.⁵⁴

If the coordinating committee decides to hear an appeal, it will review the complaint and provide written findings to the complainant, identified agencies, and subcommittee chairperson within 45 days of the filing of the appeal. If a complainant is successful on appeal, in whole or in part, the agency found to have violated the victims' rights must comply with the conditions set forth by the coordinating committee, including notifying the subcommittee of how it plans to rectify the violation. The notification must be approved by the coordinating committee.⁵⁵

◆ **Subcommittee finds that the complaint does have a basis in fact.**

If the subcommittee finds that the victim's complaint is based in fact, it will set forth directives with which the agencies identified to have violated the victims' rights must comply. The subcommittee then asks the identified agencies to outline the steps that will be undertaken to rectify the violation. The subcommittee may accept the proposed plan or ask for revisions. Once the subcommittee has accepted a plan, the case is closed. If, however, a plan is not agreed upon, the case may be referred to the full coordinating committee for review.⁵⁶

An agency may also request an appeal to the full coordinating committee within 21 days of the subcommittee decision. As indicated above, when the coordinating committee decides to hear an appeal, all parties must receive notification of the review. If the coordinating committee upholds the subcommittee's decision, the complaint is returned to the subcommittee to monitor compliance. The case is closed when written notification of compliance is submitted to the subcommittee.⁵⁷

All coordinating committee and subcommittee meetings are bound by the Colorado Open Meeting Law.

If the identified agencies do not comply with the coordinating committee's directives and all other attempts at resolution have failed, the case is referred to the governor's office. A formal written request is

submitted to the governor's office, along with all written materials collected over the course of the committee process. The Colorado attorney general, the identified agencies, as well the complainant will be advised of this referral.

Process Evolution

For the most part, cases are resolved before they reach the full coordinating committee, and at the time of this writing, no case has been referred to the governor or attorney general to file suit to enforce compliance with victims' rights laws. One example of a typical case brought to the attention of the subcommittee occurred when a woman alleged her estranged husband had assaulted her and had broken into her home. Although she had reported his behavior once to the police the year before, the charges were dropped. Despite her efforts to contact county officials about the status of the charges and the case against her estranged husband, the victim reported that she did not receive relevant and timely information from county officials.

After a second assault that she initially did not report to the police out of fear of retribution and a violation of the restraining order she placed against him, the victim became concerned for the safety and privacy of her and her young daughter. As a result, she eventually reported the second assault and restraining order violation to law enforcement officials and charges against the husband were filed.

The victim also filed a complaint with the subcommittee because she felt her VRA rights had been violated on many fronts in the first case, and wanted to prevent the violation from occurring a second time. She reported that she had not been

⁵³PROCEDURES, *supra* note 14.

⁵⁴BY-LAWS, *supra* note 44.

⁵⁵BY-LAWS, *supra* note 44.

⁵⁶BY-LAWS, *supra* note 44.

⁵⁷BY-LAWS, *supra* note 44.

consulted during the decision to dismiss the initial charges against her estranged husband. Further, she alleged that she was not provided information about services that are available to victims or witnesses in cases where they are being harassed, or information about restitution and employer intercession.

DCJ officials shared with the district attorney in the county the victim's concerns and elicited his response before the information was presented to the subcommittee for review. The district attorney indicated that the decision to dismiss the first case against the husband was appropriate and consistent with prosecutorial discretion and explained that the prosecutor did contact the victim after the decision to dismiss was made. Further, the district attorney indicated that the prosecutor on the pending case had several conversations with the victim about the case's progression, although the prosecutor had not kept track of these conversations on a phone log.

The subcommittee reviewed both the victim's statement and the district attorney's response and decided in favor of the victim. Specifically, the subcommittee found that the decision to dismiss the charges in the first case appeared to have been made without consulting the victim, as required by Colorado law. They also determined that the victim did not receive timely responses to her telephone calls from the prosecutor handling her case, and acknowledged that this lack of responsiveness "contributes to a lack of respect afforded the victim." The subcommittee did find, however, that the victim did receive timely information about the services available to crime victims, including information about restitution and employer intercession.

The subcommittee decision established four requirements with

which the district attorney's office was required to comply before the matter would be considered resolved. Specifically, the subcommittee required that the district attorney submit: the office's policies and procedures for ensuring that victims' rights are provided; a description of the procedures by which employees ensure that reasonable efforts are made to return victims' phone calls; a description of the policies in place to insure consultation with victims on charges; and the measures undertaken to assure that the victim's rights were being adhered to in the pending case.

The district attorney replied with a large package of information that described specifically his office's procedures for notifying victims of the critical stages of the trial and tracking communications with victims. The district attorney assigned another prosecutor to the victim's pending case and reprimanded the prosecutor involved in the complaint. The district attorney indicated that the prosecutor's immediate supervisor had been asked to track his performance to ensure that victim complaints of this sort did not occur in the future.

Upon its review of this information, the subcommittee agreed that the efforts of the district attorney were appropriate, but were concerned that the office did not have in place written procedures concerning the right of victims to be consulted when there are changes to the charges originally filed. The subcommittee indicated to the district attorney that its investigation into the matter would be considered dropped when written guidelines or procedures to ensure this consultation were established. One month later, the district attorney submitted these procedures, and the subcommittee closed the case, citing

that the requirements they set forth had been met sufficiently.⁵⁸

In a second case with seemingly similar characteristics, however, the subcommittee found that agency action was not a violation of the VRA. The similarity of the circumstances in these two cases reflects the importance of a close read of the details and attention to the subtle intricacies of each victim's action and the criminal justice system's response to assure an appropriate ruling on the part of the subcommittee.

In this instance, a victim of domestic assault had contacted the subcommittee alleging VRA violations in the case pending against her abuser. Her first allegation was that the district attorney's office had violated her right to be informed and present for critical stages of the criminal justice process. She noted that on three separate occasions — the preliminary hearing, the arraignment, and a motions hearing — she was notified of the proceedings, but consideration of the case against her abuser were canceled. She indicated that she was not notified of these cancellations.

She also believed her right to be treated with dignity and fairness had been violated. For example, when discussing a plea bargain with the prosecutor, the victim thought she would have some time to consider the offer that was being made. The next day, the victim called the prosecutor to indicate that she wanted the case to go to trial. The prosecutor, however,

⁵⁸Colorado Victims' Compensation and Assistance Coordinating Committee, Request #95-CA-1008. It is important to note that identifying information about the victim — name, address, telephone number, etc. — was blacked out before review of case records by the National Criminal Justice Association in order to preserve the privacy of the victim.

had already made the offer to the defendant. Further, the victim complained that she was treated poorly by the prosecutor and that he was not respectful of her concerns about the progression of the case.

DCJ staff submitted the victim's complaint to the prosecutor, and requested his response before the case was presented to the subcommittee for review. The prosecutor submitted a lengthy rebuttal to her allegations and included appropriate documentation to support it. Essentially, the delays in the proceedings against the defendant stemmed from the fact that the defense attorney had to travel approximately one hour to get from her office to the county court room in which this case was being heard — a matter not under the control of the prosecuting attorney. He included a document that indicated he expressed concern with the continued delays in the victim's case.

Further, he explained that he discussed with the victim on two occasions the plea agreement that he offered to the defendant and his attorney. He indicated, upon the second meeting, that if the agreement was still appropriate, he would be sending it to the defendant's attorney. The victim at that meeting, according to the prosecutor, indicated that the settlement was agreeable.

Finally, the prosecutor described in detail the nature of the contacts between his office and the victim. He noted that on only two occasions had there been any sort of confrontation between him and the victim. In the first instance, the victim was upset that the prosecutor was filing a misdemeanor charge against the defendant instead of a felony. In response, she was able to obtain new information about the nature of her

injuries and shared it with the prosecutor, which supported a felony charge. The prosecutor used this new information and changed the filing from a misdemeanor to a felony. The prosecutor believed the victim to be satisfied with his response to this new information.

In the second instance, on one of the dates proceedings were delayed, the prosecutor reported that the victim verbally attacked the defendant, who contacted the police department and filed a complaint. The prosecutor's office asked the victim not to display behavior of this sort, as it could be used in the defense attorney's cross examination at the trial.

Upon review of the circumstances of this case, the subcommittee found that the district attorney's office was not in violation of the VRA on either of the victim's allegations. Specifically, it found that the court delays appeared to have been granted by the judge just prior to the scheduled time of the hearings, and that the district attorney's office was unable to notify the victim in a timely manner as a result. The subcommittee did note, for the record, that it understood the frustration felt by the victim and indicated that the district attorney could have prevented this frustration by notifying the victim that the hearings would most likely not occur, leaving her the choice about whether or not she wanted to come to court.

Further, the subcommittee indicated that it did not believe the victim was treated inappropriately by the district attorney's office. On this matter, however, the subcommittee members did note that improved communications with victims of crime could elicit a better understanding of the criminal justice system. They noted that this effort

would likely result in a reduced level of frustration for future victims when continuances are filed or hearings are canceled.⁵⁹

The compliance enforcement function of the VRA, which has been in place since 1993, is viewed as evolutionary by the DCJ staff, subcommittee, and coordinating committee members. Participants have attempted to improve it as much as resources allow, to most effectively serve the needs of victims in the state. According to the chairman of the coordinating committee, the process is successful because those involved truly listen to victims and make a concerted effort to incorporate their ideas and needs into the process. Further, the chairman notes, the respectful relationships that have evolved among coordinating committee and subcommittee volunteers allow for this evolutionary approach by facilitating efforts to pioneer different ideas to accommodate crime victims.⁶⁰

Two significant changes in VRA enforcement have been undertaken since 1992. The first was the creation of the subcommittee in 1995. Until that point, all compliance complaints were heard before the full coordinating committee. Although there were only three formal complaints filed in the first two years of the VRA, those involved in the process realized that to utilize

⁵⁹Colorado Victims' Compensation and Assistance Coordinating Committee, Request #96-CA-1006. It is important to note that identifying information about the victim — name, address, telephone number, etc. — was blacked out before review of case records by the National Criminal Justice Association in order to preserve the privacy of the victim.

⁶⁰Interview with Steve Siegel, Denver District Attorney's Office and Coordinating Committee Chairman, Feb. 18, 1997 [hereinafter Siegel Interview].

most effectively the resources of the volunteer coordinating committee — also charged with the oversight of the VALE and victim compensation programs' standards, as well as VOCA advisory responsibilities — they would have to add another level of case review to the process. The creation of the subcommittee, whose membership is composed of participants of the coordinating committee, allows an additional review by the members of the body charged by statute with that oversight responsibility. This review by the subcommittee also establishes a “checks and balances” of the DCJ staff's interpretation and perception of the issue, so that control over the compliance enforcement process is not concentrated in one person or agency, but within the subcommittee and committee structure as defined by Colorado law.⁶¹

The other modification occurred in December 1996, when the appeal process was changed. Prior to that date, an appeal to the coordinating committee was automatic. Victims must now, however, request an appeal from the coordinating committee. Individuals involved with the compliance enforcement process cite time constraints on the availability of the volunteer committee members and the need to set appropriate expectations about the process as the two primary reasons why the appeal process was changed. By making the appeal process available upon request, a fair compliance effort remains intact while at the same time the time and efforts of the coordinating committee are used more efficiently.⁶²

⁶¹Feldman Interview, *supra* note 15.

⁶²Siegel Interview, *supra* note 60.

Further, many involved with the process felt the right to a mandatory appeal may have created an inappropriate expectation on the part of the victim. The change was a wise one, according the coordinating committee chair, as it is important to create a distinction between cases that merit appeal and those in which the individuals involved were simply dissatisfied that the subcommittee did not decide in their favor.⁶³

STATISTICS AND RESOURCES

When the VRA was enacted in 1992, the agencies that work routinely with victims had to undergo considerable changes — allocating more time, effort, and resources — to comply with the new law guaranteeing all eligible victims certain rights.

Since the coordinating committee and subcommittee members are volunteers from the law enforcement, legal, social services, victims' assistance professions, and the community, the process is heavily reliant upon the DCJ staff to field calls from victims, review information, and act as a mediator in resolving the complaint with the identified agencies. Again, the objective of the DCJ staff is to achieve resolution up front whenever possible and when it is beneficial to the victim, and avoid triggering the formal procedure, which tends to be more time-intensive than an informal review.⁶⁴

And as more victims have become aware that they have an avenue by which to assure state and local

⁶³Siegel Interview, *supra* note 60.

⁶⁴Siegel Interview, *supra* note 60.

agencies compliance with the VRA, the number of inquiries received by the DCJ has increased.⁶⁵ The DCJ has kept statistics on VRA complaints and inquiries filed with the office since the law went into effect in January of 1993:

- In 1993, there was one VRA complaint filed;
- In 1994, there were 10 inquiries to the DCJ for alleged VRA noncompliance, with two substantiated claims resulting;
- In 1995, there were 17 inquiries, with seven formal complaints filed, four of which were not considered to fall within the purview of the VRA; and
- In 1996, there were 40 inquiries, nine of which resulted in a formal complaint being filed.⁶⁶

The DCJ is considering expanding its current statistics collection procedures to track VRA inquiries and complaints by crime type and geographic area. As the subcommittee's caseload continues to grow, identifying trends in the nature of the calls received from victims would allow DCJ officials and subcommittee members to better provide assistance to individual victims. Further, collecting information about where calls originate may allow an opportunity to identify systemic problems that impede the provision of victims' rights in certain areas.⁶⁷

Currently, DCJ officials rely on a small personnel budget to support the compliance review structure. The DCJ staff predicted that the

⁶⁵ Feldman Interview, *supra* note 15.

⁶⁶ CONNECTIONS, *supra* note 45.

⁶⁷ Feldman Interview, *supra* note 15.

committee structure would be staff-intensive, and in its 1993 biennial budget request, the agency requested the authority to hire one full-time staff assistant as well as operating expenses, both of which would be used entirely to provide staff support for the compliance process. As a result of that budget request, the DCJ received funding for one additional employee but found that its allocation did not cover expenses and operational costs. In 1995, the DCJ requested additional funding to cover costs for printing brochures in both Spanish and English, telephone and facsimile charges, and additional moneys for meeting rooms to hold subcommittee and coordinating committee meetings.⁶⁸

Further, the DCJ staff requested additional allocations for staff and board travel expenses. Currently the committee and subcommittee structure is operating under temporary rules and procedures. Pursuant to the state's Administrative Procedures Act (APA), the DCJ staff will have to hold public hearings statewide later in 1997 to ensure compliance with the APA's notice and comment provisions for final rules.

As the compliance enforcement process evolves, so does the understanding of the resources necessary to administer successfully the program. For example, DCJ officials have found that a higher level of decisionmaking authority and understanding of the criminal justice system is necessary on the staff level. As a result, DCJ officials have determined that they may better serve victims by creating a staff structure that includes a staff

assistant, clerical person, and a higher level administrator to work part-time to oversee the whole program.⁶⁹

Another staffing concern stems from the agency's transition from a program agency to one that acts as a direct provider of services. As information becomes more readily available concerning the rights of crime victims in Colorado, the DCJ staff are finding themselves taking calls from individuals who contact the office in need of support immediately following victimization or have concerns that fall outside the purview of the VRA. DCJ officials continually try to assess the resources and instruction necessary to train employees in responding appropriately to victims in crisis.⁷⁰

The decentralized nature of politics and policy in the state has allowed nonprofit organizations to play an active role in the training, education, and outreach efforts involved with VRA compliance.⁷¹ The DCJ considers victims' advocates and assistance providers to be the "front line" in assessing if a victim's rights have been violated, and key to informing victims of the VRA and the DCJ role in compliance enforcement. According to the DCJ staff, the role of the victims' assistance community is instrumental to the complaint resolution process.⁷² The COVA, through grants from state VALE moneys, provide statewide training in the VRA and the compliance process to local victims' assistance providers.

State officials would make other changes to be more responsive to all Coloradans if resources were no

object. DCJ officials would like to play a greater role in the statewide COVA training programs, and also would like to establish a statewide toll-free number for victims making inquiries to the DCJ about VRA compliance.⁷³

The DCJ would also like to be able to provide technical assistance to agencies in need of systemic change. Although, the DCJ staff does not track complaints based on the types of crimes perpetrated, they note that the compilation of this information may prove to uncover certain trends or deficiencies in agency compliance efforts. For example, the DCJ staff have noted that the complaint most often reported by domestic violence victims is that the prosecutor fails to consult with the victim before negotiating a plea agreement. With more resources, the DCJ would be able to provide technical assistance in areas where multiple complaints have been filed, for example, to work on administrative or procedural change in hopes of rectifying continual violations.⁷⁴

IMPLEMENTATION PERSPECTIVES, EFFECTIVENESS OF THE PROCESS

Many factors have contributed to the successful beginnings of VRA compliance in Colorado. Participants refer to many intra-committee factors — positive working relationships among diverse members, an honest discourse on the issues, and a shared approach and dedication to improving the criminal justice system — which help foster collaboration and make

⁶⁸ Interview with Carol Poole, Program Administrator, Office of Victims Programs, Colorado Department of Public Safety, Feb. 18, 1997 [hereinafter Poole Interview].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Feldman Interview, *supra* note 15.

⁷³ Poole Interview, *supra* note 68.

⁷⁴ Feldman Interview, *supra* note 15.

relevant their role in compliance enforcement.⁷⁵

The chairperson of the coordinating committee sees the greatest strength of the process as the collaborative relationship that has evolved among members of the coordinating committee. The diversity of the membership makes the breadth of knowledge and perspective of the individuals involved — and therefore the information shared among all members — a necessary element of a collaborative working relationship of this sort.⁷⁶

Participation in the compliance enforcement process also affords members an opportunity to present their opinion on victims' rights implementation based on their professional perspective, while at the same time allowing exposure to new information that affords them an opportunity to reassess their individual role in providing services to victims. According to a representative of the victims' assistance community, the process works because it brings to the table all those who work daily in the criminal justice field to discuss issues surrounding victims' rights. The exposure to new ideas and information helps continually redefine what her responsibility is, as a representative of the victims' community, in improving the administration of justice.⁷⁷

Strengths and Weaknesses

Despite diversity in perspective, those involved with victims' rights

⁷⁵ Siegel Interview, *supra* note 50.

⁷⁶ Siegel Interview, *supra* note 60.

⁷⁷ Comments of Carol Lewis, COVA Executive Director, Victims' Rights Act Subcommittee Meeting, Feb. 18, 1997 [hereinafter Lewis Interview].

compliance in Colorado have fairly consistent ideas about the strengths and weaknesses of the compliance enforcement process. One of the most important strengths, according to subcommittee members and the coordinating committee chair, is the critical role that the DCJ staff plays in the process. The DCJ staff are instrumental in collecting and disseminating information in a manner that is mindful of both the victims' perspective and the challenges faced by the criminal justice system in providing victims' rights. According to the coordinating committee chair, the knowledge and understanding of these issues helps bring a balanced perspective to each case as it is received by the subcommittee.⁷⁸

Another strength is that those involved with VRA compliance approach the process as evolutionary. Because the notion of extending victims formal rights is relatively new within the criminal justice system, the creation of a process that is open to improvements is essential, according to participants. This continual awareness of new and different ways of improving the process undoubtedly will become more essential as more victims become aware of their rights, and seek the services of the coordinating committee.⁷⁹

Finally, participants believe the compliance enforcement process works well within the decentralized political climate of the state. The coordinating committee has approached the development of the VRA compliance enforcement process thoughtfully, focusing on

⁷⁸ Siegel Interview, *supra* note 60.

⁷⁹ Siegel Interview, *supra* note 60. Comments of Libby Bortz, Social Worker, Victims' Rights Act Subcommittee Meeting, Feb. 18, 1997.

problem resolution at the local level. When the message is that victims' rights compliance is under local jurisdiction, and the state is not going to intervene unnecessarily, according to the coordinating committee chair, the idea of victims' rights compliance is most well received and most effectively implemented.⁸⁰

Although there exists significant support for the existing structure of compliance enforcement, participants identify components of the process that could be improved upon. These improvements, however, would most often require resources — both money and participant time — that are currently unavailable. As a result, it is a challenge to develop effective, viable alternatives to improve on perceived weaknesses, while maintaining a workable process.⁸¹

One perceived weakness in the process cited by almost all of the committee members is the fact that it is time intensive. Although a majority of the inquiries fielded by the DCJ staff are resolved in an informal and expedient manner, the formal complaint process is more time-consuming than participants would like. However, to retain legitimacy, the process must allow victims and interested parties time to respond to allegations, and to appeal a subcommittee decision when necessary.⁸²

Members speculate that conducting site visits would be a way to shorten significantly the time involved in complaint resolution. Many participants stated that they would like to be able to meet with the individuals who are parties to the complaint, and take a more "hands

⁸⁰ Siegel Interview, *supra* note 60.

⁸¹ Siegel Interview, *supra* note 60.

⁸² Siegel Interview, *supra* note 60. Feldman Interview, *supra* note 15.

on" approach by conducting site visits to provide a more personal way of finding resolution to VRA compliance questions.

Still other subcommittee members believe that site visits would lend credibility to the compliance review process by encouraging statewide involvement and participation. As many members of the committee and subcommittee are based in the Denver metropolitan area, some are concerned that victims in the mountain regions or on the eastern plains may feel that they do not have adequate access to or input in the process.⁸³ Further, DCJ staff note that an outreach effort to the public — in terms of general education about the VRA and the compliance enforcement function — would be helpful in exposing all citizens to the process. However, neither site visits nor general education outreach are viable under present resource constraints.⁸⁴

In addition, because resources for victims are greater in the Denver-metro area than in many other sections of the state, committee volunteers must be aware that victims' rights compliance may look different or may be more difficult to achieve in some parts of the state than others.⁸⁵ According to information provided by the COVA, in 1996, there were over 175 victim services agencies that had not received the COVA's VRA training, and 118 police departments and 23 sheriff's

departments statewide that did not have crime victim advocates.⁸⁶ Thus, another obstacle in the subcommittee's work is overcoming resistance from agencies that either do not understand or do not feel they have the resources to comply with the VRA, and who are mistrustful of a Denver-based committee dictating local policy.

PROCESS EVALUATION

With the notion of victims' rights compliance still in its infancy in Colorado, attempts by committee members and the DCJ staff to evaluate the process from the perspectives of the victims' community and the agencies charged with providing rights under the VRA have been informal thus far. Committee members and the DCJ staff try to elicit feedback from victims and agencies as the compliance enforcement process progresses, and incorporate the comments of these parties as improvements in the committee infrastructure. However, those involved realize that the small number of cases that have gone through the committee review; the recent addition of the subcommittee as a first layer of review; and the difficulty in creating variables that are quantifiable will likely preclude any effort at empirical evaluation of their compliance procedures.⁸⁷

DCJ staff reports that most of the agencies involved with compliance enforcement are satisfied with the current process, especially the informal manner with which the DCJ staff and the subcommittee approach inquiries and informal complaints. The staff reports that a majority of the

law enforcement and prosecutors' offices — agencies who retain most of the responsibility to provide information about the VRA — readily accept responsibility when it is determined that they have failed to provide victims' rights, while making every effort to reconcile the error. This cooperative response stems in part from the collaborative manner in which the DCJ staff and committee members approach these agencies, communicating to them that the objectives of compliance enforcement are to work together to resolve the problem at hand.⁸⁸

There remains resistance to victims' rights compliance on some fronts, however. Although most law enforcement agencies and district attorneys indicate that victims' rights are a positive addition to the criminal justice system, there are a number of areas in which their responsibilities are not entirely clear.⁸⁹ For example, there are questions involved as to whether rights should be extended to a victim who is a defendant in another case, or when the victim and the offender are otherwise related.

Further, prosecutors note that the addition of victims to criminal proceedings creates a more "client-like" relationship between the victim and the prosecutor. It is difficult at times to avoid fostering a personal relationship with the victim and having his circumstances weigh too heavily in how the case is tried. In other words, the relationship between trying the case in the manner which is most appropriate for the state and trying to provide justice for victims is not always clear, or easily achievable.⁹⁰

⁸³ Comments of Dana Easter, Subcommittee Chair and Deputy District Attorney for the First Judicial District, Victims' Rights Act Subcommittee Meeting, Feb. 18, 1997.

⁸⁴ Feldman Interview, *supra* note 15.

⁸⁵ Comments of Bonnie Benedetti, Former Subcommittee Chair, Denver District Attorney's Office, Victims' Rights Act Subcommittee Meeting, Feb. 18, 1997.

⁸⁶ PROJECT NARRATIVE, COVA TRAINING PROGRAM, 1996 (on file with author).

⁸⁷ Siegel Interview, *supra* note 60.

⁸⁸ Siegel Interview, *supra* note 60.

⁸⁹ Siegel Interview, *supra* note 60.

⁹⁰ Comments of Gus Sandstrom, Coordinating Committee Member and Pueblo District Attorney, Standards Subcommittee Meeting, Feb. 20, 1997.

These effects may be compounded in more rural areas where there are fewer resources to allocate toward victims' rights programs, and as a result, VRA compliance may not be a priority among agencies charged with providing victims' rights.⁹¹

Members of the victims' community strongly support the compliance enforcement process, but believe that there remain some institutional barriers that prevent some victims from accessing fully their rights. For example, a victim who does not present himself or communicate well may find it more difficult to relay why he feels that his rights have been violated.⁹²

Others are concerned about victims' perceptions of what they are going to achieve from the process. Victims who understand their rights under the VRA are typically very satisfied with compliance enforcement. However, those victims who have unrealistic expectations of the process — expecting that a defendant will serve life in prison instead of the ten-year prescribed term associated with the crime — will always be disappointed.⁹³ The DCJ staff cites as its primary responsibility from the very beginning the need to set the appropriate expectation up-front, and to be very clear about what results can be achieved through the compliance enforcement process.⁹⁴

A telling example of victim satisfaction with the compliance enforcement process comes from a woman whose family was victimized by the same offender, for the same crime, in Colorado and a neighboring state. The latter state does not have

⁹¹McGhee interview, *supra* note 33.

⁹²Lewis Interview, *supra* note 77.

⁹³Siegel Interview, *supra* note 60.

⁹⁴Feldman Interview, *supra* note 15.

an enforceable victims' rights act. With the VRA and compliance enforcement process in place, the victim felt as if she were being treated fairly when dealing with officials in Colorado, and felt supported when communicating with both the DCJ staff and the relevant local law enforcement agency. When trying to elicit information from officials in the neighboring state, however, the victim reports that her telephone calls were ignored, and information about the case was difficult to obtain.⁹⁵ The victim's unique situation, and the "vast difference in treatment between the two states," is one example of how those involved with compliance enforcement in Colorado understand that their effort is making a difference.

In an effort to prepare for the future, the DCJ staff are planning on conducting a satisfaction survey of both victims and agencies charged with providing victims' rights later this year. The survey will be sent to those involved with a VRA compliance case to gauge the opinions of individuals and agencies about the compliance enforcement process. The DCJ hopes to elicit information about both the strengths and the weaknesses of the current program, as well as any suggestions for improving the process for the future.⁹⁶

PROGNOSIS FOR THE FUTURE

Participants in the VRA compliance enforcement process are confident that their current structure and evolutionary approach to enforcing

⁹⁵Senate Bill 97-084, 61st General Assembly, State of Colorado.

⁹⁶Feldman Interview, *supra* note 15.

victims' rights will help lead them into the future. As a result of inquiries made by victims whose complaints did not fall under the purview of the VRA, a bill was passed in the 1997 legislative session that will expand the types of crimes for which victims may exercise victims' rights, expand notification requirements to probation officials, and require that victims be informed of the process for enforcing compliance with the VRA. The initiative, Senate Bill 84, sponsored by Sen. Sally Hopper (R-Boulder) will:

- add to the list of crimes to which victim rights apply. New crimes covered under the victims' rights constitutional amendment would include careless driving resulting in death, hit and run when the accident results in death, stalking, ethnic intimidation, and being an accessory to any of these or previously designated crimes;
- expand the definition of critical stages of the criminal justice process to which victims are entitled to notice to include certain probation hearings and proceedings regarding changes in probationary status;
- clarify that a victim must be informed of the process for enforcing compliance with the victim rights requirements;
- give victims the right to be notified by the probation department of certain information concerning persons charged or convicted of crimes against the victim; and
- permit probation departments to apply to the victims and witnesses assistance and law enforcement board for grants to implement victims' rights.⁹⁷

⁹⁷CONNECTIONS, *supra* note 45.

In the short term, those involved with compliance enforcement are focusing their efforts on educating citizens, victims, and criminal justice practitioners about victims' rights. Training initiatives, similar to what the COVA conducts currently, will undoubtedly be instrumental in raising awareness about the victims issue, and encouraging criminal justice practitioners to incorporate the proper notification and participation requirements into their daily practice.

The education and outreach effort will also have the important effect of informing individuals in the victims' community of what the compliance enforcement process will afford them. Again, setting the appropriate expectation about what victims' rights really means will help those afflicted by crime understand that the purview of the VRA is limited.

As more and more citizens learn that there is a mechanism by which their

rights as victims may be enforced, those involved with complaint enforcement will continue to try to improve the process while balancing the time and resources available from committee members with the need to maintain a credible process. In order to be effective, the improvements they undertake will be framed in terms of loose state involvement, remaining conscious of the nature of local control in the state.

MINNESOTA

While Minnesota has a long history of guaranteeing victims both rights and services, state-level policymakers, agency officials, victims' service providers, and criminal justice practitioners are now struggling to balance their commitment to providing extensive and sophisticated services to victims with the additional administrative burdens and costs that such a commitment requires.⁹⁸ Since 1986, Minnesota has had in place an oversight function — the Office of the Crime Victims Ombudsman⁹⁹ (OCVO) — to help strike that balance by ensuring that victims are guaranteed their rights, and are treated fairly and appropriately by criminal justice practitioners.

Ombudsmen, in a general sense, are individuals acknowledged officially by the government to whom citizens may report mistreatment or grievances resulting from government action or inaction. These officials have the power to investigate the allegations of wrong-doing and suggest systemic change to improve the implementation of government programs and delivery of services to citizens.

The role of the ombudsman for crime victims has been a constant fixture in the evolution of the victims' rights movement in Minnesota, although the leadership of the office since the early 1990s has shifted its focus to one of a neutral oversight body, neither a victims' advocate nor a criminal justice practitioner. Today, OCVO officials indicate that their top priority is to approach enforcing the rights and fair treatment of victims in a neutral, objective, and autonomous way, reflecting the philosophy and function of a traditional ombudsman.¹⁰⁰

The OCVO has worked, and continues to work, proactively to ensure victims' rights and strengthen the criminal justice system's response to the needs of crime victims. However, an effort by state policymakers to consolidate victims' programs and services into one agency promises imminent change for all agencies involved in the provision of victims' rights and services in the state. Even within this climate of change, OCVO officials look to the future with the primary goals of improving and expanding their service to the citizens of Minnesota.

LEGISLATIVE HISTORY AND PROGRAM DEVELOPMENT

Minnesota has a long history of providing victims' services and protecting victims' rights. In 1974, the state's Department of Corrections (DOC) established a program for sexual assault victims with grant funding from the U. S. Department of Justice, Law Enforcement Administration Agency (LEAA). In the same year, the Department of Public Safety (DPS) established a crime victims' reparation program.¹⁰¹ Since then, expanding the provision of legal rights and services to victims has remained a priority for policymakers statewide.

In Minnesota, the late 1970s and early 1980s were marked by a growing recognition of the role of the victim in the criminal justice process. According to a state senator who has been a prominent supporter and author of victims' rights legislation over the years, a significant impetus behind the victims' rights movement in Minnesota was the effort to eradicate violence against women, domestic violence, and child abuse.¹⁰² Since that time, coalitions of individuals and nonprofit agencies concerned with the needs of battered women and victims of sexual assault have been active in advancing the cause of victims' rights before state-level decisionmakers.¹⁰³

The provision of more general services to crime victims began in Minnesota in the early 1980s.

Governor Rudy Perpich, supported by various nonprofit groups concerned with the status of victims rights in the state, convened a task

⁹⁸ Interview with Denise Rowe, Victim Services Coordinator, Minnesota Department of Corrections, April 1, 1997 [hereinafter Rowe Interview].

⁹⁹ The term "ombudsman" is used throughout the text as a gender neutral term.

¹⁰⁰ STATE OF MINNESOTA, DEPARTMENT OF PUBLIC SAFETY, THE OFFICE OF CRIME VICTIM'S OMBUDSMAN, 1995–1996 BIENNIAL REPORT, p. 20 [hereinafter 1995–1996 BIENNIAL REPORT].

¹⁰¹ Interview with Ann Jaede, Director of Juvenile Strategic Planning, Minnesota Department of Corrections, March 31, 1997 [hereinafter Jaede Interview].

¹⁰² Interview with Senator Randy Kelly, (R-67th District), [hereinafter Kelly Interview].

¹⁰³ Rowe Interview, *supra* note 98.

force to examine the needs of crime victims in Minnesota.¹⁰⁴ In 1984, the nine-member task force held hearings in seven Minnesota counties to hear concerns and determine the needs of crime victims. The governor sought diverse representation in his selection of state and local criminal justice practitioners, as well as victims' advocates and service providers, for participation on the task force.¹⁰⁵ In the hearings, held throughout 1984, participant testimony indicated that victims wanted and needed a more active voice in the criminal justice system.¹⁰⁶

As a result of the task force meetings and a heightened awareness of the challenges faced by victims of crime, three trends in the way crime victims are treated in Minnesota have emerged over the years: a consistent expansion of victims' rights as defined by the state's Bill of Rights; the creation and augmentation of services to crime victims in the state's DOC and DPS; and the creation of a victims' rights compliance enforcement mechanism — the OCVO — to assure that victims are being treated appropriately and fairly by those agencies charged with the administration of justice.

Victims' Rights in Minnesota

Although Minnesota Crime Victims' Bill of Rights was enacted in 1983, citizens' rights under the measure were greatly expanded as a result of the statewide attention policymakers and victims' assistance providers

brought to the victims' rights issue during the 1984 task force meetings. Today, these issues continue to be a priority for state policymakers.

Crime victims in Minnesota have a wide-range of rights available to them, which are applicable in both adult criminal cases and juvenile delinquency proceedings. The four basic categories of rights afforded to victims of crime in Minnesota are: 1) the victim's right to be notified of his rights and the various stages of the criminal proceeding; 2) the right to participate in the criminal justice process; 3) the right to receive restitution and compensation; and 4) the right to receive compensation and administrative relief through the Crime Victims' Reparations program and the crime victim ombudsman.¹⁰⁷

The following chart depicts the rights afforded to victims of crime in Minnesota. The information is current through the 1996 legislative session.

Victims of domestic violence and sexual assault are provided additional rights in Minnesota. For example, prosecutors in domestic violence cases are required to keep a record of why a case was dismissed. Further, state law requires prosecutors to counsel victims on the benefits and disadvantages of obtaining a protective order against the offender.¹⁰⁸

A victim of any criminal sexual assault may request that a prosecutor make a confidential motion to the sentencing court requesting that an individual convicted of a sex offense or any other violent crime to submit to HIV testing. No reference to the test, or the motion requesting the test,

may appear in a criminal record or be maintained in any record of the court. The results are available only to the victim, or, if the victim is a minor, to his parents. Positive test results are reported to the commissioner of health.¹⁰⁹ Once the victim is informed of the test results, they must be removed from any medical data or health records.

Expansion of Minnesota's Victims' Services

Since the late 1970s, the DOC has taken an active role in the provision of victims' services in the state — both through training and grants management, and the disbursement of state and federal funds for crime victims' services. According to DOC officials, the agency is committed to listening to the voices of the grassroots victims' movement when making decisions about allocating resources and services for victims of crime.¹¹⁰

The first DOC victims' program — the LEAA initiative to combat sexual assault — established a statewide referral system for victims, provided training, and assisted in the development of community-based services to victims of sex crimes. This program was expanded throughout the late 1970s to help coordinate service delivery among four nonurban areas in the state and expand the availability of its services to battered women.¹¹¹

During the 1980s the DOC's role in the provision of victims' services

¹⁰⁴ *One of a Kind*, NATIONAL VICTIM CENTER NEWSLETTER, n.d. (on file with author), [hereinafter *One of a Kind*].

¹⁰⁵ Jaede Interview, *supra* note 101.

¹⁰⁶ STATE OF MINNESOTA, DEPARTMENT OF PUBLIC SAFETY, THE OFFICE OF CRIME VICTIM'S OMBUDSMAN, 1993–1994 BIENNIAL REPORT, p. 9 [hereinafter 1993–1994 BIENNIAL REPORT].

¹⁰⁷ MINN. STAT. ANN. § 611A (West 1987 & Supp. 1996).

¹⁰⁸ MINN. STAT. ANN. §§ 611A.0311 and 611A.0315 (West 1987 & Supp. 1996).

¹⁰⁹ MINN. STAT. ANN. § 611A.19 (West 1987 & Supp. 1996).

¹¹⁰ Rowe Interview, *supra* note 98.

¹¹¹ DEPARTMENT OF CORRECTIONS' VICTIM SERVICES UNIT: HISTORY AND CURRENT STAFFING OF THE VICTIM SERVICES UNIT AND THE ADVISORY COUNCILS. (on file with author) [hereinafter DOC VICTIM SERVICES UNIT].

Notification Rights

*Pretrial Notification*¹¹²

Prior to trial, a victim must be notified of the following: information about victim assistance; programs for victims of sexual assault, incest abuse, and elder abuse; victim/witness protection services; victim assistance hotlines; and domestic violence shelters and programs.

The Crime Victim and Witness Advisory Council must notify victims of their right to apply for compensation to offset financial losses as a result of a violent crime.

Prosecutors' offices must distribute a supplemental notice to crime victims of their rights. They must make a reasonable effort to notify victims of the contents of any plea agreement, or when a case is dismissed.

*Post-Trial Notification*¹¹³

Investigating law enforcement officials must notify victims of: the charge to which the defendant was convicted; the availability of restitution; the time and place of sentencing, and the right to be present and heard at sentencing.

Corrections officials must attempt to notify the victim when an offender is to be released or has escaped from a secure facility, upon written request of the victim.

Participation Rights

*Pretrial Participation*¹¹⁴

Prosecutors must make reasonable efforts to notify and seek input from a victim when referring an offender to a pretrial diversion program rather than prosecuting him.

Victims have the right to request that the prosecutor make a demand that the trial begin within 60 days.

*During the Trial*¹¹⁵

Court officials must provide separate waiting facilities for the victim and the victims' family and the defendant and the defendant's family.

*Post-Trial Participation*¹¹⁶

Victims have the right to make a victim impact statement, to be presented orally or in writing, at the time of sentencing.

At the time of sentencing, the court must inform the victim about the notification services available from corrections officials upon written request.

Compensation and Administrative Relief

*Financial Assistance*¹¹⁷

Crime victims have the right to receive restitution as part of the disposition of a criminal charge or proceeding if the offender is convicted or adjudicated delinquent. The victim may request a probation review hearing if an offender fails to pay the restitution as required by the court.

Victims have the right to receive financial assistance from the state Crime Victims Reparation Board which oversees the disbursement of the states reparations funds.

*Administrative Relief*¹¹⁸

The OCVO is appointed by the commissioner of public safety to investigate the handling of criminal cases by criminal justice practitioners, and promote the highest standards for crime victims.

*State Victims' Services*¹¹⁹

The Crime Victim Crisis Center operates under the direction of the commissioner of corrections in two Minnesota counties and provides direct crisis intervention and victim assistance services; and conducts education and outreach about the criminal justice process, victimization, and crime prevention.

grew dramatically. With the passage of the federal VOCA in 1984,¹²⁰ new moneys became available to support victims' assistance programs. Further, state policymakers broadened the purview of the DOC's responsibilities to provide services to victims of crime by creating and funding services for abused children and general crime victims. This enhanced state and federal funding made available more money for advocacy services statewide while grant funds were designated for programs addressing special populations of victims — people

of color, people with disabilities, and the gay and lesbian population.¹²¹

A restructuring process in 1991 modified the DOC's victims' service delivery approach. The mission of the DOC's Crime Victims Unit (CVU) was revised to focus attention on the agency's role as a grant administrator and provider of technical assistance to community victims' assistance programs, replacing the prior

¹¹² MINN. STAT. ANN. §§ 611A.02–611A.03 (West 1987 & Supp. 1996).

¹¹³ MINN. STAT. ANN. §§ 611A.039, 611A.06 (West 1987 & Supp. 1996).

¹¹⁴ MINN. STAT. ANN. §§ 611A.031, 611A.033 (West 1987 & Supp. 1996).

¹¹⁵ MINN. STAT. ANN. § 611A.034 (West 1987 & Supp. 1996).

¹¹⁶ MINN. STAT. ANN. §§ 611A.037, 611A.038, 611A.0385 (West 1987 & Supp. 1996).

¹¹⁷ MINN. STAT. ANN. §§ 611A.045, 611A.046, 611A.53 (West 1987 & Supp. 1996).

¹¹⁸ MINN. STAT. ANN. § 611A.43, (West 1987 & Supp. 1996).

¹¹⁹ MINN. STAT. ANN. § 611A.74, (West 1987 & Supp. 1996).

¹²⁰ 42 U.S.C. §§ 10601–10604.

¹²¹ DOC VICTIM SERVICES UNIT, *supra* note 111.

objective of promoting a violence-free society. Further, the legislature mandated that advisory councils provide the commissioner of corrections with information and recommendations concerning grant awards and state policies impacting battered women, victims of general crime, and victims of sexual assault.¹²²

In fiscal year 1997, the CVU provided approximately \$12 million in state and federal funding to over 130 programs statewide, including grants to private nonprofit agencies, Native American reservations, and local units of government. Standards have been established to ensure that funded programs adhere to sound administrative practices in providing a range of specialized services to crime victims.¹²³

The DPS also has a long history of providing services to victims of crime. Since 1974, The Minnesota Crime Reparations Program has had as its goal the restoration of a portion, if not all, of a victim's financial losses resulting from crime.¹²⁴ The reparations program covers basic expenses for the primary victim of a crime, including:

- medical or dental care;
- ambulance service;
- prescriptions;
- medical mileage;

- rehabilitative equipment;
- mental health care;
- funeral expenses;
- lost wages;
- replacement child care and household services; and
- loss of support for dependents of homicide victims.¹²⁵

The reparations program since 1991 has also allowed for limited assistance to family members of victims, also known as "secondary victims." In homicide cases, for example, the spouse or young children of the deceased are entitled to full benefits, while siblings or adult children of a victim may apply to the reparations program to cover the costs of counseling sessions.¹²⁶ The reparations program in Minnesota is funded by allocations from the state's general fund, wages withheld from inmate labor, civil awards, and federal VOCA funding.¹²⁷

In 1985, the Minnesota legislature created within the DPS the Crime Victim and Witness Advisory Council (CVWAC), whose primary purpose, according to its director, is to conduct training for state and local agencies on victims' rights and services; facilitate programmatic development of victims' services through technical assistance; and advocate for changes in state laws or policies that would impact positively victims of crime.¹²⁸ The council is composed of

16 individuals representing law enforcement, the judiciary, prosecution and defense attorneys, the medical profession, crime victim services providers, and the general public.

THE OFFICE OF THE CRIME VICTIM OMBUDSMAN

What is an Ombudsman?

As the complexity of society and the reach of government grows, the concerns of the individual citizen may become lost among the myriad of laws, administrative procedures, and regulations that govern our society. To help preserve individual protections, many public entities have created ombudsman offices to help citizens become more connected with the processes of government. First stemming from the Swedish word *umbud*, or proxy, the ombudsman position allows a neutral party to look critically into unreasonable, unfair, oppressive, or unnecessarily discriminatory acts by government officials.¹²⁹

The ombudsman tradition in Minnesota began in 1974, when the position of ombudsman for corrections was created to examine and resolve inmate grievances in an era when the corrections system was undergoing significant reform.¹³⁰ Since then, nine other ombudsman positions have been established in Minnesota. The Ombudsman Roundtable, a voluntarily-created coalition of the 10 ombudsmen in

¹²² DOC VICTIM SERVICES UNIT, *supra* note 111.

¹²³ DOC VICTIM SERVICES UNIT, *supra* note 111.

¹²⁴ DEPARTMENT OF PUBLIC SAFETY BIENNIAL REPORT 1996: SERVING CRIME VICTIMS SINCE 1974: CRIME VICTIM AND WITNESS ADVISORY COUNCIL, CRIME VICTIMS REPARATIONS BOARD, at p. 13.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*, at p. 17.

¹²⁸ Interview with Sara Schlauderaff, Staff Member, Minnesota Crime Victim and Witness Advisory Council, April 2, 1997 [hereinafter Schlauderaff Interview].

¹²⁹ OMBUDSMAN ROUNDTABLE, MAKING GOVERNMENT RESPONSIVE TO CITIZENS: A COMPREHENSIVE OVERVIEW WITH RECOMMENDATIONS FOR EFFICIENT OMBUDSMAN SERVICES, Dec. 1995, at 7 [hereinafter OMBUDSMAN REPORT].

¹³⁰ OMBUDSMAN REPORT, *supra* note 129, at A-6.

the state to proactively facilitate cooperation and collaboration among the ombudsmen's offices, define an ombudsman's responsibilities as "an official intermediary between citizen and government to counteract the delay, injustice, and impersonality of bureaucracy. [The] powers of an ombudsman include the power to receive and investigate complaints, the power to make findings and recommendations, the power to publish reports on those findings and recommendations."¹³¹

The ombudsman positions in Minnesota are unique, and differ from ombudsmen in other states. Unlike general jurisdiction ombudsmen who have broad investigative authority over various government actions, Minnesota's "specialty" ombudsmen target underserved populations and oversee the specific government agencies serving that group of individuals.¹³²

Although the ombudsman position is created by the legislature, ombudsmen are appointed by the governor or another executive branch authority. Currently, eight of the 10 ombudsman offices are housed within an existing state agency, while the remaining two — the ombudsman for corrections and the ombudsman for mental health and mental retardation — are separate state agencies.¹³³ The ombudsmen positions in Minnesota are a full-time commitment, and no person may serve as an ombudsman while holding any other public office.¹³⁴

The Office of the Crime Victims Ombudsman

The Crime Victims' Ombudsman views her office as a problem-solving entity. She perceives her role as one of advocating broadly for fairness — not necessarily as an advocate either for the victim or for the criminal justice system.¹³⁵ Rather, it is the mission of the OCVO to promote the highest attainable standards of competence, efficiency, and justice for crime victims and witnesses in the criminal justice system. The office exists to discourage mistreatment of crime victims and ensure compliance with statutory protection for crime victims and witnesses.¹³⁶ According to Minnesota statute, the duties of the crime victim ombudsman are to investigate complaints concerning possible violations of the rights of crime victims or witnesses, including the delivery of services by various victims' assistance and reparations programs, and complaints of mistreatment by state and local criminal justice agencies.¹³⁷

The purview of the OCVO goes beyond that of enforcing the statutory rights of crime victims. The ombudsman has the discretion to investigate any action or inaction on the part of an agency and seeks to address actions that are contrary to rule or law and behavior that is alleged to have been unreasonable, unfair, oppressive, unclear or inadequately explained, or inefficiently performed.¹³⁸

The law further defines appropriate methods of conducting these investigations, including acting as a liaison between victim and agency, promoting activities that strengthen criminal justice systems, preventing violations of a victim's right, and establishing procedures for referral to appropriate victims' services agencies. The law also requires the OCVO to establish a toll-free number to allow crime victims outside of the Minneapolis/St. Paul metropolitan area access to the services provided by the office.¹³⁹

The statute creating the OCVO defined the primary features that make the ombudsman unique as an oversight body:

◆ **Nonpartisanship.**

The ombudsman, although created by the legislature and appointed by the DPS Commissioner, acts relatively autonomously. The only legislatively-mandated reporting requirement of the OCVO is a biennial report to the legislature and governor concerning its activities during the preceding biennium. Further, the ombudsman's office may provide testimony necessary to enforce the responsibilities of the office, however at no time may OCVO officials be compelled to testify before any judicial or administrative body for any other purposes.¹⁴⁰

◆ **Investigative Discretion.**

The base of the ombudsman's power comes from the discretion with which an investigation is pursued. The statute clarifies that the ombudsman may investigate any action of the criminal justice

¹³¹ OMBUDSMAN SERVICES IN MINNESOTA, OMBUDSMAN ROUNDTABLE ORGANIZATION, n.d. (on file with author)

¹³² 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 9.

¹³³ OMBUDSMAN REPORT, *supra* note 129, at 9–10.

¹³⁴ MINN. STAT. ANN. §§ 611A.74 (West 1987 & Supp. 1996).

¹³⁵ Telephone Interview, Laura Goodman–Brown, Crime Victim Ombudsman, Office of the Crime Victim Ombudsman, Mar. 27, 1997.

¹³⁶ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 1.

¹³⁷ MINN. STAT. ANN. 611A.74 (West 1987 & Supp. 1996).

¹³⁸ THE OFFICE OF CRIME VICTIM'S OMBUDSMAN, INVESTIGATIVE GUIDELINES, Oct. 5, 1995, 2 [hereinafter INVESTIGATIVE GUIDELINES].

¹³⁹ MINN. STAT. ANN. § 611A.74 (West 1987 & Supp. 1996).

¹⁴⁰ MINN. STAT. ANN. § 611A.74 (West 1987 & Supp. 1996).

system or a victim assistance program. In addition to responding to requests for investigations by citizens, the ombudsman has the discretion to inspect the actions of administrative agencies on her own initiative, and may pursue cases based on reports in the press. The ombudsman may request and examine information from agencies — including all records and documents of all agencies of the criminal justice system and victim assistance programs — to fulfill her responsibilities.¹⁴¹

◆ **Power of Publicity.**

Unlike the courts, the ombudsman has no right to reverse a decision, and has no direct control over judicial or executive branch decisionmaking. The ombudsman's reach is limited to investigating alleged abuses and proposing remedies when appropriate. According to Minnesota statute, the ombudsman may make public — both to the press and the legislature — her findings after an investigation. This statement must include a statement from the administrative agency with an explanation in defense of its action or inaction, or its rejection of the ombudsman's proposals.¹⁴²

After a complaint is reported, the OCVO staff assess the needs of the victim, determine whether referrals should be made to other agencies, and inform the complainant of the most appropriate manner for resolving the grievance.¹⁴³ In circumstances in which the OCVO is better equipped

than another agency to address the complainant's concern, however, a case is opened on the victims' behalf. After eliciting general information about the nature of the crime and the complaint, the OCVO sends to the complainant a packet of materials that explains the role of the office and the investigative process, and includes a form on which the complainant must provide written consent for the OCVO to begin an investigation.¹⁴⁴

The OCVO next gathers information from the named agency relevant to the victim's allegations. The investigator may send out letters to the agency identified by the complainant, requesting information concerning its contact with the victim. Interviews with agency representatives are scheduled when necessary. Upon completion of the interviewing process, more supporting documentation is ordered from the agency when appropriate.¹⁴⁵

Based on the information gleaned in the investigation, the investigator must determine whether any statute, policy, or practice was violated, or if mistreatment occurred. The investigator must determine the most appropriate resolution to the problem, plan for any subsequent follow-up with either the agency or the victim, and present the findings to the ombudsman.¹⁴⁶

OCVO officials may make recommendations to the agency in efforts to rectify citizens' complaints. If authorities do not accept the recommendations of the ombudsman, however, the OCVO has no

enforcement or disciplinary powers. The ombudsman's principal means to secure remedial action is through making public, both to the legislature and the press, the action or inaction of an agency.

For example, if the ombudsman finds that the agency has acted in either an inappropriate or unlawful manner, its officials must be notified and given 30 days to respond to the OCVO's findings and recommendations before they are made public.¹⁴⁷

Resolutions to victims' complaints have varied over the years and have depended on the individual circumstances of each case. Examples of the range of remedies prescribed by the OCVO over the last 10 years are:

- referring complainants to other agencies or organizations;
- explaining to citizens the laws, rules, and policies of government so that they better understand how a government agency operates;
- acting as a liaison between citizens and agencies to facilitate communication and understanding between victims and criminal justice practitioners;
- requesting that an agency issue an apology;
- reviewing agency or department documentation concerning a specific case to determine whether the agency has treated the citizen appropriately;
- developing model policies and procedures to help agencies to correct systemic procedures that negatively impact victims; and

¹⁴¹ MINN. STAT. ANN. § 611A.74 (West 1987 & Supp. 1996).

¹⁴² MINN. STAT. ANN. § 611A.74 (West 1987 & Supp. 1996).

¹⁴³ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 10.

¹⁴⁴ OFFICE OF THE CRIME VICTIMS' OMBUDSMAN, BASIC CASE FLOW, on file with author Feb. 5, 1997, pps. B-4-B-5 [hereinafter CASE FLOW].

¹⁴⁵ INVESTIGATIVE GUIDELINES, *supra* note 138 at p. 2, CASE FLOW, *supra* note at B-5.

¹⁴⁶ INVESTIGATIVE GUIDELINES, *supra* note 138 at p. 6.

¹⁴⁷ INVESTIGATIVE GUIDELINES, *supra* note 138 at p. 6.

- recommending legislative changes to laws affecting victims of crime.¹⁴⁸

The types of cases in which the ombudsman and her staff may intervene and investigate reflect the broad statutory authority of the OCVO. Since 1992, the OCVO has documented and intervened on several cases ranging from perceived mistreatment of victims by criminal justice officials, to those where OCVO officials worked with law enforcement investigators and a victim's wife after the exhumation of the victim's body to determine definitively the cause of his death.

The Minnesota statute allows OCVO staff to intervene on a victim's behalf when he feels that he is not being treated appropriately by the criminal justice system. Many complaints are resolved by "assists," when a victim's concerns may be addressed quickly by an OCVO investigator contacting the criminal justice official whose action is in question. One example of this type of victim complaint came from a homicide victim's mother who felt that she was not receiving timely information regarding the status of the investigation into her daughter's death. The mother did not contact the OCVO with a specific victims' rights violation, but perceived that she was being mistreated by the law enforcement agency because she was unable to obtain information on the status of the case.

OCVO officials resolved the complaint quickly by contacting the lieutenant in charge of the investigation to relay the mother's concerns. The lieutenant was receptive and agreed to contact the victim's family. According to OCVO records, the very next day, the

¹⁴⁸ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 5.

victim's mother advised OCVO officials that a representative of the law enforcement agency contacted her, apologized for any mistreatment, and promised to notify her in a timely fashion of the progression of the case. According to the OCVO account, she was satisfied with the action and requested that the OCVO terminate its action on the complaint.¹⁴⁹

OCVO officials note that resolving complaints with assists, as with this example, is fairly common, and that concerns about poor treatment — not only victims' rights violations — are repeatedly brought to the attention of OCVO officials by crime victims in Minnesota.¹⁵⁰

Another common method that the OCVO employs to assist victims of crime is to aid in clarifying for victims why the criminal justice system operates the way it does and why criminal justice practitioners make the decisions they do. One example of this sort came from a sexual assault victim's mother who contacted the OCVO when she learned that the prosecutor assigned to her daughter's case did not intend to bring charges against the assailant.

The OCVO reviewed the case and the prosecutor's reasoning for declining prosecution. As a result of the OCVO investigation, the prosecutor sent a letter to the victim and explained in detail his reasoning for not bringing charges. While still disappointed in the charging decision, the mother better understood the prosecutor's reasoning in not trying the case.¹⁵¹

¹⁴⁹ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 12.

¹⁵⁰ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 12.

¹⁵¹ 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 28.

Other complaints received by the OCVO relate to direct violations of Minnesota's Victims' Bill of Rights. In Minnesota, crime victims have the right to request notification from corrections officials when offenders are released from custody. In one situation, an assault victim contacted the OCVO seeking assistance when he could not get a consistent response from officials concerning the release date of his assailant.

When OCVO officials inquired, they found that the offender's history and circumstances were complex: during the period of time the assailant was on probation for assault against the complainant, he was charged with attempted murder in another county. To resolve the assault victim's complaint, OCVO officials worked with the offender's case worker to compile a lengthy case history of the offender, summarize his charges, sentences, and release dates, and forward that information to the complainant.¹⁵²

A more unusual example of the OCVO's powers to intervene emerged in a case where the cause of death of a victim was concluded incorrectly by law enforcement officials. In 1991, police officials found the body of a deceased man in his automobile, which had veered off the highway. Law enforcement officials and the medical examiner determined his cause of death was accidental.¹⁵³ However, after the man was buried, workers at a wreckage yard found in his car a cap pierced by a bullet hole, indicating that the man's death may not have been accidental, but may have been caused by a gunshot wound.¹⁵⁴ His body

¹⁵² 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 26.

¹⁵³ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 11–12.

¹⁵⁴ Maureen M. Smith, *Ombudsman Helps Crime Victims Find Peace*, Minneapolis Star Tribune, Jan. 3, 1994 [hereinafter *Peace*].

was exhumed and a second autopsy revealed that he in fact had been shot.¹⁵⁵

The OCVO intervened using a variety of techniques. The OCVO negotiated with the law enforcement agency on behalf of the victim's wife to resolve the concerns that arose from the case investigation, and provided training on victims' rights and the effects of victimization to employees of the law enforcement agency in question.

Perhaps most importantly, the OCVO met with the victim's wife and representatives of the law enforcement agency, who afforded her the opportunity to express her dissatisfaction with them and receive their apology. This acknowledgment of error was significant for the victim's wife. "It doesn't matter if a case lands on its feet," the ombudsman was quoted as saying after this case was resolved.

"The victim suffered a lot during that whole process. She was angry and upset."¹⁵⁶ Meeting with representatives of the law enforcement agency the gave her the satisfaction of knowing that this tragedy would not happen to another family, that officers were trained, and that policies were developed to ensure more accurate investigations, according to the OCVO.¹⁵⁷

Finally, the office, through its ability to make recommendations on policies and procedures that dictate the actions of criminal justice agencies can affect systemic change as well. One example of this type of intervention occurred when the OCVO received three separate complaints involving one county's prosecutor and victim/witness

program. All three victims reported poor service from these criminal justice agencies, and had specific complaints that ranged from excessive trial delays to little or no communication with victims.

Because the complaints were so similar in nature, OCVO investigators conducted a systemic investigation of the county's program. They recommended a needs assessment to determine if the county should restructure its current services, or if it needed more funding and increased staff. The recommendation was forwarded to the DOC, which conducted the assessment. The DOC has completed its analysis, and currently is working with the county to help it meet its goals of improved services to crime victims.¹⁵⁸

The OCVO, in its *Biennial Reports*, has documented "words of praise" from crime victims whom the office has assisted. A sampling of these comments which follow is reflective of the goals of the office to ensure fair and responsive government service to crime victims in a professional manner.¹⁵⁹

- "The investigator showed compassion to my needs and handled my complaint with professionalism. She is an asset to your office."
- "You provide a much needed service."
- "Just having someone skilled to look at our case was comforting."
- "The complaint was investigated quickly and efficiently."

It also publicly commends criminal justice agencies that

provide exceptional service to victims or who have undergone tremendous improvement in their delivery of services to victims. Criteria for selection for a public commendation are: flexibility, creativity, timeliness of response, cooperation, and commitment to share information with victims.¹⁶⁰

THE EVOLUTION OF THE OCVO

The OCVO office has evolved significantly since its inception, both with respect to leadership and mission. According to its *1995–1996 Biennial Report to Minnesota Policymakers*, the office has made several significant strides in the past decade. The scope of the ombudsman's oversight and investigative discretion, for example, grew after the legislature amended the state's Crime Victims' Bill of Rights to provide victims the right to give an impact statement and expanded a victims' right to notification and participation in the criminal justice process.¹⁶¹

As important, however, was the change that took place in 1992, with the appointment of the current ombudsman. Prior to 1992, the OCVO acted similarly to a victims' advocate, even though it was part of the criminal justice system. "Unlike a private [victims'] advocacy agency, this office is part of the [state's] system," according to the prior ombudsman.¹⁶² The OCVO mission and function has evolved since then to focus on neutrality and impartiality, which more clearly

¹⁵⁵ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 11–12.

¹⁵⁶ *Peace*, *supra* note 154.

¹⁵⁷ 1993–1994 BIENNIAL REPORT, *supra* note 106, at p. 11–12.

¹⁵⁸ 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 27.

¹⁵⁹ 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 33.

¹⁶⁰ 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 34.

¹⁶¹ 1995–1996 BIENNIAL REPORT, *supra* note 100, at p. 19.

¹⁶² *One of a Kind*, *supra* note 104.

imparts the philosophy and function of a traditional ombudsman.¹⁶³

The most important function of the ombudsman is to maintain neutral relationships with the other criminal justice and victims' services agencies.¹⁶⁴ According to OCVO officials, this autonomy is critical because the OCVO depends on other criminal justice and victims' services agencies for information on a given case. "If it appears we are taking sides," commented one official, "then we are not going to get cooperation from these agencies, nor will our investigations retain merit among other criminal justice practitioners."¹⁶⁵

This shift toward neutrality and objectivity in the OCVO's function has resulted in the creation of a systematic case management system as well as the recording and collection of statistics. The creation of objective management procedures enhances the ability of staff members to approach each case objectively. Further, these tools help assure that each investigation is conducted in a manner in which all parties understand clearly the issues the complainant is raising, the problems the parties are expected to address,

and the OCVO's expectations regarding resolution of the problem.¹⁶⁶

DATA COLLECTION & STAFFING RESOURCES

Over the past four years, the OCVO has kept extensive statistics that reflect its activity as well as types of victims who seek its services. Specifically, the OCVO tracks the number of inquiries made to the office, the end result of its cases, and the number of complaints filed by crime type.

Inquiries and Caseload

Inquiries to the OCVO increased substantially from 1992 to 1993, peaked in 1994, decreased slightly in 1995, and increased again in 1996. Officials cite several reasons for the increased demand for services provided by the office. One factor likely is due to the outreach efforts that the office has made statewide. According to the OCVO's 1995–1996 biennial report, the increase in caseload "is largely due to providing training and information to the public

about our services and abilities to affect positive responses from criminal justice organizations."¹⁶⁷

Another reason for the increased number of calls may stem from heightened media attention to the office from both the local and national press. An extensive article about the OCVO was published in *The Minneapolis Star Tribune* in January 1994. The article subsequently was picked up by the Associated Press and published in other dailies nationwide, providing the OCVO with more exposure than any other single public relations piece to date.¹⁶⁸

The following chart depicts the inquiries filed with OCVO since 1993.

¹⁶³ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 20.

¹⁶⁴ Interview with Kim Ross, ombudsman investigator, Office of the Crime Victim Ombudsman, April 1, 1997 [hereinafter Ross Interview].

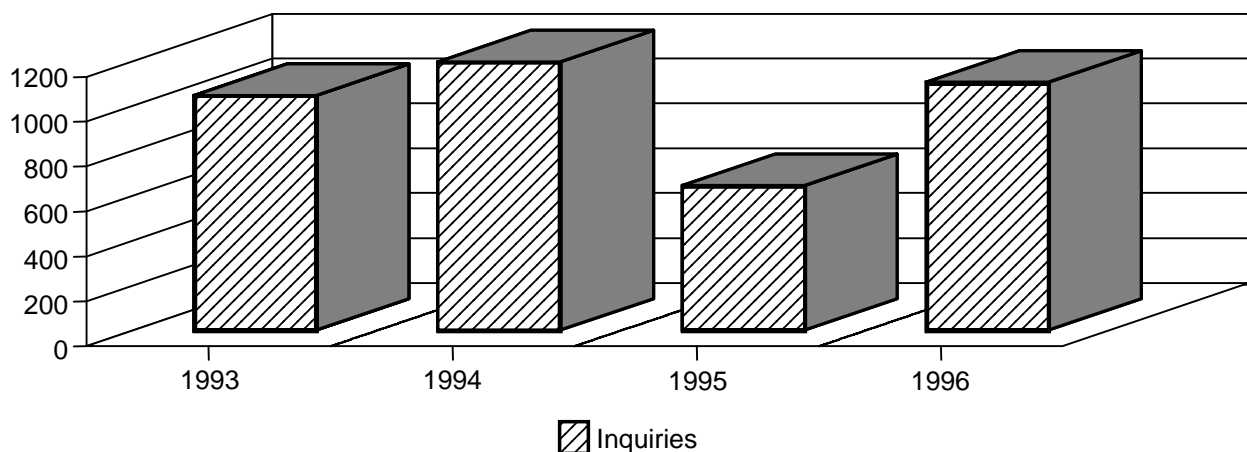
¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 41.

¹⁶⁸ 1993–1994 BIENNIAL REPORT, *supra* note 106 at p. 19.

Inquiries to the Crime Victim Ombudsman 1993–1996



It also is important to note that data for the years of 1995 and 1996 do not reflect the numerous telephone calls to the office in which citizens were given immediate responses or referred to other agencies. The OCVO has limited its reporting for the *Biennial Report* to include only the cases in which a significant level of investigation, consultation, or research is undertaken. While the hundreds of unrecorded requests handled by the office each year, according to state officials, represent an important element of the office's services, the OCVO has decided in recent years not to maintain records of such requests because of the minimal expenditure of resource required to respond.¹⁶⁹

Case Disposition

The OCVO also collects statistics that illustrate the end result of the cases brought before the ombudsman. In 1993 and 1994, the OCVO staff broke down investigations by result into the following categories:

- Assist/Referral: The OCVO determined that the complainant could be better served by another agency or service, or when the extent of the investigation was limited and the problem was resolved quickly (usually within 48 hours of complaint filing);¹⁷⁰
- Substantiated-Compliance: The OCVO determined that the complaint was substantiated, but the agency was found to be in compliance with victims' rights laws;

- Substantiated-Noncompliance: The complaint is found to be substantiated and it was determined that the agency violated victims' rights laws;
- Unsubstantiated: The OCVO could not determine conclusively that the complaint had merit; and
- Unfounded: The OCVO determined that the complaint had no merit, and that the agencies had acted appropriately and legally.

The statistics for those years are as follows (in percent):¹⁷¹

	1993	1994
Assist/Referral	16	40
Substantiated-Compliance	30	12
Substantiated-Noncompliance	10	4
Unsubstantiated	18	34
Unfounded	6	10

The general trend toward aiding crime victims with "assists" has continued in the most recent biennium. In 1995 and 1996, the OCVO collected information about the end result of investigations by using the following categories:

- Assists: When resolution to a complaint follows quickly after the complaint is filed, and the

problem is resolved within a short time span;¹⁷²

- Exonerated: Cases in which the OCVO finds that the reported act did not occur, the subject of the complaint was not involved, or the acts occurred but were justified, lawful, and proper;
- Partly justified: Those that indicate that some of the allegations were true;
- Justified: Cases in which it was determined that reported acts occurred; and
- Discontinuance: Those in which the OCVO stops short of a full investigation due to a lack of cooperation from the complainant.¹⁷³

The statistics for those years break down as follows (in percent):

	1995	1996
Assist	60	82
Exonerated	2	10
Partly Justified	2	1
Justified	0	2
Discontinued	3	1

¹⁶⁹ 1995-1996 BIENNIAL REPORT, *supra* note at 100 at p. 41.

¹⁷⁰ Ross Interview, *supra* note 164.

¹⁷¹ 1993-1994 BIENNIAL REPORT, *supra* note 106 at pps. 26-27.

¹⁷² The OCVO stopped reporting statistics about referrals in the last biennium, because of these contacts' brevity, and the minor expenditure of the resources required of the office.

¹⁷³ 1995-1996 BIENNIAL REPORT, *supra* note 100 at 41.

This trend toward aiding victims through assists is preferable in cases where it is possible to find resolution in a short time frame, and precludes the more bureaucratic procedures associated with an extended investigation. According to OCVO officials, the OCVO is most useful to the citizen when it can direct them to the appropriate resource, law, rule, or policy, or when it can resolve a complaint immediately. They note, however, that some complaints do warrant a more comprehensive investigation. In those instances

the results tend to affect a systemic change, rather than immediate relief for the victim.¹⁷⁴

Type of Crime Committed

Finally, the OCVO's statistics track the types of crimes perpetrated against victims who seek the services of the ombudsman's office. For the years 1993 through 1996, between 81 and 86 percent of the cases filed were brought by individuals

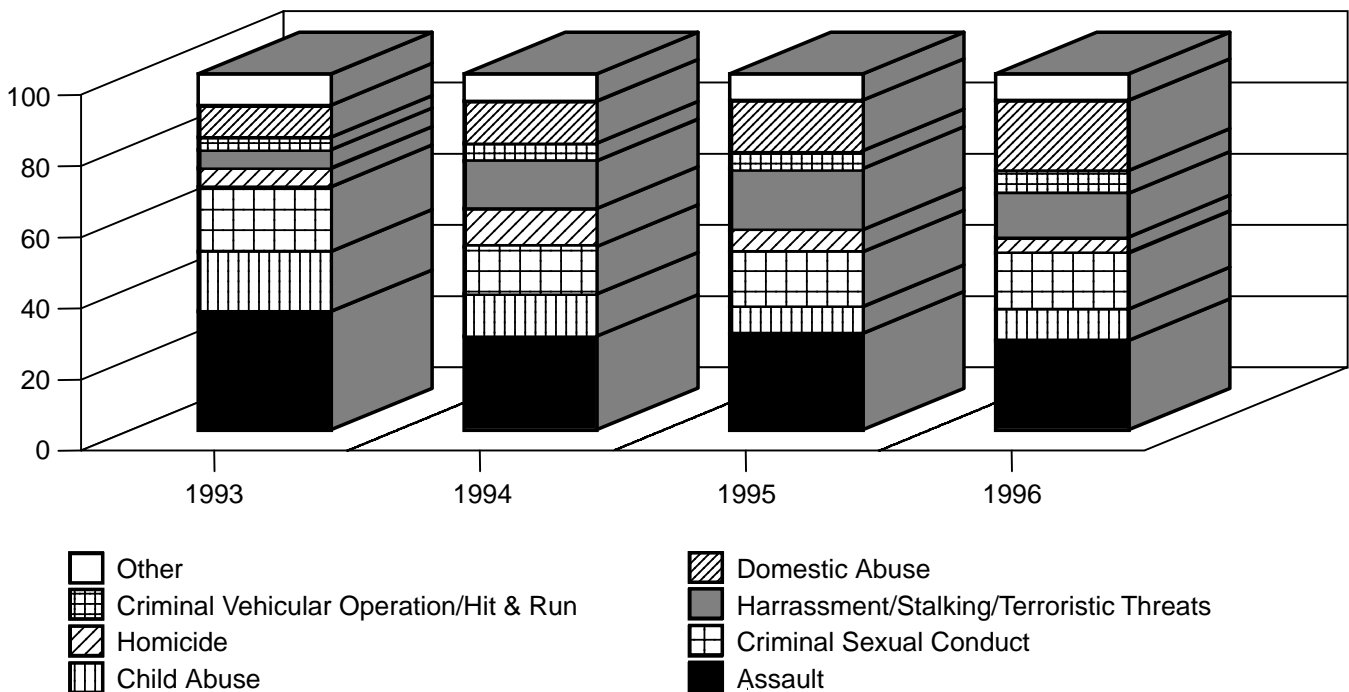
victimized by crimes against their person, while the remaining 14–19 percent were victims of property crime.¹⁷⁵

The following chart provides a comparison of the complaints by crime type for crimes against persons for the years 1993–1996.

¹⁷⁴ Ross Interview, *supra* note 164.

¹⁷⁵ 1993–1994 BIENNIAL REPORT, *supra* note 106 at p. 31. 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 51.

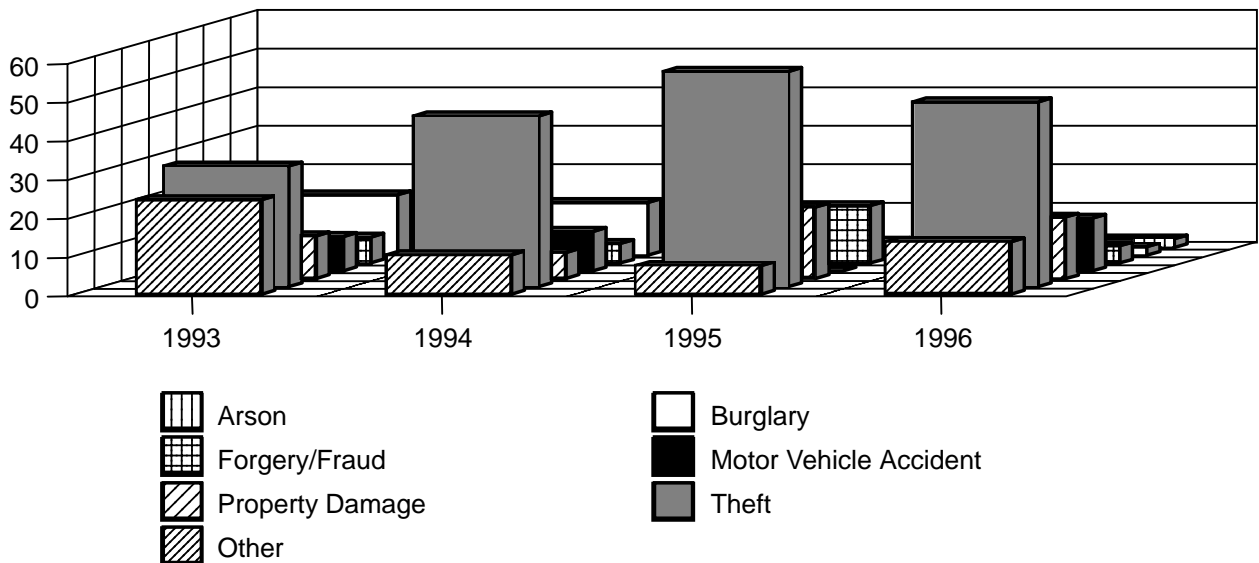
Complaints by Crime Type: Crimes Against Persons



The following chart provides a comparison of the complaints by

crime type for crimes against property for the years 1993–1996.

Complaints by Crime Type: Property Crimes



Staffing Resources

As the caseload of the OCVO office has expanded, so too has the need for resources. Currently, the office is staffed by the ombudsman, a deputy ombudsman, whose responsibility is to conduct investigations and training, three ombudsman investigators, and one volunteer coordinator/administrative assistant.¹⁷⁶ The OCVO also relies on volunteers and student interns, whose primary responsibilities include acting as intake officers. In the 1995–1996 biennium, six volunteers/interns served at the OCVO office, logging over 700 hours.¹⁷⁷

The OCVO's budget has remained constant since the 1995 fiscal year.

¹⁷⁶ 1995–1996 BIENNIAL REPORT, *supra* note 100 at pps. 16–17.

¹⁷⁷ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 18.

The office currently is funded out of revenues from the state's general fund, and a from the DOC budget, however, effective with fiscal year 1998 appropriations, all OCVO funding will come from the state's general fund. OCVO officials report that scarce resources continually pose a challenge and that the reach of the office and the ombudsman function would be greater if funding were available for more professional staff.¹⁷⁸ Resource constraints require cases to be managed according to urgency, rather than on a first-come-first-served basis, according to officials. Further, the small number of OCVO personnel impedes the staff's participation on various boards and committees concerned with criminal justice and victims issues.¹⁷⁹

¹⁷⁸ Ross Interview, *supra* note 164.

¹⁷⁹ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 14.

STRENGTHS AND WEAKNESS OF THE OCVO

Despite extensive victims' rights and a sophisticated system of victims' services, there remains concern in Minnesota about whether protections for victims are being adequately provided. The ever growing number of calls fielded by the OCVO would suggest that there remains situations in which victims are not provided their rights, or in which they are not being treated appropriately by criminal justice practitioners or victims' services agencies.

There are many features of the OCVO infrastructure that allow it to both effectively respond to victim complaints concerning the criminal justice system, and contribute to systemic change to improve the system of justice for the future. The broad investigative powers of

the OCVO, for example, are one of its greatest strengths in overseeing the criminal justice system in its provision of victims' rights. The ability to examine allegations of mistreatment or statutory violation on the part of an agency, according to OCVO officials, allows it to not only investigate, but to enforce good government service.¹⁸⁰

OCVO officials also cite the office's ability to access confidential information as a critical feature for facilitating some investigations. Because the information collected by the OCVO is classified as confidential, citizens and government agencies can feel comfortable that their communications with the office will not be disclosed.¹⁸¹

Another benefit of the OCVO's oversight is its simple, expedient manner of handling complaints. The direct and informal manner with which complaints are handled departs from the more time-intensive process of civil litigation in holding accountable state agencies. According to OCVO officials, a primary goal in the creation of the ombudsman position is to allow for the speedy and inexpensive resolution to conflicts between victims and criminal justice providers, and to provide recourse to victims beyond filing civil complaints against the agencies charged with the administration of justice.¹⁸²

Finally, and perhaps most importantly, the oversight function of the OCVO is beneficial because it affords victims an opportunity to raise questions about the actions of an agency. OCVO officials often find that, in cases in which a victim feels

revictimized by participation in the criminal justice process, he merely wants an affirmation and an acknowledgment that he was treated badly, and an apology from the agency if it is found that it did not handle the victims' rights or needs appropriately.¹⁸³ According to DOC victims' service providers, referring victims to the ombudsman creates another opportunity for them to access services, get an answer to a question, and become whole after their victimization.¹⁸⁴

Both OCVO staff and its observers, however, note room for improvement. A primary concern for OCVO officials involves their ability to strike a balance in their investigative processes between the subjectivity of individual case assessments and developing a body of consistent rulings and precedent. The staff have observed that it is sometimes difficult to rule in a manner that is fair in light of the specific factors of each case, yet consistent with prior interpretations of what the OCVO considers appropriate and legal treatment of victims. Because the OCVO acts as the final arbiter in the enforcement of victims' rights laws, it does not benefit from case law or other factors to help guide its interpretation of the facts and allegations of the case. Although the OCVO office has not received complaints about inconsistency from agency professionals, some practitioners are concerned about the subjectivity of the ruling process in general. In order to mitigate this concern, the OCVO is developing a computer system that will allow investigators more access to previous cases and the ability to review the criteria used in previous OCVO rulings.¹⁸⁵

Another weakness perceived by staff relates to resources. Officials cite outreach to the more rural areas of the state — to citizens, victims of crime, and criminal justice practitioners — as a primary concern for the office. Members of the OCVO staff respond to requests for training, and try to do as much outreach as the small staff and growing caseload can accommodate. Over the past several years, the OCVO has trained both police recruit classes and veteran officers; victim advocacy groups; sexual assault counselors; collegiate-level criminal justice classes and other professional and community groups that request training.¹⁸⁶

Further, the OCVO trains other professionals about its function at the CVWAC coordinated training conferences.¹⁸⁷ These conferences include two levels of training — introductory and advanced — on victims' rights for criminal justice practitioners three times per year. In these six sessions, information about the role of the crime victims' ombudsman is presented. However, CVWAC officials stress that information about the ombudsman function is only a small part of their broad, comprehensive training on victims' rights and service delivery.¹⁸⁸

The OCVO staff in recent years also has made efforts to educate the general public about its services. In its *1993–1994 Biennial Report*, the OCVO identified as a priority for improvement the office's outreach and education efforts in areas of the state identified as underserved.¹⁸⁹ Since that time, the OCVO has made efforts to enhance its public profile,

¹⁸⁰ Ross Interview, *supra* note 164.

¹⁸¹ Ross Interview, *supra* note 164.

¹⁸² Schlauderaff Interview, *supra* note 128.

¹⁸³ 1993–1994 BIENNIAL REPORT, *supra* note 106 at p 3.

¹⁸⁰ Ross Interview, *supra* note 164.

¹⁸¹ 1995–1996 BIENNIAL REPORT, *supra* note 100 at pps. 10–11.

¹⁸² Ross Interview, *supra* note 164.

¹⁸³ Ross Interview, *supra* note 164.

¹⁸⁴ Rowe Interview, *supra* note 98.

¹⁸⁵ Ross Interview, *supra* note 164.

by attending resource and community fairs, setting up information booths at various shopping malls, and participating in health fairs on college campuses.¹⁹⁰

Some observers question whether the OCVO adequately exposes agencies that systematically violate victims' rights. A state senator heavily involved in authoring the state's criminal justice and victims' rights laws has said that he wishes the OCVO would be more "high-profile" and proactive in its approach to enforcing victims' rights. According to the legislator, the OCVO should more actively use the tools that it has at its disposal — namely publicity — to expose instances in which victims have been denied their rights.¹⁹¹

OCVO officials, however, are hesitant to use these public, confrontational measures on a daily basis. In order to maintain positive working relationships with criminal justice agencies statewide and retain its reputation as a neutral, fact-finding agency, the OCVO tends to use more collaborative approaches in its daily interactions with criminal justice agencies around the state. However, officials report that some instances warrant a more critical, public investigation. As the OCVO is the only agency in the state that has jurisdiction to critique the actions of other criminal justice agencies, it is sometimes necessary to take more public, proactive measures to assure the systemic provision of victims rights. Staff reiterated, however, that they prefer to use publicity as a last resort in finding resolution to a victim's complaint.¹⁹²

¹⁹⁰ Ross Interview, *supra* note 164.

¹⁹¹ Kelly Interview, *supra* note 102.

¹⁹² Interview with Bruce Duncan, ombudsman investigator, April 1, 1997 [hereinafter Duncan Interview].

Finally, OCVO officials cite as a concern their statutory accountability requirements to the DPS. Under current law, the ombudsman is appointed and can be removed by the commissioner of the DPS. This could create an awkward situation and compromise the OCVO's autonomy if a situation were to arise requiring the ombudsman to investigate an agency within DPS.

Currently, the OCVO is supporting legislation that would make more uniform the functions of all of the state's ombudsman offices. In a report issued by the Ombudsman Roundtable in December of 1995, the state's ombudsmen recommended enacting legislation that would clarify and make uniform the definitions, powers, and duties of the ombudsman function statewide. The ombudsmen suggested designating a separate chapter in the Minnesota code for defining the powers and duties of an ombudsman and identifying the services available to citizens.¹⁹³ Specifically, the proposed legislation would make the OCVO independent of the DPS, and provide that the appointment and removal of the crime victims' ombudsman would be the responsibility of the governor, rather than the commissioner of the DPS.¹⁹⁴

These proposed legislative changes to the OCVO infrastructure exist in a larger framework of change to the provision of victims' services in the state. Currently, the agencies involved in providing services to victims are debating if and how their services could be best delivered by a single agency. In 1995, the Minnesota legislature directed that the availability of future funding for all victims' programming was

¹⁹³ OMBUDSMAN REPORT, *supra* note 129 at p. 3.

¹⁹⁴ Duncan Interview, *supra* note 192. Ross Interview, *supra* note 150.

contingent upon the DOC, DPS, and the state Supreme Court developing a plan for the consolidation of all existing victims' programs.¹⁹⁵

In a report presented to the legislature's crime committees titled, *Consolidation of Victim Services: Report to the House Judiciary Committee and the Senate Crime Prevention Committee*, a 25-member task force recommended that responsibility for all victims' services be placed in the DOC. Under the consolidation plan, most professional staff positions would be maintained, with the exception of one general crime program director position.¹⁹⁶

Although the function and services provided by the OCVO are not directly impacted by the task force consolidation recommendations, the debate about the future of victims' services in the state has left many involved with victims' issues concerned that the common goal of providing services to victims has been impeded. Currently, the Minnesota House of Representatives has advised both the DOC and DPS commissioners to design a plan for service consolidation, seeking input from the OCVO. However, no legislation exists to enforce this effort at this time.

EVALUATION OF THE ENFORCEMENT EFFORT

In addition to identifying ways in which the current OCVO structure could be improved, the office also

¹⁹⁵ MINNESOTA DEPARTMENT OF CORRECTIONS, MINNESOTA DEPARTMENT OF PUBLIC SAFETY, AND MINNESOTA SUPREME COURT, CONSOLIDATION OF VICTIM SERVICES: REPORT TO THE HOUSE JUDICIARY COMMITTEE AND THE SENATE CRIME PREVENTION COMMITTEE, 1 (Feb. 1996).

¹⁹⁶ *Id.* at pps. 7–8.

has taken steps to evaluate how its services affect victims. Since 1993, the OCVO staff has sent a survey to all victims who have filed complaints which result in full-scale investigations and determinations.

The evaluation asks respondents to rate on a scale from one to five the services of and investigative technique employed by the OCVO, with a "one" denoting low satisfaction and a "five" denoting high satisfaction. The survey asks respondents to rate the efficiency and effectiveness of the OCVO services; whether the staff adequately explained the impartiality of the office as well as victims' rights; their overall satisfaction with the service; and if they would make a referral to the OCVO. Finally, the survey leaves space for respondents to make comments or suggestions to the office.¹⁹⁷ The OCVO sends the survey to victims in a self-addressed and stamped envelope.

The statistics compiled by the OCVO since 1993 on victim satisfaction with the office are as follows:¹⁹⁸

	1993	1994	1995	1996
Number of Surveys Sent	21	81	79	45
Number of Surveys Returned	18	34	22	16
Percent Satisfied with the OCVO Services	72%	81.5%	73%	79%

It should be noted that the number of surveys sent in 1993 is significantly smaller than in subsequent years because the OCVO did not start sending the evaluations to victims until October of that year.¹⁹⁹ A victim is considered "satisfied" if his scores on the evaluation are three or above.

The OCVO staff currently is working on improving the mechanisms by which it evaluates its services. With hopes of improving the response rate, the staff is considering changing the survey questions to those that allow a yes or no response.²⁰⁰

OCVO officials also are developing ways to track the satisfaction of victims whose complaints are resolved before a formal investigation is necessary. The staff notes the focus of a full OCVO investigation is often to address systemic change within an agency, and likely does not bring a victim immediate resolution of his problem. However, victims whose complaints are resolved by "assists" may report more satisfaction with the process because of the expedient manner in which their complaints are resolved. To assess

the satisfaction of this group of citizens served by the OCVO, officials are considering conducting a telephone survey of such individuals.²⁰¹ Further, they intend to develop another survey to solicit information from the criminal justice agencies that are the subjects of citizen complaints. Officials plan to compile these survey results yearly and to try to incorporate comments and concerns of the criminal justice system where it is feasible and appropriate.²⁰²

PROGNOSIS FOR THE FUTURE

Senate Bill 1880, the legislature's Omnibus Crime Bill for the 1997 legislative session, adopted provisions that will aid the OCVO in achieving its objective as a neutral, fact-finding body charged with overseeing the fair and lawful treatment of victims. For example, the proposal aimed at making the OCVO more autonomous from the DPS was passed by the legislature during the 1997 session. Effective August 1, 1997, the crime victim ombudsman is required only to report to the legislature its activities, eliminating reporting accountability to the DPS commissioner. Further, S.B. 1880 clarifies that the crime victim ombudsman is selected by and serves at the pleasure of the governor, and enjoys an indefinite appointment unless replaced by the governor.²⁰³ Also debated during the 1997 legislative session was a proposal that

¹⁹⁷ OFFICE OF THE CRIME VICTIMS' OMBUDSMAN, CASE COMPLETION SURVEY, Feb. 1, 1996 (on file with author).

¹⁹⁸ Memorandum from Beth Yurchisin to Kim Ross, concerning Satisfaction Percentages from the Case Completion Surveys, April 1, 1997 (on file with author).

¹⁹⁹ *Id.*

²⁰⁰ Ross Interview, *supra* note 164.

²⁰¹ Ross Interview, *supra* note 164.

²⁰² THE OFFICE OF THE CRIME VICTIMS OMBUDSMAN, STRATEGIC PLAN-FIRST DRAFT: FY 1998-1999 (on file with author) [hereinafter STRATEGIC PLAN].

²⁰³ Duncan Interview, *supra* note 192.

would add funding for an additional full-time investigator for the office.²⁰⁴

The OCVO staff has developed three primary goals for the next biennium, in addition to continuing the services provided currently by the office.

These goals are to enhance services and outreach to victims, augment relations with other agencies within the criminal justice system and victims' services realms, and become more efficient in day-to-day case management.²⁰⁵

◆ **Enhancing Services and Outreach.**

The OCVO hopes to improve the outreach efforts of the office to both the public and criminal justice agencies. In doing so, it plans to submit one article each year to the state's law enforcement, county attorney, victims', and corrections publications. Further, it aims to participate in 12 professional or community resource fairs; travel twice a year to rural communities to disseminate information and receive complaints from victims "on the road;" and to conduct training regarding crime victims'

rights and the OCVO in Minnesota six times yearly. These efforts will be enhanced if the pending legislation creating and funding two additional OCVO positions is passed.

◆ **Augmenting Relations With Other Agencies.**

With a goal of improving communication between the OCVO and kindred agencies, the OCVO has targeted eight other state agencies and associations with whom it plans to exchange information and provide yearly in-service training. The staff hopes that seeking the input of criminal justice practitioners and victims' services agencies through enhanced OCVO evaluation techniques also will improve the relationship that the office has with other agencies.

◆ **Case Management Improvements.**

There are three sub-objectives within this goal. The first, to improve existing computer software programs, could allow the office to more effectively deliver services by improving staff access to case activity; eliminating duplication of tasks;

improving the organization and documentation of case files; and enhancing the ability of the ombudsman to manage the office. Secondly, the OCVO intends to create an information retention and retrieval system to collect and index analyses of Minnesota statutes, recommended model policies, and investigator memoranda. Finally, officials intend to improve and expand the use of the volunteer/intern program by actively recruiting volunteers from local colleges and universities, and creating research projects based on the offices information and resource needs.

Even with the changes to victims' services in Minnesota approaching, and the continual struggle to allocate existing resources effectively, the OCVO staff greet the future with enthusiasm. According to the 1995–1996 *Biennial Report*, "staff from the OCVO represent [that] dedication year after year. They are more committed and have bigger visions than ever. As we look to the next biennium, each has assumed responsibility for ensuring the office's goals are met."²⁰⁶

²⁰⁴ Duncan Interview, *supra* note 192.

²⁰⁵ STRATEGIC PLAN, *supra* note 202.

²⁰⁶ 1995–1996 BIENNIAL REPORT, *supra* note 100 at p. 6.

WISCONSIN

Policymakers in Wisconsin have created a long-standing system of victims' rights and services delivery that defers to county discretion for implementation. Since 1979, with the passage of the state's Bill of Rights for Crime Victims, counties have been eligible for reimbursement of up to 90 percent of the costs associated with providing these services. The reimbursement program — the victim and witness assistance program — is administered through the state's Department of Justice (DOJ).²⁰⁷

In an effort to complement county victim and witness services, state policymakers in the early 1990s created a state-level victims' services office — the Wisconsin Victim Resource Center (Victim Resource Center) — to provide crime victims and witnesses with information concerning available victims' services, crisis counseling, and assistance in securing resources and protection. A second charge of the Victim Resource Center is to act as a liaison between criminal

justice agencies and victims in resolving complaints concerning unlawful or inappropriate agency action.²⁰⁸ Victim Resource Center officials may not, however, prescribe remedies for violations of a victims' constitutional protections. The scope of their ability to act, under current law, allows them only to investigate these complaints and present the victims' concerns to the official whose actions are in question.

Currently, the procedures that guide the Victim Resource Center's role in protecting victims' rights are informal and handled on a case-by-case basis, often in tandem with the provision of direct services. However, policymakers in Wisconsin are taking steps to formalize the state's role with respect to victims' rights compliance enforcement, and augment the current liaison efforts within the Victim Resource Center. Currently, the Wisconsin legislature is considering a measure that would create a board structure charged with taking a "second look" at certain complaints concerning victims' rights violations, and prescribing remedies against unlawful agency action when appropriate.

LEGISLATIVE HISTORY OF VICTIMS' RIGHTS & SERVICES

Many factors have contributed to the development of victims' rights and services in Wisconsin over the years. Leadership on the part of county officials and state legislators in the mid and late-1970s, contributed significantly to the development of victims' rights laws, according to officials with the DOJ's Office of Crime Victim Services (OCVS). Their efforts have been augmented in recent years by the leadership undertaken by Attorney General James Doyle, who advocates publicly for victims' rights on both the state and national levels.²⁰⁹

Although services and programs designed to assist victims of child and domestic abuse have been in place for many years within the state's social service agencies, the DOJ's involvement in the realm of victims' services began with its management of the crime victim compensation program in 1979. Before that year, the program was administered through the state's Department of Industry, Labor, and Human Relations (DILHR), the agency responsible for processing and awarding workers' compensation claims. In 1979, the state legislature transferred responsibilities for the crime victims' compensation program to the DOJ, believing that an agency concerned with the criminal justice system and cognizant of victims' issues could more effectively and sensitively implement the initiative.²¹⁰

At the same time, there was an effort underway to create a chapter in Wisconsin law to define specifically what rights the state should afford crime victims. According to DOJ officials, the development of Wisconsin's Bill of Rights for Crime Victims stemmed from efforts to sustain a demonstration project funded by the LEAA to support victims' services. The grant provided funding for demonstration programs

²⁰⁷ Wis. Stat. Ann. § 950.05 (West 1996).

²⁰⁸ Wis. Stat. Ann. § 950.08 (West 1996).

²⁰⁹ Telephone Interview, Susan Goodwin, Executive Director, Office of Crime Victims Services, May 12, 1997 [hereinafter Goodwin Interview].

²¹⁰ Interview with Steve Derene, Victim and Witness Assistance Administrator, Office of Crime Victims Services, April 4, 1997 [hereinafter Derene Interview].

in two counties — Kings County (Brooklyn), N.Y., and Milwaukee County, Wis. — to create programs to provide services to victims and encourage their involvement in the criminal justice process.²¹¹

According to the administrator of the pilot program in Milwaukee, the demonstration project — Project Turnaround — was a separate agency within Milwaukee county government and utilized a four-pronged approach in providing services to victims: enhancing computer systems and capabilities to share information with victims about case proceedings; employing a unit to receive complaints from victims concerning their experiences with the criminal justice system; creating a victims' advocate within the district attorney's office; and establishing victim and witness protection services in the sheriff's office.²¹²

The LEAA funded the pilot program almost entirely in its first year, and required the county to contribute a small match. In the subsequent two years of the demonstration program, however, the federal allocation was reduced, with the expectation that the county would provide increased support to show its dedication to the initiative. Unfortunately, after the three-year term had expired, officials in Milwaukee decided that the county was not in a position to absorb the additional costs necessary to keep Project Turnaround intact.²¹³

Program administrators realized that the only way to retain the victims' services provided by the demonstration program would be to require, by law, that such services be provided. Milwaukee County officials quickly approached key legislators to discuss the idea of crafting the necessary legislation to sustain Project Turnaround. This effort prompted state policymakers to discuss the notion of providing all citizens of the state with certain protections if they fell prey to a crime.²¹⁴

Working closely with a freshman legislator — Rep. Barbara Ulichny — who was sympathetic to the issues and concerns faced by victims of crime, Project Turnaround staff and DOJ officials developed the nation's first Victims' Bill of Rights, which passed the legislature during the 1979 legislative session.²¹⁵ It was considered a remarkable and somewhat revolutionary endeavor that a freshman legislator could sponsor successfully a law on victims' rights — a policy concern still in its infancy at that time. Further, the effort was significant in that it included a spending component, allowing state funds to be used to reimburse the counties up to 90 percent of the funds needed to provide certain victims' services.²¹⁶

In the almost 20 years since the victims' rights issue was brought to the attention of state policymakers, the protections and services the state

provides for victims have grown considerably. One important component of this expansion of victims' services was the creation of a state-level victims' advocacy office, the Victim Resource Center, in 1991.²¹⁷

Expansion of Victims' Rights

In their creation of the Victims' Bill of Rights in 1979, policymakers recognized a moral responsibility on the part of the state to aid innocent victims of violent crime to maintain and strengthen the democratic system of law and encourage greater public cooperation in the apprehension and prosecution of criminal offenders. The legislative intent of the act was to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that victims and witnesses of crime are provided protections by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.²¹⁸

Since 1979, the legislature has expanded the rights of victims and witnesses of crimes, which may be categorized in the following manner: the right to participate in criminal proceedings; the right to be notified of certain proceedings and victims' services; and the right to access state and county-supported victims' services programs. Through the 1996 legislative session, these protections, defined by Wisconsin law, include:

²¹¹ *Id.*

²¹² Telephone Interview with Jo Kolanda, Consultant, May 6, 1997 [hereinafter Kolanda Interview].

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*; Derene Interview, *supra* note 210.

²¹⁶ Kolanda Interview, *supra* note 212.

²¹⁷ WISC. STAT. ANN. § 950.08 (West 1996).

²¹⁸ WISC. STAT. ANN. § 950.01 (West 1996).

Notification

Law enforcement officials and district attorneys must inform the victim of the final disposition of the case, when a pardon application is made, and when an offender is released from custody in felony cases; victims must be informed when a court proceeding to which they have been subpoenaed will not proceed as scheduled, and of financial assistance, social services, and crisis intervention programs available; and victims must be provided assistance in applying for and receiving witness fees.²¹⁹

District attorneys' offices must notify victims when an offender is released conditionally. Corrections officials must inform victims when an offender is placed in a nonsecure, community corrections facility; participating in an intensive sanctions programs; and released on parole.²²⁰

Participation

Victims of felonies may provide the court with a statement pertaining to the economic, physical and psychological effect of the crime; must be provided, whenever possible, a secure waiting area during court proceedings; and are entitled to a speedy disposition of the case in which they are involved as a victim or witness.²²¹

Victims may provide written statements concerning parole applications; have direct input in the parole decision making process; and provide written statements concerning pardon applications.²²²

State and County Services

Victims and families of homicide victims are entitled to receive protection from harm arising out of their cooperation with law enforcement and prosecution efforts; the expedient return of any stolen or other personal property from law enforcement agencies; and employer intercession services.²²³

Counties are encouraged to provide to victims and witnesses who request it notification of court appearances and case progression and information on victim compensation and other available crisis intervention services. Counties may be reimbursed by the DOJ for up to 90 percent of these costs.²²⁴

Victim Resource Center must maintain a toll free number; provide information and referral to victims' services, crisis counseling, assistance in securing resources, and information to the general public on victims' rights and services; and receive complaints from victims' concerning the performance of criminal justice agencies.²²⁵

Further, Wisconsin counties are encouraged to provide the following services to child victims and witnesses:

- explanations of the legal proceedings in which the child will be involved;
- advice to the judge as a friend of the court regarding the child's ability to understand the proceedings and the provision of alternative services, for example, the use of videotaped depositions, to expedite proceedings;

- advice to the district attorney concerning the ability of the child witness to cooperate with the prosecution, and the potential effects of the proceedings on the child; and
- information and referrals to appropriate social service programs to assist the child and the child's family in coping with the emotional impact of the crime and the proceedings in which the child is participating.²²⁶

Under the statute, county boards are responsible for the enforcement of rights and the provision of services. For the most part, however, the

²¹⁹ WISC. STAT. ANN. § 950.04 (West 1996).

²²⁰ WISC. STAT. ANN. § 950.045 (West 1996).

²²¹ WISC. STAT. ANN. § 950.04 (West 1996).

²²² WISC. STAT. ANN. § 950.045 (West 1996).

²²³ WISC. STAT. ANN. § 950.04 (West 1996).

²²⁴ WISC. STAT. ANN. § 950.05 (West 1996).

²²⁵ WISC. STAT. ANN. § 950.05 (West 1996).

²²⁶ WISC. STAT. ANN. § 950.055 (West 1996).

Victims' Bill of Rights does not define precisely which county officials are responsible for providing these protections, nor does it indicate the extent to which services are based upon a victim's request. Voters in Wisconsin augmented these statutory protections in 1993 by passing a victims' rights amendment to the state's constitution. The amendment states:

The state shall treat crime victims with fairness, dignity and respect for their privacy. The state shall ensure that crime victims have all of the following privileges and protections provided by law: 1) timely disposition of case; 2) the opportunity to attend court proceedings unless the trial court finds sequestration is necessary to a fair trial for the defendant; 3) reasonable protection from the accused throughout the criminal justice process; 4) notification of court proceedings; 5) the opportunity to confer with the prosecution; 6) the opportunity to make a statement to the court at disposition; 7) the right to restitution; 8) the right to compensation; and 9) information about the outcome of the case and the release of the accused. The legislature shall provide remedies for the violation of this section. Nothing in this section, or in any statute enacted pursuant to this section, shall limit any right of the accused which may be provided by law.²²⁷

Currently, the Wisconsin legislature is crafting enabling legislation to support the constitutional amendment. The legislation will be pivotal, according to

²²⁷ WISC. CONST. ART. 1, § 9m.

OCVS officials, in further defining and holding accountable the criminal justice agencies responsible for the provision of certain rights.²²⁸ Further, the proposal will augment current county efforts to enforce victims' rights by prescribing definitive remedies when an agency violates these protections.

Victims' Services

Today, the OCVS is charged with implementing the state's two principal programs for victims — the crime victim compensation and victim and witness assistance programs — and supports the Crime Victims Council, which acts as an advisor to the attorney general on victims' issues. The OCVS also houses the Victim Resource Center, which may act as a liaison between victims and criminal justice agencies and victim service providers when victims perceive their actions to be unlawful or inappropriate.

The crime victim compensation program provides financial assistance to victims of violent acts and certain serious property crimes. Program coverage extends to citizens acting as good samaritans — those who attempt to prevent a crime, apprehend a criminal, or aid a crime victim or law enforcement official — as well as on-duty police officers and fire-fighters in certain circumstances.²²⁹

The victim compensation program provides reimbursement for the following costs: medical treatment; lost wages; funeral and burial expenses; loss of support to dependents of a deceased victim; replacement costs for belongings held by law enforcement for evidentiary purposes; and reasonable and

²²⁸ Derene Interview, *supra* note 210.

²²⁹ WISC. STAT. ANN. § 949.05 (West 1996).

necessary costs associated with securing and cleaning up a crime scene. The OCVS may not make an award of more than \$40,000 for any one injury or death.²³⁰

The compensation program is funded from state general purpose revenues, a crime victim and witness assistance surcharge levied on all offenders convicted of both misdemeanor and felony crimes, and federal VOCA funding. According to a recent analysis conducted by the state's Legislative Fiscal Bureau (LFB), the OCVS had \$2.134 million available in its fiscal year 1995 budget to make compensatory awards to victims of crime.²³¹

The victim and witness assistance program was created to provide services to citizens who become involved in the criminal justice system, and to help ensure that victims and witnesses are treated with respect, dignity, and sensitivity by all parties involved in the criminal justice process.²³² Created as part of the Victims' Bill of Rights in 1979, the program encourages Wisconsin counties to provide victims' services by allowing them to reclaim up to 90 percent of the costs incurred in providing such services. Counties qualify for reimbursement by submitting a program plan to the OCVS for approval.²³³

Currently, 64 of 72 Wisconsin counties participate in the victim and witness assistance program, with 61 of those programs housed in county district attorney's offices. During the developmental stages of the program,

²³⁰ WISC. STAT. ANN. § 949.06 (West 1996).

²³¹ STATE OF WISCONSIN, LEGISLATIVE FISCAL BUREAU, CRIME VICTIM AND WITNESS SERVICES, INFORMATIONAL PAPER #73, p. 3 (Jan. 1995) [hereinafter LFB REPORT].

²³² *Id.*

²³³ WISC. STAT. ANN. § 950.06 (West 1996).

policymakers and OCVS officials concentrated their efforts on soliciting prosecutors to provide victims' services because they perceived that the district attorney's office is the agency that works most closely with victims throughout the criminal proceedings.²³⁴

Administrative procedures define specifically the types of activities that a county must provide to qualify for reimbursement, as well as supplemental services that are allowable uses of funds. The following chart lists the services that counties *must* provide to be

reimbursed by the state, as well as programs and services for which they may be reimbursed.²³⁵

²³⁴ Derene Interview, *supra* note 210.

²³⁵ WIS. ADMIN. CODE § JUS 12.

Types of Services	Services That Counties <i>Must</i> Provide for Reimbursement	Services That Counties <i>May</i> Fund With Reimbursement Allocation
<i>Notification</i>	Notification to all victims and witnesses who desire them, including information concerning case status, subpoena cancellation, any known developments of the case, and final disposition	The creation of an alert system through which witnesses are permitted to remain at work, home, or another designated place until their appearance is required
<i>Victim Compensation Referral</i>	Notification to eligible victims of violent crime of the crime victim compensation program, and explanation of the available benefits and applications procedures	Assistance in the completion and submission of a victim's compensation application form; advice to victims on the merits of their applications; and assistance in gathering relevant information to perfect their claim
<i>Social Service Referrals</i>	Information about and appropriate referrals of victims to agencies that provide support and other services; and referrals of witnesses of homicide and family members of victims of homicide to appropriate community service agencies	Tracking victim referrals to service agencies in order to assure that the needs of victims, witnesses, and the families of homicide victims are met
<i>Witness Fee Assistance</i>	Notification of the availability of witness fees and procedures to apply for and receive fees	Assistance to witnesses in applying for payment of witness fees
<i>Public Information</i>	Information to the public and agencies that have contact with victims and witnesses about victim and witness assistance services and how to avail those services	Brochures describing the rights and services available to victims and witnesses, and how to avail those rights and services, and/or training sessions for criminal justice practitioners to enhance understanding of the provision of victims' rights and services

Types of Services	Services That Counties <i>Must</i> Provide for Reimbursement	Services That Counties <i>May</i> Fund With Reimbursement Allocation
<i>Escort</i>	Information about personal support services available during court proceedings	Accompaniment for witnesses throughout their court appearances
<i>Transportation</i>	Upon request, information concerning transportation services available to allow victims' participation in the investigation and prosecution, including information regarding the courthouse location and the availability of parking facilities	Providing transportation to victims and witnesses, if program staff indicate that the victim needs transportation in order to participate in criminal proceedings
<i>Victim Impact Statements and Restitution</i>	Information about the right of victims of felonies to provide the court information about the economic, physical, and psychological effects of their victimization	Assistance to victims of felonies in the development of victim impact statements and gathering information pertaining to the economic effect of the crime on the victim for purposes of restitution
<i>Employer Intercession</i>	Employer notification of a victim's or witness's involvement in a case upon request of the victim or witness	Intercession with a victim's or witness's employer at the employee's request when the court proceedings may cause the employee to lose time from work or otherwise jeopardize his wages or employment
<i>Property Return</i>	Information about a victim's right to have personal property held as evidence returned within a reasonable amount of time; referrals to criminal justice authorities responsible for the return of property held as evidence; and assistance in securing the release of the property	Contact with criminal justice authorities responsible for the return of a victim's property held as evidence and the creation of systems that facilitate the early release of the victims property
<i>Protection Services</i>	Information about protective services available, and whom to contact if a victim or witness is threatened or harassed; if a victim or witness is harassed, the program must alert the appropriate law enforcement agencies and prosecutor	Arrangements with law enforcement agencies to investigate allegations of intimidation or threats against and witnesses

Types of Services	Services That Counties <i>Must</i> Provide for Reimbursement	Services That Counties <i>May</i> Fund With Reimbursement Allocation
<i>Waiting Facilities and Reception</i>	Safe and convenient waiting facilities for victims and witnesses who participate in criminal proceedings and witness reception services	Provision of a separate waiting room for victims and witnesses awaiting court appearances
<i>Child Victims and Witnesses</i>	Referrals specially suited to children's needs, taking into consideration each child's level of development and ability to understand	Explanations in language understood by the child of all legal proceedings in which he is involved, and advice to the court on the child's ability to understand the legal proceedings
<i>Notification of Application for Pardon or Parole</i>	Assistance to victims in assuring that written victim statements concerning pardon and parole applications are considered by appropriate officials	N/A

The victim and witness assistance program is supported primarily by general purpose revenues, program revenues provided by the state's crime victim and witness assistance surcharge, and federal anti-drug abuse funding. The actual percentage of reimbursement varies each year depending upon available funds, the costs of the counties' programs, and the number of counties operating approved programs, according to the LFB analysis.²³⁶ The following table depicts the total state reimbursements and the actual percentage of reimbursements to counties for costs of victim and witness assistance programs for fiscal years 1984 through 1994.²³⁷

Percentage Reimbursement to Counties

Fiscal Year	Total Amount of Reimbursement	Percentage of Cost Reimbursed	# of Counties Receiving Reimbursement
1984	\$763,500	83%	18
1985	\$960,700	82%	25
1986	\$1,228,000	90%	29
1987	\$1,475,400	90%	33
1988	\$1,559,100	80%	33
1989	\$1,572,900	74%	37
1990	\$2,097,100	85%	43
1991	\$2,370,600	84%	43
1992	\$3,129,400	90%	49
1993	\$3,132,000	78%	55
1994	\$3,665,000	78%	58

²³⁶ LFB REPORT, *supra* note 231 at pps. 8-9.

²³⁷ LFB REPORT, *supra* note 231 at pps. 8-9.

OCVS officials are hopeful that the eight counties that are not participating in the victim and witness assistance program will take part soon, and indicate that individuals in those jurisdictions are trying to build support from their county boards to provide victims' services, or are currently planning service delivery systems eligible for reimbursement. However, participation in some areas may be thwarted by county officials concerned with the programmatic requirements attached to the reimbursement of victim and witness services, or that the funding source will diminish in future years. Still others are developing a sensitivity to issues faced by victims of crime, and an understanding of the counties' role in providing services and protections to these individuals.²³⁸

Crime Victims Council

The Wisconsin legislature also has created a Crime Victims Council, which is composed of criminal justice practitioners, members of the judiciary, victims, and concerned citizens. The 16-member council serves in an advisory capacity to the attorney general. Currently, the council, through its committee structure, reviews and makes recommendations on legislation affecting the needs of crime victims in Wisconsin; studies access to crime victim services in terms of cultural diversity; provides training to or monitors training provided to the judiciary, law enforcement officers, mental health providers and professionals, and the general public concerning the needs and rights of crime victims; uses the media to raise public awareness of victims' issues; and advises the OCVS on funding

²³⁸ Interview with Chris Nolan, Victim and Witness Assistance Administrator, April 4, 1997 [hereinafter Nolan Interview].

policies, guidelines, and individual VOCA grant awards.²³⁹ The council has played an instrumental role since 1993 in developing the enabling legislation to support the constitutional amendment.²⁴⁰

The role of the council in affecting state victims' policy has varied over the years, depending on its composition and its relationship with the attorney general.²⁴¹ For example, when Rep. Ulichny was in office, she was named the first chair to the council. Because she was a strong advocate for victims' rights, the council worked somewhat independently of the attorney general at the time, who focused less on crime victims' issues, according to OCVS officials. However, today, the council works closely with Attorney General Doyle, and that this collaborative relationship has lent legitimacy to the council's input on the pending legislative initiatives.²⁴²

WISCONSIN VICTIM RESOURCE CENTER

Wisconsin law includes provisions for a victims' rights liaison program, as well as direct services and crisis intervention at the state level. The Victim Resource Center was created by the Wisconsin legislature in 1991 and is required by statute to provide: information about and referral to available local victims and witness programs, assistance in securing resources and protection, and information to crime victims, the general public, criminal justice

²³⁹ LFB REPORT, *supra* note 231.

²⁴⁰ Goodwin Interview, *supra* note 209.

²⁴¹ Goodwin Interview, *supra* note 195.

²⁴² Goodwin Interview, *supra* note 209.

officials, and related professionals about crime victims' rights and services and their availability statewide. The Victim Resource Center also may receive complaints from crime victims concerning inappropriate treatment and unlawful action on the part of a criminal justice agency or victim service provider, and may mediate on behalf of the victim before these officials.²⁴³

The creation of the resource center evolved from several influences. Among them was an interest among state policymakers to give the OCVS the legal authority to provide services to victims. OCVS officials, however, are careful to note that the development of state-level victims initiatives are intended to complement the provision and enforcement of victims' rights and services at the county level, not act to replace it. Further, DOJ officials had learned about the OVCO program in the neighboring state of Minnesota, and realized that elements of that effort could be effective in Wisconsin. They felt that providing a contact point between victims and the criminal justice system was an important component of a comprehensive approach for the provision of victims' services.²⁴⁴

Direct Services

Victim Resource Center officials provide a myriad of services to crime victims in Wisconsin, including direct services to victims in individual cases in which the DOJ has employed a special prosecutor to handle the proceedings for the government; assistance and support to victims of various sex crimes in cases in which the state is considering civilly committing their assailants.

²⁴³ Wis. Stat. Ann. § 950.08 (West 1996).

²⁴⁴ Derene Interview, *supra* note 210.

Further, a significant project recently undertaken by Victim Resource Center staff has as its objective to foster the development of statewide immediate response services to victims. Since the passage of VOCA,²⁴⁵ which provides funding to states and localities for victims' services, OCVS officials have taken steps to encourage early intervention and assistance services when a violent crime has occurred. These services — crisis response programming — have become a primary responsibility of the Victim Resource Center, which also is supported in part by the state's VOCA allocation.

A primary objective of crisis response programming is to provide a continuum of victims' services from the incidence of the crime through its investigation and prosecution. In 1991, the OCVS contacted with the Dane County (Madison) district attorney's office to support a demonstration crisis response program. According to the director of the Victim/Witness Unit, the crisis response effort in Madison takes a two-pronged approach. The first — immediate contact with the victim of the crime — is considered essential. The goal is to provide "hands-on" trauma services, identifying the victims' needs, providing support, and facilitating access to other relevant county and state programs. This contact is followed up with a second prong consisting of more traditional victims' services.²⁴⁶

Now that crisis response efforts in Dane and a limited number of other Wisconsin counties are operational, the OCVS has

rechannelled its support for crisis response demonstration projects to the expansion of these initiatives to other counties based on each of their individual needs. Current expansion efforts include identifying local resources, working in conjunction with local victims' service providers to develop infrastructure to support crisis response services in the community, and conducting training for individuals interested in becoming crisis response service providers.²⁴⁷

Victims' Rights Compliance

In its efforts to help victims of crime exercise their rights, the Victim Resource Center operates two primary programs: The Victim Assistance Notification Service (VANS), which notifies victims of proceedings scheduled when an offender appeals his case, and liaison services in which Victim Resource Center officials act as a contact between victim and agency when the victim perceives his rights are not being protected.

Victims' Appellate Notification Services

Under the VANS program, victims may register with their county victim and witness assistance program or the Victim Resource Center to receive information about the appeals process in the state court system, to be notified when a defendant appeals his conviction, and to continue receiving victims' services and outcome information during the appeal process.²⁴⁸ Upon the DOJ's receipt of a defendant's brief, the district attorney's office or victim

and witness coordinator must instruct victims on how to register for appellate notification, by requiring him to complete and submit a victim notification card.²⁴⁹

Registered victims will be informed whether an oral argument is scheduled, and of the final decision of the Court of Appeals and its effect on the circuit court's decision. Upon request, a victim will continue to receive services, including the option of being accompanied to an oral argument by a victims' services professional, throughout the appeal.²⁵⁰

The VANS program, which was first implemented in 1994, was evaluated in 1996. At that time, the DOJ had approximately 375 appellate cases in which victims and families had requested VANS. A random sampling of that population participated in the survey. Victims were asked to respond to four "yes or no" questions about VANS services: whether the victim received information materials from the Victim Resource Center on the VANS program; if the materials were presented clearly; if the notification services were timely; and if the victim understood the information he received about the appellate decision and its effect on his case. The evaluation asked that the victims indicate which agency — either the local victim and witness coordinator or the Victim Resource Center staff — provided them with the information about the Court of Appeals' decision.²⁵¹

The Victim Resource Center received 14 responses from victims from the

²⁴⁵ 42 U.S.C. §§ 10601–10604.

²⁴⁶ Interview with Suzanne Beaudoin, Director, Victim and Witness Unit, Dane County District Attorney's Office (April 3, 1997) [hereinafter Beaudoin Interview].

²⁴⁷ Interview with Kathy Zupan, Executive Director, Wisconsin Victim Resource Center, April 4, 1997 [hereinafter Zupan Interview].

²⁴⁸ OFFICE OF CRIME VICTIMS' SERVICES, VICTIMS' RIGHTS AND CRIMINAL APPEALS, n.d. (on file with author).

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ OFFICE OF CRIME VICTIMS' SERVICES, VICTIM APPELLATE NOTIFICATION SERVICES QUESTIONNAIRE, (Aug. 20, 1996), (on file with author).

25 surveys they mailed. All 14 victims responded positively to the survey, indicating that they had received information from a victim and witness coordinator or the Victim Resource Center on the VANS program; that the pamphlets were clear and easy to understand; and that they understood the information received regarding the Court of Appeals decision and how the decision impacted their case. Only one victim of the 14 indicated that he was not notified of the Court of Appeals decision in a timely manner, while the other 13 indicated that the response time was satisfactory.²⁵²

Victim Resource Center officials indicate that there is room to improve the VANS program. As of this time, no specific efforts have been undertaken to ensure that counties that have not submitted VANS cards receive additional training or information on the availability of the program and its function. Thus, the Victim Resource Center cannot be sure if officials in these counties are aware of the program, or if they merely choose not to notify victims of its availability. Further, Victim Resource Center officials plan to further investigate and identify counties where appeals have originated but where no VANS cards have been received.²⁵³

Liaison Services

The Victim Resource Center may also receive complaints brought by victims concerning the provision of rights and services by county-level criminal justice practitioners and victim and witness assistance

²⁵² *Id.*

²⁵³ WISCONSIN VICTIM RESOURCE CENTER, VOCA PROJECT PERFORMANCE/EVALUATION REPORT, Aug. 28, 1996 (on file with author) [hereinafter VOCA REPORT].

providers. Because current law dictates that county officials are responsible for the provision of victims' rights, if they choose to seek reimbursement from the state for the provision of such services, Victim Resource Center officials often work closely with local victim and witness assistance providers to ensure that victims' rights are protected.

The approach to victims' rights compliance in Wisconsin is inextricably entwined with the provision of services to victims. According to the executive director of the Victim Resource Center,

The backbone of the Victim Resource Center is to help victims exercise their rights by helping them participate in the criminal justice process and intervening on their behalf to facilitate this involvement where it is appropriate. I also provide direct services to victims, and approach my responsibilities to the office by adopting a role as a victims' advocate. I try to hear what citizens' concerns are and share information with victims about how and why the system works the way it does.²⁵⁴

Complaints brought to the attention of Victim Resource Center officials may concern poor treatment or unlawful action by criminal justice practitioners and county victim and witness assistance providers. Victim Resource Center officials may not, however, prescribe remedies for violations of a victims' constitutional protections. The scope of their ability to act, under current law, allows them only to investigate these complaints and present the victims' concerns to the official whose actions are in question.

²⁵⁴ Zupan Interview, *supra* note 247.

Currently, Victim Resource Center officials approach the day-to-day case management of complaints on an informal, case-by-case basis, which allows the executive director to be responsive to the individual needs of victims. Because the Victim Resource Center also provides direct service in the form of crisis counseling and emotional support, it would be difficult to mandate certain procedures by which all cases must be handled.²⁵⁵ Rather, there are themes that dictate the Victim Resource Center's approach to overseeing the provision of victims' rights:

◆ **Acting as an Advocate for Victims.**

Although Wisconsin statute currently describes the Victim Resource Center as a source for mediation between victim and agency, officials perceive their role as providing an advocacy and intervention service for all crime victims in the state. Victim Resource Center officials note that a primary reason for the development of the office was to provide direct services at the state level. They note that the opportunity to hear directly from victims allows them to better understand a victim's perspective when a question arises about an agency's compliance with victims' rights laws.²⁵⁶

◆ **Defer to the Local Level First.**

According to the Victim Resource Center's annual program report, its practice has been to rely heavily on local programs in addressing the concerns of victims, and encourage victims to rely on the local program for ongoing information and support as a

²⁵⁵ Zupan Interview, *supra* note 247.

²⁵⁶ Zupan Interview, *supra* note 247.

means to remedy a problem.²⁵⁷

In providing direct victim services, a common practice is to assess a victim's needs before making a referral, to assure that the suggested contact agency is the most appropriate.²⁵⁸

◆ Collaborative Approach to Enforcement.

Victim Resource Center officials have adopted a collaborative tone in handling their relations with county criminal justice providers. Officials indicate that they have developed an understanding of the proficiency and dedication of the individuals charged with providing victims' services in many Wisconsin counties. This knowledge helps dictate the most appropriate approach to handling victim complaints.²⁵⁹ Other OCVS officials indicate that this approach has been effective and has allowed the Victim Resource Center to affect change in a manner that facilitates collaboration and cooperation among criminal justice providers.²⁶⁰

If situations arise in which the Victim Resource Center needs to be more confrontational in its interventions with county agencies, officials emphasize that the office is a part of the DOJ. Most county officials take note that the DOJ is involved, which stems, in part, from the fact that the attorney general in the state is an active supporter of victims' rights.²⁶¹ Currently, Victim Resource Center officials cannot recommend systemic change for

local agencies under current law. Thus, the purview of their powers at present are somewhat limited to encouraging agency action that would facilitate better or more lawful treatment of victims.

These three priorities are implicit in the Victim Resource Center's responses to complaints concerning the criminal justice system. One method that Victim Resource Center officials use to mediate on behalf of crime victims is to provide information about the criminal justice system to citizens who do not understand why a case is not being charged or a plea agreement has been entered. For example, one young woman contacted the Victim Resource Center because she did not understand why the county prosecutor was not filing criminal charges against her estranged partner, who sexually assaulted her and violated a restraining order she placed against him. She also was concerned about the prosecutor's perception of her credibility as a witness due to criminal charges she was facing.

Victim Resource Center officials explained to the complainant about prosecutorial discretion and why the district attorney did not have to file criminal charges against her assailant. Officials also suggested that she contact the victim and witness assistance program in that county to explore how she may work collaboratively with the district attorney to express her concerns about the offender.²⁶²

Other intervention approaches used by the Victim Resource Center

emerge when victims do not feel that they are being treated appropriately by criminal justice agencies and officials. An example of this sort came to the attention of Victim Resource Center officials when the father of a young murder victim contacted them and expressed concern about the progression of the investigation into his daughter's death.²⁶³ The circumstances of the young woman's death were suspicious, according to the victim's family, who were told that she drowned in a canoeing accident. The young man accompanying the victim said that she fell out of the canoe and struck her head. Her body was found face up under a log in the river.²⁶⁴

The father of the victim perceived that he was being treated poorly by criminal justice practitioners and was upset that the trial against the individual with whom his daughter was canoeing was set to begin over a year after her death occurred. Further, he was angry that he had minimal contact from the victim and witness assistance coordinator in the county.²⁶⁵

The Victim Resource Center contacted the county victim and witness coordinator and expressed the victims' concerns. Together, they communicated to the judge, prosecutor, and defense attorney why an earlier trial date should be set. Upon receiving the letter, the trial judge immediately set a pretrial conference and put the proceedings on the calendar to begin six months earlier than originally scheduled.²⁶⁶

²⁵⁷ VOCA REPORT, *supra* note 253.

²⁵⁸ VOCA REPORT, *supra* note 253.

²⁵⁹ Zupan Interview, *supra* note 247.

²⁶⁰ Goodwin Interview, *supra* note 209.

²⁶¹ Zupan Interview, *supra* note 247.

²⁶² Wisconsin Victim Resource Center, Client Case Record No. 00589. It is important to note that identifying information about the victim — name, address, telephone number, etc. — was blacked out before review of case records by the National Criminal Justice Association in order to preserve the privacy of the victim.

²⁶³ VOCA REPORT, *supra* note 253.

²⁶⁴ Wisconsin State Journal, *Family's Question: Accident or Murder*, Associated Press, Dec. 30, 1996 [hereinafter *Family's Question*].

²⁶⁵ VOCA REPORT, *supra* note 253.

²⁶⁶ VOCA REPORT, *supra* note 253.

Press accounts since that time, however, indicate that charges against the young man have been dropped after expert testimony provided to the prosecutor indicated that the victim drowned and there was no evidence to indicate that foul play was involved. Although the family of the victim has continued to work with Victim Resource Center officials and has appealed to the governor and the attorney general, it recognizes that these elected officials cannot force the prosecutor to try a case.²⁶⁷

Victim Resource Center officials also step in on behalf of victims when they are not being afforded their rights under the constitutional amendment. One example of this sort occurred when the wife of a man who had been killed in a criminal traffic matter heard on the radio that the perpetrator had been arrested and that a preliminary hearing had been set. This news came as a shock to the victim's wife, who had not been notified of the proceedings and had been trying for over a month to get information from the prosecutor and the victim and witness assistance coordinator on the status of the case.

Members of the victim's family, who had contacted the Victim Resource Center prior to the arrest to ask for assistance in securing access to information about the case, were terribly upset about not being notified in advance of the trial's commencement. In response to their frustration, Victim Resource Center officials contacted the victim and witness coordinator and expressed concern with his service to the victim's family. She reminded him that the victim's family must be notified of criminal proceedings in an expedient manner, especially in cases where the loss of a loved one is involved. Prompt and accurate notification to proceedings is not only

²⁶⁷ *Family's Question*, *supra* note 264.

critical in these circumstances, she explained, it is the law.²⁶⁸

Although Victim Resource Center officials are not able to prescribe recommendations for systemic or procedural change, there are instances when their efforts result in a better articulation of policy or procedure, which benefits victims in the future. For example, one victim contacted the Victim Resource Center when the individual who targeted her house for a shooting was released from jail. The victim indicated that she had requested notification of the offender's release date, but was not notified when the offender had posted bail only two weeks after the incident. The victim wanted to know whose responsibility it was — either corrections officials or the district attorney's office — to notify victims of release dates, and why it had not been done in her case.²⁶⁹

Victim Resource Center officials communicated the victim's concerns to the county victim and witness coordinator, who recognized this miscommunication as a recurring one. As a result, the victim and witness assistance coordinator changed the form letter they send to victims to clarify that victims must request notification of release from the corrections officials themselves. Further, she stated that she would continue to work with the jail to

²⁶⁸ Wisconsin Victim Resource Center, Client Case Record No. 00483. It is important to note that identifying information about the victim — name, address, telephone number, etc. — was blacked out before review of case records by the National Criminal Justice Association in order to preserve the privacy of the victim.

²⁶⁹ Wisconsin Victim Resource Center, Client Case Record No. 00568. It is important to note that identifying information about the victim — name, address, telephone number, etc. — was blacked out before review of case records by the National Criminal Justice Association in order to preserve the privacy of the victim.

prevent these problems from reoccurring. Victim Resource Center officials notified the victim of how the miscommunication occurred, reiterated that current law was not definitive regarding this responsibility, and indicated that officials in the county were working together to preclude problems like this from happening again.²⁷⁰

RESOURCES AND STATISTICS

The Victim Resource Center is funded primarily by a portion of the state's VOCA allocation, with a match provided by the state.²⁷¹ Currently, the Victim Resource Center is staffed by an executive director, a program or administrative assistant, and two limited term employees who work on developing the crisis response effort. Officials indicate that the current staffing structure is able to accommodate well the calls from dissatisfied victims. They note, however, that the expansion of the crisis response effort may require additional personnel focused solely on that effort to better provide strategic planning in the expansion of direct intervention services on a consistent level statewide.²⁷²

The mediation services provided by the Victim Resource Center may soon be augmented with the passage of the enabling legislation for the constitutional amendment. The bill includes provisions for the creation of a board to review victim complaints filed with the Victim Resource Center after officials have tried to resolve the

²⁷⁰ *Id.*

²⁷¹ LFB Report, *supra* note 231 at p. 11.

²⁷² Zupan Interview, *supra* note 233.

issue, or have determined there exist systemic obstacles that impede the consistent delivery of victims' rights and services in certain areas. The board, as envisioned by the drafters of the legislation, would be able to prescribe various remedies to resolve victims' complaints, or encourage systemic change in the day-to-day practices of the agency.²⁷³

Statistics

Currently, the Victim Resource Center tracks statistical information by the crime type and category of service provided. Officials indicate that they document new contacts made to the office.²⁷⁴ What follows are these statistics — by crime type and service category — from July

1995 to June 1996.²⁷⁵ It should be noted that the difference in sum totals reflects that some victims are the recipients of more than one service from the Victim Resource Center.

²⁷³ 1997 SB 195, 1997–1998 Wisconsin Legislature.

²⁷⁴ Zupan Interview, *supra* note 247.

²⁷⁵ VOCA REPORT, *supra* note 253.

Type of Crime	Unduplicated Number of Victims Served
Child Physical Abuse	41
Child Sexual Abuse	94
DUI/DWI Crashes	37
Adult Sexual Assault	50
Elder Abuse	0
Adults Molested as Children	8
Survivors of Homicide Victims	172
Robbery	105
Assault	228
Other Violent Personal Injury	89
Property Crimes	66
Others (includes Harassment)	157
<i>Total</i>	<u>1,114</u>

Service Category	Number
Crisis Counseling	198
Follow-up	209
Therapy	0
Group Treatment/Support	0
Crisis hotline Counseling	13
Shelter/SafeHouse	0
Information/Referral	208
Criminal Justice Support/Advocacy	359
Emergency Financial Assistance	0
Emergency Legal Advocacy	0
Crime Victim Compensation Assistance	562
Personal Advocacy	46
Other (Oral Arguments, Debriefing, Sexual Predator)	11
<i>Total</i>	<u>1,606</u>

The number and nature of the calls the Victim Resource Center receives reflect the broad scope of its responsibilities to provide service, crisis counseling, and victims' rights oversight services to the citizens of Wisconsin. Further, because the Victim Resource Center shares a toll-free number with the crime victim compensation program, many of the calls its staff fields are related to compensation questions.²⁷⁶

STRENGTHS AND WEAKNESSES

Individuals involved in the criminal justice and victims' services profession in Wisconsin are largely supportive of the liaison effort provided by the Victim Resource Center and of the nonbureaucratic and informal method with which officials are able to aid victims while working collaboratively with criminal justice practitioners. The OCVS executive director, noted that the informal structure facilitates collaboration and cooperation among criminal justice providers because it is nonconfrontational, and typically is well received by practitioners. The result is a persistent and positive effect on the day-to-day response of the criminal justice system to the issues and concerns crime victims pose.²⁷⁷

Other benefits of the Victim Resource Center are its affiliation with the DOJ and the leadership that the attorney general and OCVS officials bring to the issue of victims' rights. This leadership attracts the attention of local criminal justice officials when the action or inaction of their agencies is the reason for a phone call from the Victim Resource Center. One observer notes that,

because of Wisconsin's tradition of deference to counties, the role of the Victim Resource Center in overseeing victims' rights would be missed if it were gone. She further noted that having the DOJ's and Doyle's focus on victims' rights carries weight with local criminal justice officials and encourages the consistent provision of victims' rights and services.²⁷⁸

The DOJ affiliation also offers an "outsider's" perspective that may help resolve differences in perspective between county victims' service providers and district attorneys. A victim and witness assistance provider indicates that there are often incongruities in being both a victims' advocate and working for a district attorney. However, insight and support provided by the Victim Resource Center allows an objective perspective and leverage with prosecutors to resolve some of the sticking points that develop when trying to address both a victim's and a prosecutor's interests.²⁷⁹

Criminal justice practitioners appreciate this DOJ alliance in cases when victims are mistrustful or do not understand the criminal justice process and the difficulty involved in bringing a case to prosecution. Many are grateful that there is an individual within the DOJ — but outside of an individual county attorney's office — who can explain the criminal justice system and why a case is being handled the way it is in a more objective, detached way without compromising the integrity of the district attorney or the criminal justice system.²⁸⁰

Finally, observers note that the compliance enforcement mechanism offers an opportunity for relief for victims when they feel revictimized by their involvement in criminal justice process. "It is enormous relief for victims," says the executive director of the Wisconsin Coalition Against Domestic Violence, "when a family calls into the Victim Resource Center and [the executive director] can offer them an avenue for recourse and an opportunity to intervene in the situation on their behalf."²⁸¹

There also are weaknesses in the current structure of the liaison effort that impede better compliance with victims' rights laws on the part of criminal justice providers. One obstacle is the lack of resources to conduct training on victims' rights and compliance. The Victim Resource Center, in allocating its limited personnel and resources, has prioritized its current effort to expand the crisis response initiative, while outreach campaigns to promote its services to victims and criminal justice practitioners have been secondary. Victim Resource Center officials indicate, however, that once crisis response efforts are established more consistently statewide they may explore the role of the office in providing training and outreach on victims' rights issues. Currently, most of the training on victims' rights is conducted by the victim and witness assistance program director, who conducts technical assistance and program development for local practitioners three times per year in four locations statewide.²⁸²

Although additional training would be a significant undertaking, practitioners perceive that it necessary to keep them current on the rights and services they must

²⁷⁸ Interview with Mary Lauby, Executive Director, Wisconsin Coalition on Domestic Violence, April 4, 1997 [hereinafter Lauby Interview].

²⁷⁹ Beaudoin Interview, *supra* note 246.

²⁸⁰ Telephone Interview with Ralph Uttke, Langlade County District Attorney, May 6, 1997 [hereinafter Uttke Interview].

²⁸¹ Lauby Interview, *supra* note 278.

²⁸² Nolan Interview, *supra* note 238.

²⁷⁶ VOCA REPORT, *supra* note 253.

²⁷⁷ Goodwin Interview, *supra* note 209.

afford victims, and assist them in changing their systems and practice to reflect these protections.²⁸³ Others note that it would be useful for the DOJ to develop a public awareness campaign to better inform citizens about the compliance enforcement process, and the availability of recourse for victims of crime.²⁸⁴

Most criminal justice practitioners, victims' advocates, and DOJ officials emphasize that the pending enabling legislation will clarify and further define victims' rights and services, allowing them to achieve a higher, more sophisticated level. Although the executive director of the Victim Resource Center is hopeful she can maintain her role as troubleshooter and affect change in a quiet and nonbureaucratic way, she and other OCVS officials welcome the enabling legislation and the board proposal as a formal avenue to enforce victims' rights and the provision of victims' services in the state, and allow them to further grow and improve.²⁸⁵

A related benefit that will result from the passage of enabling legislation is the creation of remedies for noncompliance with victims' rights. OCVS officials note that the limited authority and power of the Victim Resource Center limits its ability to force an agency or official to act, and that when officials are stonewalled by a criminal justice professional, they have little recourse. The proposed crime victims' rights board would mitigate this lack of recourse by reviewing grievances filed with the Victim Resource Center and prescribing certain remedies the agency must follow when it has violated a victims' rights.²⁸⁶

²⁸³ Uttke Interview, *supra* note 280.

²⁸⁴ Beaudoin Interview, *supra* note 246.

²⁸⁵ Zupan Interview, *supra* note 247.

²⁸⁶ Goodwin Interview, *supra* note 209.

EVALUATION

Efforts to analyze the efficacy of both the enforcement of victims' rights on the county level, and the state's role in encouraging the provision of these rights have been undertaken in recent years. OCVS officials are hopeful that these efforts will yield policies by which a balance may be struck between deference to county discretion and autonomy on victims' issues and the delivery of consistent services statewide.²⁸⁷

Currently, the DOJ has hired a consultant — the director of the original Milwaukee county victims' assistance program — to evaluate the implementation of current county victim and witness assistance programs. The purpose of the evaluation is to develop a mission statement and standards to guarantee that all victims in Wisconsin may expect a baseline of services from their county officials and criminal justice practitioners.²⁸⁸

Although the DOJ is still formulating specifics of the standards and mission statement, it hopes that the study of current programs will identify preferred practices. Ideally, OCVS would change both the rules that govern eligibility for reimbursement under the victim and witness assistance program, and the Victims' Bill of Rights, to reflect preferred practice.²⁸⁹ In the course of conducting her review of current practices in Wisconsin counties, and based on her extensive involvement in the evolution of

²⁸⁷ Kolanda Interview, *supra* note 212.

²⁸⁸ Kolanda Interview, *supra* note 212.

²⁸⁹ MEMORANDUM FROM JO KOLANDA TO VICTIM AND WITNESS SERVICES COORDINATORS AND SPECIALISTS AND OTHER INTERESTED PERSONS, (March 1, 1997), (on file with author). Nolan Interview, *supra* note 238.

victims' services in Wisconsin, the DOJ consultant deduced that:

In some ways, the victim and witness assistance program has “come of age” in Wisconsin. Acceptance of the need for victim and witness programs is widespread. Programs in many jurisdictions have become institutionalized. The time has come to step back and examine the basic principles that underlie the existence of victim and witness services. The time has come to adopt a mission statement that can be used as a standard by which programs can be evaluated.

In crafting the proposed mission statement, the consultant reviewed state plans and conducted site visits to 15 diverse Wisconsin counties to take an in-depth look at current practice among victim and witness assistance providers. From her analysis, she observed factors that may impede the provision of rights and services from victim and witness assistance providers. A primary concern was the classification or identification of the victim and witness assistance provider as part of the clerical support staff of a district attorney's office. She identified the problem existing in four forms:

- victim and witness positions that are classified as clerical;
- positions that are required to divide their time between clerical responsibilities and victim and witness services;
- positions that are full time that have purely clerical tasks assigned to them; and

- victim and witness staff who view themselves as clerical and prefer form letters over personal and telephone contact with victims and witnesses.²⁹⁰

Further concerns that emerged from the analysis relate to the type and frequency of contact made by some victim and witness assistance providers. Preferred practice would dictate that victims be contacted and provided with information, services, and referral as soon as possible after a crime; that telephone or personal contact is critical to providing good service to victims; and where possible, one victim and witness assistance provider should follow a case from beginning to end.²⁹¹

Although the guidelines are still under development, the DOJ consultant is working closely with victim and witness assistance providers to further develop appropriate guidelines for day-to-day practice in the provision and enforcement of victims' rights. Officials hope this effort will result in the availability of more sound and consistent services to victims statewide.²⁹²

In a separate evaluation analysis, Victim Resource Center officials developed a survey in 1996 to study the efficacy of the office in responding to victims' request for information and investigating complaints concerning the criminal justice process. The seven-question, yes/no survey asked if the victim used the toll-free number in contacting the Victim Resource Center and if the caller had difficulty getting through on that line; if the support staff was courteous and

helpful; if the information or referral received was useful and timely; if the Victim Resource Center staff contacted other agencies on behalf of the victim; and if that contact was helpful.²⁹³

Victim Resource Center officials received 11 of the 25 surveys sent to crime victims who had contact with the Victim Resource Center. For the most part, the results reflected positively on the work of Victim Resource Center officials. Seven of the 11 surveys indicated that the referral information received was useful, while eight responded that they received information in a reasonable amount of time. Nine respondents indicated that the Victim Resource Center support staff was courteous and helpful.²⁹⁴

The results of the survey also indicated that respondents had positive experiences when a Victim Resource Center official acted as a liaison in contacting criminal justice or victim assistance providers on their behalf. Of the eleven respondents, only five involved cases in which Victim Resource Center officials contacted other agencies at the request of the complainant. However, four of five of the contacts were deemed beneficial by these victims.²⁹⁵

The Victim Resource Center survey also included a section for victims to comment on their experiences generally. Officials indicate that many comments reflected victims' dissatisfaction with the criminal justice system's response to their victimization, but not necessarily the

mediation process.²⁹⁶ Other criminal justice service providers concur with this interpretation. A district attorney in a northern Wisconsin county has observed that the crime victims with whom he has contact appear much more satisfied than those in the past, now that his office has in place a system for providing victims' services. A significant impediment to victims' satisfaction is that they often do not understand the limitations of the criminal justice system and its resources. He notes that individuals who do not work in the criminal justice field may not understand why some charges are dropped, or why offenders may only serve a portion of the time to which they have been sentenced.²⁹⁷

In addition to surveying victims on the performance of the Victim Resource Center, officials recognize the importance of asking criminal justice practitioners to give their opinions on the efficacy of the Victim Resource Center. Future evaluative efforts will solicit such input, according to officials.²⁹⁸

PROGNOSIS FOR THE FUTURE

The enabling legislation for the constitutional amendment was introduced in early May 1997. Senate Bill 195 and its companion in the General Assembly, Assembly Bill 392, would institutionalize and clarify many changes for the agencies and officials that provide and enforce victims' services and rights. Specifically, the bill defines precisely who is responsible for the provision of victims' rights and

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Nolan Interview, *supra* note 238.

²⁹³ OFFICE OF CRIME VICTIMS' SERVICES, VICTIM RESOURCE CENTER QUESTIONNAIRE, (Aug. 20, 1996), (on file with author).

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Zupan Interview, *supra* note 247.

²⁹⁷ Uttke Interview, *supra* note 280.

²⁹⁸ Zupan Interview, *supra* note 247.

creates a crime victims' rights board to review complaints made to the Victim Resource Center and offer remedies to resolve the complaints.

◆ **Responsibilities for Providing Victims' Rights.**

The bill, as introduced, provides that county boards will no longer retain primary responsibility for enforcing victims rights. Rather, the legislation specifies that both law enforcement agencies and prosecutors (or in juvenile delinquency cases, court intake workers) will be responsible for notifying victims of their rights and providing information to victims on how to exercise those rights.

At the request of the victim, prosecutors in adult criminal cases would be required to: notify the victim of the date, time, and place of the scheduled court proceedings; inform the victim if a case is being closed without an individual being charged, or if the case is dismissed; and confer with a crime victim concerning the case, certain actions taken in the case, and possible outcomes of the prosecution. Court intake workers in juvenile delinquency cases also would be required to inform the victim if a case is closed without charge or dismissed, and confer with victims about proposed consent decrees and the possible outcomes of the delinquency proceeding.²⁹⁹

◆ **Creation of a Crime Victims' Rights Board.**

The crime victims' rights board, as proposed, could (when necessary) review complaints made to the Victim Resource

Center regarding a violation of the rights of a crime victim after Victim Resource Center officials have completed their review and action on the complaint. At the request of either the victim or the agency involved, the board could review the complaint and do any of the following: issue a private or public reprimand of public officials or agencies that violate the rights of crime victims; refer violations by judges to the judicial commission, which is a body that oversees the performance of the judicial branch; seek appropriate equitable relief on behalf of the victim if such relief is necessary to protect their rights; or bring civil suit to assess a forfeiture of not more than \$1,000 when an agency intentionally fails to provide a victim's rights. The board, under the proposed legislation, would also be able to issue reports and recommendations concerning systemic change that would help secure and provide crime victims' rights and services.

The proposal indicates that the board would consist of a district attorney, a representative of local law enforcement agencies, a person employed or contracted by a county to provide services to victims and witnesses, and two public members. All of these individuals would be appointees of the attorney general, with the exception of one public member position, which would be appointed by the council.³⁰⁰

Victim Resource Center officials welcome the clarification that the enabling legislation will provide, and believe it will help the OCVS achieve a more sophisticated level of service to victims. The Victim Resource

Center executive director is hopeful that the board structure, if passed by the legislature, will be an action-oriented, educational, and public acting body. She welcomes an opportunity to work in tandem with a structure that goes beyond trying to convince criminal justice officials to provide better practice to requiring them to do so.³⁰¹

Another legislative proposal would expand the funding source that supports victim and witness assistance programs statewide. The governor's biennial budget proposal, Senate Bill 77, and its companion in the Assembly, Assembly Bill 100, would expand the crime victim and witness surcharge to juvenile offenders.³⁰²

OCVS officials also believe that the future will bring an opportunity to expand the involvement of law enforcement officials in the provision of victims' services. Because the victim and witness assistance program has a traditional association with prosecutorial agencies, OCVS officials are cognizant of the need to forge a formal relationship with law enforcement agencies on victims' issues. The OCVS has issued requests for proposals from local law enforcement agencies to conduct demonstration programs to fill the gaps in victims' services between the time of the crime and the involvement of the prosecutor's office and victim and witness assistance staff. Funded from a portion of the state's VOCA allocation, the objective of the demonstration project is to document these "early response" programs as models or benchmarks by which other agencies may follow.³⁰³

³⁰¹ Zupan Interview, *supra* note 247.

³⁰² 1997 SB 77, 1997–1998 Wisconsin Legislature.

³⁰³ Goodwin Interview, *supra* note 209.

²⁹⁹ 1997 SB 195, 1997–1998 Wisconsin Legislature.

³⁰⁰ 1997 SB 195, 1997–1998 Wisconsin Legislature.

OBSERVATIONS AND THEMES

The creation of victims' rights compliance enforcement programs represents a unique dedication among policymakers to ensure that the protections provided victims by law are implemented in practice. In conducting the interviews with state officials, criminal justice practitioners, and victims'

services representatives in Colorado, Minnesota, and Wisconsin, it became clear that there are distinct characteristics within each of the programs that make them unique and appropriate to the social and political climate of their state. There also emerged consistent themes and challenges faced by all programs in one way or another. The purpose of this section is to discuss these differences and similarities in the administration of each victims' rights compliance enforcement program, with the hopes of identifying the factors that facilitate and impede a state's efforts to ensure the protection of victims' rights.

DIFFERENCES AMONG VICTIMS' RIGHTS COMPLIANCE PROGRAMS

Each victims' rights compliance enforcement program has evolved in a unique manner reflective of the political traditions of each state, the factors that have shaped the state's victims' rights movement, and the length of time victims' rights and services have been institutionalized within the state's laws, policies, and procedures. These are among the factors that criminal justice officials creating or replicating a compliance enforcement mechanism must consider when deciding what type of program will be most effective in an individual state.

Although broadly categorized, the primary differences in the programs studied relate to the investigative and sanctioning powers of the program officials; the role of the program or office as either an impartial liaison or an advocate for victims; the range of services provided; and the role of the compliance enforcement program in the provision of training and outreach to the public and the criminal justice community.

The investigative powers of compliance enforcement agents and officials vary greatly among programs. Minnesota and Wisconsin officials have broad investigative discretion, with the ability to investigate not only unlawful but inappropriate action on the part of an agency toward a victim of crime. The action in question does not need to be a direct violation of a victims' statutory rights. In Colorado, however, DCJ staff retain much less discretion in their investigative powers, and may only investigate and present to the subcommittee questionable agency action involving victims of specific crimes defined under the VRA.

The remedies each compliance enforcement program may invoke vary significantly as well. The VRA subcommittee in Colorado may require systemic change on the part of the agency in cases where a violation of a victim's rights has been found. If the agency chooses not to comply, the case may be referred to the governor and the attorney general, who may file suit against the agency. These formalized procedures are a significant contrast to the powers of the OCVO in Minnesota. Although the OCVO's investigative discretion is broad, it only may suggest a

remedy to the agency. If the agency chooses not to respond to the OCVO's recommendations, however, the only remedial action the OCVO retains is public exposure of the agency to the press and to the legislature.

In Wisconsin, under the current law, it is beyond the responsibility of Victim Resource Center officials to suggest remedies — they may only investigate the situation and present to the victim's concerns to the agency. However, if the current version of the enabling legislation is passed by the legislature, the state board will be able to suggest systemic change, and also will be able to fine agencies and report publicly an agency's noncompliance with victims' rights laws.

Another significant difference among the three programs is the role adopted by the enforcement body with respect to the victim. In Wisconsin, a primary role of Victim Resource Center officials is to act as an advocate for victims' rights. For example, officials will provide direct victims' services to victims in Wisconsin counties that do not participate in the victim and witness assistance program, and in cases in which the DOJ has employed a

special prosecutor to handle the proceedings for the government.

In Minnesota, however, the situation is different. OCVO officials stress the importance of neutrality and objectivity in their investigations of allegedly unlawful or inappropriate treatment of crime victims, and prefer to emphasize their role as a body that oversees the government's provision of service to victims. Colorado officials also adopt a more neutral position. The DCJ staff's responsibility under the current structure is to support and facilitate victims' access to the subcommittee.

This difference in role is reflected in Victim Resource Center officials' decision to prioritize further development of the direct services provided by the office, such as the crisis response program. Conversely, the scope of services offered in Minnesota and Colorado are limited to overseeing the treatment of victims in the criminal justice system. As a result, officials in Colorado and Minnesota concentrate their efforts on expanding current training and outreach efforts to both the criminal justice communities and the general public on crime victims' rights and services and the availability of redress through the compliance enforcement process.

SIMILARITIES AMONG PROGRAMS

Despite the different approaches to victims' rights compliance, officials in each of the three states cite several similar themes that guide them in their investigation of victims' rights violations, and help them foster positive changes for victims within the criminal justice system. They also note similar challenges in their roles as enforcers of victims' rights.

Officials in all three states note that criminal justice practitioners are more receptive to their efforts to improve the criminal justice system's response to victims when they use a collaborative, nonconfrontational approach when investigating the action or inaction of an agency, or when addressing the actions of criminal justice practitioners or victims' service providers. By handling these situations in a nonconfrontational way, officials maximize the likelihood that the practitioner or provider will take responsibility in the case. Furthermore, compliance enforcement officials who act in a nonconfrontational manner are less likely to be perceived negatively by criminal justice practitioners in cases in which a victim's allegations are unfounded or the agency has acted lawfully.

Another common theme officials in the three states describe is their deference to local authorities and resources to address victims' allegations concerning unlawful and inappropriate agency action. Victims' services offices in all three states have created resource directories that list local public and private victims' services providers. State officials consult these directories and make referrals from them on a consistent basis.

For the most part, these officials perceive their services as a last resort for victims when complaints cannot be solved by working collaboratively with local criminal justice practitioners and service providers. The exception to this is in the eight Wisconsin counties that do not participate in the victim and witness assistance program. In these counties, resource center officials act as the primary contact for victims' services as well as victims' rights compliance enforcement.

Another common theme officials note was the role of the state agency in clarifying for victims their misperceptions about the workings of the criminal justice system. Officials in all three states indicated that one of the agency's primary responsibilities is to explain to the victim why the criminal justice system works the way it does, illustrate the difficulty and significant amount of work involved in bringing a case to trial, and explain why an offender may only serve a portion of his sentence. This effort serves to appropriately establish what he will get back from both the criminal justice proceedings and the compliance enforcement process.

Observers of the compliance enforcement process in all three states agreed that individuals charged with victims' rights compliance oversight must believe in and understand the criminal justice system to be effective in their role of explaining to the victim his role and rights. They also noted that compliance enforcement officials — whether they adopt an impartial or advocacy role toward victims — must also be willing to think critically about how the system may be expanded or modified to incorporate the rights and needs of victims.

Officials express some consistent frustrations with overseeing their systems' provision of victims' rights. They note that in some situations, enforcing victims' rights was out of the purview of their ability to act. For example, none of the programs studied or officials interviewed are able to interfere with a prosecutor's decision to try a case, although they all may present an opinion on the issue on behalf of the victim. Nor may compliance enforcement officials oversee the actions of judges in the provision and enforcement of victims' rights.

Officials also expressed concern about situations in which the compliance enforcement process does not produce an immediate benefit for the victim. Resolution to a victim's complaint may not be identified in time for a victim to benefit from any changes in agency behavior. In those cases, a victim's complaint results in the agency undergoing some sort of systemic change in the way it handles specific victims' issues in the future. Although this type of comprehensive change is considered positive by all compliance enforcement officials, they expressed frustration with the fact that the victim who brought the issue to the attention of officials does not benefit from his effort.

Finally, state officials involved with victims' rights oversight efforts indicate that more resources — in the form of funding or personnel — dedicated to the compliance enforcement function would be helpful. Officials in Colorado emphasize the importance of additional resources for training and outreach in rural areas of the state about victims' rights and the subcommittee process. OCVO officials in Minnesota reiterated this same concern, and indicated that their case volume would benefit from additional staff people to investigate complaints brought by victims, while Victim Resource Center officials in Wisconsin indicated that additional funding would help them expand the crisis response effort, and aid them in exploring their future role in training and outreach activities.

SUGGESTIONS FOR REPLICATION

The creation of a victims' rights compliance enforcement function affords state policymakers and

administrators an opportunity to review and assess the status of victims' rights implementation, as well as the current delivery of victims' services in the state. Analysis of this sort may allow officials to assess how a compliance enforcement mechanism will interrelate with current service delivery systems.

When state officials consider creating compliance programs, they may want to consider what type of system will work most effectively within the current political context of their state. They also may wish to consider defining explicitly which agency, individual, or body will accept accountability for compliance enforcement. For example, officials may want to analyze the most appropriate role of the state agency and assess whether a strong state presence in victims' rights compliance oversight would be well received by criminal justice practitioners. Another option would be to create a more decentralized board or committee-driven structure that draws participation from a variety of participants from within the criminal justice system, and different regions of the state.

Another issue that state policymakers may wish to explore during the program planning process is the role and support of other groups active in victims' issues. These groups may include various state and local victims' advocacy groups and victims' service providers, as well as criminal justice practitioners who have been active in incorporating the concerns of victims in their daily practice. Consultation with these groups may add to the program planning process in significant ways. First, eliciting a broader perspective when developing viable victims' rights compliance enforcement mechanisms may help identify

what type of oversight is necessary and will mesh well with current criminal justice practices and traditions in the state. Further, collaboration of this sort may also facilitate acceptance of victims' rights compliance issues, as well as identify viable roles and responsibilities for the criminal justice and victims' services and advocacy systems within these systems.

Other factors that decisionmakers may want to consider is the creation of remedies for agency violation of victims' rights laws. The scope and circumstances which trigger remedies, as well as whom or what may prescribe them are important considerations in the creation of compliance enforcement mechanisms. Once remedies are decided upon, it may be appropriate to encourage legislators to amend current constitutional and/or statutory language to reflect these remedies, as well as the existence of the compliance enforcement process and a victim's right to its access.

Budget concerns and funding for victims' rights compliance enforcement programs are other issues that policymakers may wish to address. An assessment of how victims' services and victims' rights provision are funded under the current system — as well as estimating the level of state support, if any, a compliance enforcement program may receive — may be relevant in program planning. Decisionmakers also may wish to explore the viability of creating or increasing current crime or court surcharges to support victims' services. Finally, it may be appropriate to consider reallocating portions of current federal funding for victims' services to support a compliance enforcement function

when consistent with grant funding eligibility and other current victims' service initiatives.

Other considerations that state policymakers may wish to address when planning for program replication include assessing the alternative functions and responsibilities of a compliance enforcement program. Officials may wish to conduct a needs assessment to determine if the compliance

enforcement body or agency should provide other services, including direct counseling to victims, or training and technical assistance to promote victims' rights outreach and education. Again, officials may want to review the current status of victims' programs and services, as well as assess any gaps in the continuum of victims' service delivery when developing any additional responsibilities for compliance enforcement programs.

Finally, policymakers should consider what types of evaluation tools or techniques may be built into a compliance enforcement system. The ability of a program to evaluate its service to victims and the criminal justice community and respond to deficiencies and developing needs may promote collaboration between victims and the criminal justice system, and encourage effective programming for future victims' services and programming.