



Addressing Victims' Rights in Pretrial Justice Reform

Pretrial Justice Brief 2*

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Momentum for achieving greater justice in pretrial release decision making is building across the country as state and local jurisdictions are exploring a range of approaches and implementing various reforms.¹ The collaborative engagement of criminal justice system stakeholders has been a hallmark of these reform efforts. Victims of crime are among these stakeholders, and they bring important voices to the pretrial justice discussion.

In the past few years, legislatures, criminal justice agencies, courts and victim advocates have pressed for victims' meaningful participation in pretrial decision making and access to services in the pretrial process.² Nearly all states have enumerated victims' rights in pretrial release processes through legislation or constitutional amendment,³ but many victims may have little knowledge about these rights or how to exercise them. For example, a 2013 California survey of crime victims and survivors found that the majority of victims were unaware of most of the services available to them, including access to victim compensation and assistance in navigating the criminal justice system.⁴

Across the numerous articulations of victims' rights, four stand out as fundamental rights: (1) notice, (2) participation and input, (3) victim compensation

and restitution, and (4) reasonable protection.⁵ This brief describes examples of legislation, programs and other resources that promote each of these rights.

Notice

Providing notice to victims of hearings and other events related to criminal proceedings, including the release status of defendants, are essential to ensuring the meaningful exercise of other victims' rights.

- The National Victim Notification Network, also known as VINE (Victim Information Notification Everyday),⁶ operates statewide in 40 states and in some counties in another 7 states. VINE allows 24/7 access to up-to-date information about criminal cases and custody status of offenders. VineLink⁷ provides crime victims online access to this information. In some states the information is available in Spanish.
- According to a review by the National Conference of State Legislatures (NCSL), as of April 2013, 24 states require victim notice of the defendant's pretrial release hearing and 41 states provide victims the right to notice when a defendant is released prior to trial.⁸

* This Brief was prepared by Susan Keilitz of the National Center for State Courts' Pretrial Justice Center for Courts (www.ncsc.org/pjcc). The Pretrial Justice Center provides information and tools, offers education and technical assistance, facilitates cross-state learning and collaboration, and promotes the use of evidence-based pretrial practices for courts across the country. It works closely with the Conference of Chief Justices, the Conference of State Court Administrators and other national court organizations to implement pretrial justice reform. The Center is supported by the Public Welfare Foundation (PWF). Points of view or opinions expressed in the Brief are those of the author and do not necessarily represent the official position of the NCSC or PWF.

Participation and Input

A victim's ability to provide input into decisions throughout the criminal justice process is critical to victim safety, as well as to promoting trust and confidence in the criminal justice system.

- Opportunities to provide input in pretrial decisions may include being heard at pretrial hearings and being consulted before the hearing. The NCSL's review identified 18 states that allow victims some participation in pretrial hearings, with 14 providing the opportunity to be heard or to be consulted.⁹
- The National Institute of Corrections (NIC) recommends that criminal justice agencies and victim service providers adopt policies and develop materials for providing victims information about their rights and opportunities for participation at all stages of the criminal justice system. NIC also recommends that state corrections websites include a page specific to victim information and involvement.¹⁰

Compensation and Restitution

Crime victim compensation and restitution are two important ways that the criminal justice system can help victims recover from the losses they suffer and move forward from their victimization. Victim compensation is made through a state program that pays for out-of-pocket expenses incurred by victims of specified types of crimes, typically felonies, whether or not the offender is prosecuted or convicted. Victim restitution comes from the offender and typically is made through a court order following a conviction.¹¹ Although these remedies may be available by law, access to and enforcement of them can be challenging.

- State and local court leadership spurred and sustained the implementation of innovative

restitution programs that significantly improved victim access to restitution funds in California; Michigan; Vermont; Maricopa County, Arizona; and the Eighth Judicial Circuit of Florida.¹²

- Ten states (Alaska, California, Illinois, Indiana, Kansas, Minnesota, Montana, Nevada, Washington and Wisconsin) have enacted legislation to authorize funds from forfeited bail bonds to be directed to victims, either directly or through victim compensation funds. Montana and Wisconsin broaden access to these funds by allowing the court to order restitution to the victim without making a determination of guilt. Washington directs the dollars to a fund that supports testimony by victims and witnesses.¹³

Reasonable Protection

Ensuring victim safety is a key goal of justice system responses to crime, and pretrial reforms have addressed this goal in several ways. While much of the movement has focused on protecting victims of domestic violence, sexual assault, and stalking, many activities may apply to all victims of crime.

- Examples of legislative action include specifying violent offenses for which pretrial release may be denied, requiring pretrial release hearings in specified crimes, requiring some period of detention before pretrial release for specified crimes, and setting conditions of release.¹⁴
- Johnson County, Kansas is using a locally validated tool, the Domestic Violence Lethality Assessment (DVLA). Law enforcement officers administer the DVLA in a victim interview at the scene of domestic violence calls. A high score can trigger specified protocols, including linking the victim with the local victim service provider and raising the pretrial risk assessment score.¹⁵

- Virginia has implemented guidelines for electronic monitoring of defendants, including while on pretrial release.¹⁶
- The National Network to End Domestic Violence provides extensive guidelines on safety planning related to the ever growing use of technology.¹⁷

In announcing the 2015 National Crime Victims' Rights Week Resource Guide, Office for Victims of Crime Director Joye E. Frost stated:

By working with community leaders and organizations, we can leverage existing

community resources to understand the needs of underserved victims and the impact of victimization. Engaging the entire community will enable us to reach more victims and expand their options for services.¹⁸

Based on the examples of legislative and programmatic activities highlighted here, communities are answering Director Frost's call by continuing to advance victims' rights in their efforts to achieve greater safety and justice in pretrial release.¹⁹

Endnotes

¹ See "A Snapshot of Pretrial Reform Activity Across the Nation," National Center for State Courts Pretrial Justice Center for Courts, January 2015 (www.ncsc.org/PJCC).

² According to the National Conference of State Legislatures (NCSL), over the past three years (2012-2014) 16 states have enacted a total of 22 laws related to victim protection and policy in the pretrial process. See NCSL's searchable databases of bills related to pretrial release (<http://www.ncsl.org/research/civil-and-criminal-justice/state-pretrial-release-legislation.aspx>) and pretrial policy (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy.aspx>).

³ See NCSL, Victims' Pretrial Release Rights and Protections (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx>).

⁴ See "California Crime Victims' Voices: Findings from the First-Ever Survey of California Crime Victims and Survivors," http://www.courts.ca.gov/documents/BTB_XXII_IIIIE_3.pdf.

⁵ See "Offender Re-Entry: The Value of Victim Involvement," a National Institute of Corrections web broadcast, February 18, 2015, at http://nicic.gov/downloads/files/ib2015feb_15c9002%20part%20guide%20nic%20offender_%20reentry%20final%20508%202-18-15.pdf.

⁶ See <http://www.appriss.com/vine.html>.

⁷ See <https://www.vinelink.com/vinelink/initMap.do>.

⁸ See NCSL, Victim Notification and Participation Rights in Pretrial Release at <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#Victim Notification>.

⁹ See Victim Notification and Participation Rights in Pretrial Release at <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#Victim Notification>.

¹⁰ See "Offender Re-Entry: The Value of Victim Involvement" (Participant Guide, p.17); prepared for a National Institute of Corrections web broadcast, February 18, 2015, at http://nicic.gov/downloads/files/ib2015feb_15c9002%20part%20guide%20nic%20offender_%20reentry%20final%20508%202-18-15.pdf.

¹¹ See the National Center for Victims of Crime at <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/restitution>.

¹² See "Making Restitution Real: Five Case Studies on Improving Restitution Collection," National Center for Victims of Crime (NCVC), at http://www.victimsofcrime.org/docs/Reports%20and%20Studies/2011_restitutionreport_web.pdf?sfvrsn=2. See also NCVC's online Restitution Toolkit at <http://www.victimsofcrime.org/library/publications/restitution-and-compensation/restitution-toolkit>.

¹³ See NCSL, Forfeited Bail Bonds Disbursed to Victims at <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#Victim Funds>.

¹⁴ See NCSL, Victims' Pretrial Release Rights and Protections (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx>).

¹⁵ The tool is undergoing further validation. See "An Analysis of the Domestic Violence Lethality Assessment in Johnson County, Kansas," United Community Services of Johnson County at



<http://ucsjoco.org/Uploads/Domestic-Violence-Lethality-Assessment-Report.pdf>.

¹⁶ See Virginia Department of Criminal Justice Services Guidelines For Local Electronic/GPS Monitoring Programs at <https://www.dcjs.virginia.gov/programs/emonitoring/DJSGuidelinesforLocalPrograms.pdf>.

¹⁷ See <http://nnev.org/resources/safetynetdocs.html>.

¹⁸ See Office for Victims of Crime Letter to Colleagues at <http://ovc.ncjrs.gov/ncvrvw2015/pdf/OVCletter.pdf>.

¹⁹ If your jurisdiction is addressing victims' rights and issues in pretrial justice reforms, please share your experiences with Susan Keilitz skeilitz@ncsc.org of the NCSC's Pretrial Justice Center for Courts.

