



Right to be Present Checklist

*Research to Compile in Preparation for Drafting Motion*¹

Constitutional Rights:

- ❑ Determine if your jurisdiction is one of the 30+ states with a victims' rights amendment. If so, within the amendment identify the following:
 - The definition of victim;
 - The provision granting victim standing to assert rights in the trial court;^{2,3}
 - The provision granting the right to be present; and
 - The more general provision of right to be treated with fairness, dignity, and respect, as it may be used to argue for presence in the courtroom.

Victims' Rights Statute:

- ❑ All fifty states have some version of a victims' rights statute.
 - Identify all of the same information under your jurisdiction's code as for the Constitutional Rights above.

Witness Exclusion Rule:

- ❑ All jurisdictions have a rule authorizing a court to exclude witnesses from a courtroom during proceedings. Generally, most states' rules are modeled after the Federal Rule 615.
 - Identify if your jurisdiction provides a specific exception for victims within the witness sequestration rule.⁴
 - Determine if the jurisdiction has an exception for excluding the victim elsewhere in its rules or statutory code.⁵

Caselaw:

- ❑ Search a legal database for any cases in your jurisdiction addressing:
 - A victim's right to be present.⁶

¹ To assist in locating the victims' rights laws in your jurisdiction, [click here](#).

² Examples of an explicit standing provision include: Or. Const. art. I, § (5)(a) ("Every victim ... shall have remedy by due course of law for violation of a right established in this section."); Tex. Const. art. I, § 30(e) ("A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section"); Ariz. Rev. Stat. § 13-4437(A) ("The victim has standing to seek an order, to bring a special action or to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, any implementing

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Are you working on a case with a victims' rights issue?

NCVLI provides legal technical assistance to practitioners serving crime victims.

legislation or court rules.”); Fla. Stat. § 960.001(e)(7)(“The victim of a crime, the victim’s parent or guardian if the victim is a minor, and the state attorney, with the consent of the victim or the victim’s parent or guardian if the victim is a minor, have standing to assert the rights of a crime victim which are provided by law or s. 16(b), Art. I of the State Constitution.”); Ind. Code § 35-40-2-1 (“A victim has standing to assert the rights established by this article.”).

³ Not every jurisdiction has an explicit standing/enforcement provision. If you are in a jurisdiction where standing is not explicit be prepared to argue your jurisdiction’s common law standing analysis. Generally, a victim has standing if he or she can demonstrate: injury, causation, and redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (“Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an ‘injury in fact’ Second, there must be a causal connection between the injury and the conduct complained of Third, it must be ‘likely’ . . . that the injury will be redressed by a favorable decision.”) (internal citations omitted). Remember, party status is irrelevant to a standing analysis. *See, e.g., Doe v. United States*, 666 F.2d 43, 46 (4th Cir. 1981) (finding, in the context of appeal, that the rape victim did have standing to challenge the admission of evidence under rape shield: “No other party in the evidentiary proceeding shares [the victim’s interests in privacy] to the extent they might be viewed as a champion of the victim’s rights”).

⁴ *See e.g., Tex. R. Evid. 614 (4)* (At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of: . . . the victim in a criminal case, unless the victim is to testify and the court determines that the victim’s testimony would be materially affected if the victim hears other testimony at the trial.”).

⁵ *See e.g., Md. Code Ann., Crim. Proc. § 11-302 (d)* (“The court may sequester a representative or, after a victim has initially testified, the victim from any part of the trial or juvenile delinquency adjudicatory hearing on request of the defendant, child respondent, or the State only after the court determines, with specific findings of fact on the record, that:(1) there is reason to believe that the victim will be recalled or the representative will be called to testify at the trial or juvenile delinquency adjudicatory hearing; and (2) the presence of the victim or representative would influence the victim’s or representative’s future testimony in a manner that would materially affect a defendant’s right to a fair trial or a child respondent’s right to a fair hearing.”).

⁶ *See, e.g., In re Mikhel*, 453 F.3d 1137, 1139 (9th Cir. 2006) (finding that the Crime Victims’ Rights Act “abrogated Rule 615, at least with respect to crime victims. A mere possibility that a victim-witness may alter his or her testimony as a result of hearing others testify is therefore insufficient to justify excluding him or her from trial. Rather, a district court must find by clear and convincing evidence that it is highly likely, not merely possible, that the victim-witness will alter his or her testimony.”) (internal citations omitted). If you are a member of the National Alliance of Victims’ Rights Attorneys and Advocates (NAVRA) and have an enhanced membership, you can search case summaries on the right to be present in your jurisdiction at www.navra.org.

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