Breaking the Silence: Creating a Voice for Victim Rights

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**Introduction**

Victim rights have come a long way in a short period of time but they need to be more effectively protected. There is no one central agency within a state that can properly manage or implement policies of victim rights which is due to a lack of coordination and collaboration of department agencies. To have a good understanding of victim rights, we must first understand what a victim is and the significance of historical background. Starting with important movements and acts that congress passed; next historical background would be the understanding of how they were developed from landmark movements to major Acts that were passed. Victimization and the different types of crimes that take place will really show how important rights are to a victim, while explaining the importance of the intervention for the crime victim. Major court cases have been decided on, reversed, and lead to weakening and strengthening of the victim rights.

Which leads me to my proposal, I propose that a constitutional amendment should continually be proposed as political agenda to keep awareness up and to gain further support. My second proposal is that every state should include a Victim Bill of Rights into their constitution to ensure the victim’s rights are upheld. Along with the Bill of Rights in state constitutions, there should be one lead agency within the state that focuses on improvements and implementing standards for all victim programs. Every county within the state should handle their victim rights to the same standard; there should be no differences between the counties and how they go about upholding the victims’ rights. To prove the points behind the proposal, it is important to look at best practices, and early law concerning victim rights. An explanation of differences between victim rights of the
federal and states levels are needed to then distinguish the core rights that are shared between the two government entities. To tie it all together we can relate all this back to the bible and what God says about the Victims of crimes, which will lead into what the role of Victim Advocate does and why they are the single most important aspect to the victims of crimes.

**What is a victim?**

There are two main documents that give different definitions, and these two sources describe most of the Department of Justice view of what a victim is. The first main source is the VRRA, which are the Victims Rights and Restitution Act. The VRRA defines a victim as, “a person that has suffered direct physical, emotional or pecuniary harm as a result of the commission of a crime…” The second main document that defines a victim is the CRVA, which stands for Crime Victims’ Rights Act. The CRVA definition states that a victim is “a person directly harmed as a result of the commission of a Federal offense or an offense in the District of Columbia”  

The two statutes, VRRA and CVRA also have definitions for other type of victims that include, institutional and representative victims. Institutional victims are commonly from corporations, society, company, association, and joint stock companies. A representative victim, when the actual victim is not capable to represent him/herself or they are under eighteen years old, so they are to have a representative to act on behalf of their rights as a victim; For example, and underage child’s mother or father will be their child’s representative victim acting in their best interest for their rights as long as they are not the accused defendant.
The State of California’s definition of a victim is, “a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term “victim” also includes the person’s spouse, parents, children, siblings’, or guardian, and includes a lawful representative of a crime victim that is deceased, a minor, or physically, or psychologically incapacitated. The term “victim” does not include a person in custody for an offense, the accused or a person whom the court finds would not act in the best interest of a minor victim.” 4

A victim can be more than just the person that has a crime committed against them; as well as, there are different degrees of victims such as the “victim”, representative victim, and institutional victims. For our laws, each statute could have their own definitions; two main statutes, the Victims Rights and Restitution Act (VRRA) and the Crime Victims Rights Act (CRVA), guide them. The VRRA states services to “victims” that are directly harmed by a crime, and the CRVA, sets rights that can be enforced in court for victims that are harmed directly or non-directly by a crime that can be charged. 5

**Historical Background**

**Movements/Important Acts**

Now that we have established who and what a victim is, it is important to understand how victim rights came about; as well as, what important events happened to make them so important. Victim rights have been around, but they were not popular until the 1960’s and the 1970’s. Prior to victim rights, there was no such thing as victim rights; the victim was never part of the criminal justice system if they even reported the crime.
The beginnings started with “Victimology” which is the study and understanding of the relationship between the criminal and victim. This study became relevant after World War II, when a scholar named Stephen Schafer wrote the book, “The Victim and the His Criminal: A Study in Functional Responsibility.” 6 Due to the increase in crime during the 1960’s In the United States his book was the precursor, which the study was done for the U.S. Department of Health, Education, and Welfare.7 During the year 1966, the Administration of Justice and the Presidents Commission on Law Enforcement were made. Those two entities ended up completing the first ever-national victimization survey; which exposed a lot of non-reporting by the law enforcement offices.8

Women’s Movement/ Compensation Program

During the 60’s and the 1970’s, the women’s movement was popular in the United States; nonetheless, they were a huge influence on victim rights. The women who focused on the victim rights movement were usually younger women who were victims themselves from sexual assault, most of the time. As stated by a long time victim advocate Janice Rench of Massachusetts in the 2005 NCVRW Resource Guide,

“ It was not by accident that I joined the movement. That was my passion, having been a victim of a sexual assault crime…And so it was the victims themselves, I believe, that really started this field and certainly it was the sexual assault field in the 70’s that did it.” 9

Since the popularity of fighting for victim rights hit off, the new feminist saw the importance and soon after in the 1972 their three-victim assistance programs and of the three, two were rape crisis centers in Washington D.C, and San Francisco Bay area.10 According to Dr. Marlene Young, and Dr. John Stein, there are three main points of significance that were brought to the victims movement by the new feminist:

1. Emotional crisis was recognized as a critical part of the injury inflicted.
2. Interveners learned to help victims with the practical consequences of rebuilding their lives, rather than relying on a criminal justice system where they were too often maltreated.

3. In the absence of any resources, there was a heavy reliance on volunteers. As a result of their movement and fighting for rights, it resulted in the first ever victim compensation program, which is where the victim is paid back any loss of money that they may have endured. The first compensation program was established in 1965, in the state of California, then came New York; 28 other states by 1979 all had victim compensation programs. The early compensation programs were through the social welfare programs, and this was a good start because it involved communication from the victim to the criminal justice system since they had to report any kind of crime and had to follow through with the actions after reporting the crime, for instance criminal prosecution. This type of involvement was a much need step in the right path since it allowed for more accurate data collection when it came to criminal-victim relationship, and future Acts.

The usual law enforcement involvement before the compensation programs was very limited and usually consisted of taking information from the victim; there was no active participation of the victim, and no follow-ups. The interaction was limited unless the police needed the victim for more questions and information. The lack of conviction rates and growing number of victims is what drew more attention to victim rights thus the victim compensation program made for better more reliable reporting of crimes; as well as, providing appropriate fund to victims. It is proven through money that reporting of crimes has gone up and money has been handed out over the years since 1984, which started with a 100 million dollar cap. The year of 2012 the yearly cap was 705 million and in fact, in the year of 2012 the receipts filed for compensation exceeded the annual
amount given with a grand total of just under 3 billion dollars worth.\textsuperscript{14} The 2015 funding
cap reached an all time high at 2.3 billion dollars for the year.\textsuperscript{15} As the victims report the
crimes that are committed against them, the law enforcement agencies have to report the
case to victim assistance programs. The involvement of crime victims lead to better
prosecution, as stated by Donald E. Santarelli, Director of the Federal Law Enforcement
Assistance Administration (LEAA) in 1974.\textsuperscript{16} Santarelli quoted Frank Cannavale with
saying that, “the largest cause of prosecution failure was the loss of once-cooperative
witnesses who simply stopped helping a justice system that was indifferent to their most
basic needs.”\textsuperscript{17}

\textit{Feminist Movement Creation}

The feminist movement, helped grow the victims movement, which at first dealt
primarily with victims of sexual assault, or rape, but during the mid to later 1970’s, the
victims’ movement started expanding. The growth of activism started growing; including
friends and families of missing persons by survivors of homicide victims (1974), Parents
of murdered children (1978), Mother against Drunk Drivers (1980), and Justice for
Victims. These different grass roots programs helped shaped how law enforcement acted
towards victims, and they helped build a foundation to grow on for years to come.

After these grass root programs were developed, they were working
independently of each other, so in 1975 NOVA (National Organization for Victim
Assistance) was created and funded by LEAA, (Federal Law Enforcement Assistance
Administration). The purpose behind this new national organization was to bring together
all the ideas and goals, and strengthen them. The creation of NOVA led to many victim
assistance programs created throughout the many states, which gave a basis of
understanding on what services to provide. The beginning services were, common understanding of crisis intervention, counseling, support during criminal justice proceedings, compensation, and restitution. LEAA was the leading supporter, through block grants and it established the first National Victim Resource Center 1978. By the end of the 1970’s there were many states that had multiple victim assistance programs and ten states that had networks, or programs.

A huge influence in the development of Victim Rights was from President Reagan. Due to the growing number of victims involved in the criminal justice system, President Reagan supported policy platforms on victim rights. In 1981, President Reagan endorsed and implemented a National Victims Rights Week. It is no surprise that California was the first state in 1980 to implement state funding for victim assistance, which led to Wisconsin being the first state to pass the bill of rights for victims in their state constitution in 1980.

President Reagan’s Influence

President Reagan created the President’s Task Force on Victims on April 23, 1982 through executive order 12360. The purpose behind the President’s task force was to every year review programs of national, state, and local policies affecting crime victims so they could advise Reagan and his attorney general on ways to improve and assist victims of crimes. The task force findings indicated an uneven scale of rights from the defendant compared to the victims’ rights. The task force made 68 recommendations to Reagan in five different areas:

1. Proposed executive and legislative action at the federal and state levels
2. Proposed federal action
3. Proposed action for criminal justice system agencies (including police, prosecutors, the judiciary and parole boards.
4. Proposed action for other organizations (including hospitals, the ministry, the Bar, schools, the mental health community, and the private sector.)
5. A proposed amendment to the Federal Constitution

President Reagan went as far as proposing a Constitutional Amendments in the sixth amendment. Along with changes to federal victim rights, a couple years later, the Victims of Crime Act of 1984 (VOCA) was passed. The purpose behind VOCA was to fund victims’ services through fines and fees and levied against criminal offenders. In addition to the VOCA, under the United States Code Title 42, the establishment of crime victims rights, services and compensation in law enforcement, prosecution, courts, and courthouses. The actions and importance of these programs helped the area of victim’s movement and victim rights in three different areas including: public policy, program implementation, and public awareness. Public policy has been created through proposed amendments, Acts and laws that have been reauthorized and updated throughout time. Program implementation has been in the form of every state having their own victim assistance programs within the District Attorneys office or within the law enforcement agencies. Lastly, public awareness is the result of popular important head figures speaking out on the issue of Victim Rights, and multiple grass root programs.

With Reagan’s actions and proposal to the sixth amendment of the United States Constitution, there was a ripple effect, and soon after states started establishing victim services, rights to restitution, and state constitutional amendments, just to name a few. Victim Rights, finally had attention, but it doesn’t stop after Ronald Reagan; there were a few other major accomplishments that were made in victim rights after Ronald
Reagan time. What spurred these events was the growth of crime within the United States; it caused people to question our criminal justice system.

1994 Violence Against Women Act (VAWA)

1994, Congress passed the Violence Against Women Act (VAWA) as part of the Violent Crime Control and Law Enforcement Act of 1994. Current Vice President Joe Biden was the initiator as the Senator of Delaware; he submitted to congress a preliminary proposal in 1990 to address the violence against women. After working on VAWA with his staff that consisted of committees, experts and organizations, it was successfully passed four years later. VAWA took four years to pass because of the resistance it received from others on Capitol Hill. The main opposition leader was Chief Justice William Rehnquist who thought VAWA was going to bring an extreme number of family matters into the federal court and bombard the system.

The purpose of VAWA was that it provided requirements for rape and battery that focused on prevention, funding for the victim’s service’s departments and evidentiary matters. VAWA of 1994 also included the first federal crime law that was against battering and a requirement that every state afford full faith and credit to orders of protection issued anywhere throughout the United States. VAWA was a huge win with bipartisan support of 226 sponsors in the House and 68 in the Senate. Domestic violence, which is under VAWA, at that time in 1994, cost taxpayers an estimated 5 to 10 billion a year in health care, criminal justice and other special costs. Under those numbers Congress was able to pass VAWA using the Commerce Clause and the fourteenth amendment of our constitution.
Services have improved since the passing of VAWA and the continued passing of VAWA has dramatically improved victim services for sexual/domestic violence and stalking. Between 1993 and 2010, the rate of intimate partner violence declined 67%.

Besides just the services being improved, it has improved the training for Victim Advocates, law enforcement, health professional, prosecutors, and judges through educational training. As stated by the Whitehouse, “VAWA has trained over five hundred thousand law enforcement officers, prosecutors, judges, and other personnel every year.” VAWA was reauthorized in 2000 and 2005 both with improvements. The reauthorizations of 2000 and 2005 had a combined improvement that included areas that dealt with expanding the laws to include stalking and sexual assault while paying close attention to underserved populations which meant communities of color, immigrants, and tribal/ Native communities. The Office on Violence Against Women gives the funds that are given to VAWA, which is a section of the Department of Justice. Current VAWA was reauthorized and signed in 2013, which has a main focus point on domestic and dating violence on Indian tribes.

*Justice For All Act*

The last major Act that has impacted Victim Rights is the Justice For All Act signed by Congress in 2004. The Justice For All Act is the strongest federal crime victim legislation; it failed to be amended into the United States constitution because the House committee “failed to take action.” This Act is different compared to most Acts due to the fact that the first part of the Act, title 1, is named after 5 different victims. The first part is called the, “Scott Campbell, Stephanie Roper, Wendy Preston, Louaruna Gillis, and Nila Lynn Crime Victims’ Rights Act.” The second part of the Act is called the Debbie
Smith Act of 2004, the third part called DNA Sexual Assault Justice Act of 2004, and the last part of the Act is named Innocence Protection Act of 2004.\textsuperscript{37}

The purpose of the Justice For All Act is to assure protection of crime victims’ rights, to get rid of a large backup of DNA samples that was collected from convicted criminals and from crime scenes, improve and expand DNA testing in the federal, state, and local crime labs, to increase research for a better DNA testing technology, to develop new educational training programs regarding DNA collection and use, provide post conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and other purposes.\textsuperscript{38} This Act is specific for federal crimes only, so victims of federal crimes pertain to this Act only. When the drafters were developing this Act and the reason it was passed besides the main purpose, it is hoped that the Justice For All Act will be a model or guide for states in developing their state victim rights and how they implement them. A way for this to be a guide for states is by offering state’s formula grants, discretionary grants, and set-asides grants, which is all determined by the annual distribution.\textsuperscript{39} The formula grants are for programs that give direct service to victims; while the discretionary funds are given for training, and education for the providers of victim services. To receive these grants, states must meet the Office of Victims of crime (OVC), and VOCA.\textsuperscript{40}

The historical background including the important Acts, and movements are very important in understanding victim rights. Within the last forty years Victim Rights have grown because of the amount of attention that has been given to it and the amount of grants that are available for the programs to exist. Even though there is still a lot more
Victimization

What is victimization?

The basic definition that is in the Merriam-Webster dictionary is. “To treat (someone) cruelly or unfairly; to make a victim of (someone): to harm or commit a crime against (someone).” There is a misconception that after the crime happens; the victim usually gets over the fact that he or she was just a victim. A lot of people do not fully understand the affects of being victimized and the aftermath of being a victim. There is no one certain way of who becomes a victim, or who gets selected. After doing studies, criminal justice professionals can say a certain area of people are more likely to be victims of certain crimes. Victimization is genderless, it shows no biased and it can happen to anyone anytime. Many times victims suffer both, physical and psychological trauma. There are three separate or primary categories of injuries in victims; physical, financial, and emotional. There are secondary injuries, which are results of the victim not receiving appropriate help, and support such as intervention for the aftermath of the crime.

Trauma Associated With Victimization

Physical injury that victims receive are broken bones, bruises from being hit or kicked, and open wounds such as cuts. Those are usually the injuries that are first noticed due to the fact that they are visibly noticeable. There are not so noticeable injuries, such as loss
of sleep, and changes in how the victim eats. The second injury is financially; that means the victim lost money due to the crime. It can be from the loss of items, expenses not paid back to them, and damage done to their property. The third primary injury is emotional victimization; these injuries are a little different than the first two injuries because they are both immediate, and long term. Emotional victimization affects not just the victim but both their family, and friends.

Shock and numbness are in the initial phase, when a victim is considered in shock; it is usually because the victim is put in a situation to which they have no control over. “Fight or Flight” is an uncontrollable automatic response from our brains; it’s an automatic physiological response. Since victims do not have control over this response, it is very important that the victim is not questioned or blamed because it will cause a secondary injury for the victim. A physical and emotional paralysis causes the victim to not be able to make a sound decision. The later effect of this causes the victim to feel unsafe, confused, and defenseless.

Denial, disbelief, and anger are the next phase after shock. This is where the victim’s mood will change from one extreme to another, such as, “Why me?” to wanting revenge. A victim will have the crime on auto play going over and over in their mind, which can cause nightmares, and even fantasies of the killing or causing harm to the offender. The aftermath of a crime is a very stressful time, so a victim may feel many different emotions during this phase.

Recovery time is different for each victim because no situation or crime circumstances are the same; and every one deals with stressful situations at different
rates. During the recovery period, it is very important that the crisis intervention happens immediately. The person who is the intervenor must ask the victim questions about their well being, so they can better serve them, and provide them with the needed services. As the intervenor, it is important to ensure the victim that they are not at fault for what happened because often times, the victim will blame themselves for the crime. If the victim does not have a crisis intervention immediately then they are at risk for long-term injury.

If a victim does not receive the proper support during the aftermath of crime, then there is a high chance the victim will have “secondary injuries.” These secondary injuries are caused due to the lack of support from a number of different individuals. The leading causes of “secondary injuries” are an end result of lack of proper training and ability to sympathize and have compassion for the victims. According to the senior victim advocate of Placer County, “sympathy, empathy, and compassion” are the keys to assisting victims and avoiding any secondary injuries.

Trauma of victimization follows the victim throughout the process of the criminal justice system. When the victim is not given any assistance, it is very easy for the victim to feel lost and confused when it comes to the criminal justice system. Our criminal justice system is not a clear black and white, so it is even harder for a victim to clearly understand what all the process consists of. As stated by the National Center for Victims of Crimes that, “a victims participation in the criminal justice system can aid the victim in rebuilding their lives.” With the victim being allowed to participate and be involved with the criminal proceedings, it will give the victim a sense of control back in their life that will help them regain some kind of “normalness”.
The list of victimization is an important piece of information for why upholding victim rights are so important and why the awareness needs to become larger. The list I explained is distributed by the National Center for Victims of Crime which is a non profit organization that is focused on education and training to better serve victims of crime. The National Center for Victims of crime is funded by donations and federal government grants. The list serves as a guide to policy makers and how victim assistance program should have their personnel respond to victim that they encounter which Eric Holder- Attorney General stated. For instance, the California Penal Code § 13835.10 mandates that the whole state of California, victim advocates must complete required training and after five years they will be reassessed. The year of 2014/15 VOCA gave California $210,000 for just education and training for all victim advocates.

The Use of Victim Rights

There have been two major court cases for the cause of Victim rights; one that ruled against victims rights and the other case ruling for upholding victim rights. These cases were fought in court in regards to using a victim impacts statement. A victim impact statement is a written statement read to the court by the victim or the victim advocate assisting the victim before sentencing. There are two main court cases that have had both positive and negative affects on victim rights.

Victim Impact Statement

The purpose of the victim impact statement is to allow the victim a voice in the court proceedings. Every single state in the United States allows victim impact statements; they are read or presented to the court and judge before sentencing takes
place which allows the judge to consider the victims statement before they impose a final sentencing order. Once these statements are read in court, they become part of the court documents, and if the convicted defendant is sentenced to prison, then the victim’s statement will be available for the parole board to read and consider if they should be up for early release. Victim impact statements are such an important and strong step in the court process. The statements can include how the crime has affected their lives; physical and emotional damage, financial burdens, and in California victims are allowed to state what they believe the defendant should be sentenced too. (Not all states have that option).

**Major Court Cases**

*Booth v Maryland* was a court case that argued that a victim impact statement was unconstitutional, as it would violate the 8th amendments cruel and unusual punishment. John Booth murdered his elderly neighbors as he robbed them so he could feed his heroin addiction. The victims were stabbed to death, and the Maryland Courts convicted Booth on two counts of first-degree murder, two counts of robbery, and conspiracy to commit robbery. 51 Usually a judge will determine the sentencing but Booth wanted the jury to determine his sentencing since he was already found guilty for the crimes that he had committed. Booth’s defense agued that a victim impact statement was violating the 8th amendment and tried to have it suppressed, but the motion was denied and the jury heard the victim impact statement from the family of the couple that was murdered. The case was appealed and taken the Supreme Court were the Supreme Court deliberated and agreed with Booth that the victim impact statement did violate his 8th amendment with a close vote of 5 for Booth and 4 votes against. As stated by Justice Powell for the decision:
Justice Powell argued that in a capital case, the jury's sentencing task is based on the defendant as a unique individual and not on the character or impact of the crime on the victim's family…” – Justice Powell. Monday, June 15th, 1987

The majority of the Justices agreed that this case was violating the defendants 8th constitutional right and that the victims right to read an impact statement was not adequate for a jury sentencing.

*Payne v Tennessee* overruled previous cases *Booth v Maryland*. This case was similar to the *Booth v Maryland*; Payne was arguing that a victim impact statement should not be heard during court regarding how the crime has affected the life of the family. The defendant Pervis Payne entered the victim’s apartment where she and her two children were. When Payne entered the residence he tried to make sexual advances towards the mother, but she resisted and that is when he stabbed her (Ms. Christopher) and her two children, resulting in her death and her daughters death; the little boy survived the stabbing. During the trial Payne and his defense team tried to create a picture that he was a person of good character, and the Prosecution team had the mother of Ms. Christopher give a victim impact statement. The jury found Payne guilty on two counts of murder and sentenced him to death.

When the case was taken to the U.S Supreme Court Payne argued that the Victim impact statement violated his 8th amendment rights of cruel and unusual punishment. The U.S Supreme Court with a vote of 6 to 3 did not overturn the previous court findings. As a result *Payne v Tennessee* overruled the court case *Booth v Maryland*, stating that the defendants 8th amendment was not violated against. As stated by Chief Justice William H. Rehnquist:
"…assessment of the harm caused by the defendant has long been an important factor in determining the appropriate punishment, and victim impact evidence is simply another method of informing the sentencing authority about such harm." – Chief Justice William H Rehnquist. Payne v Tennessee (1991)

The decisions of these cases (Booth v Maryland & Payne v Tennessee) were huge because they brought awareness to the issues of victim rights in the criminal justice system. The end results have set a precedence that allows victim impact statements throughout all sentencing phases. In Booth v Maryland the dissenting justices made a statement that supports the use of VIS and the importance of victim rights. As stated by Justice Rehnquist, Justice O’Connor, Justice Scalia, and Justice White:

“The affront to humanity of a brutal murder such as petitioner committed is not limited to its impact on the victim or victims... I cannot agree that there was anything “cruel or unusual” or otherwise unconstitutional about the legislation about the legislature’s decision to use Victim Impact Statements…” Booth v Maryland 482 U.S. Certiorari To The Court Of Appeals of Maryland

Reform/Proposal

Having the background of what a victim is, the history behind victim rights, and two examples of major cases, next I will present my proposal. After my proposal, I will explain the need for them by explaining the beginning law of victim rights and comparing the federal victim rights and the state victim rights.

The first proposal is best described as a political agenda; with a proposal to the United States Constitution, it will promote victim rights and will make higher officials recognize the need for them. There will also be more recognition as to what they are, just like President Reagan did when proposing his amendment to the U.S Constitution. While
it is extremely hard to add changes to the U.S constitution, I believe that continual effort would bring more awareness to the issue.

Crime is happening and it will never go away, so the rights of victims need to be protected. In addition to the political agenda/ Constitutional amendment, my second proposal is that all states should have a Victim Bill of Rights added into their state constitution because the rights of victims should be upheld throughout the whole court process. A victim bill of rights will provide more precise and clearer understanding of what the rights are.\textsuperscript{55}

The 3\textsuperscript{rd} proposal would call for more awareness, and unity between the local governments and state government so the best way to ensure victim rights would be offered. Due to the lack consistency between agencies, there needs to be standards developed for victim assistance programs. Every state should have one agency that focuses on implementation of victim programs and guidelines to help serve victims of crimes.\textsuperscript{56} We currently have some guidelines, but they can get complex and not every agency within the state of California has the same type of guidelines that they follow. It will also make it easier for when a victim is needed in more than one county for their appearance so the transition will go more smoothly.

Support for Proposals

Best Practices/ Best Guidelines

In the subject of victim rights, it is a little harder to find and tack down the best practices associated with it. This is because of the lack of consistency through the
different victim assistance program, which results in a harder find of data needed to calculate and suggest the best practices for all states. This paper will use the best guidelines for Victim Witness Assistance\textsuperscript{57}, which is written by the Department of Justice.

States have their own laws for Victim Rights, so no one state is run exactly the same. States can suggest their own guidelines/best practices, but that is just for their states because states have different penal codes. Organizations that receive government grants are the ones that help spread awareness, and provide education and training for professionals. The National Center for Crime Victims, the Office for Victims of Crime, The National District Attorneys Association, The National Organization for Victim of Assistance, these are just some of the organizations that push for bettering victim rights from supporting proposed constitutional amendments to helping develop training material and distributing information on the subject.

The best guidelines written by the Department of Justice include seven points that are a model for programs to follow and implement into their program to provide the best possible care to victims.\textsuperscript{58} These guidelines show how agencies should act, but there needs to be a law requiring agencies to implement standards to ensure that all are treated with fairness and so there is a consistency within a states and their local agencies.

\textit{Beginning Law with Victim Rights}

Victim Rights have been addressed a long time before the United States was the United States. There are two main early laws that talked about victim rights and taking care of the victim; they were the Code of Hammurabi, and the Early Roman Law. The
purpose is to show that victim rights are a necessity and the implementation needs to be clearer and programmed into agencies to allow interagency sharing.

Code of Hammurabi was one of the first laws written, which was about 2,000 B.C. The main purpose of the Code of Hammurabi was written for the purposes of having order, as it was essential for trade. Surprisingly, though for the time of the code was written it had victim rights laws written in it. While these laws were advanced for the time pertaining to victim rights, they were also harsh in a sense and are not what our current laws reflect. The Code of Hammurabi was divided into five (5) sections:

1. A penal code of laws
2. A manual of instructions for judges, police officers, and witnesses
3. A handbook of rights and duties of husbands, wives and children.
4. A set of regulations establishing wages and prices.
5. A code of ethics for merchants, doctors, and official

The two main points where the Code of Hammurabi talks about victim and their rights when “protection of the weaker from the stronger.” That first instance is basically saying that widows, elders, and lesser officials were to be protected from the accuser who might misuse or abuse them. The second instance where victim rights is mentioned is when it is said that, “Restoration of equity between the offender and the victim.” In the code it explains this law as making the victim as whole as before; meaning, if something was taken from the victim then the defendant would have to pay it back usually in two fold or more. In some circumstances, that would require death on the defendant’s part. As a result of having rights for the victims, the victim had to forgive the offender.

The second main law to mentioned victim rights was early Roman law. Early Roman law was developed from the twelve tablets, which focused on main points of conduct of family, religious and economics in life. -Tablet one is giving both parties a
voice in the process, which relates to victim rights. Our constitution has given the 
accused rights within our justice system, and this is why victim rights need to be more 
established. 62 Tablet three and eight, main purpose is to signify that the victim has the 
right to have the money given back to him; in other words, restitution is to be paid back 
to the victim and if not then punishment will be inflicted. Tablet eight, again indicates 
that restitution should be given to the victim as a right.63 Early laws regarding victim 
rights have been present, and while they have not had their own exact location in those 
laws, they were addressed. We have established victim rights within our nation but they 
are not up to par with where we are as a society.

*Federal Victim Rights*

Federal Victim Rights were implemented because of the Crime Victims Act. 
President George W Bush signed in the current rights and while they are similar to the 
rights from before; the rights were changed in a way to where they offer the victim more 
access to criminal court procedures and how a victim is treated. In the Act it establishes 
eight (8) rights for the victim; they are: to be protected, notice of court proceedings, not 
to be excluded from the process, the right to be heard in court, speak with the attorney, 
restitution, right of free unreasonable delays, and the right to be treated fair.64

This section is to show the difference between the federal victim rights and 
California state victim rights. It is important to know that not every state has 
implemented victim rights into their state constitution, like California, but all states do 
have legislation concerning victim rights.
**California State Victim rights**

The State of California has been one of the most progressive states regarding victim rights; California was the first state to implement victim restitution to victims of crimes. Before November of 2008, California had victim rights though legislation, but on November 4, 2008, voters of California passed proposition 9 the Victims Bill of Rights Act also known as Marsy’s Law. The whole purpose is to ensure that all victims of crime have their rights protected and they are given due process.  

**Importance of Federal and State rights**

The benefits of having federal victim rights is that it sets a model for the states to help guide them in what the minimum rights should be, which are the eight federal rights. Each state has the minimum rights implemented for their state. Federal Victim rights do not have as many rights as most states, and they are not specific enough for states. Federal victim rights are beneficial to guiding what states rights should be. Compare those to California’s victim rights; California’s rights are more plentiful, and the description is more detailed in what is allowed and what is not. That is the reason for the proposal; that every state should implement a Victim Bill of Rights to ensure they are treated fair from all.

A state is more capable of providing specific detailed laws and rules regarding victim rights because they can shape them to their population and activity going on within their state. The federal government can do a better job of setting a standard with the states of handling victim rights. For instance, the State of California, to receive funding for their victim rights, they have to meet the requirements with reporting the numbers of cases.
filed. All states do that to receive federal grants but they lack consistency throughout the state for working together. For instance, services offered within the San Joaquin County Victim Assistance department, do not assist the victim in court support; meaning the victims is expected to attend court by themselves with no guidance. Where as, services provided within Placer County Victim Assistance Program, provide court assistance during court proceedings, that’s so the victim is informed of what is happening in court.

Bible Application & Role of a Victim Advocate

Bible Application

“If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep… If the theft be certainly found in his hand alive, whether it be ox, or ass, or sheep; he shall restore double. (Ex. 22:1,4). In the bible, the biblical laws are not so much focused on punishment as they are on restoration, between man (defendant) and God, and restitution between the criminal and victim. As said by author Gary North, “Restitution by the criminal to the victim is one way of restoring wholeness to the victim.” These senses of whole feeling of the victim is in respect to making them happy and given them back what was taken from them; a way to restore the peace.

Role of a Victim Advocate

Victim Advocates are the individuals who advocate for the victim; they offer the victim support throughout the whole criminal procedures. Advocates will help with the filling out of required paperwork, documents that are necessary for court, as well as
emotional support. An easy way to think about what an advocate does is to think of them as a middleman. The advocate is the person who communicates with the victim, as to what is going on in their case. If the prosecutor needs to know something about the victim, they will ask the advocate to talk with them; if the victim wants to know how long the process will take or anything specific for the prosecutor, the advocate will communicate their concerns with the prosecutor. The main purpose of advocates is to initiate contact between the victims during the crucial beginning period. The faster an advocate can intervene with the victim then the victim will have a better understanding of what is going on.

The exact role of an advocate is not the same throughout the U.S; it is dependent on the county and what they provide. Placer County Victim Advocates will attend court and will transport a victim to court if requested. Not every county in the state of California offers that option. This lack of consistency throughout the counties causes confusion for victims who have to deal with multiple counties. For example, a boy was murdered and during the trial the mother read a victim impact statement at court in Placer; well the defendant was also wanted in another county. The advocate called the other county because the mother wanted to sit with an advocate during court because she had never been to this county. As it turned out, this county did not offer that option to victims; advocates only spoke and provided information. That mother was in the dark, and felt uninformed.
Conclusion

Victim rights have been mentioned as long ago as 2000 B.C, but it wasn’t until the end of the 60’s did it become an issue and not until Reagan did it gain strength. Victim rights have gained attention within the last 40 years, but it is still a newer concept that needs to be worked on. That is why it is important to know firstly what a victim is, what victim rights are and the history behind victim rights because the way it gained strength fairly quick is the foundation to what it can become. My proposal for a continual political agenda of a constitutional amendment is so important because it will at least bring attention and keep attention within Capitol Hill. Secondly, states should all implement a victim bill of rights because it will ensure that they are treated fairly and that due process is given to the victims. Thirdly, the agencies/ counties within a state should all operate the same way. This can be accomplished with having one single agency within a state that will set rules and standards that every county has to follow. As a result, the state can have interagency exchange, and victims will be informed throughout the whole process. This will ensure that again victims will be treated fairly and properly because the lack of unity creates confusion among victims, and agency personnel.
Bibliography


Endnotes


2 (42 U.S.C SC 10607 (e)(2)(A)

3 (18 U.S.C SC 3771 (e))


See appendix 1A


38 Congressional Research Services: <https://www.govtrack.us/congress/bills/108/hr5107>


41 http://www.merriam-webster.com/dictionary/victimize


“VIS” is abbreviated for Victim Impact Statement

See appendix 1C.


See appendix 1B.


http://www.historyguide.org/ancient/12tables.html : The Laws of Twelve Tablets

http://www.historyguide.org/ancient/12tables.html : The Laws of Twelve Tablets

See appendix 1C for the list of 17 CA Victim rights in Bill of Rights for California


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Appendix 1A

Constitutional Amendment by President Ronald Reagan

“In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense. …Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.” –President Ronald Reagan 6th amendment proposal 1982.
Appendix 1B: U.S Dept. of Justice - Attorney Generals Guidelines.

A) Encouragement to Provide Services and Assistance - Victim assistance programs should always provide services as mandated by their state law. For example, the federal government provides federal crime victim rights, which are the baseline for the Departments services to the victims. The Department of Justice also suggests that when available and depending on resources available, the victim assistance programs should provide additional assistance.

B) Victim Declinations of Services and Exercise of Rights - Every victim assistance program is suppose to notify the victim of their rights and if the victim wants to invoke their rights they are certainly allowed but they can also decline their rights. Whichever the victim chooses, the DOJ suggests that the request be documented.

C) Privacy and Confidentiality Considerations for Victims and Witnesses - The victims’ private information should try to be hidden or blacked out to ensure that personal and confidential information is not produced into public records. Personal and confidential information should remain as eyes only for the professional handling the crime case.

D) Mandatory Training - All employees who work and deal with crime victims will have mandatory training that will be provided and needs to be completed. It is also suggested that for specific titles, they receive specific training. For example, a victim advocate dealing with only juvenile sex cases should have training that is directed specifically for them.

E) Mandatory Reporting of Attorney Generals Guidelines Compliance - All victim assistance programs need to report services to the crime victim therefor at the end of the fiscal year the Office Of Victim Crimes can collect data.

F) Attorney General Guideline compliance measures - all agencies need to set up and put into place compliance measures.

Performance Appraisal - All personnel who are involved with handling victim rights will need to have an evaluation done of their performance.
Appendix 1C: California Victim Bill of Rights

Under Marsy’s Law, the California Constitution article I, § 28, section (b) now provides victims with the following enumerated rights:

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

2. To be reasonably protected from the defendant and persons acting on behalf of the defendant.

3. To have the safety of the victim and the victim’s family considered in fixing the amount of bail and release conditions for the defendant.

4. To prevent the disclosure of confidential information or records to the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim’s family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

5. To refuse an interview, deposition, or discovery request by the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

9. To a speedy trial and a prompt and final conclusion of the case and any related post-
judgment proceedings.

10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim’s family and any sentencing recommendations before the sentencing of the defendant.

11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

13. To restitution.

A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

14. To the prompt return of property when no longer needed as evidence.

15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

16. To have the safety of the victim, the victim’s family, and the general public considered before any parole or other post-judgment release decision is made.

To be informed of the rights enumerated in paragraphs (1) through (16).