



# NATIONAL CRIME VICTIM LAW INSTITUTE

## **Victims of Human Trafficking, Like All Crime Victims, Have the Right to Retained Counsel's Presence and Representation During Investigative Interviews<sup>1</sup>**

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This resource explores the right of victims of human trafficking to retained counsel's presence and representation during investigative interviews. Notably, because all victims have the right to retained counsel's presence and representation during investigative interviews, the information provided in this resource is not limited to victims of human trafficking. In the course of discussing the legal sources of this right, this resource reflects on the unique challenges human trafficking victims can face with respect to investigative interviews, such as concerns that they will be punished for conduct that their traffickers forced or coerced them to commit, and how counsel's presence and representation can help address these challenges.<sup>2</sup>

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Federal and state law grant victims of crime numerous constitutional, statutory, and rule-based rights that are implicated at the earliest stages of investigation, including when victims are interviewed by law enforcement or other government agencies. Victims' rights make crime victims independent participants, rather than mere witnesses, in the criminal justice system.<sup>3</sup> These rights are personally held and independent of the government's interests in investigating and prosecuting a case.

As independent participants whose rights and interests are at stake, victims have a right to have retained counsel be present and represent them during investigative interviews; they also have the right to be informed, in advance of the interview, of this right.<sup>4, 5</sup> These rights are components of victims' constitutional right to due process. They can also be found in constitutional, statutory, and rule-based victims' rights provisions.

### **1. Victims' Due Process Rights to Retained Counsel's Presence and Representation During Investigative Interviews<sup>6</sup>**

The independent rights of crime victims that are implicated during investigative interviews must be interpreted through the lens of due process, which requires fundamental fairness for victims and that their rights are afforded in such a way that they are meaningful.<sup>7</sup> In the context of investigative interviews, due process requires the right to the presence of retained counsel. It also requires that victims are informed of this right in advance of any interview.

The United States Supreme Court has long recognized a federal constitutional due process right to the assistance of counsel.<sup>8</sup> In construing the requirements of due process, the Court has emphasized that “[d]ue process is flexible and calls for such procedural protections as the particular situation demands,” and that a determination of whether procedural protections are constitutionally mandated “requires analysis of the governmental and private interests that are affected.”<sup>9</sup> The factors considered in this analysis are: (1) the private interests at stake in the official action; (2) the risk of an erroneous deprivation of the private interest through the procedures used and the probable value of any additional or substitute procedural safeguards; and (3) the government’s interest, including the function involved and any fiscal and administrative burdens that these procedures would create.<sup>10</sup> Consideration of these factors makes clear that due process requires that investigative agencies inform victims of their right to have retained counsel present in investigative interviews in advance of the interviews<sup>11</sup> and that, when victims choose to have an attorney present at such an interview, the investigating entity accommodates counsel’s presence.

First, the private interests at stake are vast. In all federal and state jurisdictions, crime victims are afforded constitutional, statutory, and/or rule-based rights that may be directly at issue in, or implicated by, an investigative interview, including the rights: to reasonable protection from the accused; to freedom from intimidation, harassment, and abuse in the criminal justice process; to privacy; to be treated with fairness, dignity, and respect; to advance notice of case-related proceedings or events that implicate a victim’s rights; to confer with the attorney for the government; and to restitution.<sup>12</sup> Federal and state legislators have recognized the importance of these rights and their protection within criminal justice processes.<sup>13</sup>

Investigative interviews also implicate constitutional rights that are not limited to crime victim status, including rights to privacy,<sup>14</sup> to access justice,<sup>15</sup> and to be free from compelled self-incrimination.<sup>16</sup> Additionally, investigative interviews can compound victims’ initial trauma and cause them fear for their safety—physical, legal, and otherwise.<sup>17</sup> The interview process can be intimidating, confusing, and feel hostile to victims and their interests.<sup>18</sup> This may be especially true for victims who have had negative interactions with law enforcement in the past or who otherwise have reasons to distrust the criminal justice system. Victims have a personal interest in not suffering such harms as a result of their participation in the interview process.

Second, there is a considerable risk that, if retained counsel is dissuaded or barred from being present during investigative interviews, victims will be deprived of their rights, face secondary harms, and/or be prevented from accurately and meaningfully communicating relevant information to investigators. Protecting the legal rights and interests implicated in these interviews requires special legal knowledge and analysis that may only be provided by independent victims’ counsel.<sup>19</sup> Full implementation and enforcement of victims’ rights requires the presence of independent counsel in investigative interviews.<sup>20</sup> Additionally, retained counsel’s presence can help ease victims’ fears, empower them in their communications with investigators, and clarify any confusion that may arise in the course of the interview.<sup>21</sup> Counsel’s presence and support during an investigative interview may also honor victims’ agency and build trust with investigators, thereby increasing victims’ access to justice and facilitating victims’ chosen level of participation in the investigation.<sup>22</sup>

On the other hand, the administrative and financial burdens on the government to inform victims that they have a right to have retained counsel present and to accommodate such presence would be minimal. Law enforcement and other investigative agencies are often already required to provide victims with information about their rights in advance of an investigative interview;<sup>23</sup> indeed, some jurisdictions require the provision of information about interview-related rights.<sup>24</sup> Adding information about the right to have retained counsel present would have little practical impact in such jurisdictions; even in the absence of such preexisting obligations, providing information about this right merely requires a brief, straightforward statement. Accommodating counsel's presence at the interview likewise poses little to no administrative or financial cost to the government.<sup>25</sup> Many jurisdictions afford victims the right to have a victim advocate or another support person of their choosing present during certain investigative interviews, evidencing the ability of jurisdictions to accommodate the presence of additional individuals in the interview.<sup>26</sup>

Due process requires that victims who have secured the assistance of counsel have the benefit of the attorney's knowledge and skills in asserting the victims' legal rights as part of investigative interviews; to conclude otherwise is to deny victims access to the very tools that are necessary to ensure that their rights are meaningful.

## **2. Laws Expressly Affording or Otherwise Recognizing Victims' Right to Counsel's Presence and Representation of Their Rights During Investigative Interviews**

In many jurisdictions, victims' rights laws afford victims an express or implied right to have counsel represent their rights in a criminal matter. Some jurisdictions expressly afford victims a right to counsel to enforce their rights;<sup>27</sup> and a number of jurisdictions recognize victims' right to counsel through laws affording victims a right to information about their right to have legal representation.<sup>28</sup> In jurisdictions without these provisions, victims still have an implied right to counsel under other provisions that afford victims the right to enforce their rights themselves or through a legal representative.

Some of these provisions expressly apply to government interviews and investigations.<sup>29</sup> Others apply victims' right to counsel to this context through general provisions related to when victims' rights in the jurisdiction attach; for instance, in Florida, North Dakota, and Wisconsin, victims' rights—which include the right to be informed of their right to counsel and the right to have counsel assert their rights—vest prior to the interview, at the time of victimization.<sup>30</sup> Even in the absence of such direct language, provisions that afford victims the right to assert and seek enforcement of their rights imply the right to counsel's presence at investigative interviews because meaningful enforcement of the rights implicated in these interviews requires counsel's presence.<sup>31</sup>

Ultimately, these provisions offer additional support for victims' clear constitutional due process right to have retained counsel present and representing them during investigative interviews.

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<sup>1</sup> This resource builds off a prior NCVLI publication, *Crime Victims Have the Right to Retained Counsel's Presence During Investigative Interviews*, Victim Law Bull. (Nat'l Crime Victim Law Inst., Portland, Or.), Aug. 2014.

<sup>2</sup> See *infra* note 17.

<sup>3</sup> See *Kenna v. U.S. Dist. Ct. for the C.D. Cal.*, 435 F.3d 1011, 1016 (9th Cir. 2006) (“The [federal Crime Victims’ Rights Act] was enacted to make crime victims full participants in the criminal justice system.”).

<sup>4</sup> See generally *Survey of Select State Laws Governing Crime Victims’ Right to Counsel* (Nat’l Crime Victim Law Inst., Portland, Or.), 2023, <https://ncvli.org/wp-content/uploads/2023/08/Survey-of-Select-State-Laws-Governing-Victims-Right-to-Counsel-2023-3.pdf> (providing an overview of crime victims’ right to counsel and collecting select state laws governing victims’ right to counsel).

<sup>5</sup> Pro bono counsel may be a good option for victims with limited financial resources who want an attorney to be present and to represent them in an investigative interview. See Sarah Dohoney Byrne, *Meeting the Legal Needs of Human-Trafficking Survivors*, 52 Wake Forest L. Rev. 379, 384 (2017) (footnote omitted) (“Although [human trafficking victims’] rights are at stake [during the criminal investigation] and their fears significant, our criminal justice system generally does not afford legal representation to crime victims, but pro bono attorneys can.”). For information regarding a court’s authority to appoint counsel to represent a victim, contact NCVLI for [technical assistance](#). While finding a victims’ rights attorney can be challenging, the [Pro Bono Portal](#) of the National Alliance of Victims’ Rights Attorneys & Advocates (NAVRA) connects attorneys willing to provide no cost legal services with survivors in need.

<sup>6</sup> One concern that may be raised in connection with having victim counsel present during investigative interviews is whether the defendant or the prosecution will later be able to call the attorney as a witness in a criminal case. Ethics rules and court decisions recognize that such an outcome is problematic for courts, clients, and attorneys. See, e.g., ABA Model Rule of Professional Conduct 3.7 Cmt. 1 (commenting on ABA Model Rule 3.7, which limits when an attorney may act as an advocate at a trial in which they are likely to be a “necessary witnesses,” and stating that “[c]ombining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.”); *United States v. Bin Laden*, 91 F. Supp. 2d 600, 622 (S.D.N.Y. 2000) (concluding that “[c]ourts are quite reluctant . . . to permit an advocate to testify as a witness in a case in which he is representing a litigant” given the inconsistent roles of advocates and witnesses and the risk that jurors will be unable to distinguish an attorney’s argument from their testimony). Indeed, case law suggests that calling a victim’s attorney to testify in the prosecution in which they are representing the victim would be difficult to accomplish because courts are generally reluctant to allow an attorney to be a witness in a trial in which they are an advocate. See *Gajewski v. United States*, 321 F.2d 261, 268 (8th Cir. 1963) (“Courts are especially reluctant, and rightfully so, to allow lawyers . . . to be called as witnesses in trials in which they are advocates.”). Given this reluctance, the general standard for allowing an attorney in the case to be called as a witness in federal and state courts is strict and requires a showing of compelling need for the testimony. See, e.g., *United States v. Regan*, 103 F.3d 1072, 1083 (2d Cir. 1997) (“A defendant who wishes to call a prosecutor as a witness must demonstrate a compelling and legitimate reason to do so.”); *United States v. Ziesman*, 409 F.3d 941, 950 (8th Cir. 2005) (concluding that the trial court did not err in denying defendant the opportunity to call the prosecutor as a witness where defendant failed to demonstrate that the sought after testimony was “vital” to the case or that they were unable to present the same or similar facts from another source (citing *United States v. Watson*, 952 F.2d 982, 986–87 (8th Cir. 1991))). It is unlikely that the presence of a victim’s attorney during law enforcement interviews would create a “compelling need” for the attorney to testify at trial because other people would be present from whom the relevant testimony (if any) could be elicited—for instance, the investigating officers. See, e.g., *United States v. Ashman*, 979 F.2d 469, 494 (7th Cir. 1992) (finding there was no abuse of discretion in preventing defense from calling prosecutor as a witness regarding defendant’s initial interview, where an FBI agent was also in attendance who could testify about the interview); *United States v. Brothers*, 856 F. Supp. 388, 391 (M.D. Tenn. 1993) (finding attorney was not a necessary witness because “there were many other investigating agents present at [defendant’s] proffer who can testify to what occurred during the meetings”). Notably, even if a court were to find that defense counsel or the prosecution had met the burden to call victim counsel as a witness at trial, this would not defeat the victim’s right to have had counsel present in the first instance.

<sup>7</sup> See, e.g., *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (observing that fundamental aspects of due process include the opportunity to be heard in a “meaningful manner”).

<sup>8</sup> The Court recognized the assistance of counsel as aspect of a criminal defendant’s due process rights in *Powell v. Alabama*, 287 U.S. 45 (1932), in which the Court observed that “[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.” 287 U.S. at 68–69. Although today the

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context of the proceedings at issue in *Powell* likely would be subject to analysis under criminal defendants' Sixth Amendment right to counsel, commentators have recognized that "the concept of a right to counsel grounded on due process has continuing significance for other proceedings not encompassed by the Sixth Amendment." Wayne R. LaFave et al., *The Constitutional Rights to Retained and Appointed Counsel*, 3 Crim. Proc. § 11.1(b), at 1 (4th ed. 2023). Other Supreme Court decisions have described the rights to retained and appointed counsel as resting on "both equal protection and due process concerns," where the "[t]he equal protection concern relates to the legitimacy of fencing out would-be appellants based solely on their inability to pay core costs," and "[t]he due process concern homes in on the essential fairness of the state-ordered proceedings." *Halbert v. Michigan*, 545 U.S. 605, 610–11 (2005) (quoting *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996)).

<sup>9</sup> *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972)).

<sup>10</sup> *Id.* State constitutional due process clauses may require analysis under a different framework. State practitioners are encouraged to independently research whether their jurisdiction requires additional analysis to support a procedural due process argument.

<sup>11</sup> The United States Supreme Court has noted that "the central meaning of procedural due process" is that "[p]arties whose rights are to be affected are entitled to be heard; and, in order that they may enjoy that right, they must first be notified" and that "[i]t is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (quotation marks and citations omitted); see also *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (quoting *Fuentes*).

<sup>12</sup> See generally *Ten Common Victims' Rights* (Nat'l Crime Victim Law Inst., Portland, Or.), 2023, at 6, [https://ncvli.org/wp-content/uploads/2024/02/Common-Victims-Rights\\_final.pdf](https://ncvli.org/wp-content/uploads/2024/02/Common-Victims-Rights_final.pdf) (providing an overview of common crime victims' rights, including the rights to reasonable protection, to privacy, to notice, to confer, to be treated with fairness dignity and respect, and to restitution).

<sup>13</sup> See, e.g., 18 U.S.C. § 3771 (guaranteeing victims independent rights and establishing procedures for ensuring rights are upheld and enforced); 725 Ill. Comp. Stat. Ann. 120/4.5 (establishing procedures to ensure that victims are afforded their rights); see also, e.g., Cal. Const., art. I, § 28(a)(2) ("The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance.").

<sup>14</sup> See, e.g., *Whalen v. Roe*, 429 U.S. 589, 598–600 (1977) (recognizing a federal constitutional right to informational privacy that includes the individual interest in avoiding disclosure of personal matters); *Eastwood v. Dep't of Corr.s of State of Okl.*, 846 F.2d 627, 630–31 (10th Cir. 1988) (finding that the United States Supreme Court's nearly 100-year recognition of the constitutional right of personal privacy "protects two kinds of privacy interests: the individual's interest in avoiding disclosure of personal matters and the interest in being independent when making certain kinds of personal decisions"); Ariz. Const. art. II, § 8 (guaranteeing a right to privacy to all people); Cal. Const. art. I, § 1 (same); Fla. Const. art. I, § 23 (same); La. Const. Ann. art. I, § 5 (same).

<sup>15</sup> Courts recognize that all people have a fundamental right to access the courts that is grounded in multiple provisions of the federal constitution. See, e.g., *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) ("Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment."); *Swekel v. City of River Rouge*, 119 F.3d 1259, 1261–62 (6th Cir. 1997) (stating that the right of access to the courts is a fundamental right protected by the Due Process Clause, the Equal Protection Clause, the First Amendment, and the Privileges and Immunities Clause of Article IV) (citations omitted). State constitutions also guarantee individuals this right. See, e.g., Ohio Const. art. I, § 16 ("All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law."); *Jersey v. John Muir Med. Ctr.*, 118 Cal. Rptr. 2d 807, 812 (Cal. App. Ct. 2002) ("Access to the courts is indeed a right guaranteed to all persons by the federal and state constitutions").

<sup>16</sup> See, e.g., U.S. Const. amend. V (guaranteeing all people a right against self-incrimination); N.Y. Const. art. I, § 6 (same); *Kastigar v. United States*, 406 U.S. 441, 444–45 (1972) (explaining that the constitutional privilege against self-incrimination "protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used").

<sup>17</sup> For instance, victims of human trafficking may be especially concerned during an investigative interview that they will be punished for conduct that their traffickers forced or coerced them to commit. See Sarah Dohoney Byrne & Jules Carter, *A Penumbra of Rights at Risk: Human Trafficking Victims' Rights in Federal Criminal Cases*, 31 B.U. Pub. Int. L.J. 143, 147–50 (2022) (describing the criminalization of human trafficking survivors' victimhood and

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how “most trafficking victims do not readily cooperate with law enforcement for fear that they themselves will become a target of the same or a separate investigation”).

<sup>18</sup> See generally Office for Victims of Crime Training and Technical Assistance Center (OVCTTAC), *Human Trafficking Task Force e-Guide: Strengthening Collaborative Responses*, § 5.3 Trauma-Informed Victim Interviewing (2024), <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/> (detailing potential barriers to communication that victims face in investigative interviews, discussing the importance of trauma-informed investigative interviews of victims of human trafficking, and providing guidance for such an approach).

<sup>19</sup> See, e.g., *Miranda v. Arizona*, 384 U.S. 436, 469–70 (1966) (recognizing that the “need for counsel to protect the Fifth Amendment privilege [against self-incrimination] comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires”); see also, e.g., *Hill v. State*, 847 So. 2d 518, 520–22 (Fla. Dist. Ct. App. 2003) (finding that the trial court did not err when it informed the victim—at the state’s request—at an evidentiary hearing that she faced possible criminal exposure for perjury and advised her of her right to counsel and her right against self-incrimination related to an affidavit submitted to the court by defendant in which the victim recanted her trial testimony). Cf. ABA Formal Op. 95-396 (July 28, 1995) (“The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel”); ABA Formal Op. 91-359 (Mar. 22, 1991) (“The profession has traditionally considered that the presumptively superior skills of the trained advocate should not be matched against those of one not trained in the law.”).

<sup>20</sup> Government investigators and prosecutors have obligations to uphold victims’ rights. See, e.g., 18 U.S.C. § 3771(c)(1) (“Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in [18 U.S.C. § 3771(a)].”); Ga. Const. art. I, § 1 ¶ XXX(a) (providing that “victims shall be accorded the utmost dignity and respect and shall be treated fairly by the criminal justice system of this state and all agencies and departments that serve such system”). Yet, these system actors cannot be substitutes for victims’ counsel during investigative interviews or otherwise because, ultimately, they represent the interests of the government, not the victim. See Caitlin K. Cervenka & Christine M. Crow, *Lawyering in the #metoo Era*, 109 Ill. B.J. 30, 35 (2021) (“[A] victims’ attorney will be the only actor primarily dedicated to ensuring victims can fully enjoy and assert their rights without undue compromise or coercive influence and may represent survivors in support of their *preindictment rights* and in defense of their rights in court.”) (emphasis added); Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 Ohio St. J. Crim. L. 67, 86 (2015) (“It is apparent that independent lawyers for sexual assault victims are needed to ensure victims can knowingly and voluntarily choose whether and when to engage with the criminal justice system and, having engaged, whether to exercise or waive any specific right. Critically, prosecutors cannot substitute for this vital role because they cannot consistently and adequately represent victims’ interests, nor can they facilitate agency.”).

<sup>21</sup> See, e.g., Inst. for Intergovernmental Research & Office of Community Oriented Policing Services, U.S. Dep’t of Justice, *Interviewing Labor Trafficking Victims: Victim-Centered Considerations for Law Enforcement Investigators* 2 (2020), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0922-pub.pdf> (“Some [labor trafficking] victims may prefer to have an attorney or victim advocate present in the room [during an investigative interview] or may request that a support person or advocate be outside the room for additional support. This should not be perceived as the client being noncompliant or defensive. Victims of labor trafficking are often mistrustful of law enforcement and other service providers. Victims may feel safer communicating if the attorney is present. Attorneys can often reassure victims of their rights.”); Byrne & Carter, *supra* note 17, at 153 (footnote omitted) (“[F]ear of retaliation by the perpetrator or criminalization by the government are the primary reasons for [human trafficking] victims’ reluctance to participate in the [criminal justice] process. And for these very reasons, when victims are willing to participate in the criminal process, they are entitled to the presence of counsel at every stage. Presence of counsel at every stage necessarily includes investigative interviews and trial preparation sessions.”).

<sup>22</sup> See Byrne, *supra* note 5, at 387 (footnote omitted) (“Legal support in the investigation and prosecution of the trafficker is particularly important for survivors who have had adverse experiences with law enforcement and the courts in the past. Pro bono lawyers can inspire renewed trust in the legal system and provide access to justice by advocating for victim-witnesses’ rights in the wake of their victimization.”).

<sup>23</sup> See, e.g., N.C. Const. art. I, § 37(1a)(d) (affording victims “[t]he right to be given information about the crime or act of delinquency, how the criminal justice system works, the rights of victims, and the availability of services for victims”); see also N.Y. Pub. Health Law § 2805-I(6)(b) (“Before . . . a police agency, prosecutorial agency or other

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law enforcement agency commences an interview of a sexual offense victim, the . . . police agency, prosecutorial agency or other law enforcement agency shall inform the victim of the victim’s rights by providing a copy of this sexual assault victim bill of rights and offering to explain such rights.”).

<sup>24</sup> See, e.g., Cal. Penal Code § 680.2(a)(7) (providing that, upon the initial interaction with a sexual assault victim, law enforcement must provide a card that explains, *inter alia*, the victim’s rights, including “[a] clear statement that the victim has the right to have a sexual assault counselor and at least one other support person of the victim’s choosing present at any . . . investigative interview arising out of a sexual assault”); Cal. Penal Code § 236.21(b)(1) (providing that “[p]rior to the commencement of the initial interview by a law enforcement authority or a prosecutor pertaining to a criminal action arising out of a human trafficking incident, a victim of human trafficking or abuse . . . shall be notified orally or in writing by the attending law enforcement authority or prosecutor that the victim has the right to have a human trafficking advocate and a support person of the victim’s choosing present at the interview”); Ohio Rev. Code Ann. § 2930.04(D)(1) (providing that, at the time of initial contact with a victim or as soon as practicable following the initial contact, law enforcement must provide victims with information about their rights, including victims’ “right to exercise those rights through counsel”).

<sup>25</sup> Cf. *Goldberg v. Kelly*, 397 U.S. 254, 270-71 (1970) (observing that even in cases where an individual is not entitled to court-appointed counsel at a hearing, they “must be allowed to retain an attorney if [they] so desire[]” and noting that the court did “not anticipate that this assistance will unduly prolong or otherwise encumber the hearing”).

<sup>26</sup> See, e.g., Cal. Penal Code § 236.21(a)(1) (stating that human trafficking victims have “the right to have a human trafficking advocate and a support person of the victim’s choosing present at an interview by a law enforcement authority, prosecutor, or the suspect’s defense attorney” and that “[t]he law enforcement officer or prosecutor may exclude the support person from the interview if the law enforcement officer or prosecutor believes that the support person’s presence would be detrimental to the process”). Some jurisdictions that explicitly authorize the presence of victim advocates or other support persons during law enforcement interviews do so through laws that affirmatively authorize the presence of certain individuals during the interviews. See, e.g., N.Y. Exec. Law § 642(2-a)(a) (providing that only following individuals may be present during a victim’s law enforcement interview: “(i) those persons directly and immediately related to the interviewing of a particular victim, (ii) the victim, (iii) a social worker, rape crisis counselor, psychologist or other professional providing emotional support to the victim, unless the victim objects to the presence of such person and requests the exclusion of such person from the interview, and (iv) where appropriate, the parent or parents of the victim, if requested by the victim”); Tex. Code Crim. Proc. Ann. art. 56A.3515(c)–(d) (providing that a victim advocate, liaison, officer, or counselor authorized to be present during a sexual assault victim’s investigative interview is limited to providing the victim with (1) counseling and other support services; and (2) information regarding the rights of crime victims under Subchapter B” and stating that such support persons “may not delay or otherwise impede the interview process”); Wis. Stat. Ann. § 950.045(1)(a)–(b) (affording victims of certain crimes, including sexual assault and human trafficking, the right to have an advocate accompany them to law enforcement interviews and providing that “[v]ictim advocate may not obstruct or delay a law enforcement interview, shall comply with the victim’s requests or instructions, and shall comply with any rule, policy, or requirement established by a law enforcement agency regarding the confidentiality of information relating to an investigation”). Importantly, although these laws may limit who can accompany a victim in a supportive capacity and how such individuals may behave within the interview, they do not preclude a victim’s attorney from being present.

<sup>27</sup> See generally *Survey of Select State Laws Governing Victims’ Right to Counsel*, *supra* note 4 (identifying provisions of state constitutions, statutes, and rules that expressly afford victims the right to counsel).

<sup>28</sup> See, e.g., 18 U.S.C. § 3771(c)(2) (“The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in [18 U.S.C. § 3771(a)].”); see generally *Survey of Select State Laws Governing Victims’ Right to Counsel*, *supra* note 4 (identifying provisions of state constitutions, statutes, and rules that expressly afford victims the right to be informed of their right to counsel).

<sup>29</sup> See, e.g., 725 Ill. Comp. Stat. Ann. 120/4(d) (“At any point, the victim has the right to retain a victim’s attorney who may be present during all stages of any interview, investigation, or other interaction with representatives of the criminal justice system. Treatment of the victim should not be affected or altered in any way as a result of the victim’s decision to exercise this right.”).

<sup>30</sup> See, e.g., Fla. Const. art. I, § 16(b), (b)(11), (c) (providing that “every victim is entitled to the following rights, beginning at the time of his or her victimization,” including the right “to be informed that victims can seek the advice of an attorney with respect to their rights,” and stating that a victim’s retained attorney may assert and seek enforcement of the victim’s rights, including those that attach at the time of victimization); N.D. Const. art. I, § 25(1), (1)(s), (2) (providing “all victims shall be entitled to the following rights, beginning at the time of their

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victimization,” including the right “to be informed that victims can seek the advice of an attorney with respect to their rights,” and stating that a victim’s retained attorney may assert and seek enforcement of the victim’s rights, including those that attach at the time of victimization); Wis. Const. art. I, § 9m(2)(p), (4)(a) (providing that victims are entitled to certain rights, “which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused,” including the right “[t]o timely notice about all rights under this section and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced,” and affording victims the right to have counsel assert and seek enforcement of their rights).

<sup>31</sup> For assistance determining whether a particular jurisdiction’s laws regarding rights enforcement apply at the investigatory stage of a case, contact NCVLI for [technical assistance](#).