

Victims' Interests in Sentencing – in Courthouses and in Public Policy Arenas

Russell P. Butler, Esq.
Maryland Crime Victims'
Resource Center, Inc.

rbutler@mdcrimevictims.org

1-877-VICTIM-1
301-952-0063

Historical Perspective

- Victim as Investigator/Prosecutor
- Victim as Witness/Bit Player
- Victim as Participant

President's Task Force on Victims of Crime - 1982

- <http://www.ojp.usdoj.gov/ovc/publications/presdntstskforcrprt/87299.pdf>
- Bible of Victims' Movement
- System Out of Balance

President's Task Force on Victims of Crime - Recommendations

- Legislative Branch
- Executive Branch
- Criminal Justice Agencies
- Other

Victims of Crime – No Recommendations to Federal and State Sentencing Commissions – Why?

- Commissions did not exist
in 1982 as they do today

Legislative Efforts by Victims and Victims' Organizations

- Victims' Rights
- Criminal Justice Reform

Legislative Efforts - Victims' Rights

- Right to be heard
(Bond/Pleas/Sentencing/
Parole Hearings)
- Right to Restitution
- No Contact with Victims

Federal Crime Victims' Rights

18 U.S.C. § 3771

- *Passed in lieu of federal constitutional amendment*
- *Right to be reasonably heard (plea/sentence/parole)*
- *Right to full restitution as provided by law (see e.g. 18 U.S.C. § 3663A)*
- Notice of release

Rights – To Enforcement of Rights

- Federal – *Kenna v. United States Dist. Court*, 435 F.3d 1011 (9th Cir. 2006)
 - Court's failure to hear victim resulted in reversal on mandamus.

Rights – Supreme Court

- Morris v. Slappy, 461 U.S. 1, 14 (U.S. 1983) - But in the administration of criminal justice, courts may not ignore the concerns of victims.

Rights - States

- 33 State Constitutional Amendments –
Fundamental Law of
States

Rights - States

- By 2008, 27,000 state victim related statutes passed -

<http://www.ojp.usdoj.gov/ovc/new/directions/pdf/t/direct.pdf>

*Maryland Constitution –
General - Md. Dec. of R. art.
47*

*A victim of crime shall
be treated with
dignity, respect, and
sensitivity during all
phases of the criminal
proceedings*

Maryland Constitution - Specific

In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this Article and, *upon request and if practicable*, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these *rights are implemented* and the terms "crime", "criminal justice proceeding", and "victim" *are specified by law*.

Hoile v. State - 404 Md. 591 (2008)

- Domestic violence victim not notified of reconsideration fought back and trial court vacated reconsideration. Maryland appellate court found that victim had no remedy.

Legislative Efforts - Criminal Justice Reform

- Abolish Parole
- Three Strikes
- Death Penalty
- Mandatory Sentences
- Truth in Sentencing

Maryland Statutes and Rules

-

http://www.mdcrimevictims.org/_pages/e_legislation_policy/e3_legis_maryland.htm

- Numerous Statutes
- Rules to Conform Statutes

Maryland's Legislative Efforts – by MCVRC -

- Victims' Rights
- Truth in Sentencing – Provide Transparency to Improve Public Confidence
- (No Advocacy for Mandatory Sentences, Death Penalty Advocacy, or Abolishing Parole)

MD Commission on Criminal Sentencing Policy

- One representative from a victims' advocacy group, appointed by the Governor; (I served two terms from the Commission's founding in 1999)

As victim representative,

- Chaired COMAR Committee which Drafted the MCCSP's Regulations
- Served on Guidelines Committee
- Had vote on Commission

<http://www.dsd.state.md.us/comar/14/14.22.01.07.htm>

- The individual completing the worksheet shall provide the victim information requested in the designated space on the worksheet.

- The information requested includes:
- (1) Whether there was a written or an oral Victim Impact Statement (VIS);
- (2) Whether the victim was notified of and present at the sentencing;

- (3) Whether the victim was notified of a plea agreement;
- (4) Whether the victim filed a notification request form (NRF);
- (5) Whether there was a victim in this offense;

- (6) If the victim was available to participate among other information.

United State's Sentencing Commission Formed a Victims Advisory Group (VAG)

- <http://www.ussc.gov/PRESS/re120080422.htm>
- (I was one of the 6 original members)

For Federal Victims Advisory Group (VAG)

- Drafted VAG's position on Identity Theft Comments
- Testified for VAG before Commission

Future – Sentencing Commissions vis-à-vis Crime Victims

- Should There be Victim Representatives on Commissions?
- Should There be Victim Advisory Committees to Commissions?
- Can Commissions Assist in Carrying Out/Measuring Compliance Regarding Victims' Rights Laws?

Future – Federal Sentencing by PSR/Application of Guidelines

- In re Brock, 262 Fed. Appx. 510 (4th Cir. Md. 2008)
- Should victim be reasonably heard in determination of the guidelines computation? ~ 80 % of cases are within guidelines.
- Should victim have reasonable access to the non-confidential material in the pre-sentence report (PSR) in order to be reasonably heard?

Summary

- Victims Roles Have Changed
- Both in Courts and in Public Policy Venues Victims are Being Heard in Some Jurisdictions
- Sentencing Commissions Should Consider how Victim Issues and Groups Can Have Reasonable Input into the Process as Stakeholders
- Transparency in Sentencing Would Benefit Public Accountability including by Victims.

Questions????

Your turn

ACKNOWLEDGEMENT

- “This Project supported by funding awarded under subgrants funding from the Office of Justice Programs, United States Department of Justice through the National Crime Victims Law Institute (NCVLI) (Grant No. #2008-DD-BX-K001). Points of view in this presentation and document are those of the author and do not necessarily represent the official position or policy of the U.S. Department of Justice or NCVLI.”

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