



NATIONAL CRIME VICTIM LAW INSTITUTE

CONSIDERATIONS WHEN TALKING TO VICTIMS ABOUT THEIR EXPECTATIONS FOR CASE DURATION AND THEIR RIGHTS RELATED TO TIMEFRAMES FOR THE DISPOSITION OF CRIMINAL CASES

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Victims often experience long delays between reporting a crime and the conclusion of trial.¹ Although such delays can undermine victims' interests and cause them harm, slow case processing times can also benefit victims or otherwise align with their preferences. Many jurisdictions provide victims with rights and procedural mechanisms related to the timely resolution of a case and their fair treatment throughout the criminal justice process; but these rights and procedures do not give victims control over case timing. As a result, it is important for victim attorneys, victim advocates, and other professionals serving victims to provide them with information about what to expect regarding case duration as soon as possible.² Understanding the context and available options regarding case timelines, as well as the possible costs and benefits of delay, can empower victims to make informed choices about how to proceed. Although this resource focuses on delays before the end of trial, conversations with victims about case progression and length should include information about appellate and post-conviction proceedings, as these can add significantly to overall case duration.

Topics to consider and address when providing victims with case duration information can include:

- **How a Case Progresses through the Criminal Justice System.** A conversation with victims about case duration can start with an overview of how a case moves through the criminal justice system. This overview can identify and explain the different stages of the process and highlight where delays can occur or where a defendant, prosecutor, or court might try to speed up the process.
- **General Information on Case Processing Times.** Although it is important to communicate to victims that case processing times will vary in individual cases, general information on case duration can provide helpful context. Familiarity with criminal case processing times in a particular jurisdiction and related local and national resources can be useful during such discussions. For instance, many states have adopted case processing standards to establish expectations for courts, litigants, attorneys, and the public regarding their case processing times.³ Case processing times often do not meet these standards;⁴ thus, it is important to supplement a review of any standards with other relevant information (*e.g.*, available government data on processing times,⁵ studies of processing times in a specific jurisdiction and/or regarding a specific crime,⁶ anecdotal information from local practitioners).

- **Potential Harms to Victims from Case Processing Delays.** Long delays between reporting a crime and the conclusion of trial can: impede victims' recovery; compound victims' initial trauma; cause victims new emotional, psychological, physical, and/or financial harms; leave victims feeling excluded by the criminal justice system; and result in other forms of secondary victimization.⁷ Delays can also impact case outcomes in a way that is contrary to victims' priorities, needs, and interests. Communicating with victims about these negative impacts can prepare them and inform their decisions on how to proceed.
- **Potential Benefits of Slow Processing Times.** In some instances, slower case timelines can be to a victim's advantage. For instance, rushing the resolution of a criminal case at the trial level may increase the likelihood of a conviction being challenged, resulting in a lengthy appellate process. Additionally, faster resolutions can alter sentencing and other outcomes in a way that is contrary to victims' desires and interests.⁸ Discussions with victims of any costs they may experience due to faster timelines and the advantages of not speeding up proceedings can help victims decide whether and how to challenge case duration or utilize tools to minimize delay.
- **Potential and/or Actual Sources of Delay.** Informing victims about potential and known sources of delay in a particular case can give victims context for the case timeline. Case delay can be attributed to many sources, including overcrowded court dockets, system participants' scheduling conflicts and strategic decisions, limited availability of experts and witnesses, continuances, and frequent in-person status checks.⁹ The time in which a case reaches disposition can also increase when a victim or other case participant seeks appellate or interlocutory review. Different types of cases lend themselves to different types of delays;¹⁰ investigation of the types of delay that may be associated with a specific case is encouraged.
- **Victims' Rights.** Case delays can implicate a number of victims' rights, such as victims' rights to the timely disposition of a criminal case¹¹ and to be treated with fairness, dignity, and respect.¹² Some jurisdictions expressly require that courts take victims' interests and opinions into account when making scheduling decisions;¹³ the right of victims to have such interests and opinions considered is implicit in their rights to a timely disposition¹⁴ and to be heard.¹⁵ Many jurisdictions expressly provide rights regarding the timely resolution of a case to vulnerable victim populations, such as child-victims¹⁶ and older adults.¹⁷ Whether a delay is untimely or unreasonable is generally a fact-specific inquiry.¹⁸
- **Tools to Challenge and/or Minimize Case Delays.** The federal government and many states expressly recognize victims' standing to assert and seek enforcement of their rights in court.¹⁹ In other jurisdictions, traditional standing analysis applies. Mechanisms for rights enforcement vary by jurisdiction; victims generally may assert and seek enforcement of their rights in writing or orally.^{20, 21} For instance, a victim can file a motion asserting their right to a timely disposition, in which they ask the court to order a date certain for trial or oppose a continuance request. Victims may challenge a violation of their rights by asking the trial court to reconsider and/or petitioning an appellate court to compel the enforcement of their rights.²²

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¹ See 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, 183 (2013) ("A common problem in the prosecution of crimes against victims is that the trial is typically delayed through scheduling conflicts, continuances, and other unexpected delays throughout the course of the trial."); Wendy A. Walsh & David C. Steelman, *Criminal Disposition Time for Child-Sexual Abuse Cases in a Large Urban Court*, 34 Just. Syst. J. 107, 107 (2013) (noting that research studies support the conclusion that criminal court delay is common in child-sexual abuse cases and citing studies).

² See Caitlin K. Cervenka & Christine M. Crow, *Lawyering in the #metoo Era*, 109 Ill. B.J. 30, 35 (2021) ("Victims [in Illinois] should also know that while they have a right to timely disposition of the criminal case, they generally will not be able to force a criminal case to move more quickly than average. Thus, survivors should always be made aware that, if the case against their offender is charged, it is very possible that the case could take up to three or more years to be fully resolved, not including any possible appeals."); Wendy A. Walsh et. al, *How Long to Prosecute Child Sexual Abuse for a Community Using a Children's Advocacy Center and Two Comparison Communities?*, 13 Child Maltreatment 3, 3 (2008) [hereinafter Walsh et. al, *How Long to Prosecute Child Sexual Abuse*] (observing that research about child sexual abuse case processing times can be "essential for . . . informing families about what to expect").

³ See generally Nat'l Ctr. for State Courts, *Find Case Processing Time Standards by State*, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/high-performance-courts/cpts> (providing case processing time standards by state for all case types).

⁴ See Brian J. Ostrom et. al, *Timely Justice in Criminal Cases: What the Data Tells Us* 3, 6 (Nat'l Ctr. for State Courts 2020), https://www.ncsc.org/_data/assets/pdf_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf (studying data from 136 courts and concluding that no court met the national time standard for felonies).

⁵ See, e.g., Illinois Courts, *2021 Annual Report of the Illinois Courts* 73, <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/54868468-989e-45f4-8bb8-c3882ed3b175/2021%20Annual%20Report%20Statistical%20Summary.pdf> (reporting on the age of pending cases by case category for downstate Circuits in Illinois, as of December 31, 2021, including the percentage of cases that have been pending for over 12 months); Cook County Gov., *Open Data: Dispositions* (July 15, 2023), https://datacatalog.cookcountyil.gov/browse?tags=state%27s+attorney+case-level&sortBy=most_accessed (providing felony case disposition data that can be used to calculate processing times in Cook County, Illinois).

⁶ See, e.g., Walsh & Steelman, *supra* note 1 (presenting results from a study comparing criminal disposition time for child sexual abuse cases and other felonies in the Arizona Superior Court for Maricopa County).

⁷ See, e.g., 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 can suffer when criminal proceedings last multiple years); Paul G. Cassell & Margaret Garvin, *Protecting Crime Victims in State Constitutions: The Example of the New Marsy's Law for Florida*, 110 J. Crim. L. & Criminology 99, 121–22 (2020) (describing the psychological and emotional harms that victims can suffer as a result of delays in the criminal justice process); Maria Hawilo et. al, *How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System*, 112 J. Crim. L. & Criminology 171, 197 (2022) (concluding that, as a result of long criminal case processing times, "[v]ictims can be left feeling that the criminal legal system is not just ignoring their trauma, but in some cases generating new trauma[]"); Dan S. Levey, *Balancing the Scales of Justice*, 89 Judicature 289, 291 (2006) (observing that the years of delay common in capital cases "exact an enormous physical, emotional, and financial toll [on victims]").

⁸ Walsh et. al, *How Long to Prosecute Child Sexual Abuse*, *supra* note 2, at 11 ("There is the potential for reducing case length to have unintended consequences for the quality of justice. Does greater time to resolution lead to more unjust outcomes because children's ability to testify effectively is eroded, or more just outcomes because it offers children time to prepare to participate and prosecution and defense time to deal with complicated issues?"); Wendy A. Walsh et. al, *Length of Time to Resolve Criminal Charges of Child Sexual Abuse: A Three-County Case Study*, 33 Behav. Sci. Law 528, 543 (2015) [hereinafter, Walsh et. al, *Length of Time to Resolve Criminal Charges*]

(noting the need for future research to test “the assumption that faster is better” in child sexual abuse cases, which could involve “comparing sentencing outcomes and psychological outcomes for those affected, including families of the victim and defendant, for cases with similar charges at the start of prosecution” and “compar[ing] the experiences and perceptions of families whose cases resolve quickly versus slowly”).

⁹ Hawilo et. al, *supra* note 7, at 197–98 (noting that causes of delay in criminal court cases can include in-person status checks, frequent judicial recesses, and other system-wide problems); Ricke, *supra* note 1, at 183 (noting that trials are often delayed as a result of “scheduling conflicts, continuances, and other unexpected delays”).

¹⁰ For instance, child sexual abuse prosecutions often have especially long case processing times due, in part, to prosecutors’ need for extra time with child-victims to develop rapport and obtain full disclosure, to prepare them for court, and to complete medical and psychological examinations. Walsh et. al, *How Long to Prosecute Child Sexual Abuse*, *supra* note 2, at 4. Long processing times in these cases can also stem from: the preexisting close relationships that often exist between child-victims and their abusers, which can increase victims’ reluctance to participate; and the time-consuming nature of certain procedures common to child sexual abuse cases, such as psychosexual evaluations of the defendant and pretrial hearings regarding the admissibility of character evidence. Walsh & Steelman, *supra* note 1, at 117–18. The high stakes of a child sexual abuse conviction can also extend case duration by making it more difficult to obtain confessions or plea bargains. Walsh et. al, *Length of Time to Resolve Criminal Charges*, *supra* note 8, at 528. Defendants in these cases may also seek delays in order to allow pre-pubescent child-victims to mature so that they appear less vulnerable to the jury at trial. Cf. Amy Russell, *Documentation and Assessment of Children’s Forensic Interview Statements*, 16 *Widener L. Rev.* 305, 308–09 (2010) (noting that video recordings of children’s forensic interview can be “beneficial for purposes of trial, as the investigative interview is frequently conducted months or even years before the child may have to testify in court” because “[c]hildren who experience growth spurts in the intervening time may appear less vulnerable to the jury, and possibly more complicit or compliant in their victimization” and “[p]laying the interview that demonstrates the child’s own reports of his victimization for the jury may emphasize the fact that the child was defenseless to the alleged perpetrator’s molestation” (internal footnotes omitted)).

¹¹ Jurisdictions vary in how they articulate this right. For instance, some refer to it as a right to a “prompt,” “speedy,” or “timely” disposition; others articulate it as a right to proceedings “free from unreasonable delay.” The federal government and a majority of states provide crime victims some version of a constitutional and/or statutory right to the timely disposition of a criminal case. See, e.g., 18 U.S.C. § 3771(a)(7); Alaska Const. art. I, § 24; Ill. Const. art. I, § 8.1(a)(7); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(11); Mass. Gen. Laws ch. 258B § 3(f).

¹² A majority of states afford victims the right to fair treatment within the criminal justice process. See, e.g., Ill. Const. art. I, § 8.1(a)(1); 725 Ill. Comp. Stat. Ann. 120/4(a)(1); Ohio Const. art. I, § 10a(A)(1); Tex. Const. art. I, § 30(1). This right gives victims a voice with regarding practices within the criminal justice system that jeopardize their rights and interests, such as scheduling decisions. See The Honorable Jon Kyl et. al, *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims’ Rights Act*, 9 *Lewis & Clark L. Rev.* 581, 613 (2005) (“[A victim’s] right to fairness requires, for example, that the victim be given the opportunity to be heard on the matter of a delay requested by the defendant, especially in light of the victim’s right to proceedings free from unreasonable delay.”). Additionally, given the significant harms that victims can suffer as a result of delayed proceedings, any unreasonable delay also implicates their right to be treated fairly. See Craig Peyton Gaumer, *Protecting the Innocent: Victim-Witness Rights in Illinois*, 83 *Ill. B.J.* 568, 574 (1995) (recognizing that “[i]n cases where a lengthy pretrial delay might force a victim of violent crime to continually relive the trauma of the crime in trial preparation, the rights to a timely disposition of the case and to be treated with fairness” may authorize the prosecution’s use of alternative means of testimony, such as video depositions); *United States v. Sampson*, 68 F. Supp. 3d 233, 237 (D. Mass. 2014) (recognizing that the court’s discretion to grant a continuance implicates the victim’s federal statutory rights, pursuant to the Crime Victims’ Rights Act, 18 U.S.C. § 3771, to proceedings free from unreasonable delay and to be treated with fairness and respect for victims’ dignity and privacy).

¹³ See, e.g., *Ariz. Rev. Stat. Ann.* § 13-4435(A); *Del. Code Ann. tit. 11, § 9404(a)*.

¹⁴ See 150 *Cong. Rec.* S10910 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl) (stating that the federal CVRA right to proceedings free from unreasonable delay “should be interpreted so that any decision to schedule, reschedule, or continue criminal cases should include victim input through the victim’s assertion of the right to be free from unreasonable delay”); see, e.g., *United States v. Biggs*, 431 F. Supp. 3d 1190, 1192 (D. Or. 2018) (considering, when addressing defendant’s request for a trial continuance, *inter alia*, the victims’ legal rights and interests, including their federal right under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771, to proceedings free from unreasonable delay and their right, under 18 U.S.C. § 3509(j), as children in a case of special public importance, to a speedy trial).

¹⁵ A victim's right to be heard is the right to express the victim's views to the court and other entities tasked with making decisions related to a criminal case. Depending on the jurisdiction, the right to be heard may apply to all proceedings implicating victims' rights. *See, e.g.*, Cal. Const. art. I, § 28(b)(8); Ill. Const. art. I, § 8.1(a)(5); Wis. Const. art. I, § 9m(2)(i). Some jurisdictions expressly tie the right to be heard to certain proceedings, such as those related to pretrial release, *see, e.g.*, Ohio Const. art. I, § 10a(A)(3), Wis. Const. art. I, § 9m(2)(i); or the disposition of the case, *see, e.g.*, Alaska Const. art. II, § 24; Ky. Const. § 26A.

¹⁶ The federal government and at least 18 states recognize child-victims' heightened interest in avoiding case delays through provisions that call for expediting or otherwise prioritizing certain, if not all, cases involving this victim population. *See, e.g.*, 18 U.S.C. § 3509(j); Mass. Gen. Laws Ann. ch. 278, § 16F, para. 1; N.Y. Exec. Law § 642-a(3). Some of these jurisdictions, as well as others, require that, when a court decides a motion for a continuance or other request for a delay in a case where there is a child-victim, the court considers and gives weight to the adverse impact that such a delay could have on the child. *See, e.g.*, 18 U.S.C. § 3509(j); 725 Ill. Comp. Stat. Ann. 5/114-4(k); Wash. Rev. Code Ann. § 10.46.085.

¹⁷ *See, e.g.*, Cal. Penal Code § 1048(b)(1); Mich. Comp. Laws § 780.759(1)(d), (2); N.H. Rev. Stat. Ann. § 632-A:9.

¹⁸ Although this determination is typically fact-dependent, at least one jurisdiction connects a victim's right to a timely disposition to its established time standards. *See, e.g.*, N.D. Cent. Code § 12.1-34-02(13). At least one other jurisdiction specifies a timeframe that must be followed upon the victim's exercise of their right. *See, e.g.*, Minn. Stat. Ann. § 611A.033(a).

¹⁹ *See, e.g.*, 18 U.S.C. § 3771(d)(1); 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(3); Wis. Const. art. I, § 9m(4)(a).

²⁰ *See, e.g.*, 725 Ill. Comp. Stat. Ann. 120/4.5(c-5)(4)(A)–(C) (providing that victims may exercise their rights by filing a motion or orally asserting and requesting enforcement in open court).

²¹ Sample motions asserting a victim's right to a timely disposition are available to members of the National Alliance of Victims' Rights Attorneys & Advocates (NAVRA), a project of NCVLI. *See, e.g.*, *NCVLI Sample Motion: Crime Victim's Motion for Enforcement of [His/Her/Their] Victims' Rights, Including the Rights to a Speedy Trial and to be Treated with Fairness and Respect* (2017),

https://navra.org/sites/default/files/CA_Motion%2520for%2520Enforcement%2520of%2520Speedy%2520Trial%2520Right_NCVLI%2520Sample%2520Template.pdf; *NCVLI Sample Motion: Crime Victim's Response to [the Prosecutor's/Defendant's] Motion for a Continuance* (2021),

https://navra.org/sites/default/files/Memo_AZ_Victims-ResponsetoMotionforContinuance.pdf.

²² *See, e.g.*, 18 U.S.C. § 3771(d)(3); Md. Code Ann., Crim. Proc. § 11-103(b); Ohio Const. art. I, § 10a(B).