UNDERSTANDING AND APPLYING THE COLORADO VICTIM RIGHTS AMENDMENT

Emily Tofte Nestaval, Rocky Mountain Victim Law Center (RMvlc)
Jenn Doe, Colorado Organization for Victim Assistance (COVA)

Objective for this session
- Understand the rights afforded to victims engaged in the Colorado criminal justice process
- Be better able to recognize potential VRA compliance issues faced by victims you work with
- Know what resources are available to help safeguard the constitutional rights of victims

BRIEF HISTORY OF VICTIM RIGHTS
From prosecutor...to piece of evidence

- Private prosecution was common in the U.S. into the 19th Century
- Then came a shift and the eventual change in victims' role to that of a witness or piece of evidence in a prosecution.
  - Rule 615 of the Federal Rules of Evidence, as initially adopted in 1975, allowed for exclusion of crime victims from the courtroom unless their “presence is...essential to the presentation of a party’s cause.”

The 1970s to the 1980s

- States enact victim compensation programs and rape shield legislation.
- Presidential Task Force created in 1982
  - Task Force interviews crime victims, CJ Professionals and conducts research

President’s Task Force on Victims of Crime, Final Report vi (1982)

“Somewhere along the way, the American criminal justice system had become “appallingly out of balance,” “serv[ing] lawyers and judges and defendants, [while] treating the victim with institutionalized disinterest,” “the neglect of crime victims is a national disgrace.”
Task Force Results

- US Office of Victims of Crime (OVC) established in 1983
- 1984 Passage of the Victims of Crime Act (VOCA)
  - Provides victim services funding through federal crime fines and fees
  - VOCA funds become available in all 50 states, DC, and US Territories
- Attempts to pass a federal victim rights amendment have been unsuccessful, but paved the way for states...

VICTIM RIGHTS IN COLORADO
Colorado’s VRA

- An amendment to the Colorado Constitution was passed in 1992 by over 80% of the vote.

24-4.1-301, Legislative Declaration

"...It is the intent of this 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 protection afforded criminal defendants."

Article II, Section 16a of the Colorado Constitution

"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 justice process. All terminology, including the term ‘critical stages,’ shall be defined by the general assembly."
24-1-302.5(1)(a). Fairness, Dignity & Respect

“The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.”

The first rule in victims rights.

COLORADO VRA CRIMES

VRA Crimes are PERSONS crimes

<table>
<thead>
<tr>
<th>Crime</th>
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<tbody>
<tr>
<td>Murder (1st &amp; 2nd degree)</td>
<td>Stalking</td>
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<tr>
<td>Manslaughter</td>
<td>Robbery &amp; Aggravated Robbery</td>
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<td>Criminal negligence homicide</td>
<td>Human Trafficking</td>
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<tr>
<td>Vehicular homicide</td>
<td>Protecting a person from harassment or intimidation</td>
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<tr>
<td>Assault (1st, 2nd, 3rd degree)</td>
<td>Carless Driving Resulting in Death</td>
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<tr>
<td>Vehicular assault</td>
<td>Child Abuse</td>
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<tr>
<td>Mansigness</td>
<td>Robbery (except an Accident that results in death or SBI)</td>
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<tr>
<td>Burglary</td>
<td>Indecent Exposure</td>
</tr>
<tr>
<td>All sex crimes</td>
<td>Tampering with a victim or witness</td>
</tr>
<tr>
<td>Kidnapping (1st &amp; 2nd degree)</td>
<td>Bribery</td>
</tr>
<tr>
<td>Vehicular assault</td>
<td>Criminal attempt, conspiracy, solicitation, conspiracy to ALL</td>
</tr>
<tr>
<td>Tampering with a victim or witness</td>
<td>Any crimes where the underlying factual basis is DV</td>
</tr>
<tr>
<td>Robbery (except an Accident that results in death or SBI)</td>
<td>Any crimes against an adult person</td>
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<td>Child abuse</td>
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"Municipalities and municipal courts shall be encouraged to adopt policies which afford the rights granted to crime victims pursuant to this section to crime victims at the municipal court level, to the extent the adoption of such policies is practicable in the particular municipality."

DV cases go through municipal court in some jurisdictions
- When, why and what does that mean for the VRA?
- Statutory language versus local policies

NOTIFICATIONS AND CRITICAL STAGES
VRA Notification Processes & Responsibilities

- Automatic Notification
  - Victim doesn’t have to request notification
  - Enforcement agencies are responsible for notification
    - Law Enforcement
    - District Attorney
    - Judges/Courts

- Notification by Request
  - Victim has to assert right through written request (opt-in)
    - Local Jails
    - Department of Corrections (includes ComCorr & Parole)
    - Probation
    - State Hospital
    - Division of Youth Services

What Advocates Need To Know About Notification

- Opt-in for post-sentencing
- Charging decisions
- Plea deals

Post-sentencing VRA Notification

- Release, transfer, death, projected release date
- Any scheduled parole or probation hearings and any changes to schedule
- Requests for modification to protection order or sentence
- Any release on furlough, work release, or to a community corrections facility
- Release, escape, transfer, death, projected release date
- Upon Written Request
### Critical Stages (‘denotes the right to be heard)

<table>
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<tr>
<th>Stage</th>
<th>Proceedings</th>
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<tbody>
<tr>
<td>Arraignment</td>
<td>Preliminary hearing</td>
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<tr>
<td>Motions hearing</td>
<td>Disposition/Pla*</td>
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<tr>
<td>Sentencing</td>
<td>Subpoena for victim records*</td>
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<tr>
<td>Appeals</td>
<td>Modification or resentencing*</td>
</tr>
<tr>
<td></td>
<td>DNA test result/proceedings</td>
</tr>
<tr>
<td></td>
<td>Expungement of juv. records or sealing of adult records hearing*</td>
</tr>
</tbody>
</table>

### Offender's location/projected release date

- Full board parole hearing*
- Decision to commute/pardon (prior to public disclosure)
- Advance notice of furlough or work release
- Release, transfer, escape/recapture, and/or death
- Discharge and related conditions

### Critical Stages (‘denotes the right to be heard)

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<td>Offender's location/projected release date</td>
<td>Preliminary hearing</td>
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<tr>
<td>Time/location</td>
<td>Execution in capital case</td>
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<tr>
<td>Referral to community</td>
<td>Transfers to non-secured facility</td>
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<tr>
<td>Parole/revocation hearings*</td>
<td>Transfer from non-residential facility</td>
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### Additional VRA Rights/Responsibilities

- Disclosure for defense-initiated victim outreach (DiVO):
  - State legal name and inform victim that they are with defense
- Cold case victims have rights, too (LE responsibilities)
- If the crime occurred before 1993, and the offender is currently serving a sentence, victim can request notification
- Victims who were minors when the crime occurred can request to become the primary point of contact at 18
Filing a Complaint with the Division of Criminal Justice

- Written Complaint Received, Reviewed, and Recommendations Made by DCJ Staff
- Complaint Forwarded to VRA Subcommittee and to Named Agencies
- VRA Subcommittee Makes Violation Determination
- If the Complaint is Founded, Subcommittee Sets Forth Resolution Requirements
- Victim Informed

VRA COMPLIANCE PROCEDURES

THE ROLE OF ADVOCATES
How Advocates Help to Enforce the VRA

- System vs. Community-based advocates
- Communication with VRA responsible agencies
  - Ex., advocating for a client to be heard remotely, assistance with victim impact statement, advocating for swift resolution, etc.
- Navigating post-sentencing notification
- Issue spotting related legal issues and making referrals
- Advocating for right to be upheld
- Understanding where the case is filed
- Assistance with compliance process

When to Contact RMvlc

Free legal services for crime victims in Colorado providing information, representation, and support with legal issues that are the direct result of victimization.

- Victim Rights Legal Services
  - General questions about VRA
  - When the VRA is going wrong
  - Privacy issues
  - Cell phones
  - Mental Health Records
  - School Records, etc.
  - Sequestration
  - Restitution
  - Notification
  - Return of Property
  - Fairness, Dignity, & Respect

- Legal Information Network of Colorado (LINC)
  - Civil legal issues related to victimization
  - Accurate & reliable legal information
  - Technical assistance
  - Training
  - Consultation
  - Limited legal advice and representation for survivors
  - General questions about legal issues related to victimization

Issues Arising From a Criminal Case

- Notification
- Right to be Heard
- Sequestration & the Right to be Present
- Privacy
- Right to Swift Resolution
- Restitution
Civil Issues Arising From a Criminal Case

- Restitution converts to civil judgement post-sentencing
- Protection Orders
- Housing
- Disability
- Title IX
- Immigration
- Family Law (custody, divorce)
- Dependency & Neglect
- Estate and Probate
- Intellectual property (story telling)
- Personal injury
- Name change
- Liable/Slander
- Retaliatory litigation defense
- And more…

CASE STUDY

Hope calls your office and says she thinks someone may have sexually assaulted her last month. Hope explains she is a student at a local university and uses a wheelchair. Hope says the school assigned an aide to help her take notes during classes, and she and the aide, Shannon, had become friends. Shannon invited Hope to a party at her house. Hope tells you she had a few drinks at the party, but can’t remember anything that happened after that. Hope says she woke up the next day on the couch and her underwear and shirt were gone. Shannon told Hope she was “so wasted” at the party and that they “had a really good time together.”
Hope (continued)
Hope tells you she called the non-emergency line at the police department and went for a SANE exam. She originally made an anonymous report, but decided to engage the criminal justice system later. Two weeks after she decided to talk to law enforcement, a detective came to her job at the school library to take a statement. Hope says she was uncomfortable talking about what happened where other people could hear, but the police officer told her it was "now or never" and that she had already waited too long to really do anything anyway. Hope says the officer gave her some papers to sign to get her school records, and asked if he could copy all of the messages between her and Shannon from her phone.

Hope (continued)
Hope tells you it has been weeks since she has heard from the detective and isn’t sure what is happening in her case. She thinks that Shannon may have been arrested, but isn’t sure. She expresses safety concerns and tells you she is now failing several of her classes because of everything that has happened. She is curious about what to expect in the process, what her rights are, and needs support navigating the criminal justice system.

Hope (continued)
- What, if any, additional follow-up questions do you have for Hope?
- What present and potential victim rights issues do you see/foresee arising for Hope?
- What information and resources do you provide Hope?
QUESTIONS?

THANK YOU!

Emily Tofte Nestaval, emily@rmvictimlaw.org
Jenn Doe, jenn@coloradocrimevictims.org

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