



Legal Services Department

# Hot Topic!

## Victim Impact Statements

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*WCSAP is committed to fostering a culture of respect, dignity and autonomy for all individuals. We recognize that disrespect, ignorance and the abuse of disparities in power are the roots of sexual violence. To that end, WCSAP endeavors to engage with agencies and individuals who share our commitment.*

### Message from the Editors:

Welcome to the Washington Coalition of Sexual Assault Program's Legal Services - easy to read, single topic e-newsletter for sexual assault advocates. In our first issue, Victim Impact Statements are highlighted to help provide advocates with more insight and information into the importance of one of the few places victims have a voice within the criminal justice system.

We hope you find this information helpful. It is not meant to be comprehensive. Just practical and easy to read. If you have comments, feedback and or suggestions about this issue or future topics, please contact Sherina, at [sherina@wcsap.org](mailto:sherina@wcsap.org).

Our perspective is one that strives to empower the victim, while at the same time utilize the skills and working knowledge that advocates have about the criminal justice system. We realize that this is only one perspective on how to use/create Victim Impact Statements. We respect the diversity of perspectives among the victim advocate community and appreciate that not all victim advocates may subscribe to this perspective.

Lastly and most importantly, thank you. Thank you. Thank you. You are doing amazing work! You have our outmost respect and support.

Sincerely,

*Sherina & Catherine, WCSAP Legal Services Staff*

### In This Issue

- The History of Victim Impact Statements
- The Importance of Victim Impact Statements
- Victim Impact Statements as Effective Court Documents

This project was supported by Grant Number 2001-WL-BX-0036 awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

## The History of Victim Impact Statements

*by Sherina James, WCSAP Legal Services Coordinator*

The first victim impact statement was created in 1976 by a Fresno County, California Probation Officer that wanted the court to have the victim's input regarding their injuries prior to sentencing.<sup>1</sup> At this time, Washington State law did not grant victims the right to give victim impact statements. Prior to victim impact statements, crime victims and survivors were mainly treated as evidence and witnesses by the criminal justice system. However, largely due to successful advocacy, Washington



*Crime Victims receive an overwhelming amount of paperwork as a result of the crime (crime victims' compensation, police reports, medical and insurance forms). The Victim Impact Statement is often another "form" that a victim needs to complete.<sup>2</sup>*

*Alert the client about the impact statement and let them know what the paperwork they will receive will look like. If you are unaware of the type of form that is used by the prosecutor, request a copy so you can clarify any questions your client may have.*

*Inform your client that they may be requested to give more than one impact statement. Remind them that the Department of Corrections may also be contacting them to get an impact statement for the pre-sentence investigation report prior to the sentencing hearing.*

<sup>2</sup> Jeri Costa, *Victim Impact Statements, A Victim's Right to Speak: The System's Responsibility to Listen*

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State is considered by some to be a state with progressive victim rights. In 1981, with the urging of victim rights advocacy groups such as the Office of Crime Victims Advocacy (OCVA) and the Washington Coalition of Crime Victim Advocates (WCCVA), Washington instituted RCW 7.69.030 (see sections 13 and 14) which is often referred to as the "Crime Victims' Bill of Rights". Victim's rights were advanced again in 1990, when Washington amended the state's constitution, Article I, Section 35, to include the right of victims and survivors to make a statement at sentencing or any other time at which the defendant's release is being considered.

<sup>1</sup> Jeri Costa. *Victim Impact Statements, A Victim's Right to Speak: The System's Responsibility to Listen*

## The Importance of Victim Impact Statements

*by Sherina James, WCSAP Legal Services Coordinator*

Victim impact statements are a tool that crime victims and survivors can use to give the court an understanding of how the crime has impacted their life. It is important to note the term 'crime victim' includes secondary victims of crime such as family members. If the crime victim is unavailable for any reason a representative of the victim may exercise the right of the victim to make a statement.

Washington's crime victims' bill of rights and the state constitution gives victims the legal right to give input regarding:

- *the charging decision of the prosecutor*
- *their objection to plea agreements or any comments they have related to the plea agreement*
- *the pre-sentence investigation*
- *the sentencing of the defendant and*
- *any proceeding where the defendant's release is considered; presumably this includes arraignment, bail hearings and speedy trial violation dismissals.*

Impact statements are not only helpful to judges and other parties of the criminal justice system. They can be helpful to clients as well. Victims that are given the opportunity to present a victim impact statement express a greater level of satisfaction with the criminal justice system in general (1992 MADD Criminal Justice Survey, by Regina Sobieski). Judges often consider the information contained in the victim impact statement as well as the pre-sentence investigation (PSI) report when sentencing a defendant.

Victim impact statements are generally written documents. However victims are not limited to this format - audio and video taped statements are permitted, but remember to request the equipment needed to present a statement in these formats.

### The Advocate's Role

As advocates, we can inform our clients of their right to give input at



***“As advocates if we understand what type of sentence an offender is likely to receive and the importance of integrating victim requests into conditions of sentencing, we are better able to keep clients informed about the criminal court process; what happens after sentencing and how a victim’s statement may be used in the future when the offender is released.”***

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specific points throughout the criminal court process. We can ask our clients what they need to help facilitate their ability to exercise these rights. For example, if your client is in need of an interpreter, work with the prosecutor's office to ensure the client gets an interpreter and that the court is prepared to allow extra time for the sentencing.

It is our responsibility as advocates to inform the victim as soon as possible that they are entitled to give an impact statement(s) and when they are allowed to present it to the court. The earlier in the process a victim is aware of their rights, particularly their opportunity to make a formal statement to the court the more likely it is a victim will exercise those rights. Advocates also provide emotional support to victims when preparing their impact statements. Does the client need someone to help them refine their statement or help them clarify what they really want to say? Sometimes a victim may want the opportunity to practice reading the statement. Lastly, in assisting victims with impact statements, it is important to remember that our role is informed by what helps empower victims as they move through the court process.

## Victim Impact Statements as Effective Court Documents *by Catherine A. Carroll, WCSAP Staff Attorney*

\*Note, this article uses the pronoun he for defendant/offender and she for victim/survivor because the majority of victims are female and the majority of perpetrators are male. We appreciate that men are also victims and women are also perpetrators.

As advocates we know how important victim impact statements can be - not only to victims but to the court. Often a victim impact statement is the result of a process that a victim goes through in order to articulate the extent of the harm the defendant has caused to help illustrate the short and long term physical, psychological and emotional impact of the crime. Conceptually a victim impact statement serves to present a picture to the court of what the victim has experienced.

In general a victim impact statement is used to educate the court and the jury about the impact of the crime upon the victim(s) and their loved ones. It is also used to inform conditions of sentencing imposed upon the defendant at the time of release. This is important because depending on the type of sentence received, if a particular desire of the victims is not articulated and included as a condition of sentence, then it is lost. It is also used to educate the court and sometimes the Department of Corrections about the more subtle characteristics of the defendant or his behaviors or illustrate any particular knowledge the victim has of the defendant that would not otherwise be known.

In Washington State we have a rather complicated sentencing scheme that can make it difficult sometimes to understand just how and when a victim impact statement may be used. Generally, a victim impact statement will be reviewed by the Department of Corrections, (DOC) Indeterminate Sentencing Review Board (ISRB) if the offender has *been sentenced before July of 1984 (also referred to as indeterminate sentencing)* or under a **determinate plus sentence**. The ISRB will consider recommendations from the victim about how much time the offender should serve, requests for any specific conditions to be imposed



***“With determinate sentences under the Sentencing Reform Act, (SRA) the victim impact statement is used only at the sentencing hearing. It is not further reviewed by any board. Including any conditions the victim would like imposed upon the defendant, upon his release, in the victim impact statement is critical. It is also important to make sure those requests are documented in the Judgment and Sentence as a condition upon release. If the request is not documented as a condition of release, it does not exist and will not be considered at violation of community supervision. “***

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if parole is granted and anything relevant towards the offender's progress towards rehabilitation. Most importantly the ISRB is looking for information in the victim impact statement that they would not otherwise have in the defendant's file. Remember they are reviewing his file to determine if he should be released. The more clear a statement is and the more compelling it is about the impact of the crime upon the victim, and how it expresses her fears and needs, the more powerful it will be to the review board.

With indeterminate sentences, because it applied to people convicted before July 1984, there are not many in existence because most of those people have already completed their sentences and have been released from prison. With a determinate plus sentencing, which applies to most Class A felonies, such as Rape 1 or 2, Child Rape 1 or 2, the victim impact statement is used at sentencing and beyond by the Department of Corrections, ISRB.

If the defendant has a **determinate sentence** it is likely that the victim impact statement will only be used at the sentencing hearing and not be further reviewed by the Department of Corrections. This is because once a defendant has completed a determinate sentence – he is released and on community supervision for a period time, usually 1 - 3 years. If he violates any conditions imposed at the time of sentencing, he is subject to an actionable violation of up to 60 days in jail. He is not however returned to prison. Remember the defendant has already served his time and completed his sentence. Therefore with determinate sentences under the Sentencing Reform Act, (SRA) the victim impact statement is used only at the sentencing hearing. It is not further reviewed by any board. Therefore, including any conditions the victim would like imposed upon the defendant upon his release in the victim impact statement is critical. It is also important to make sure those requests are documented in the Judgment and Sentence as a condition upon release. If the request is not documented as a condition of release, it does not exist and will not be considered a violation of community supervision.

Thus as advocates if we understand what type of sentence an offender is likely to receive and the importance of integrating victim requests into conditions of sentencing, we are better able to keep clients informed about the criminal court process; what happens after sentencing and how a victim's statement may be used in the future when the offender is reviewed and/or released.

Victims may use alternative formats for presenting their statements. However, when submitting a written document, the following guidelines may be helpful for advocates in assisting victims draft their statements so that they also create an effective court document. If you find that these suggestions "sanitize" the victim impact statement - by all means don't use them. You are working with victims everyday. No victim is the same and there is no one "right" way to write a Victim Impact Statement. My perspective requires that I think about whom the receiver of this information is - the court, the jury and possibly, the Department of Corrections. As such, I believe as advocates, our role is not just to facilitate the victim's voice in the criminal justice system, but also to



### **Noteworthy:**

- *Victim Impact Statements can be updated if the defendant is still under Dept of Corrections (DOC) jurisdiction.*
- *Victims may want the Indeterminate Sentencing Review Board (ISRB) to know how the crime has effected them years later.*
- *The ISRB may try to contact the victim for an updated victim impact statement.*
- *Generally the IRSB will use the contact information and address listed on the DOC's Victim Witness Notification enrollment form.*
- *It is important that victims keep their contact information updated with DOC if they would like to be contacted.*

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make sure that voice is informed about how the statement may be utilized. Having that information expands a victim's ability from being heard to having a lasting impact.

### **The Nuts & Bolts**

- When you inform the client that she may present a victim impact statement to the court at sentencing, provide her with a list of questions that would be helpful to help get her started in thinking about what she would like to communicate.
- Be mindful that sometimes the process of writing a statement becomes very cathartic for victims. Victims may need to be reminded of the statement's purpose without discouraging them of their need to purge themselves.
- Think about using an interviewing technique with the victim to help extrapolate the most important points - let yourself act as a filter for the client so that you can pull out what is most important for the court to know, objectivity is helpful. When you are finished have the client review it and talk about it-what they like or don't like; what they would like to add/change, etc...
- Remember that even though this is an opportunity for the victim to fully express themselves, this is a court document. A number of drafts may be helpful before submitting a final, well thought out and edited version to the court.
- Include in the statement any requests that the victim has in the future - when the defendant may be released; such as a no contact provision - or stay away from the victim's residence or place of employment (be careful not to be too specific because if the victim moves or changes jobs you want the provision to be applicable over time). Ask that these requests specifically be included as conditions of sentencing.
- The statements should not be too long - as a general rule try to keep them to no more than two pages; this way they are more likely to be fully read (Also, make sure there are paragraphs - one long sentence is not recommended).
- The statement should focus on the most salient effects the crime has had upon the victim and her/his family. It may also include information about the victim/defendant's history if they have been in a relationship, and any other information that is relevant that the victim would like the court to know.
- Written documents should be typed. Generally use 12 point font. Victim Impact Statements should be dated and signed by the victim.
- Drafting victim impact statements is difficult. Drafting victim impact statements to make them effective court documents may be even more difficult. To make a victim impact statement an effective court document requires a degree of objectivity,



**Save the Date!**

The 2004 WCSAP  
Annual Conference  
April 21-23, 2004

Bellevue, Washington

*The will be a Legal Track  
for advocates interested in  
employment, immigration,  
protection orders,  
sentencing and civil issues  
impacting sexual assault  
survivors*

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*Washington's Sentencing  
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<http://www.leg.wa.gov/RCW>

*A website of Washington state  
laws*

<http://www.cted.wa.gov>

*Office of Crime Victims  
Advocacy (OCVA)*

<http://www.ncvc.org>

*The National Center for Victims  
of Crime website*

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forethought about potential issues when the defendant is released and good writing skills. As advocates we have these skills and can certainly practice them with our clients as we strive to help make their statements as powerful as possible. It is our role to understand how these statements may get used and how to help victims convey the true impact of sexual assault upon their lives. It is also our role to empower crime victims and not eclipse their experience. As such, understanding how the criminal process works provides us with tools to better support victims in exercising their rights as crime victims. ♦

**Local Wisdom on.....**

***Victim Impact Statements*** with Jeralita "Jeri"  
Costa Community Victim Liaison, Department of Corrections

When asked about the importance of victim impact statements Jeri Costa explains that victim impact statements are often the only opportunity for victims to have some say in the system about how the crime has effected their life and the lives of their family members.

She stresses the importance of informing a victim/ client of their right to give an impact statement. This includes informing them about all aspects of the statement, such as how it will be used and who will have access to the statement (especially the defense attorney and the defendant).

It is also critical that advocates and prosecutors protect the confidentiality of the victim's contact information, which is often included on the cover sheet of the victim impact statement.\* In order to make sure that the victim impact information is retained in the offender's file with the Department of Corrections, the victim impact statement must be attached to the Judgment and Sentence document at the time of sentencing. Advocates can provide advocacy by working with the prosecutor to ensure that the sentencing documents include the impact statement without revealing the victim's confidential address and contact information.

*\* It is important to note that victims ARE NOT required to provide their contact information on the cover sheet of a Victim Impact Statement form or document. If a Prosecutor requests this information it should be crossed out before it is forwarded to the court and defense attorney (and defendant). If confidentiality and safety are a concern of the victim, be sure to inform the prosecutor.*

*"Local Wisdom" is a feature that focuses on an issue faced by sexual assault service providers in Washington. WCSAP Legal Services asks service providers to share their wisdom on these issues in an effort to allow all programs to have access to the experiences of other professionals.  
Our Thanks to Virginians Aligned Against Sexual Assault*