NATIONAL CRIME VICTIM LAW INSTITUTE

PROTECTING CRIME VICTIMS FROM DISCOVERY REQUESTS IN CIVIL PROCEEDINGS DURING THE PENDENCY OF A RELATED CRIMINAL CASE[1]

Resource Overview

Navigating legal systems can be traumatizing. At times, a crime victim who is involved in a civil case while their related criminal case is ongoing may want to pause or otherwise protect themselves during certain aspects of the civil case such as civil discovery, which can include depositions, interviews, and disclosure of records. Victims' rights can often help in these situations. Unfortunately, attorneys and others working with victims in civil cases (e.g., family law, civil protection orders) often are not as familiar with victims' rights as advocates and other criminal law practitioners. This resource is designed for advocates and others working closely with victims during criminal justice processes to share with attorneys and others supporting victims during civil processes, so that those in the civil space can leverage victims' rights to enhance their trauma-informed, victim-centered advocacy.

The resource addresses the practices and procedures that a victim's attorney can employ to protect victims from civil discovery requests while a related criminal case is pending. It describes two approaches: motions to stay civil proceedings or civil discovery and requests for a protective order to postpone or limit civil discovery or quash a particular discovery request. This resource also includes "Practice Pointers" for attorneys.

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Introduction

A victim of sexual violence who is participating in the criminal prosecution seeks a civil protective order restraining the harm-doer.[2] A victim of domestic violence becomes involved in divorce proceedings. As part of these civil proceedings, the harm-doers serve the victims with subpoenas demanding that they submit to depositions or turn over personal records. For many this feels like yet another victimization, but what can be done? These victims have rights in the criminal case that may prevent harm-doers from compelling "discovery"[3] in those proceedings,[4] but what, if any, protections exist in the related civil proceedings?

Victims may seek a number of protections. Depending upon the relationship between the civil and criminal cases and the unique circumstances of the civil matter, including the interests at stake, a crime victim may seek a stay of the civil proceedings or civil discovery during the pendency of the related criminal case and/or seek a protective order shielding the victim from a civil discovery request. As civil litigants, crime victims have significant rights and interests that weigh in favor of such relief.

I. Staying a Civil Proceeding or Civil Discovery.[5]

Courts have the inherent authority to stay civil proceedings or civil discovery pending the outcome of a related criminal action when to do so would be in "the interests of justice."[6, 7] This power is part of a court's inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."[8]

A. Courts' weighing of competing interests.

Although courts have wide discretion to stay proceedings when exercising their inherent authority, exercise of this discretion is subject to limitations. When deciding whether to stay civil proceedings in the face of a related criminal action, courts must weigh the competing interests of litigants, nonparties, the public, and the court.[9] In balancing these competing interests, courts must focus on the particular facts and circumstances of the case before them.[10] The party requesting the stay bears the burden of demonstrating that the stay is necessary.[11]

Jurisdictions vary in their articulation of the test used to engage in this fact-bound analysis. Despite this variation, most consider the same core factors: (1) the extent to which the issues presented in the criminal case overlap with those presented in the civil case, including the extent to which the parallel proceedings implicate the criminal defendant's Fifth Amendment rights;[12] (2) the status of the criminal case, including whether there has been an indictment; (3) the interests of any party in staying the civil proceeding; (4) the prejudice to any party from staying the civil proceeding; (5) the interests of nonparties; (6) court convenience; and (7) the interest of the public[13] in the civil and criminal litigation.[14, 15] The balance of factors for and against a stay may change over time as the underlying criminal case develops.[16] When the parallel criminal case involves a crime victim, weighing these core factors necessarily requires considerations of victims' rights and interests.

B. Victim-parties' interests in staying civil proceedings or discovery.

When weighing competing interests to decide whether to issue a stay of civil proceedings or discovery, a court should consider the crime victim's significant rights and interests that weigh in favor of granting such a stay, including: (1) the right to refuse a defense request for an interview, deposition, or other "discovery"; (2) the interests in preventing criminal defendants from using civil discovery tools to circumvent the limitations of criminal discovery; (3) the rights to protection and to be free from intimidation, harassment and/or abuse by the criminal defendant; (4) the interests in not being subjected to the psychological and emotional harms of simultaneous civil and criminal proceedings; and (5) the right to the prompt disposition of a criminal case.

1. Right to refuse a defense request for an interview, deposition, or other "discovery."

Some states afford crime victims an express right to refuse a defense request for a pretrial interview and/or other forms of pretrial "discovery."[17] Allowing a criminal defendant to circumvent such protections through civil discovery undermines the purposes of this right and can conflict with its plain language.[18] This conflict arises because the right is designed to safeguard victims' privacy, to minimize pretrial contact with the harm-doer, to protect victims from harassment and abuse, and to avoid re-traumatization during the pretrial process.[19] Any deposition of the victim or other form of "discovery" about the crime in a parallel civil case undermines these goals.[20]

Staying civil discovery completely—or at least that portion addressed to or regarding the victim—to protect a crime victim's constitutional and statutory rights to refuse defense discovery requests promotes the overall protective purposes of a jurisdiction's victims' rights laws. To avoid rendering meaningless a victim's right to refuse defense requests for pretrial depositions, interviews, and other forms of discovery, a court should grant a request by the victim to stay civil discovery during the pendency of a related criminal case.[21] Even in jurisdictions where victims' right to refuse such requests may be limited to criminal proceedings,[22] the policies underlying this right support the issuance of a stay.

2. Interests in preventing criminal defendants from circumventing the limitations of criminal discovery.

The scope of civil discovery is broader than the scope of criminal discovery.[23] Civil litigants may typically obtain discovery regarding any matter, not privileged, that is relevant to the party's claim or defense.[24] They may obtain discovery through a variety of methods, including depositions.[25]

Criminal "discovery" is subject to narrower discovery rules. A criminal defendant has no general federal constitutional right to discovery.[26] Prosecutors do have a federal constitutional obligation to automatically disclose to the defendant exculpatory or impeachment evidence, but this constitutional obligation only applies to information and materials in their possession or control.[27] A jurisdiction's procedural rules and/or criminal statutes generally reflect these limitations and otherwise lay out the scope of criminal discovery.[28] Some jurisdictions require

criminal defendants to make certain showings of need before a court will compel the disclosure of material in a criminal case that falls outside of the prosecution's limited constitutional, statutory and/or rule-based disclosure obligations.[29] Additionally, criminal depositions are not to be used as discovery devices, but instead are tools to preserve witness testimony.[30] A number jurisdictions have specific procedural rules for subpoenaing victims' records in a criminal case, which also provide unique protections to victims in the context of a criminal prosecution.[31]

The narrow scope of criminal discovery is designed to prevent the harassment and intimidation of potential government witnesses, reduce delays in the criminal justice system, and foster witness and victim participation in a criminal investigation or prosecution.[32] The difference between the scope of civil and criminal discovery rules is intentional. The rules reflect legislative determinations regarding what processes can best accomplish the unique purposes of civil and criminal justice systems[33] and where additional protective measures are necessary and fair. A criminal defendant's use of civil discovery tools to circumvent the limitations of criminal discovery and such protective measures undermines careful legislative determinations and should not be allowed.[34]

Notably, crime victims have an independent interest in a fair and just criminal justice process.[35] A harm-doer's use of civil discovery to circumvent the limitations of criminal discovery during parallel proceedings undermines this interest and conflicts with a jurisdiction's commitment to treating victims fairly throughout criminal justice.

Such an approach also interferes with the interests of the government and the general public in the integrity of civil and criminal justice systems. Courts have recognized that these interests weigh in favor of staying civil proceedings and/or discovery, where such discovery would be used to sidestep the limitations of criminal procedure.[36, 37] In particular, courts have recognized that staying civil discovery until the conclusion of a criminal case prevents criminal defendants from using the more liberal civil rules to access information and evidence that would be inaccessible under narrower criminal rules.[38]

3. Rights to protection and to be free from intimidation, harassment and/or abuse.

Civil discovery during the pendency of a criminal case can also directly implicate the rights of crime victims to protection and to be free from intimidation, harassment and/or abuse by a criminal defendant.[39] At least twenty states, the District of Columbia, and the federal government provide victims with the right to reasonable protection from the accused;[40] some of these jurisdictions also provide victims with an express right to be treated with respect for their safety.[41] Many jurisdictions provide crime victims with the right to be free from intimidation, harassment and/or abuse throughout the criminal justice process.[42] These rights, separately and in combination, weigh heavily in favor of granting a victim's request for a stay of civil proceedings or civil discovery.

The need for a civil stay to protect victims from intimidation or harassment is especially great where the victims are the sole witnesses to the criminal conduct and their testimony is key to a determination of the criminal defendants' guilt.[43] The risk of civil discovery intimidating a victim is also particularly high where the victim is a child, in trauma, or otherwise emotionally or

psychologically vulnerable.[44] Additionally, where protective measures have already been taken in a criminal case to limit or completely bar a defendant from contacting a victim, allowing a defendant to circumvent these measures through civil discovery can jeopardize the victim's safety, as well as their willingness and ability to participate in the criminal case.[45]

4. Emotional and psychological interests in not participating in simultaneous civil and criminal proceedings.

Simultaneous civil and criminal proceedings can put a victim's emotional and psychological health at risk. Courts have issued stays in civil cases to address such concerns[46]; particularly when a victim's distress about continuing with a civil action or with civil discovery jeopardizes a criminal investigation or prosecution.

5. Right to the prompt disposition of the criminal case.

Many jurisdictions provide victims with the right to the prompt disposition of the criminal case involving their victimization.[47] Ongoing civil litigation can interfere with this right and the efficient resolution of a criminal case.[48] The right to a prompt and timely disposition is designed, in part, to limit the secondary victimization that prolonged interaction with the criminal justice system can cause victims.[49] Prioritizing efficient resolution of the criminal case and limiting these harms weigh in favor of a stay of civil proceedings/discovery.[50]

II. Obtaining a Protective Order.

A victim may also seek a protective order that postpones[51] or otherwise limits civil discovery generally or quashes a particular discovery request.[52] A court's authority to issue a protective order typically comes from the jurisdiction's rules of civil procedure. In general, such rules authorize courts, upon a showing of "good cause," to issue an order protecting a party or person from annoyance, embarrassment, oppression, or undue burden or expense.[53] Such an order may provide, *inter alia*, that a discovery request be quashed in its entirety; that the discovery be allowed only on specified terms and conditions; that the discovery be limited in scope or restricted to certain topics; or that the discovery may only be taken by a method other than that selected by the party seeking discovery.[54]

To show "good cause" for a protective order, a party must provide the court with a substantial and concrete reason for the requested protection.[55] The party seeking the protective order must show specific facts that demonstrate how the challenged discovery will cause that party serious injury of the type the rule authorizing the order was designed to prevent.[56]

To establish "good cause" for a protective order postponing, limiting, or quashing civil discovery, a victim may demonstrate to the court that allowing discovery to proceed would violate the victim's rights or enable circumvention of the limitations of the jurisdiction's criminal discovery process.[57] "Good cause" also exists for such a protective order where the victim can show that the order is necessary to protect them from harassment or intimidation.[58] Finally, a victim has "good cause" for a protective order where they can demonstrate—either through their own testimony or the testimony of an expert—that allowing discovery to proceed prior to the resolution of the related criminal case will cause the victim additional psychological or

emotional harms.[59] Information that a victim feels comfortable sharing with the court regarding how and why discovery will harm them can be included in a motion for a protective order.

Practice Pointers

There are a number of grounds upon which a crime victim—or the state on their behalf—may request a stay of civil proceedings/discovery or a protective order during the pendency of a related criminal case. Such a request should be narrow and specific. It should highlight the relevant rights and interests detailed in this *Bulletin*, and identify the particular burdens that the victim would suffer in the absence of the stay or protective order. Key arguments include:

- In jurisdictions where victims have a constitutional and/or statutory right to refuse discovery, asserting that right may be sufficient to warrant a stay or protective order. Even if the right does not expressly apply in civil proceedings, victims may argue that a stay is nonetheless necessary to support the policies underlying the right and their ability to meaningfully enforce their rights in a criminal case.

- When requesting a stay on the ground that a harm-doer is using the civil discovery process to obtain broader pretrial disclosures than they would otherwise be entitled to in a criminal case, victims can identify specific harms that will likely result in the absence of a stay or protective order. A general accusation that civil discovery will circumvent the limitations of criminal discovery may be insufficient to support a request to obtain a stay or protective order.

- When civil discovery will be used as a means of harassing or intimidating the victim, the victim can provide evidence of this intentional misuse of civil discovery tools. The motion may also focus on any reasons why, regardless of the intentions underlying the discovery request, the victim is especially prone to being intimidated or harassed by the requested discovery.

- In addition to focusing on the emotional or psychological harms that a victim might suffer in the absence of a stay or protective order, the victim can highlight the negative effects that such harms will have on the pending criminal case.

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[1] Whether it is in the best interests of a victim to proceed with all aspects of the civil proceedings, seek to stay the entirety of the civil proceedings, or seek to stay or quash portions of civil discovery will depend on the particular circumstances of the criminal and civil cases. This resource focuses on those instances where a victim seeks to limit, quash, or to stay some aspect of the civil proceedings.

[2] This *Bulletin* uses the term "harm-doer" at times as a general term because in each legal context the legal title of the person may vary. For instance, in some situations where there are parallel civil and criminal proceedings involving a victimization, the harm-doer will be the "defendant" in both cases; in other cases, the harm-doer will be the "defendant" in the criminal case but could be the "respondent" in a protective order case or the "plaintiff" in another related civil case.

[3] The term "discovery" generally refers to the exchange of information between the "parties" in a case. In a criminal case, the "parties" are the prosecutor and defendant; for this reason, using the term "discovery" in a criminal matter to describe a party's request for information and records from a non-party, such as the victim, is imprecise. It is, however, often the shorthand that courts and legislatures employ when referring to such requests, most notably in the context of constitutional and statutory provisions that afford crime victims the right to refuse defense requests for interviews, depositions, and "other discovery requests." *See infra* note 17.

[4] For information about and strategies for opposing a criminal defendant's pretrial discovery requests for privileged victim information as part of the criminal proceedings, see *Refusing Discovery Requests of Privileged Materials Pretrial in Criminal Cases*, Violence Against Women Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), June 2011, https://law.lclark.edu/live/files/11779-refusing-discovery-requests-of-privileged. For information on resisting defense subpoenas of non-privileged victim information pretrial in criminal cases, see *Protecting Victim's Privacy: Moving to Quash Pretrial Subpoenas Duces Tecum for Non-Privileged Information in Criminal Cases*, Violence Against Women Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Sept. 2014, https://law.lclark.edu/live/files/17860-ncvlivawmoving-to-quash-pretrial-subpoenas-for. Sample motions to quash pretrial subpoenas in criminal cases are available via the National Alliance of Victims' Rights Attorneys & Advocates at www.navra.org.

[5] The analysis in Parts I and II in this *Bulletin* assumes some weighing of rights—*i.e.,* that the harm-doer has some recognized right to have the civil proceeding move forward but the court should stay or quash because a victim's rights—or the interests of justice—overcome the right to proceed. In some civil protection order cases, a victim may be able to argue that the harm-doer has *no right* to discovery in the first instance. *See, e.g.*, *Depos v. Depos*, 704 A.2d 1049, 1051 (N.J. Super. Ct. Ch. Div. 1997) (concluding that the defendant in a case brought pursuant to the Prevention of Domestic Violence Act does not have a right to depose the victim-plaintiff because domestic violence proceedings under the Act are "summary actions" that are exempt from the civil rules authorizing discovery as a matter of right); *Scheib v. Crosby*, 249 P.3d 184, 187 (Wash. Ct. App. 2011) (concluding that the state's Domestic Violence Protection Act proceedings are "special proceedings" outside the scope of regular rules of civil procedure and affirming the district court's denial of the perpetrator's request to depose the domestic violence victim). For help analyzing whether a similar argument may be raised in a particular jurisdiction, contact NCVLI for technical assistance.

[6] *See Afro-Lecon, Inc. v. United States*, 820 F.2d 1198, 1202 (Fed. Cir. 1987); *Dominguez v. Hartford Fin. Servs. Grp., Inc.*, 530 F. Supp. 2d 902, 905 (S.D. Tex. 2008); *Ex parte Ebbers*, 871 So. 2d 776, 788 (Ala. 2003); *see* also *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (stating that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants" and "[h]ow this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance"); *Doe v. City of Chicago*, 360 F. Supp. 2d 880, 881 (N.D. Ill. 2005) ("The court has the inherent power to stay civil proceedings, postpone civil discovery, or impose protective orders when the interests of justice so dictate.").

[7] In addition to the court's inherent authority to issue stays, express statutory provisions may authorize stays. Some of these provisions mandate civil stays while others simply reinforce the court's discretion to stay a civil proceeding during the pendency of a related criminal case. Examples of statutes explicitly authorizing civil stays that are particularly relevant to crime victims' rights and interests, include those allowing for stays of: (1) a civil action brought by a human trafficking victim, *see, e.g.*, 18 U.S.C. § 1595(b)(1); (2) a civil action brought by a child victim of sexual abuse, physical abuse, or exploitation, *see, e.g.*, 18 U.S.C. § 3509(k); (3) a civil action brought by a criminal defendant against a crime victim based on the victim's exercise or intended exercise of their constitutional rights, *see, e.g.*, Conn. Gen. Stat. § 52-235e; (4) a civil forfeiture action, *see, e.g.*, 18 U.S.C. § 981(g)(1), Haw. Rev. Stat. § 712A-11(8), Or. Rev. Stat. § 131A.265(2); and (5) a civil action against a debtor who has filed for bankruptcy, *see, e.g.*, 11 U.S.C. § 362. Statutes and rules that explicitly authorize stays of discovery may be found in the provisions governing civil discovery. *See, e.g.,* Cal. Civ. Proc. Code § 2025.420(b)(1) (providing that "[t]he court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense" and "[t]his protective order may include, but is not limited to" directing that a deposition not be taken at all); Mont. R. Civ. P. 26(c)(1)(A) (providing that "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," and that such an order may include "forbidding the discovery"). Further discussion of the use of protective orders to stay civil discovery appears below in Part II, but a full discussion of statutes and rules expressly authorizing civil stays is outside the scope of this *Bulletin*.

[8] *Landis*, 299 U.S. at 254.

[9] *See Dominguez*, 530 F. Supp. 2d at 905 ("Although a district court has wide discretion to stay proceedings, its power is not unbounded. . . . A court must weigh the competing interests when exercising its discretion to issue a stay." (internal citations omitted)); *State v. Deal*, 740 N.W.2d 755, 766 (Minn. 2007) (concluding that "[t]o determine whether a stay is appropriate in a particular case, . . . a district court should balance the interests of "'litigants, nonparties, the public, and the court itself'" (quoting *Bridgeport Harbour Place I, LLC v. Ganim*, 269 F. Supp. 2d 6, 8 (D. Conn. 2002)).

[10] *Landis*, 299 U.S. at 254–55.
[11] *Clinton v. Jones*, 520 U.S. 681, 708 (1997).
[12] In general, the issue of whether parallel civil and criminal cases implicate a criminal defendant's Fifth Amendment rights only arises when the defendant has asserted these rights in support of a motion to stay the civil proceedings. The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. Under this privilege against self-incrimination, a person may refuse to testify at a criminal trial or to answer official questions asked in any other proceeding, where the answer might tend to incriminate that person in future criminal proceedings. *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984). The Fifth Amendment does not, however, require a stay of civil proceedings pending the outcome of a related criminal matter. *See Microfinancial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 77–78 (1st Cir. 2004) (finding that "a defendant has no constitutional right to a stay simply because a parallel criminal proceeding is in the works"); *Davies ex rel. Harris v. Pasamba*, 17 N.E.3d 763, 769 (Ill. Ct. App. 2014) (stating "[t]he fifth amendment does not . . . mandate a stay of civil proceedings pending the outcome of similar or parallel criminal proceedings"). Indeed, "[n]ot only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding." *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir. 1995) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)); *accord Austin v. Nagareddy*, 811 S.E.2d 68, 70 (Ga. Ct. App. 2018) (stating that "'whether to stay a civil action pending resolution of a parallel criminal prosecution is not a matter of constitutional right, but, rather, one of court discretion, that should be exercised when the interests of justice so require'" (quoting *Alcala v. Webb County*, 625 F. Supp. 2d 391, 396 (S.D. Tex. 2009))).
[13] The "public interest" in the context of this test takes two forms. The first form of "public interest" "is not the intensity of public concern, but rather the public welfare; that is, the protection of the public from harm." *King v. Olympic Pipeline Co.*, 16 P.3d 45, 60 (Wash. Ct. App. 2000). In cases where the government has brought a civil action to enforce laws designed to protect the public, courts have found the public interest to be "a compelling basis for denying a stay because of a 'tangible threat of immediate and serious harm to the public at large.'" *Id.* (citation omitted). The second "public interest" implicated by stay requests is "the public interest in the integrity of the judicial system." *Id.*
[14] *See, e.g.*, *Dominguez*, 530 F. Supp. 2d at 905 (listing factors courts consider when determining whether to stay civil proceedings during a related criminal case); *Deal*, 740 N.W.2d at 766 (same); *King*, 16 P.3d at 52–53 (same); *Ex parte Ebbers*, 871 So. 2d at 789–90 (same).
[15] In addition to these core considerations, some courts also take into account additional factors, such as: the litigants' "the good faith (or the absence of it)," *Microfinancial*, 385 F.3d at 78; or whether the government brought the two actions, *Doe*, 360 F. Supp. 2d at 881.
[16] *See Cruz v. City of Chicago*, No. 08 C 2087, 2011 WL 613561, at *2 (N.D. Ill. Feb. 15, 2011) (slip copy) ("[T]he balance of factors for and against a stay may be altered with the passage of time and the continued development of the underlying criminal matter.").
[17] For example, at least seven states—Arizona, California, Ohio, Oregon, North Dakota, South Dakota and Wisconsin—provide victims with an express constitutional right to refuse an interview, deposition, or other discovery request by the defendant or another acting on the defendant's behalf. *See, e.g.*, Ariz. Const. art. II, § 2.1(A)(5); Cal. Const. art. I, § 28(b)(5); N.D. Const. art. I, § 25(1)(f); Ohio Const. art. I, § 10a(A)(6); Or. Const. art. I, § 42(1)(c); S.D. Const. art. VI, § 29(6); Wis. Const. art. I, § 9m(L). At least one state—Nevada—affords victims a constitutional right to refuse defense requests for interviews or depositions, without express reference to other forms of discovery. Multiple states afford victims another variation of this right through constitutional and statutory provisions that entitle victims to refuse a defense request for an interview or other communication with the victim. *See, e.g.*, Ala. Code § 15-23-70; Ga. Code Ann. § 17-17-8.1(a); Idaho Const. art. I, § 22(8); Idaho Code Ann. § 19-5306(1)(g); La. Const. Ann. art. I, § 25; La. Stat. Ann. § 46: 1844(C)(3); Mass. Gen. Laws ch. 258B § 3(m); Okla. Const. art. II, § 34(A); Tenn. Code Ann. § 40-38-117. For assistance in determining the scope of victims' rights protections from discovery in these jurisdictions or others, contact NCVLI for technical assistance.
[18] The Arizona Court of Appeals reached this conclusion in *State v. Lee*, 245 P.3d 919 (Ariz. Ct. App. 2011), a case in which it held that a victim retains their constitutional right "[t]o refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or the person acting on behalf of the defendant," Ariz. Const. art. II, § 2.1(A)(5), in a civil proceeding. *Lee* involved a civil forfeiture action and a criminal action proceeding in parallel against the same parties and involving the same fraudulent acts. The criminal defendants sought to depose, in the civil case, individuals who had been identified as victims in the criminal case; in both cases, the state moved for a protective order to prevent the depositions, which each court denied. 245 at 920–21. The state

filed a special action on behalf of the victims to determine whether their constitutional right to refuse a defendant's request for a deposition applied in a civil proceeding. In concluding that it did, the court the court emphasized the plain language of the constitutional right; it reasoned that this language "limits the scope of a victim's right only by the identity of the person requesting the interview—the defendant or the defendant's representative—and the identity of the person to whom the request is directed—a crime victim. It does not limit the proceedings to which the right extends." *Id.* at 923. The *Lee* court concluded that the language of the provision authorized victims to refuse a civil deposition request, even though other provisions of the victims' rights amendment are tied directly to victims' involvement in the criminal justice system, reasoning that "even if the right to refuse to be deposed is limited to the duration of the criminal justice process, a victim may assert that right in any venue during that time." *Id.* at 923–24. The court further found that its holding was necessary to promote the purposes of a victim's constitutional right to refuse discovery requests, which it recognized as including protection of the victim's privacy, minimization of pre-trial contact with the defendant, and avoiding retraumatization during the pretrial process. *Id.* at 924. As the court explained, "the right to refuse to be deposed is immediately and completely defeated if the defendant can compel a victim to submit to a deposition in a separate proceeding." *Id.*

[19] *See id.* (recognizing that the purpose of a victim's state constitutional right to refuse defense discovery requests is to protect victim privacy, minimize pretrial contact between the victim and defendant, and avoid retraumatization of the victim).

[20] *See id*. (finding that *any* deposition about a criminal offense would undermine the purposes of a crime victim's constitutional right to refuse a deposition request because "the right to refuse to be deposed is immediately and completely defeated if the defendant can compel a victim to submit to a deposition in a separate proceeding"

[21] *See, e.g.*, *id.*, 245 P.3d at 923–24 (finding that the trial court erred when it denied the state's requests for a protective order in both criminal and civil cases to prevent the pretrial depositions of crime victims, where the victims had a constitutional right to refuse discovery requests).

[22] At least one intermediary court has found that a crime victim's constitutional right to refuse a defense request for a deposition does not apply to requests made outside the criminal case. In *Slaieh v. Superior Ct. of Riverside Cnty.,* 292 Cal. Rptr. 3d 404 (Cal. Ct. App. 2022), the victim-wife filed an action for divorce against her husband, who was later arrested for stalking and making criminal threats against the victim. The trial court denied the husband's motion to compel the victim's deposition in the divorce action based on the victim's constitutional right to refuse a deposition request under the state's victims' rights amendment, Cal. Const. art. I, § 28(b)(5). 292 Cal. Rptr. at 405. The husband petitioned for a writ of mandate to vacate the judge's order on the ground that the victim's right to refuse a deposition request did not apply in civil actions, like a marriage dissolution proceeding. *Id.* After reviewing the language and purpose of the constitutional provision and the long-standing role of depositions in civil litigation, the court found that the constitutional protection did not apply to the petitioner in a marriage dissolution matter. *Id.* at 407–09. The court recognized the importance of taking a broad and protective approach to interpreting the provision, but "decline[d] to interpret the law to exceed the boundaries clearly laid out by the electorate." *Id.*

[23] *See Dominguez*, 530 F. Supp. 2d at 907 ("The scope of criminal discovery is significantly narrower than the scope of civil discovery."); *Deal*, 740 N.W.2d at 763 ("In contrast to the civil rules, criminal rules allow only limited discovery[.]").

[24] *See, e.g.,* Fed. R. Civ. P. 26(b)(1); Ill. Sup. Ct. R. 201(b); Or. R. Civ. P. 36(B)(1).

[25] *See, e.g.,* Fed. R. Civ. P. 30(a); Ill. Sup. Ct. R. 201(a); Or. R. Civ. P. 36(A).

[26] *Weatherford v. Bursey,* 429 U.S. 545, 559 (1977); *State ex rel. O'Leary v. Lowe,* 769 P.2d 188, 193 (Or. 1989) (citing *Weatherford*, 429 U.S. at 559).

[27] *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that a criminal defendant is constitutionally entitled to information that is in the prosecution's possession and material and favorable to guilt or punishment); *see also People v. Superior Court (Meraz)*, 77 Cal. Rptr. 3d 352, 370 (Cal. Ct. App. 2008) ("'*Brady* [*v. Maryland*, 373 U.S. 83 (1963)] exculpatory evidence is the only substantive discovery mandated by the United States Constitution.'" (quoting *People v. Superior Court (Barrett)*, 96 Cal. Rptr. 2d 264 (Cal. Ct. App. 2000))); *State v. Bassine*, 71 P.3d 72, 75 (Or. Ct. App. 2003) ("As to discovery, a defendant is constitutionally entitled to information that is (1) in the possession of the prosecution and (2) material and favorable to a defendant's guilt or punishment." (citing *State v. Cartwright*, 20 P.3d 223 (Or. Ct. App. 2001) and *Brady*, 373 U.S. at 87)).

[28] *See, e.g.*, Fed. R. Crim. P. 16; N.Y. Crim. P. Law § 245.20; Wash. Super. Ct. R. 4.7; *see Deal*, 740 N.W.2d at 763 (noting that Minnesota's "criminal rules allow only limited discovery, with a handful of provisions meant to give the defendant and prosecution as complete discovery as is possible under constitutional limitations").

[29] *See, e.g.*, Ariz. R. Crim. P. 15.1(g) ("On the defendant's motion, a court may order any person to make available to the defendant material or information not included in this rule if the court finds: (A) the defendant has a

substantial need for the material or information to prepare the defendant's case; and (B) the defendant cannot obtain the substantial equivalent by other means without undue hardship."); Minn. R. Crim. P. 9.01, subd. 2 ("(1) On the defendant's motion, the court for good cause must require the prosecutor, except as provided by Rule 9.01, subd. 3, to assist the defendant in seeking access to specified matters relating to the case that are within the possession or control of an official or employee of any governmental agency, but not within the prosecutor's control. . . . (3) On the defendant's motion, the trial court at any time before trial may, in its discretion, require the prosecutor to disclose to defense counsel and to permit the inspection, reproduction, or testing of any relevant material and information not subject to disclosure without order of court under Rule 9.01, subd. 1, provided, however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant must inspect and preserve any relevant material and information.").

[30] *See Dominguez*, 530 F. Supp. 2d at 907 ("The scope of criminal discovery is significantly narrower than the scope of civil discovery. . . . For example, criminal defendants may not obtain discovery from third parties or depose a prospective Government witness unless the prospective witness is unable to attend trial." (citations omitted)); *Deal*, 740 N.W.2d at 763 (explaining that depositions are not permitted in a criminal case for discovery purposes, but are instead used to preserve testimony); *State ex rel. O'Leary*, 769 P.2d at 192 (stating that Oregon law does not afford defendants the right to depose a potential state's witness).

[31] *See, e.g.*, Colo. Rev. Stat. Ann. § 24-4.1-303(a.5); 725 Ill. Comp. Stat. Ann. 120/4.5(9)(A); La. Stat. Ann. § 15:260; Ohio Rev. Code Ann. § 2930.071; Minn. R. Crim. P. 22.01, subd. 2(c); Utah R. Crim. P. 14(b).

[32] *See SEC v. Nicholas III*, 569 F. Supp. 2d 1065, 1071–72 (C.D. Cal. 2008) (noting that the federal rules regarding criminal discovery are "are purposefully limited so as to prevent perjury and manufactured evidence, to protect potential witness from harassment and intimidation, and to level the playing field between the government and the defendant, who would be shielded from certain discovery by the Fifth Amendment" (citing *Campbell v. Eastland*, 307 F.2d 478, 487 n.12 (5th Cir.1962)); *Deal*, 740 N.W.2d at 763 (recognizing that the purpose behind a rule limiting criminal depositions to instances where there is a reasonable probability that the witness will be unavailable for trial "is to prevent harassment of state's witnesses and law enforcement officers, to reduce delays in the criminal process, and to avoid the possible 'chilling effect on the willingness of witnesses to come forward'" (citation omitted)).

[33] *See State ex rel. Upham v. Bonebrake*, 736 P.2d 1020, 1023 (Or. 1987) (recognizing that the differences between the scope of civil and criminal discovery reflect the different purposes of civil litigation and criminal prosecution).

[34] *See Lizarraga v. City of Nogales*, No. CV 06-474 TUC DCB, 2008 WL 4079991, at *3–4 (D. Ariz. Aug. 29, 2008) (recognizing how, in a criminal case, use of information about a sexual assault victim that was obtained through civil discovery disregarded the intentionally narrow scope of criminal discovery rules and circumvented criminal procedural rules); *Nicholas III*, 569 F. Supp. 2d at 1072 (noting that "a number of courts have rejected a criminal defendant's attempt to use civil discovery mechanisms to obtain disclosures that are otherwise unavailable under the criminal rules" and citing cases); *Dominguez*, 530 F. Supp. 2d 902, 908 (S.D. Tex. 2008) ("[A]llowing [a criminal defendant] discovery in the civil action would vitiate the rules of criminal discovery and establish a harmful incentive for future criminal defendants to file civil suits in order to avoid limitations imposed by the criminal discovery rules."); *Lehmann v. Gibson*, 482 S.W.3d 375, 383 (Ky. 2016) (observing that "[c]ivil and criminal procedural rules serve distinctly different policies and objectives" and that, in light of the rationales underlying the limited nature of criminal discovery, staying civil discovery during the pendency of a related criminal proceeding may be necessary to prevent the criminal defendant from using broad civil discovery rules to "sidestep" criminal discovery procedure); *Deal*, 740 N.W.2d at 765 ("Prohibiting a defendant from taking a discovery deposition in a criminal proceeding, only to allow him to take the same investigatory deposition through a related civil proceeding, would contravene the [ ] policies behind the criminal discovery rules.").

[35] In general, jurisdictions with constitutional and/or statutory victims' rights provisions expressly recognize the right of crime victims to fair treatment throughout their involvement in criminal justice. *See, e.g.*, 18 U.S.C. § 3771(a)(8); Alaska Const. art. I, § 24; Ariz. Const. art. II, § 2.1(A)(1); Cal. Const. art. I, § 28(b)(1); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(a); Conn. Const. art. I, § 8(b)(1); Fla. Const. art. I, § 16(b)(1); Ga. Const. art. I, § 1 ¶ XXX(a); Ga. Code Ann. § 17-17-1(9); Idaho Const. art. I, § 22(1); Ill. Const. art. I, § 8.1(a)(1); 725 Ill. Comp. Stat. Ann. 120/4(a)(1); Ind. Const. art. I, § 13(b); Ind. Code Ann. § 35-40-5-1(1); Kan. Stat. Ann. § 74-7333(a)(1); La. Const. art. I, § 25; Md. Const. Decl. of Rights art. 47(a); Mich. Const. art. I, § 24(1); Miss. Const. art. III, § 26A(1); Nev. Const. art. I, § 8A(1)(a); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a); N.J. Const. art. I, ¶ 22; N.J. Rev. Stat. Ann. § 52:4B-36(a); N.M. Const. art. II, § 24(A)(1); N.M. Stat. Ann. § 31-26-4(A); N.D. Const. art. I, § 25(1)(a); Ohio Const. art. I, § 10a(A)(1); Okla. Const. art. II, § 34(A); Or. Const. art. I, § 42(1); 18 Pa. Cons. Stat. § 11.102(1); R.I. Const. art. I, § 23; S.C. Const. art. I, § 24(A)(1); S.D. Const. art. VI, § 29(1); Tenn. Code Ann.

§ 40-38-102(a)(1); Tex. Const. art. I, § 30(1); Utah Const. art. I, § 28(1)(a); Va. Const. art. I, § 8-A(2); Wash. Const. art. I, § 35; Wis. Const. art. I, § 9m(2)(a); *see also* Cal. Penal Code § 679 (declaring the legislature's intent when enacting the state's victims' rights laws to ensure that victims are "treated with dignity, respect, courtesy, and sensitivity"); Haw. Rev. Stat. § 801D-1 (same); Vt. Stat. Ann. tit. 13, § 5303(a) (stating that the legislative purpose underlying the state's victims' rights laws is to ensure that victims are treated with dignity and respect).

[36] *See, e.g., Nicholas III*, 569 F. Supp. 2d at 1071–72 (concluding that the public interest favors a complete stay of civil discovery to prevent criminal defendants from impermissibly using civil discovery to their benefit in a related criminal prosecution); *Dominguez*, 530 F. Supp. 2d at 907 (finding that a civil action should be stayed during the pendency of a criminal case because, *inter alia*, the criminal defendant brought the civil action as a means of obtaining discovery related to the criminal case and noting that "[a]s a matter of equity and public policy, a criminal defendant may not institute a civil action to obtain discovery relating to the criminal case"); *Wilcox v. Webster Insurance*, No. CV075010093S, 2008 WL 253054, at *5–6 (Conn. Super. Ct. Jan. 11, 2008) (finding that the public's interest in the prosecution of crime weighed in favor of staying civil discovery proceedings pending the outcome of a related criminal trial where, absent a stay, criminal defendants could use the civil discovery process to circumvent criminal discovery rules); *Hakeem v. Allen*, Nos. 2-16-0429, 2-16-0431, 2016 WL 6603692, *2–3 (Ill. Ct. App. Nov. 7, 2016) (order) (holding that the trial court did not abuse its discretion in granting the state's petition to intervene and motion to stay civil proceedings in two defamation actions the defendant in pending criminal prosecutions brought against his victims, where the trial court found, *inter alia*, that the state had an interest in preventing a criminal defendant from using a civil defamation action to circumvent criminal discovery rules); *Deal*, 740 N.W.2d at 766 (emphasizing "the strong government and public interest in the integrity of a criminal proceeding that must be part of [the] balancing test [used to determine whether to stay civil proceedings]—integrity that may be compromised by a defendant's access to the broad scope of civil discovery").

[37] As described in the Practice Pointers section of this *Bulletin*, general allegations that a defendant is misusing civil discovery to circumvent the limitations of criminal discovery is unlikely to be sufficient to warrant a stay; courts tend to require articulation of specific harm that would be suffered in the absence of a stay. *See, e.g.*, *Ex parte Windom*, 763 So. 2d 946, 950 (Ala. 2000) (emphasis in original) (finding that a discovery stay was not required "based upon the allegation of one party to a civil action that the other party *may* in that civil action use the discovery process to interfere with a pending criminal proceeding"); *Doe v. Lenarz*, No. CV054012970, 2006 WL 2130351, at *2 (Conn. Super. Ct. July 5, 2006) (granting only a limited stay in civil discovery where the state's stay request did not identify any specific harm that the victim or other witnesses would suffer if discovery was not stayed, but only suggested that the defendants "'may attempt to utilize liberal civil discovery procedures to obtain broader pre-trial disclosure than would otherwise be available in the criminal case alone'").

[38] *See, e.g.*, *Lehmann*, 482 S.W.3d at 380, 383 (finding that the trial court did not err in staying civil discovery in a sexual abuse case during the pendency of a related criminal prosecution because, *inter alia*, the Commonwealth and the public had a strong interest in preventing the use of more liberal civil discovery rules to avoid restrictions on criminal discovery and a stay would prevent the defendant in both cases from using civil discovery rules to access proof through victim depositions that was unavailable to him under more restrictive criminal rules); *Deal*, 740 N.W.2d at 767–68 (finding that public policy supported staying the civil deposition of a sexual abuse victim during the pendency of a related criminal action, where the defendant in both actions admitted that he intended to use the civil discovery deposition to gain information for his criminal trial).

[39] *See generally Survey of Select State Laws Governing Victims' Right to Protection and Related Rights* (Nat'l Crime Victim Law Inst., Portland, Or.), 2023, https://ncvli.org/wp-content/uploads/2023/04/All-States__Select-Laws__Right-to-Protection-Chart__FINAL.pdf
(compiling select state laws that afford victims the right to protection and protection-related rights, including the rights to be free from intimidation, harassment and/or abuse, to protection from harm and/or threats of harm, to information about the protections available in response to intimidation and/or threats of harm, and to be treated with respect for their safety).

[40] *See, e.g.*, 18 U.S.C. § 3771(a)(1); Cal. Const. art. I, § 28(b)(2); Conn. Const. art. I, § 8(b)(3); D.C. Code Ann. § 23-1901(b)(2); Fla. Const. art. I, § 16(b)(3); Ill. Const. art. I, § 8.1(a)(7); 725 Ill. Comp. Stat. Ann. 120/4(a)(7); Ky. Const. § 26A; Mich. Const. art. I, § 24(1); Mo. Const. art. I, § 32(1)(6); Nev. Const. art. I, § 8A(1)(b); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(c); N.M. Const. art. II, § 24(A)(3); N.M. Stat. Ann. § 31-26-4(C); N.D. Const. art. I, § 25(1)(c); Ohio Const. art. I, § 10a(A)(4); Okla. Const. art. II, § 34(A); Or. Const. art. I, § 43(1)(a); S.C. Const. art. I, § 24(a)(6); S.D. Const. art. VI, § 29(3); Tex. Const. art. I, § 30(a)(2); Wis. Const. art. I, § 9m(2)(f); Wyo. Stat. Ann. § 1-40-203(vii).

[41] *See, e.g.*, Ky. Const. § 26A; N.H. Rev. Stat. Ann. § 21-M:8-k(II)(a); Ohio Const. art. I, § 10a(A)(1); Okla. Const. art. II, § 34(A); Okla. Stat. Ann. tit. 21, § 142A-2(A)(2).

[42] *See, e.g.*, Ariz. Const. art. II, § 2.1(A)(1); Cal. Const. art. I, § 28(b)(1); Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)(a); Fla. Const. art. I, § 16(b)(2); Ill. Const. art. I, § 8.1(a)(1); 725 Ill. Comp. Stat. Ann. 120/4(a)(1); Ind. Code Ann. § 35-40-5-1(2); Nev. Const. art. I, § 8A(1)(a); N.H. Rev. Stat. Ann. § 21-M:8-k(II)(c); N.J. Stat. Ann. § 52:4B-36(c); N.D. Const. art. I, § 25(1)(b); S.C. Const. art. I, § 24(A)(1); S.D. Const. art. VI, § 29(2); Tenn. Const. art. I, § 35(2); Utah Const. art. I, § 28(1)(a); Wyo. Stat. Ann. § 1-40-205(a). Some jurisdictions afford this right to certain categories of victims, such as victims of sexual assault. *See, e.g.*, Mo. Ann. Stat. § 595.201.2(9); Nev. Rev. Stat. Ann. § 178A.290(1)(b).

[43] *See, e.g.*, *Lizarraga*, 2007 WL 4218972, at *3 (observing that that avoiding causing the victim distress through a civil deposition was a strong reason to stay the deposition because such "distress might jeopardize the criminal trial" and "[a]s the victim, she is the primary witness in the criminal case"); *Deal*, 740 N.W.2d at 767–68 (recognizing the importance of a civil stay to protect a child sexual abuse victim from intimidation or harassment through a civil depositions because any distress such a victim experiences as a result of the civil deposition could place the criminal trial in jeopardy, as such a victim is usually the sole witness to the crime committed against them).

[44] *See, e.g.*, *Deal*, 740 N.W.2d at 767 (finding that the risk of a civil deposition intimidating or harassing a crime victim is particularly high where the victim is a minor who was sexually assaulted by the criminal defendant seeking to civilly depose her).

[45] *See, e.g.*, *Tyson v. Alvarez*, No.3:17-cv-731, 2018 WL 5961425, at *1–3 (D. Conn. Nov. 14, 2018) (granting the Connecticut Division of Criminal Justice's motion to stay discovery in a federal civil sexual assault case during the pendency of a related state criminal case where the Division sought the stay to protect the victim, to ensure the orderly process of the state criminal matter, and to avoid facilitating the violation of a state protective order barring contact with the victim).

[46] *See, e.g., Lizarraga*, 2008 WL 4079991, at *1 (noting the court's conclusion in an earlier proceeding that the mental and emotional harm to the victim-plaintiff from simultaneous civil and criminal trials "would negatively impact the criminal trial" and that these harms "outweighed the disadvantage to the Defendant of not proceeding with the civil case"); *Deal*, 740 N.W.2d at 767–68 (finding that a civil deposition of a child-victim of sexual abuse prior to a related criminal prosecution could place the victim in "severe distress.)

[47] *See, e.g.*, 18 U.S.C. § 3771(a)(7); Alaska Const. art. I, § 24; Ariz. Const. art. II, § 2.1(A)(10); Cal. Const. art. I, § 28(b)(6); Conn. Const. art. I, § 8(b)(2); Del. Code Ann. tit. 11, § 9404(a); Fla. Const. art. I, § 16(b)(10); Fla. Stat. § 960.001(1)(a)(7); Idaho Const. art. I, § 22(2); Ill. Const. art. I, § 8.1(a)(7); Ky. Const. § 26A; La. Const. Ann. art. I, § 25; Md. Code Ann., Crim. Proc. § 11-1002(b)(13); Mass. Gen. Laws ch. 258B § 3(f); Mich. Const. art. I, § 24(1); Minn. Stat. Ann. § 611A.033(a); Miss. Code Ann. § 99-43-19; Mo. Const. art. I, § 32(1)(5); Neb. Rev. Stat. Ann. § 81-1848(2)(i); Nev. Const. art. I, § 8A(1)(i); N.M. Const. art. II, § 24(A)(2); N.D. Const. art. I, § 25(1)(o); N.D. Cent. Code § 12.1-34-02(13); Ohio Const. art. I, § 10a(A)(8); S.C. Const. art. I, § 24(A)(11); S.D. Const. art. VI, § 29(15); Tenn. Const. art. I, § 35(6); Utah Code Ann. § 77-38-7(2); Wis. Const. art. I, § 9m(2)(c)–(d); Vt. Stat. Ann. tit. 13, § 5312(b).

[48] *See Lizarraga*, 2008 WL 4079991, at *4 (concluding that the simultaneous prosecution of parallel civil and criminal sexual assault cases would interfere with the victim's interest making the resolution of the criminal case a priority over the civil case and "undermine the public's interest in a fair and efficient prosecution of its criminal laws, distract the parties and the court involved in the criminal proceeding from preparing the criminal case and divert the trial courts' attention with burdensome discovery litigation and unnecessary law and motions."

[49] *See, e.g.,* Md. Code Ann., Crim. Proc. § 11-1002(b)(13) ("A victim of a crime, victim's representative, or witness . . . should be entitled to a speedy disposition of the case to minimize the length of time the person must endure responsibility and stress in connection with the case."); Neb. Rev. Stat. Ann. § 81-1848(b)(i) (affording victims the right "to a speedy disposition of the case in which they are involved as a victim . . . in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter"); 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl) (recognizing that delays in criminal justice proceedings are a source of victimization and that the federal right to proceedings free from unreasonable delay under the Crime Victims' Rights Act is "a positive" start in changing "a criminal justice culture which has failed to focus on the legitimate interests of crime victims"). *See also* Marilyn Peterson Armour & Mark S. Umbreit, *The Ultimate Penal Sanction and 'Closure' for Survivors of Homicide Victims*, 91 Marq. L. Rev. 381, 413 (2007) (discussing the secondary victimization that victims suffer when criminal proceedings last multiple years); Mary Beth Ricke, Note, *Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection,* 41 Wash. U. J. L. & Pol'y 181, 182–83, 193 (2013) (observing that victims can suffer additional and unnecessary trauma as the result of delays in trial).

[50] *See, e.g., Nicholas*, 569 F. Supp. 2d at 1071–72 (concluding the complete stay of civil proceedings was in the interest of justice because it would contribute to the efficient resolution of a parallel criminal case and noting that the

public's interest was "best served by resolving the criminal case in the most expeditious manner possible"); *McCormick v. Rexroth*, No. C 09-4188 JF, 2010 WL 934242, at *3 (N.D. Cal. Mar. 15, 2010) (recognizing that one factor that weighs in favor of staying civil proceedings during the pendency of a related criminal action is the public's interest not having ongoing civil cases subvert the criminal process).

[51] As a practical matter, a protective order that postpones civil discovery generally and an order granting a stay of civil discovery or the civil case in its entirety effectively achieve the same result. Which order to request may depend on jurisdiction-specific practices and rules of procedure.

[52] A victim might seek a protective order to limit the use of any materials or information obtained through civil discovery to the civil case. *See Nosik v. Singe,* 40 F.3d 592, 596 (2d Cir. 1994) ("Although civil and criminal proceedings covering the same ground may sometimes justify deferring civil proceedings until the criminal proceedings are completed, a court may instead enter an appropriate protective order."). In some instances, an order staying discovery or an order quashing the discovery request altogether may be the best way to protect a victim's interests during the pendency of a related criminal case against the offender. For instance, a victim might seek a protective order to limit the use of any materials or information obtained through civil discovery to the civil case. Where a defendant admits his intention to use or has used civil discovery procedures as a discovery tool in a related criminal case, a victim has "good cause" to obtain a protective order that places such limitations on the defendant's use of civil discovery. *See Lizarraga*, 2007 WL 4218972, at *3 (finding that the victim had shown "good cause" for a protective order that would limit the defendant's use of civil discovery where the defendant admitted his intention to use civil discovery procedures as a discovery tool in a related criminal case). Yet, such a protective order may not meaningfully prevent the misuse of facts and information uncovered through civil discovery procedures. *Id.*

[53] *See, e.g.*, Fed. R. Civ. P. 26(c)(1); Ala. R. Civ. P. 26(c); Cal Civ. Proc. Code § 2025.420(b); Ga. Code Ann. § 9-11-26(c); Minn. R. Civ. P. 26.03(a); Or. R. Civ. P. 36(C)(1); Wash. Super. Ct. Civ. R. 26(c).

[54] *See, e.g.*, Fed. R. Civ. P. 26(c)(1); Ala. R. Civ. P. 26(c); Cal Civ. Proc. Code § 2025.420(b); Ga. Code Ann. § 9-11-26(c); Minn. R. Civ. P. 26.03(a); Or. R. Civ. P. 36(C)(1); Wash. Super. Ct. Civ. R. 26(c).

[55] *See Black's Law Dictionary* (11th ed. 2019) (defining "good cause" as "[a] legally sufficient reason"); *State v. Pettit*, 675 P.2d 183, 185 (Or. Ct. App. 1984) (analyzing the term "good cause" in Oregon's criminal discovery rules, and concluding that "[i]n the context of the discovery statutes, good cause means a substantial reason—one that affords a legal excuse").

[56] *See Tolbert-Smith v. Bodman,* 253 F.R.D. 2, 4 (D.D.C. 2008) ("To show good cause for the entry of a protective order, the movant must show specific facts and cannot rely on speculation or conclusory statements." (citing *Peskoff v. Faber,* 230 F.R.D. 25, 28 (D.D.C. 2005))).

[57] *See, e.g.*, *Lee,* 245 P.3d at 923–24 (concluding that the trial court erred when it denied the state's requests for protective orders in criminal and civil cases to prevent the pretrial depositions of victims in the civil case, where the victims had a constitutional right to refuse a defendant's deposition request); *Deal*, 740 N.W.2d at 764–65 (finding that the public policy of "[m]aintaining the integrity of a criminal proceeding by preventing circumvention of the criminal discovery rules" can constitute "'good cause' to issue a protective order staying civil discovery").

[58] *See Wesselmann v. Tyson Foods, Inc.*, No. 15-CV-4247-LTS, 2016 WL 6986683, at *2 (N.D. Iowa Nov. 28, 2016) ("Good cause [for a protective order] can include preventing the intimidation of a witness at a deposition."); *see, e.g.*, *id*. (finding that "good cause" existed to support entry of a protective order barring a supervisor from attending the deposition of an employee, where, *inter alia*, the employee had attested to her fear of the supervisor); *Monroe v. Sisters of St. Francis Health Serv., Inc.*, No. 2:09 cv 411, 2010 WL 4876743, at *3 (N.D. Ind. Nov. 23, 2010) (finding "good cause" existed to support a protective order barring supervisors from attending the deposition of employee who claimed he was wrongfully terminated, where the record indicated that the supervisors' presence would "intimidate the plaintiff, interfere with the accuracy of his testimony, and negatively affect his health").

[59] *See Tolbert-Smith,* 253 F.R.D. at 4 (finding that "good cause" exists for a protective order barring the former employers of a victim of employment discrimination from attending the victim's deposition where the victim demonstrated that the former employers' presence at the deposition would cause the victim "severe depressive stress possibly resulting in suicide").