



NATIONAL CRIME VICTIM LAW INSTITUTE

VICTIMS' RIGHTS GUIDE: INTEGRATING VICTIMS' RIGHTS INTO LAW ENFORCEMENT-BASED VICTIM SERVICES IN IDAHO

USING THIS RESOURCE

This resource is designed to improve victim services personnel's knowledge and understanding of crime victims' rights in Idaho. It provides an overview of key concepts and laws that can help victims make meaningful choices about their rights. Because laws change and can be complex, this *Guide* does not include all victims' rights-related laws. It is not legal advice, and does not substitute for legal advice. This resource is best used with its companion resource: *Law Enforcement-based Victim Services in Idaho: Privacy, Privilege and Confidentiality*.

The following icons are used throughout this resource to highlight key moments for the user.



= Promising Practices: As used in this *Guide*, the “promising practices” indicator highlights procedures, methods or techniques, grounded in victim-centered and trauma-informed research and experience, that afford victims meaningful rights in the justice system.



= Take Note: As used in this *Guide*, the “take note” indicator provides jurisdiction-specific citations to law cited or discussed.

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MEANING & SCOPE OF VICTIMS' RIGHTS

Benefits of Victims' Rights to Criminal Justice

In 2022, 23.5 out of every 1,000 people aged 12 and up were victims of violent crime, and about 42% of those crimes were reported.¹ The numbers are even higher for some groups. For example, between one in two and one in four women will experience stalking, sexual violence, or some other form of intimate partner violence at some point in their lives.² It is well known that victims' reporting rates and system involvement are low, even though these rates are high. This is especially true for survivors of domestic and sexual violence, people whose legal status for immigration purposes is uncertain, people with disabilities, and other vulnerable groups.³

Some victims will feel stronger and be able to heal after dealing with the criminal justice system, while others will feel like they have been victimized again. One way in which the system can harm victims is by telling them they have rights but in reality the rights are not respected.⁴ This kind of harm imposed on victims by the system is sometimes called "secondary victimization" or "secondary trauma," and can have major long-term effects on victims' bodies, minds, and other impacts.⁵ Victims who experience secondary victimization because of their interactions with the criminal justice system, and other people who see this happen, are less likely to report crimes and get involved in the justice system.⁶ When this happens it hurts our justice systems.⁷

Research shows that re-victimization and its negative effects are less likely to happen when victims can choose if, how, when, and how much they want to be involved in the justice system, and when the processes and procedures are clear and treat them with respect.⁸ Making sure victims get up-to-date information on their rights and referrals to victims' rights attorneys to help them assert and enforce their rights are important ways to reduce re-victimization and to get them involved.



It is important to support victim empowerment and agency, which can help prevent secondary victimization and improve system engagement. One way to do this is to set up policies and procedures to help victims quickly learn about their rights and to provide referrals to victims' rights attorneys who can help them ask for (also known as "assert") and seek enforcement of those rights.

Role of Law Enforcement-Based Advocates in Affording Victims' Rights

Best practice in victim services makes it easier for victims to have meaningful choices. To do this, victims' services personnel must know about and support victims' rights, which can be found in constitutions, laws, rules, and policies. It is not enough for victims to have rights; those rights must also be respected and enforced. Compliance is when people who have legal duties to

victims follow them and try to avoid failing to do so on purpose, by accident, or because they were careless. Enforcement is when a court or administrative order requires people to follow victims' rights laws or offers remedies for violations of those laws. Enforcement can be sought by victims themselves or by someone speaking for them, like a victim's attorney or the prosecution.

Law enforcement-based advocates are in a special position to help victims exercise their rights. As part of their job to make sure rights are respected, advocates must make sure that victims get timely information about their rights, including how to assert and enforce those rights if they choose to do so.

Who Can Exercise Victims' Rights?

According to the law, someone who meets the criteria for being a legal "victim" has a number of rights.

It might seem like it would be simple to tell if someone is a crime victim. For example, a person whose laptop was stolen might look like a clear victim of theft. But there may be differences between how people normally use words and how the law uses them.

Legal meanings are very specific, so someone may be a "crime victim" in one state but not in another, even if the facts are the same. Similarly, the term "crime victim" can mean different things in different parts of the legal code. For example, someone who meets

the legal definition of "crime victim" when they are seeking restitution may not necessarily meet the legal definition of "crime victim" for other purposes. To know if someone is a "crime



In Idaho, key legal definitions of "victim" include:

- For Idaho's constitutional and statutory victims' rights generally, "victim" means "an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense[.]" Idaho Code Ann. § 19-5306(5)(a).
- For the right to restitution, "victim" means, among other things, "a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases[.]" Idaho Code Ann. § 19-5304(1)(e)(i).
- For the right to apply for compensation under the Crime Victims Compensation Act, "victim" means "a person who suffers injury or death as a result of: (a) Criminally injurious conduct; (b) His good faith effort to prevent criminally injurious conduct; or (c) His good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct." Idaho Code Ann. § 72-1003(8).



A promising practice to help victims have meaningful rights is to maintain a list of attorneys and legal agencies to refer victims for individual representation. One resource to help in creating this list for victims in your community is NCVLI's Victim Resources Database, <https://ncvli.org/victim-resources-database/>, which offers a "legal services" dropdown to view "Attorneys for Victims in Criminal Cases" or "Attorneys for Victims in Civil Cases", depending on the victims' legal needs. The database is searchable by state as well as crime and victim population.

Other possible referral resources to help victims find attorneys include modest means programs run by states' individual bar associations. Information about Idaho's Lawyer Referral Service can be accessed at <https://isb.idaho.gov/lawyer-referral-service/>.

For more information about why advocate and attorney roles complement one another, see NCVLI's video *Attorneys and Advocates Working Together* at <https://www.youtube.com/watch?v=fSRojrk9YqM>.

victim-client and the victims' rights attorney have special privacy protections called privilege, which means they cannot be shared with anyone else without the victim's permission except under very limited circumstances. A victims' rights attorney can give legal advice and file papers with the court that assert or ask for the enforcement of victims' rights. A



A promising practice is to notify victims that they can ask for their rights in court and that they may do so personally, with the assistance of an attorney, and sometimes through the prosecution. This notice should include an explanation of the different roles of a prosecuting attorney and an attorney hired by the victim.

victim" in a specific jurisdiction who can assert and enforce victims' rights, it is necessary to carefully read the victims' rights laws where the crime occurred or where it is being investigated or prosecuted.

If a person meets the legal definition of "victim" they have "standing" to use their rights. A person's standing means that they can go to court on their own and ask for their rights. The federal government and many states make it clear that victims have standing in trial and/or appeals courts.⁹ When there are no clear rules about who has standing, courts will use a jurisdiction-specific standing analysis, which means they will apply certain legal standards to the facts of the case.¹⁰

Victims can use their own attorney or another personal representative to ask for their rights, or they can go through the prosecutor. Prosecutors can and do at times support the rights of victims, however, they are not the victims' attorney. In a criminal case, prosecutors represent the government's interests. A victims' rights attorney, on the other hand, represents the victim-client's interests only. Any conversations that happen between the

victims' rights attorney can also help the victim understand the different legal ways to address the harm they have suffered right from the start and can help the victim navigate the system and take legal action if needed to protect the victim's rights. Because of these things, hiring a victims' rights attorney is often the best way for a victim to make sure their rights are protected.

Common Victims' Rights



Modern crime victims' rights statutes and constitutional amendments give crime victims rights that are recognized by the law. These rights make crime victims legal participants in the criminal justice system, not just witnesses.¹¹ Different jurisdictions have different victims' rights laws, and every jurisdiction has rights in addition to the ones listed below. However, some of the most common victims' rights are outlined below. For more information about the first ten rights described below, see Nat'l Crime Victim Law Inst., *Common Victims' Rights*, 2023, at 2-8, [https://ncvli.org/wp-](https://ncvli.org/wp-content/uploads/2023/11/Common-Victims-Rights.pdf)

[content/uploads/2023/11/Common-Victims-Rights.pdf](https://ncvli.org/wp-content/uploads/2023/11/Common-Victims-Rights.pdf). More information is provided in the endnotes for rights 11-14.

1. Rights to Be Treated with Fairness, Dignity, and Respect

In many jurisdictions, victims have rights to be treated with fairness, dignity, and respect. These rights can be asserted on their own and can also help inform how other rights are interpreted. A victim's right to be treated fairly in the criminal justice process includes the right to receive adequate notice of hearings and other events where their rights are involved and the right to be heard in these situations. Sometimes the law will describe the right to adequate notice and to be heard when rights are at issue as "due process." Some examples of meaningful ways victims can be treated with fairness, dignity, and respect include:

- ✓ Polygraphs of victims cannot be used to decide if an investigation should happen or if charges should be filed.¹²
- ✓ Law enforcement agencies provide victims with a copy of the criminal incident report free of charge.¹³
- ✓ If a victim's rights are at issue in a court proceeding, the victim's attorney should be able to sit near the front of the courtroom with the prosecutors and defense attorneys.¹⁴
- ✓ Prosecutors must talk with victims before dismissing a case, and they must tell the court what the victim thinks about the possible dismissal.¹⁵

2. Right to Privacy

A victim's right to privacy includes the right to protective measures that prevent or limit access to a victim's personal information. A victim's privacy is at issue when the parties in a criminal case (like the prosecution and the defense) or others (like media outlets) seek information about or from the victim such as the police report; the victim's mental health, medical, and other records; prior sexual history; social media accounts and posts; and telephone or computer files. Any disclosure of the victim's identifying or locating information in official records, court filings, or proceedings also implicates a victim's privacy rights. Some jurisdictions clearly recognize a right to privacy in their victims' rights laws; such rights are typically expressed either as a general right to privacy or as a right to be treated with respect for the victim's privacy. Some states explicitly provide all individuals—not just crime victims—with a constitutional right to privacy. In addition, the United States Constitution affords individuals, including victims, with privacy protections, including the right to be free from unreasonable government intrusions into their person, home, papers, and effects, and the right to keep personal information private.

Additional laws protecting victim privacy exist in many jurisdictions, including: address confidentiality protections; rape shield laws (laws that are designed to protect victims of sexual



A promising practice is for law enforcement-based victim services to have clear policies and procedures in place that spell out what it means to treat victims fairly, with respect, and with dignity.



Idaho law makes it clear that victims have rights to privacy and to be treated with fairness, dignity, and respect.

- “A crime victim, as defined by statute, has the . . . right[] [t]o be treated with fairness, respect, dignity and privacy throughout the criminal justice process.” Idaho Const. art. I, § 22(1).
- “Each victim of a criminal or juvenile offense shall be . . . [t]reated with fairness, respect, dignity and privacy throughout the criminal justice process[.]” Idaho Code Ann. § 19-5306(1)(a).

violence by limiting the ability of defendants or the prosecution to introduce evidence about their past sexual activity or cross-examine them about it during a trial); confidentiality and privilege protections; exclusions of certain victim information from public records disclosures (for example victims' identifying and locating information, requests for assistance submitted to state compensation programs, and information associated with participation in address confidentiality programs); laws requiring that certain identifying information be filed only under seal; laws allowing the use of pseudonyms or initials in place of a victim's full name; and more. For in-depth information about privacy and related rights and privileges held by victims, as well as related duties of law enforcement-based victim advocates, see the companion resource: *Law Enforcement-based Victim Services in Idaho: Privacy, Privilege and Confidentiality*.

3. Right to Notice

A victim's right to notice is the right to be advised, in a reasonable, accurate, and timely manner of any proceedings, as well as other specific events in the justice process, that put the victim's rights or interests at issue, such as: a defendant's arrest, arraignment, release, escape, or other change in custodial or offender status; any change in the status of DNA or rape kit tests; a plea agreement; and if defendant has made a request for the return of property. The right to notice overlaps with—but is different from—the right to information, which generally refers to a crime



Idaho has a number of laws requiring that victims receive timely notice, including:

- “A crime victim, as defined by statute, has the . . . right[] [t]o prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.” Idaho Const. art. I, § 22(3).
- “Each victim of a criminal or juvenile offense shall be . . . [g]iven prior notification of trial court, appellate, probation and parole proceedings and, upon request, to information about the sentence, incarceration, placing on probation or release of the defendant[.]” Idaho Code Ann. § 19-5306(d).
- “Each victim of a criminal or juvenile offense shall be . . . [n]otified whenever the defendant or suspect is released or escapes from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. When the release is granted subsequent to a final conviction, notice shall be given to the victim by the law enforcement authority from whose custody the defendant was released unless release is granted by the commission of pardons and parole, in which case the commission shall notify the victim. When a release on probation is being considered following a period of retained jurisdiction, notice of the hearing shall be given to the victim by the prosecuting attorney.” Idaho Code Ann. § 19-5306(j).

victim's right to be informed about their rights, how the criminal justice system works, and available resources.



Idaho law uses the term “communicate” in its right to confer.

- “A crime victim, as defined by statute, has the . . . right[] [t]o communicate with the prosecution.” Idaho Const. art. I, § 22(5).
- “Each victim of a criminal or juvenile offense shall be . . . [a]fforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children[.]” Idaho Code Ann. § 19-5306(f).

4. Right to Confer

Victims have the right to confer with the prosecution about things like their rights or interests, important steps in the criminal justice process, and how the case will be resolved (often called the disposition of the case). This means that victims get to provide information to the prosecution and that the prosecution must provide information to them. Laws in many states and the federal government say that victims get to talk to the prosecution about whether the person will be charged and how the case will be resolved. Because so many criminal cases end quickly with a plea deal, the timing of the conferral can be very important. For the right to confer to be meaningful, it must happen before charges are filed that could limit the victims' rights and before the government and defendant reach a binding plea deal.

5. Right to Be Present

A victim's right to be present means that they can choose whether and, in many jurisdictions, also how to attend criminal justice hearings. These proceedings can be about the investigation, prosecution, or custody status of the defendant. They can also be about the victim's rights and interests. The federal government and all 50 states give crime victims some kind of right to be present at trial and/or other criminal proceedings.

Courts have concluded that a defendant's federal constitutional rights are not violated just because a victim is present in the

courtroom. Still, a victim may have the absolute right to be present, or they may have to meet certain conditions, based on the laws and decisions of the courts in their jurisdiction. For



Idaho law recognizes victims' right to be present.

- “A crime victim, as defined by statute, has the . . . right[] [t]o be present at all criminal justice proceedings.” Idaho Const. art. I, § 22(4).
- “Each victim of a criminal or juvenile offense shall be . . . [p]ermitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings[.]” Idaho Code Ann. § 19-5306(1)(b).

example, the court may decide that the victim's presence would violate the defendant's state constitutional rights or significantly impact the victim's testimony. It is important to note that in most places, constitutional and statutory rights to be present should prevent courts from using sequestration rules that were in place before these rights were passed to keep crime victims from attending criminal proceedings.



It is a promising practice to know about the victim's right to be present in your jurisdiction. In some jurisdictions a victim's right to be present applies at all criminal hearings or at all proceedings where the defendant has the right to be present. In other jurisdictions, the victims have the right to be present at certain types of hearings, which are sometimes called "critical stage proceedings." Some jurisdictions may not explicitly include certain proceedings in the victims' right to be present, like when the accused or convicted person's release is being considered. However, other victims' rights, like the rights to protection, to be heard, and to be treated fairly, with respect and dignity, should still allow the victim to be present when their rights or interests are at stake.



Idaho law recognizes victims' right to be heard.

- "A crime victim, as defined by statute, has the . . . right[] [t]o be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result." Idaho Const. art. I, § 22(6).
- "Each victim of a criminal or juvenile offense shall be . . . [h]eard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result[.]" Idaho Code Ann. § 19-5306(e).

6. Right to Be Heard

A victim's right to be heard is the right to express views to the court and other entities that make decisions in criminal cases and about the accused/convicted person. Depending on the jurisdiction, the explicit right to be heard may apply to all proceedings where victims' rights are at issue or only to certain proceedings, such as proceedings related to: defendant's pretrial release; the disposition of the case (for example, plea hearings, change of plea hearings, sentencing); an offender's release from supervision (for example, parole or probation hearings); or requests for disclosure of the victim's information and records (for example, hearings involving subpoenas for the victim's records). Even when not explicit, the right to be heard is at

issue whenever a victim's rights or interests are at stake.

Some jurisdictions explicitly provide information about the ways in which a victim may exercise their right to be heard. For example, some laws specify that victims may exercise their right to be heard through written and/or oral statements; other laws may explicitly provide victims with the option of choosing the method they would like to use when exercising their right to be heard. Unless the exercise of this right is specifically limited by constitution, statute, or rule, the victim may choose the method by which they wish to be heard.



No matter what stage of the criminal justice system or what victims' rights or interests are at stake, the victim has the right to be heard. This includes before trial and after conviction. There should be policies and procedures in place to help make sure that victims are informed of their right to be heard as soon as they interact with the criminal justice system and are kept up to date on when the court might consider releasing the defendant. This is because defendant's release could be considered as early in the case as arraignment or charging. It might also be helpful to share with victims the different kinds of information that they could give to the court as part of their right to be heard. For release proceedings, this information could include telling the court about any safety or other worries about the defendant's possible release and requesting conditions the court should impose on the defendant if they are released.

7. Right to Reasonable Protection

A victim's right to reasonable protection is the right to efforts to prevent further harm from the accused and those acting on behalf of the accused during and after the victim's involvement with the criminal justice system. This right is generally reflected in constitutional and statutory provisions that address the victim's physical safety, as well as their mental and emotional health. A number of states and the federal government provide victims with a broad constitutional right to reasonable protection. Many states similarly protect victims through constitutional and statutory provisions guaranteeing the right to be free from intimidation, harassment, and abuse. Some states' victims' rights laws include requirements that courts take victim safety into account when considering a defendant's release from custody, when imposing release conditions, and/or when setting bond.

In addition to these clear protection rights, many places also require that victims be given the information and/or notice they need to take steps to protect themselves. For example, they should be told when a defendant or convicted criminal is released or escapes custody, or when they apply for and are granted clemency. There are many other laws that help protect victims,

such as the right of victims to refuse interviews or any other requests from the accused or anyone acting on behalf of the accused; laws that make no contact orders a condition of release; laws that govern civil orders of protection; the right to be heard at bail and other release proceedings about how dangerous the offender is; and the right to a separate waiting area in the courthouse.



Idaho has a number of laws requiring that victims be provided with information.

- “A crime victim, as defined by statute, has the . . . right . . . upon request, to information about the sentence, incarceration and release of the defendant.” Idaho Const. art. I, § 22(3).
- “Each victim of a criminal or juvenile offense shall be . . . [g]iven . . . upon request, [] information about the sentence, incarceration, placing on probation or release of the defendant[.]” Idaho Code Ann. § 19-5306(d).
- “Upon the filing of a criminal complaint or juvenile petition, the prosecuting attorney shall inform the victim of the various opportunities provided by this section[.]” including information about victims’ rights. Idaho Code Ann. § 19-5306(2).
- “A crime victim, as defined by statute, has the . . . right[] [t]o read presentence reports relating to the crime.” Idaho Const. art. I, § 22(9).

There are also laws that address victims’ privacy and protection. Examples include address confidentiality laws; laws allowing victims to proceed by a fake name/pseudonym; laws that say victims cannot be forced to share certain contact information while testifying; and other similar laws that give victims the right to keep their identifying and locating information from getting out.

8. Right to Information

The right to information for a victim means that they have the right to know about their rights and services, how the criminal justice system works, and the specifics of their case. Victims may have the right to specific types of information, depending on the law in their jurisdiction. This information could include: the justice process and the victim’s role in it; the status of the criminal case; the final outcome of the case; and the victims’ constitutional and statutory rights. Some jurisdictions also have a clear right of victims to review information in a presentence report, court transcripts, and copies of police reports that are connected to their case.

Victims need information to navigate the criminal justice system and to understand their other rights and decide if, how, and when to use

them. These reasons mean that even in places where there is not a clear right to information, other rights—like the right to confer with the prosecutor or the right to be treated fairly, with dignity, and with respect—require victims be provided information to make these rights meaningful. In a lot of places, law enforcement and prosecutors are required by law to tell victims about their rights and the resources that are available to them, like medical services, social services, crisis or emergency services, and compensation benefits.

9. Right to Timely Disposition

A victim's right to a prompt or timely disposition means that the case involving their victimization should be resolved as soon as possible, without any unreasonable delays in the justice system. This includes before charges are brought, before and during trial, and after conviction. The facts of a particular case decide if a delay in the process is reasonable. According to federal and most state laws, crime victims have a constitutional and/or statutory right to have their criminal case completed quickly. Different places use different words to describe this right. Some call it the right to a "prompt," "speedy," or "timely" disposition, while others say it is the right to procedures "free from unreasonable delay."



Idaho law recognizes victims' right to a timely disposition.

- "A crime victim, as defined by statute, has the . . . right[] [t]o timely disposition of the case." Idaho Const. art. I, § 22(2).
- "Each victim of a criminal or juvenile offense shall be . . . [e]ntitled to a timely disposition of the case[.]" Idaho Code Ann. § 19-5306(c).



Idaho law recognizes victims' right to restitution.

- "A crime victim, as defined by statute, has the . . . right[] [t]o restitution, as provided by law, from the person committing the offense that caused the victim's loss." Idaho Const. art. I, § 22(7).
- "Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim." Idaho Code Ann. § 19-5304(2).
- The court may order restitution on behalf of victims of rape for "specific costs incurred by the victim as a result of injury or loss caused by the criminal act." Idaho Code Ann. § 18-6106.

There are federal laws and laws in at least 18 states that speed up or otherwise give priority to some cases involving child-victims. Some places also have laws that provide similar rights for other vulnerable victim groups, like elder-victims (usually defined as people aged 65 or 70 or older), or dependent adults.

10. Right to Restitution

When someone is convicted of a crime, the court can order the person to pay the victim back for any money they lost because of the crime. This is called "restitution." Federal and state laws give victims the right to restitution.

Restitution laws vary throughout the country; they can be either mandatory or optional, or they can be a mix of the two. Federal law and the laws of many states have mandatory restitution. Depending on the jurisdiction, the right to mandatory restitution can apply to all crimes where victims have losses, or it can be restricted to certain crimes, defendants, victims,

or situations. In some cases, like when someone is being prosecuted for certain federal crimes or in a few states, courts can choose whether to order restitution in an amount less than the full amount of the victim's financial losses. In states where the victims' rights amendment in the state's constitution says that victims have an unqualified right to be compensated, that right should take precedence over any other legal language that says victims only have a limited or optional right.



A promising practice is to inform victims of their right to restitution. From the start of the case, consider helping victims keep track of their losses, including what they expect to spend in the future. Tools like a restitution binder and log can help victims keep track of their losses. You can view and download a sample restitution binder and log [here](#).

11. Right to Return of Property

Victims have the right to get back property that the government holds in an investigation or prosecution when it is no longer needed as evidence.¹⁶ In many jurisdictions, the law says that the victim has the right to either the "prompt" or "expeditious" return of their property, and the government is required to give the property back to the victim as soon as it is no longer needed as proof. In some jurisdictions, the victim's right to get their property back is written in a way that requires them to make a request to have their property returned rather than their property being automatically returned.



Idaho recognizes victims' right to the expeditious return of their property.

- "Each victim of a criminal or juvenile offense shall be . . . [a]ssured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence[.]" Idaho Code Ann. § 19-5306(1)(i).



Having a policy and process in place to make sure that victims' property is returned to them quickly when it is no longer needed as evidence is a promising practice. Victims should be given clear instructions on how they can get their property back, along with the name of someone they can call to find out the status of the return.



Idaho's Crime Victim Compensation Act includes a number of laws describing, among other things, what types of expenses are compensable and how and when a victim may apply.

- Victims' right to file compensation claims. Idaho Code Ann. § 72-1012.
- In addition to compensation award, attorney fees may be paid for representing claimants before the commission; amount of attorney fees may not be "in excess of five percent (5%) of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney[.]" Idaho Code Ann. § 72-1006.
- Claim to be filed within one year after the criminal conduct occurred, cooperation with investigation and prosecution required; exceptions for good cause shown. Idaho Code Ann. § 72-1016.
- Preponderance of evidence standard for compensation benefit awards; prosecution or conviction not required. Idaho Code Ann. § 72-1018.

12. Right to Apply for State Compensation

Crime victim compensation programs (CVCPs) are created to reimburse victims for out-of-pocket costs related to being a victim.¹⁷ Being able to get victim compensation benefits can be very helpful for victims who do not have health insurance or employment-related benefits, or whose offenders are not being prosecuted. Every state has a CVCP. Even though each program is different, they generally have similar goals, processes, and types of costs that are reimbursed.

Even though CVCPs do not cover every victimization or expense victims may have because of the crime, they do cover some common ones, like medical and mental health care, lost wages, funeral costs, and attorney fees for services related to the victim compensation process. There are, however, two general limits. First, CVCPs do not pay for costs that are covered by another source or could be covered by another source. When a victim gets money from a compensation program for a certain expense and then gets money from another source for the same expense, the victim may have to pay back the CVCP for that

amount. This is because CVCPs are known as "payors of last resort." Second, each CVCP has a limit on the amount of compensation a victim can receive. In some states, different types of expenses are also limited individually.



To provide holistic victim services, you need to know about your jurisdiction's CVCP to make sure that qualified victims can use this important source of help and get the biggest awards possible. Some good ways to help victims with their state compensation claims are (1) offering victims guidance on how to fill out their application and gather supporting documents like police reports, records of expenses, and receipts; (2) telling victims about your CVCP's privacy policies, such as when the program will share a victim's information and records; (3) telling victims about CVCP funds that can be made available in an emergency; and (4) putting victims in touch with attorneys who can help them challenge unfair award decisions.

13. Right to Support Person Presence

Many state laws explicitly recognize a victim's right to have a victim advocate and/or someone else chosen by the victim, such as a victim's attorney, present with them during police interviews, court proceedings, and other times in the criminal justice system where their rights or interests are at stake.¹⁸ This is often described as the victim's right to have a support person accompany or be present with them. In some places, the law also says that certain crime victims, usually children, have the right to have a facility dog with them during criminal proceedings.¹⁹

Some laws say that all crime victims have these rights, while others make it clear that only certain victims (like child-victims) or victims of certain crimes (like sexual assault victims) have them. In places where victims are not explicitly given these rights, other rights, like the right to protection, to due process, and to be treated with fairness, dignity, and respect, may still require that they be given these rights.



Idaho recognizes the right of child-victims and witnesses to be accompanied by a support person and/or facility dog when called as a witness.

- “When a child is summoned as a witness in any hearing in any criminal matter, including any preliminary hearing, notwithstanding any other statutory provision, parents, a counselor, friend or other person having a supportive relationship with the child, or a facility dog, shall be allowed to remain in the courtroom at the witness stand with the child during the child's testimony unless in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial will be unduly prejudiced.” Idaho Code Ann. § 19-3023(1).

14. Right to Receive Timely Copies of Police Reports

Most states' laws make it clear that crime victims have the right to get copies of at least some police reports that are connected to their case.²⁰ These laws vary but most fit in one of the



It is a promising practice to have a policy and procedure in place to help make sure that victims who want a copy of their police report can get one without charge. Instructions explaining how they may promptly obtain copies of their police reports should be available.

following groups: (1) laws that say some or all crime victims must get copies of the police report or parts of it at a certain time or when they ask for them; or (2) laws that say a crime victim has the right to get a copy of the police report, but that law enforcement, courts, people who keep public records, or others may decline to provide the information for various reasons. Even in places that do not have laws clearly saying that victims have the right to get copies of police records, victims may need to be able to do so to fully exercise their other rights.



Idaho law recognizes many victims' rights in addition to the 14 common rights described above, including:

- The right to read presentence reports relating to the crime. Idaho Const. art. I, § 22(9), Idaho Code Ann. § 19-5306(h).
- The right to refuse an interview, ex parte contact, or other request by the defendant, or any other person acting on behalf of the defendant unless authorized by law. Idaho Const. art. I, § 22(8), Idaho Code Ann. § 19-5306(1)(g).
- The right to receive any profits earned by criminals for publicity relating to the crime. Idaho Code Ann. § 19-5301(1).

Other Victims' Rights

All jurisdictions have victims' rights in addition to the common rights described above. Examples of other rights include:

- ✓ the right to refuse defense requests for interviews, depositions, and other discovery;
- ✓ the right to access the presentence investigation report;
- ✓ the right of all victims or victims of certain crimes (most often domestic or sexual violence, or stalking) to have an employer make reasonable changes to support their safety, including providing leave and schedule changes;
- ✓ the right of all victims or victims of certain crimes (most often domestic or sexual violence, or stalking) to be free from housing discrimination because of the crimes, including requiring that landlords give options for breaking or splitting leases; and
- ✓ the right of victims to receive any profits earned by convicted criminals from publicity relating to their crimes (also known as Son of Sam or notoriety-for-profit laws).

Where to Find Rights in Your Jurisdiction's Laws

Victims' rights laws are commonly found in constitutions or victims' rights statutes. They are also woven into other specific laws and rulings. For instance, laws about a victim's right to restitution are often in laws about how offenders are sentenced. They may also be found in laws about probation/supervised release. Laws about restitution collection and distribution may be found in criminal procedure laws, court rules, administrative codes, and local court orders. Sometimes, there are specific restitution laws just for certain crimes, like human trafficking or child abuse. Other examples of rights found outside of a jurisdiction's constitutional amendments or victims' rights statutes include:



A promising practice is to know about victims' rights in your jurisdiction, including where in the law they are written. It is also important to have policies and processes in place to give victims timely information about their rights and how and when they can use them.

- ✓ Rights about protective orders, which are usually in laws about family/domestic relations matters.
- ✓ Legal privileges (such as privilege between victims and their attorneys, some victim advocates, and doctors), which are often in evidence laws.
- ✓ Rights to keep victims' personal and other case information private, which are usually in criminal and appellate procedures, court rules, and laws about public records and address confidentiality programs.

HOW TO READ LAW & UNDERSTAND RIGHTS

Legal Definitions & Their Impact

A lot of victims' rights laws have definitions for important words that are used in the laws. These legal definitions help make it clear what the victims' rights laws are supposed to do and what they cover. One example has to do with the word "victim," which was described in the *Who Can Exercise Victims' Rights?* part of this resource. To find out if someone is a legal crime victim with rights who can assert and seek enforcement of those rights, it is necessary to read all the definitions of "victim" and know which one applies to which right(s).

Some additional examples of terms commonly defined in victims' rights laws include:

- ✓ For victims' rights laws connected with legal proceedings—for example, the rights to notice of, be present at, and heard during these proceedings—what are “critical stage proceedings” or “hearings”;
- ✓ For state compensation act laws, who is a “victim” or “claimant” who can apply for compensation funds, as well as the types of “criminal conduct” and “injury” that result in compensable “loss”;
- ✓ For evidentiary privileges, who is a “doctor” and “patient”, or an “attorney” and “client”, or a “victim advocate” and “victim” who can claim the respective privileges;
- ✓ For public records' laws, what is a “law enforcement agency” or “investigatory record”, and what is an “unwarranted invasion of personal privacy”;
- ✓ For victim accompaniment laws, what/who qualifies as a “support person” or a “facility dog”; and
- ✓ For restitution laws, who is a legal “victim” who can assert this right, what types of “losses” are compensable, and what “value” means.



A promising practice when reading victims' rights laws is to look for and read definitions.



Examples of where to find definitions for certain Idaho victims' rights include:

- Definition of “victim” applicable to victims' rights generally (Idaho Code Ann. § 19-5306(5)(a));
- Right to restitution (Idaho Code Ann. § 19-5304(1));
- Right to apply for a state compensation award (Idaho Code Ann. § 72-1003);
- Right to assert certain evidentiary privileges, including the nongovernmental domestic or sexual violence program employee/volunteer-victim privilege (Idaho Code Ann. § 9-203);
- Right to the non-disclosure of certain information and records under public records laws (Idaho Code Ann. § 74-101); and
- Right of child-victims and witnesses to be accompanied by a facility dog when called as a witness (Idaho Code Ann. § 19-3023(3)).

Rights with Ambiguous or Vague Terms

While many victims' rights laws contain definitions of key terms that help inform the meaning and scope of those rights, there are some that do not. Common examples include:

- ✓ laws that say system actors like the prosecution, law enforcement, and courts must make “best” or “reasonable” efforts to meet certain victims’ rights obligations, such as giving notice, without explaining what “best” or “reasonable” efforts or “reasonable” notice mean in this context; and
- ✓ laws that say victims have the right to “expeditious” or “prompt” return of their property by law enforcement, without explaining what “expeditious” or “prompt” mean in this context.



A promising practice is to have clear policies and procedures that explain what “best” or “reasonable” efforts and “expeditious” or “prompt” return of property mean.

Automatic vs. Requested Rights



A promising practice is to have a policy and procedure in place to let victims know right away that they need to make a “request” to exercise certain rights. When a victim asks to exercise their rights, agencies should carefully keep track of the request.

Most laws that protect victims either make rights “automatic,” which means that the victim has these rights without having to do anything, or they make rights “request-based,” which means that the victim has to make a request for the right to be used. If a right is activated “upon request”, victims must be told how, when, and to whom they can be requested.



Examples of Idaho victims' rights laws that must be requested by victims include:

The right to information about the sentence, incarceration, and release of the defendant.

- “A crime victim, as defined by statute, has the . . . right[] . . . upon request, to information about the sentence, incarceration and release of the defendant.” Idaho Const. art. I, § 22(3).
- “Each victim of a criminal or juvenile offense shall be . . . [g]iven . . . upon request, [] information about the sentence, incarceration, placing on probation or release of the defendant[.]” Idaho Code Ann. § 19-5306(d).

The right to be heard at criminal justice proceedings.

- “A crime victim, as defined by statute, has the . . . right[] [t]o be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.” Idaho Const. art. I, § 22(6).
- “Each victim of a criminal or juvenile offense shall be . . . [h]eard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result[.]” Idaho Code Ann. § 19-5306(e).

Mandatory vs. Permissive Rights

In general, victims' rights laws can be written in either mandatory or permissive language. Mandatory rights must be accorded to victims. With permissive rights (also known as discretionary rights), the decision of whether and how much those rights will be accorded is up to an agency or person. But even with permissive rights, they still have limits on how the agency or person can legally use their discretion. For example, they cannot use their discretion in a way that is discriminatory or unlawful in another way. When rights are mandatory, they usually use the words “shall” or “must” or are stated without any conditions. When rights are permissive, they often use the word “may” or are written in a way that makes it clear that the rights are subject to agency or individual discretion. As a general rule, if there is no discretionary wording, it means that the right is a mandatory right.

VICTIMS' RIGHTS RESOURCES & TECHNICAL ASSISTANCE



This resource has introductory information about victims' rights to assist law enforcement-based victim services personnel with making sure these rights are included in your work with crime victims. But it can be hard to understand victims' rights and figure out how to make policies and procedures that best protect those rights. NCVLI can help! You can request victims' rights-related technical assistance through NCVLI's website [here](#); victim-rights-related trainings can be requested [here](#). NCVLI's website also has a lot of information about victims' rights for attorneys, advocates, and other people who work with victims. There are also tools for victims to help them understand their rights.

- ✓ Resources for victim attorneys, advocates, and other people who work with victims include [written publications](#) and a [Victims' Rights Enforcement Toolkit](#).
- ✓ Resources for victims include [Know Your Rights QuickTool videos](#) and a [national Victim Resources Database](#).

To learn more about these and other resources as well as about the work of NCVLI, visit www.ncvli.org.

¹ Alexandra Thompson & Susannah N. Tapp, Bureau of Just. Stat., *Criminal Victimization, 2022*, 1 (Sept. 2023), <https://bjs.ojp.gov/document/cv22.pdf>.

² See, e.g., Sharon G. Smith, Kathleen C. Basile & Marcie-jo Kresnow, Nat'l Ctr. for Inj. Prevention and Control, Ctrs. for Disease Control, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Stalking — Updated Release*, 3 (Apr. 2022), <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsStalkingReport.pdf> (prevalence of about one in three, or 31 percent, of women reporting stalking victimization during lifetime); Kathleen C. Basile et al., Nat'l Ctr. for Inj. Prevention and Control, Ctrs. for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*, 3 (June 2022),

<https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf> (prevalence of about one in four, or 26 percent, of women reporting sexual violence during lifetime); Ruth W. Leemis et al., Nat'l Ctr. for Inj. Prevention and Control, Ctrs. for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence*, 4 (Oct. 2022),

https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf (prevalence of almost one in two, or 47.3%, of women reporting any contact sexual violence, physical violence and/or stalking victimization by an intimate partner during lifetime).

³ According to data from the Bureau of Justice Statistics National Crime Victimization Survey in 2022, less than half (42%) of all violent crimes were reported to the police; the reporting rates are significantly lower for certain crimes and populations. See Thompson & Tap, *supra* note 1, at 1, 6 (21.4 percent reporting rate for crimes of sexual violence for 2021-22); Erika Harrell, Bureau of Just. Stat., *Crime Against Persons with Disabilities, 2009–2019 – Statistical Tables*, at 7 (Nov. 2021) (noting findings that “[v]iolent crime against persons with disabilities (38%) was less likely to be reported to police than violence against persons without disabilities (45%)”).

⁴ Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. of Traumatic Stress 159, 163 (2003) (observing that “dissatisfaction appears to be highest among victims who are denied a chance to participate in the legal system, in spite of their expressed wish to do so”); Dean G. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L. Rev. 7, 19 (1987) (predicting that “victim perceptions of helplessness and lack of control are maximized by raising the expectation that a right of participation exists, the victim electing to exercise that right, and then being denied that right”).

⁵ See, e.g., Ulrich Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Soc. Just. Rsch. 4, 313–325 (2002) (describing findings of study that criminal proceedings frequently result in secondary victimization for crime victims); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. of Traumatic Stress 2, 119–32 (2003) (describing rates of PTSD, substance abuse, major depressive disorder, anxiety and other mental health impacts of crime); Mary Graw Leary, *Third Dimension of Victimization*, 13 Ohio St. J. Crim. L. 139, 155 (2015) (observing that the harms experienced by victims of stalking include fear, hypervigilance, disrupted sleep, helplessness, anxiety and post-traumatic stress disorder); see also Malini Laxminarayan, *Procedural Justice and Psychological Effects of Criminal Proceedings: The Moderating Effect of Offense Type*, 25 Soc. Just. Research 390, 392 (2012) (describing “secondary victimization” as “negative experiences” caused by criminal proceedings or societal reactions in response to a primary victimization).

⁶ See Yesenia Esmeralda Solorzano, *The Significance of the Dark Figure of Crime: Analyzing, Unreported Violent Crime Statistics*, Cal. State Univ. Stanislaus, (July 2021), at 1, https://www.csustan.edu/sites/default/files/groups/University%20Honors%20Program/Journals_two/solorzano_yesenia.pdf (explaining that “victims weigh the costs and benefits of reporting crime before they make the decision of whether or not to report” and that one of the reasons for not reporting is “the fear of secondary victimization by the justice system”).

⁷ See, e.g., Meg Garvin, *Victims and the Supreme Court’s Eighth Amendment Jurisprudence in Miller v. Alabama: A Tale of a Constitutive Paradox for Victims*, 39 New England J. on Crim. & Civ. Confinement 303 (2013) (noting that without victim participation systems cannot fulfill constitutive functions); Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U. L. Rev. 911, 951 (2006) (noting that “[v]ictims in states with weak victims’ rights laws are much less likely to receive notice or participate meaningfully in various stages of the criminal process” and are therefore “more likely to come away dissatisfied and doubt the criminal justice system’s fairness and thoroughness” and that “criminal procedure’s failings may undermine the criminal justice system’s legitimacy and efficacy”).

⁸ See, e.g., Lauren Bennett Cattaneo & Lisa A. Goodman, *Through the Lens of Therapeutic Jurisprudence: The Relationship Between Empowerment in the Court System and Well-Being for Intimate Partner Violence Victims*, 25 J. of Interpersonal Violence 3, 481, 485 (2010) (noting that studies demonstrate “that the empowering or disempowering nature of a victim’s experience in the court system has a connection to her feelings about the system

and the likelihood she will use it again”); Margaret E. Bell, et al., *Battered Women’s Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcomes and Process*, 17 *Violence Against Women* 72, 78 (2011) (describing results of study of court-related experiences of victims of intimate partner violence, including that “a much greater proportion of their responses involved comments about court process” rather than outcomes); Bibas, *supra* note 7, at 953-54 (explaining that victims “gain important substantive as well as procedural benefits from transparency and participation” and that “criminal justice can make victims better off by better informing and including them”).

⁹ For more information about standing, including citations to examples of laws explicitly recognizing victim standing, see Nat’l Crime Victim Law Inst., *Common Victims’ Rights*, 2023, <https://ncvli.org/wp-content/uploads/2023/11/Common-Victims-Rights.pdf>.

¹⁰ *Id.*

¹¹ See Douglas E. Beloof, *Constitutional Implications of Crime Victims as Participants*, 88 *Cornell L. Rev.* 282, 283-287 (2003).

¹² See, e.g., 34 U.S.C. § 10451 (to be eligible to receive federal grants under the Violence Against Women Act, government officials may not ask or require any victim of a sex offense to submit to a polygraph examination as a condition to proceeding with the investigation of the offense and a victim’s refusal to submit to such an examination may not be used to determine whether to investigate, charge or prosecute the offense).

¹³ See Nat’l Crime Victim Law Inst., *Crime Victims’ Rights and Interests Require Their Timely Receipt of Copies of Police Reports*, 2023, https://ncvli.org/wp-content/uploads/2023/07/NCVLI_Victims-Right-to-Receive-Copies-of-Police-Reports-1.pdf.

¹⁴ See, e.g., *E.H. v. Slayton in & for Cnty. of Coconino*, 468 P.3d 1209, 1217 (Ariz. 2020) (“[A] victim’s counsel should presumptively be permitted to sit before the bar when a victim’s constitutional or statutory rights are directly at issue in a court proceeding. . . . This presumption may be overcome by physical limitations within the courtroom, or, for instance, to allow for physical distancing during a pandemic, or for other concerns about seating arrangements affecting the conduct of a fair hearing. At all times, however, a trial court’s discretion to address seating arrangements must honor a victim’s constitutional right to be present and heard at criminal proceedings and to be treated with fairness, dignity, and respect.”).

¹⁵ See, e.g., *Heaton*, 458 F. Supp. 2d at 1272 (finding that the right to be treated with fairness and dignity applies to a court’s decision whether to grant the government’s motion to dismiss and holding that “in passing on any government motion under Rule 48(a) [regarding dismissal] in any victim-related case, the court will expect to see the prosecutor recount that the victim has been consulted on the dismissal and what the victim’s views were on the matter”).

¹⁶ For a national survey listing state and federal laws providing for the victims’ right to return of property, see Nat’l Crime Victim Law Inst., *Surv. of Select State and Fed. Laws Providing for the Return of Victims’ Prop.*, 2018, <https://law.lclark.edu/live/files/26754-return-of-victim-property-survey-qr-codepdf>.

¹⁷ To learn more about CVCP’s—including general information about victim eligibility, types of covered expenses and required proof, and review of unfavorable decisions—and to review citations to select jurisdictions’ laws, see Nat’l Crime Victim Law Inst., *Crime Victim Compensation: A Valuable Res. for Victim Recovery*, 2016, <https://law.lclark.edu/live/files/25182-ncvli-newsletter---victim-compensation-process.pdf>.

¹⁸ For more information about victims’ right to the presence of a support person of their choosing, including citations to select laws, see Nat’l Crime Victim Law Inst., *Crime Victims Have the Right to Retained Counsel’s Presence During Investigative Interviews*, 2014, <https://law.lclark.edu/live/files/17836-victim-law-position-paper-right-to-counsel-in>; Nat’l Crime Victim Law Inst., *Survey of Select State and Fed. Laws Providing Victims’ Rights and Protections that are Specific to Children*, 2016, <https://law.lclark.edu/live/files/22778-ncvli50-state-surveykey-child-victim-specific>.

¹⁹ For a discussion of victims' right to be accompanied by a facility dog, including citations to laws, see Nat'l Crime Victim Law Inst., *Facility Dogs: Helping Victims Access Just. and Exercise Their Rights*, 2013, <https://law.lclark.edu/live/files/21750-facility-dogshelping-victims-access-justice-and>.

²⁰ For a discussion of victims' right to receive copies of police reports, with citations to laws, see Nat'l Crime Victim Law Inst., *Crime Victims' Rights and Interests Require Their Timely Receipt of Copies of Police Repts*, 2023, https://ncvli.org/wp-content/uploads/2023/07/NCVLI_Victims-Right-to-Receive-Copies-of-Police-Reports-1.pdf.

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