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AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS: EXPLORING THE EFFECTIVENESS OF STATE EFFORTS

by Jennifer J. Stearman, Esq.

"They explained the defendant's constitutional rights to the nth degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me, I haven't got any." — a victim¹

I. INTRODUCTION

Provisions in the United States Constitution specifically protect the rights of the criminally accused.² There are, however, no constitutionally guaranteed rights allocated to crime victims.³ Consequently, crime victims

often feel neglected and ignored in our criminal justice system.⁴

As part of a movement aimed at providing more balanced rights to crime victims, thirty-one states have approved victim rights amendments ("VRAs") to their state constitutions.⁵ These VRAs have enjoyed wide margins of public support.⁶ In 1996, the United States Congress began consideration of a federal VRA. Since then, the proposal for a federal VRA has received both earnest political consideration and strong bi-partisan support.⁷

¹PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME: FINAL REPORT, at 114 (1982) [hereinafter FINAL REPORT].

²See U.S. CONST. amend. IV (providing freedom from unreasonable searches and seizures and requisite probable cause for issuance of warrant); U.S. CONST. amend. V (requiring a grand jury indictment for trial on a capital offense, prohibiting double jeopardy, protecting against self-incrimination, guaranteeing due process of law); U.S. CONST. amend. VI (providing in criminal trials the right to a speedy, public trial by an impartial jury, the right to notice of charges, the right to confront witnesses, and the right to an attorney); U.S. CONST. amend. VIII (prohibiting cruel and unusual punishment).

³Several legal commentators have attempted to provide an explanation for the lack of constitutional provisions protecting the rights of crime victims. See generally Richard Barajas & Scott Alexander Nelson, *The Proposed Crime Victims' Federal Constitutional Amendment: Working Towards a Proper Balance*, 49 BAYLOR L. REV. 1, 8-11 (1995) (providing historical information regarding the role of the crime victim and indicating that the English common law tradition was one of private prosecutions); Jennie L. Caissie, *Passing the Victims' Rights Amendment: A Nation's March Toward a More Perfect Union*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 647, 649-53 (1998) (describing the evolution of the justice system that initially provided private prosecutions in England and Colonial America, to a more organized criminal-law system which includes public prosecutions); Kathleen Kalaher, *The Proposed Victim's Rights Amendment: Taking a Bite Out of Crime or a Dog With No Teeth?*, 22 SETON HALL LEGIS. J. 317, 323-324 (1997) (examining the historical background of the victims' rights movement, and tracing the evolution underlying the movement from private actions against the defendant to state involvement); Thad H. Westbrook, *At Least Treat Us Like Criminals!: South Carolina Responds to Victims' Pleas for Equal Rights*,

49 S.C. L. REV. 575, 576-78 (1998) (tracing the United States system of justice to early English law that placed responsibility for justice on the victim, not the modern-day prosecutor).

⁴See generally FINAL REPORT, *supra* note 1, at 114 (documenting crime victim testimony that reflects frustration and feelings of re-victimization by the criminal justice system due to institutionalized disinterest); Paul G. Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 UTAH L. REV. 1373, 1375 (stating that crime victims "have come to believe that the criminal justice system is out of balance, that their voices are not heard, and that the system is preoccupied with defendants' interests and rights").

⁵Over the past sixteen years, thirty-one states have amended their constitution to add victim rights amendments (dates of passage are indicated in parentheses). See ALA. CONST. amend. 557 (1994); ALASKA CONST. art. I § 24 (1994); ARIZ. CONST. art. II, § 2.1 (1990); CAL. CONST. art. I, § 28 (1982); COLO. CONST. art. II, § 16a (1992); CONN. CONST. art. I, § 8(b) (1996); FLA. CONST. art. I, § 16 (1988); IDAHO CONST. art. I, § 22 (1994); ILL. CONST. art. I, § 8.1 (1992); IND. CONST. art. I, § 13(b) (1996); KAN. CONST. art. XV, § 15 (1992); LA. CONST. art. I, § 25 (1998); MD. DECL. OF RIGHTS art. 47 (1994); MICH. CONST. art. I, § 24 (1988); MISS. CONST. art. 3 § 26A (1998); MO. CONST. art. I, § 32 (1992); NEB. CONST. art. I, § 28 (1996); NEV. CONST. art. I, § 8(2) (1996); N.J. CONST. art. I, § 22 (1991); N.M. CONST. art. II, § 24 (1991); N.C. CONST. art. I, § 37 (1996); OHIO CONST. art. I, § 10(a) (1994); OKLA. CONST. art. II, § 34 (1996); R.I. CONST. art. I, § 23 (1986); S.C. CONST., art. I, § 24 (1996); TENN. CONST. art. I (1998); TEX. CONST. art. I, § 30 (1989); UTAH CONST. art. I, § 28 (1994); VA. CONST. art. I, § 8(A) (1996); WASH. CONST. art. I, § 35 (1989); WIS. CONST. art. I, § 9(m) (1993).

⁶For individual state electoral support, see Appendix A.

⁷See *infra* Part II.C.

Despite the apparent public support for VRAs, not everyone supports this sweeping movement. Some legal scholars have suggested that VRAs would only be “symbolic” victories, and would fail to provide any real expansion of crime victims’ rights.⁸ Scholars and legislators are also concerned about the potential impact a federal VRA would have on defendants’ rights.⁹ Recently, United States Senators, critical of the effort to enact a federal constitutional amendment regarding the rights of crime victims, suggested that before passing such legislation, “[a]t a minimum, we should explore the effectiveness of the state efforts and the nuances of their various approaches before grafting a rigid, untested standard onto the U.S. Constitution.”¹⁰

While much scholarly debate has transpired over the efficacy of a federal VRA, little scholarly inquiry has been devoted to assessing the actual effectiveness of those VRAs adopted and in use by the states. This article presents an initial step in the process of exploring the effectiveness of state efforts to provide constitutional rights to victims of crime. It is designed to address the concerns raised by Congressional leaders in considering the federal proposed amendment.

The article begins with a brief historical overview of the modern victims’ rights movement, including the legislative history relevant to the proposed federal amendment and an examination of the current proposed federal amendment. It then provides a comparison of rights afforded crime victims by the variety of adopted state VRAs. Thereafter, the article surveys state appellate court

decisions interpreting VRAs. In light of these rulings, the article suggests how the proposed federal amendment is likely to be construed.

II. BACKGROUND

A. The Modern Victims’ Rights Movement in the United States

The political momentum of the modern crime-victim movement began to escalate during the 1970s,¹¹ when federal and state statutes aimed at providing rights for crime victims were enacted.¹² These statutes provided crime victims with monetary restitution and an enhanced opportunity to participate in the prosecution, sentencing, and parole of criminal defendants.¹³

In 1982 President Ronald Reagan established a Presidential Task Force (“Task Force”) to investigate the treatment of crime victims by the American criminal justice system.¹⁴ The final report, issued by the Task Force in December 1982, made startling observations about the treatment of crime victims by the criminal justice system.¹⁵ The Task Force observed that:

The American criminal justice system is absolutely dependent on [] victims to cooperate. Without the cooperation of victims and witnesses in reporting and testifying about

⁸See, e.g., Robert P. Mosteller, *Victims’ Rights and the United States Constitution: An Effort to Recast the Battle in Criminal Litigation*, 85 GEO. L.J. 1691, 1692-94 (1997) (stating that a federal amendment is “unnecessary symbolism at best,” and speculating that the amendment would provide little direct impact for crime victims); Richard E. Wegryn, *New Jersey Constitution Amendment for Victims’ Rights: Symbolic Victory?* 25 RUTGERS L.J. 183, 207-08 (1993) (predicting that although a “victim in New Jersey can now say she has a constitutional right to fair treatment . . . this will likely be the most substantial effect of the Amendment.”).

⁹See, e.g., S. REP. NO. 105-409, at 64-67 (1998); Mosteller, *supra* note 9, at 1693.

¹⁰S. REP. NO. 105-409, at 69 (1998). This suggestion was asserted by Senate Judiciary Committee members Patrick Leahy, Ted Kennedy, and Herb Kohl. See *id.*

¹¹Several commentators trace the origin of the modern victims’ rights movement to grass-roots programs formed in the early 1970s. See, e.g., Andrew J. Karmen, *Who’s Against Victims’ Rights? The Nature of the Opposition to Pro-Victim Initiative in Criminal Justice*, 8 ST. JOHN’S J. LEGAL COMMENT. 157, 158-59 (1992) (tracing the victim rights movement to members of self-help support groups and outreach groups in the 1970s with a common desire to turn their victimization into something positive).

¹²See Marlene A. Young, *A Constitutional Amendment for Victims of Crime: The Victim’s Perspective*, 34 WAYNE L. REV. 51, 52 (1987).

¹³See *id.*

¹⁴See PRESIDENT’S TASK FORCE ON VICTIMS OF CRIME, 19 WEEKLY COMP. PRES. DOC. 521-22 (Apr. 23, 1982). The Task Force was comprised of nine members: Lois Haight Herrington, Chairman; Garfield Bobo; Frank Carrington; James P. Damos; Doris L. Dolan; Kenneth O. Eikenberry; Robert J. Miller; Marion G. (Pat) Robertson; and Stanton E. Samenow. See FINAL REPORT, *supra* note 1, at 142-44.

¹⁵See FINAL REPORT, *supra* note 1, at vi.

crime, it is impossible in a free society to hold criminals accountable. When victims come forward to perform this vital service, however, they find little protection. They discover instead that they will be treated as appendages of a system appallingly out of balance. They learn that somewhere along the way the system has lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.¹⁶

In response to its observations, the Task Force formulated sixty-seven recommendations for action,¹⁷ including a modification to the Sixth Amendment of the United States Constitution to include a victims' rights provision.¹⁸

The Task Force proposed the following language as an addition to the last sentence of the Sixth Amendment: "Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings."¹⁹ The actions and findings of the Task Force have been considered a catalyst to the modern victims' rights movement. Indeed, in 1985 victims' rights advocates began to focus their efforts on amending state constitutions in order to secure rights that were more meaningful for crime victims.²⁰ The success of these efforts

is evidenced by the enactment of victims' rights amendments in thirty-one states over the past sixteen years.²¹

B. Political Efforts Towards a Federal Constitutional Amendment

No serious effort was made to amend the federal constitution until nearly fourteen years after the Task Force released its final report. Congressional action toward a federal constitutional amendment began during the 104th Congress when the Victims' Bill of Rights Constitutional Amendment ("Bill") was introduced in both the United States Senate and House of Representatives.²² The introduction of the Bill coincided with the 1996 presidential election and was endorsed by both Republican Presidential candidate Robert J. Dole and President William J. Clinton.²³ Both the United States House of Representatives and the Senate Judiciary Committee held public hearings on their

¹⁶*Id.*

¹⁷*See id.* at 115-16. The Task Force made recommendations targeted to federal and state executive and legislative bodies, police, prosecutors, the judiciary, parole boards, hospitals, the ministry, the bar, schools, the mental health community, and the private sector. *See id.*

¹⁸*See id.* at v.

¹⁹*Id.* at 114.

²⁰*See Victims' Bill of Rights Amendment: Hearings on S.J. Res. 6 Before the Senate Committee on the Judiciary*, 105th Cong. (1996) (statement of Paul G. Cassell, Professor of Law, University of Utah College of Law) (detailing the history of the victims' rights movement in the quest for a constitutional amendment; stating that organizations supporting a victims' rights amendment decided at a 1985 national conference to proceed on a state-by-state basis first, then continue the effort for a federal constitutional amendment).

²¹For a table indicating states with VRAs and the percentage of electoral support received, see Appendix A.

²²*See S.J. Res. 52 & H.R.J. Res. 174*, 104th Cong. (1996).

²³*See President William J. Clinton, Remarks by the President at Announcement of Victims' Rights Constitutional Amendment*, 32 WEEKLY COMP. PRES. DOC. 1134 (June 25, 1996). In announcing his support of the federal proposed VRA, President Clinton stated:

Having carefully studied all of the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights—to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the victim is present, to be told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released, restitution from the defendant, reasonable protection for the defendant and notice of these rights.

Id.; *see also* John M. Broder, *Clinton Calls for Victims' Rights in Constitution*, L.A. TIMES, June 26, 1996, at A1; Angie Cannon, *Victims' Rights Wins President's Support*, PHIL. INQUIRER, June 26, 1996, at A2; Alison Mitchell, *Clinton Calls for Amendment Guaranteeing Victims' Rights*, N.Y. TIMES, June 26, 1996, at A15.

respective Bills.²⁴ The 104th Congress, however, adjourned in October 1996 without taking action on either version of the proposed amendment.

On January 21, 1998, during the 105th Congress, Senators John Kyl and Dianne Feinstein reintroduced the Victims' Bill of Rights Constitutional Amendment.²⁵ Likewise, on April 15, 1997, Representative Henry Hyde reintroduced the House version of the amendment in the United States House of Representatives.²⁶ Both the Senate and House Judiciary Committees held hearings on the proposed amendment.²⁷ Senators Kyl and Feinstein introduced a new version of the amendment on April 1, 1998.²⁸ On July 7, 1998, the Senate Judiciary Committee voted eleven to seven in support of the Resolution.²⁹

With each congressional session, the proposed federal amendment continues to be considered and enjoys bi-partisan support. In 1999, the version of the Bill adopted by the Senate Judiciary Committee was reintroduced in the Committee during the 106th Congress and additional public hearings were held in Committee.³⁰ On May 26, 1999, the Senate Judiciary Committee's

Subcommittee on the Constitution, Federalism, and Property voted in favor of Senate Joint Resolution 3, which would create a VRA to the United States Constitution. On September 30, 1999, the Senate Judiciary Committee voted twelve-to-five to recommend enactment of the Senate Joint Resolution that would create a VRA to the United States Constitution. In the House, on August 4, 1999, Ohio Representative Steven Chabot introduced a House version of the proposed federal VRA for consideration.³¹

C. The Current Proposed Federal Constitutional Amendment

During the past three congressional sessions when the federal VRA has been considered, there have been incremental changes in the language and scope of the proposed amendment. This section examines the current language adopted by the Senate Judiciary Committee for the proposed federal amendment and compares the current language with significant changes from prior versions of the amendment.³²

The current proposed federal amendment is divided into five sections and provides:

Section 1: A victim of a crime of violence, as these terms may be defined by law, shall have the rights: to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime; to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence; to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender; to reasonable notice of a release or escape from custody relating to the crime; to consideration of the interest of the victim that

²⁴The full Senate Judiciary Committee held hearings on the proposed victims' rights constitutional amendment on April 23, 1996. Representative Henry Hyde, Chairman of the House Judiciary Committee, conducted a full-committee hearing on the proposed amendment on July 11, 1996. On September 30, 1996, Senators Kyl and Feinstein introduced a new version of the proposed amendment in the Senate.

²⁵See S.J. Res. 6, 105th Cong., 1st Session (1998).

²⁶See H.J. Res. 71, 105th Cong., 1st Session (1998).

²⁷The Senate Judiciary Committee held a public hearing on the Senate Joint Resolution on April 16, 1997. A full hearing was held before the House Judiciary Committee on June 25, 1997.

²⁸See S.J. Res. 44, 105th Cong., 2nd Session (1998). The new amendment changes the operative language from "victims of crime" to "victims of violent crime."

²⁹See S. REP. NO. 105-409, at 69 (1998).

³⁰See S.J. Res. 3, 106th Cong. (1999). For the language of the proposed amendment, see *infra* Part II.C. On January 19, 1999, Senators Kyl and Feinstein reintroduced the VRA in the 106th Congress based on the earlier version adopted by the Senate Judiciary Committee. See *id.* On March 24, 1999, the Senate Judiciary Committee held a public hearing on the Joint Resolution.

³¹H.J. Res. 64, 106th Cong. (1999).

³²The proposed House version of the VRA contains provisions similar to the version adopted by the Senate Judiciary Committee on September 30, 1999. One important distinction is that H.J. Res. 64 would encompass victims of all felony crimes and "any other crime that involves violence."

any trial be free from unreasonable delay; to an order of restitution from the convicted offender; to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and to reasonable notice of the rights established by this article.

Section 2: Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

Section 3: The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

Section 4: This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

Section 5: The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.³³

³³S.J. Res. 3.

The current version of the proposed federal VRA has subtle differences from earlier proposed amendments. In particular, the scope of the amendment has changed. Earlier versions of the proposed amendment provided that the amendment was applicable to "[e]ach victim of a crime of violence, *and other crimes* that Congress may define by law."³⁴ This language has been changed and now states that the amendment is applicable to "[a] victim of a crime of violence, as these terms may be defined by law."³⁵ Thus, the current version limits the applicability of the amendment solely to victims of violent crime.

In addition to establishing the scope of the proposed federal amendment, the first section establishes the affirmative rights of crime victims. Unlike most of the state VRAs, the proposed federal constitutional amendment does not mention the right of the victim to be "treated with fairness and respect."³⁶ Among the rights conferred by the amendment are the right to notice of and not to be excluded from public proceedings related to the crime, to be heard, to receive notice of the accused's release from custody, the right to a trial free from unreasonable delay, to restitution, to consideration of the victim's safety in determining conditional release from custody, and to notice of the victim's rights.³⁷

After listing the affirmative rights granted to crime victims, section two of the proposed amendment addresses standing and limitations on enforcement of the amendment.³⁸ This section explicitly denies any grounds for a victim to stay or continue a trial or challenge a decision or conviction.³⁹ Section two also provides that violation

³⁴S.J. Res. 6, 105th Cong., 1st Session (1997) § 1 (emphasis added). Interestingly, the version considered in the House of Representatives provided: "[e]ach individual who is a victim of a crime for which the defendant can be imprisoned for a period longer than one year or any other crime that involves violence." H.J. Res. 71, 105th Cong., 1st Session (1997).

³⁵See S.J. Res. 44, 105th Cong., 2nd Session (1998); S.J. Res. 3, 106th Cong. (1999).

³⁶See S.J. Res. 3.

³⁷See *id.* at § 1.

³⁸See *id.* at § 2.

³⁹See *id.*

of the amendment does not give rise to a claim for damages against the government.⁴⁰

The third section of the proposed amendment empowers Congress to enforce the article "by appropriate legislation."⁴¹ Section three also limits exceptions to the rights conferred in the amendment to when "necessary to achieve a compelling interest."⁴² Earlier versions of the proposed amendment empowered both the states and Congress to enforce the article, as well as to enact exceptions "required for compelling reasons of public safety or for judicial efficiency in mass victim cases."⁴³ The current version limits the power of enforcement to legislation by Congress, and is silent on the appropriate legislative body to enact exceptions to the article.

Sections four and five address the amendment's relevance.⁴⁴ The rights conferred in the proposed amendment are applicable to federal, state, District of Columbia, and other territorial proceedings.⁴⁵ These proceedings are deemed to include military and juvenile proceedings.⁴⁶

III. STATE VICTIMS' RIGHTS AMENDMENTS

A. A Comparative Analysis of State Victims' Rights Amendments

While the federal government continues to consider a constitutional amendment, many states already have adopted constitutional amendments providing rights to victims of crime. In 1982, California became the first state to adopt a constitutional amendment providing rights to

crime victims.⁴⁷ California's amendment is narrow in scope, simply providing victims with the right to restitution,⁴⁸ that relevant evidence shall not be excluded in any criminal proceeding,⁴⁹ and that a judge shall consider public safety when setting bail amounts.⁵⁰

Four years after California adopted its VRA, Rhode Island became the second state to adopt a constitutional amendment providing rights to crime victims.⁵¹ Rhode Island's amendment is also comparatively narrow in scope, providing crime victims the "right to be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process."⁵² The amendment further provides restitution and the right to address the court at sentencing regarding the impact of the crime on the victim.⁵³

Thereafter, four other states adopted VRAs in the 1980s: Florida,⁵⁴ Michigan,⁵⁵ Texas,⁵⁶ and Washington.⁵⁷ With these new amendments also came new rights afforded to crime victims. The Michigan amendment, for example, provided nine enumerated rights to the crime victim: (1) to be treated with fairness and respect; (2) to timely disposition of the case; (3) to be reasonably protected from the accused; (4) to notification of proceedings; (5) to attend proceedings; (6) to confer with the prosecution; (7) to make a statement at sentencing; (8) to restitution;

⁴⁰*See id.*

⁴¹*See id.* at § 3.

⁴²*Id.*

⁴³S.J. Res. 6, 105th Cong., 1st Session § 3 (Jan. 21, 1997).

⁴⁴*See* S.J. Res. 3, 106th Cong. §§ 4-5 (1999).

⁴⁵*See id.*

⁴⁶*See id.*

⁴⁷*See* CAL. CONST. art. I, § 28.

⁴⁸*See id.* at § 28(b).

⁴⁹*See id.* at § 28(d). The language of the amendment empowers the legislature to enact statutory exceptions. *See id.*

⁵⁰*See id.* at § 28(e).

⁵¹*See* R.I. CONST. art. I, § 23.

⁵²*Id.*

⁵³*See id.*

⁵⁴*See* FLA. CONST. art. I, § 16.

⁵⁵*See* MICH. CONST. art. I, § 24.

⁵⁶*See* TEX. CONST. art. I, § 30.

⁵⁷*See* WASH. CONST. art. I, § 35.

and (9) to information about the conviction, sentence, imprisonment, and release of the accused.⁵⁸

From these initial state amendments, the momentum of state VRA adoption gradually increased during the 1990s. Arizona passed a VRA in 1990, and New Jersey followed in 1991.⁵⁹ Between 1992 and 1994 eleven states enacted VRAs,⁶⁰ and eight additional states passed VRAs in 1996.⁶¹ Today, the majority of states have adopted VRAs.⁶²

Despite the increasing number of states with VRAs, the existing VRAs vary widely in strength and scope.⁶³ The most common rights afforded crime victims in the state amendments are the right to notification of proceedings and the right to attend proceedings.⁶⁴ These two rights

are, however, limited by language in some of the amendments. In some state amendments, a crime victim has constitutional rights to the extent that those rights do not interfere with the constitutional rights of the defendant. Other state amendments afford crime victims the right to attend proceedings, but limit this right by requiring that victims not be a material witness in the matter.

Another right, afforded in varying degrees by twenty-five of the state amendments, is the right to be heard at proceedings.⁶⁵ This right primarily refers to victim-impact testimony or testimony at sentencing. Sixty-four percent of the state amendments give victims a constitutional right to be treated with fairness, dignity and respect.⁶⁶

Several provisions appear in over one-third of the VRAs. One of these is the right of crime victims to be informed of their rights.⁶⁷ A second provision provides victims with the right to be protected from the accused.⁶⁸ In addition, more than one-half of the VRAs provide one or more of the following rights: to confer with the prosecutor, to restitution, to be protected from the accused, to a speedy disposition, and to notice of the sentence, release, or escape of the perpetrator.⁶⁹

Other rights are less pervasive in the various state VRAs. VRAs in only five states—Alaska, Idaho, Missouri, South Carolina, and Utah—provide some rights or authorize the legislature to extend victims' rights at the juvenile level. Only three state VRAs—Arizona, Idaho, and Louisiana—provide a crime victim the right to refuse an interview related to the crime and initiated by the defense.⁷⁰ New Mexico provides victims with the constitutional right to "have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a

⁵⁸See MICH. CONST. art. I, § 24.

⁵⁹See *infra* Appendix A.

⁶⁰The eleven states adopting constitutional amendments between 1992 and 1994 were: Alabama, Alaska, Colorado, Idaho, Illinois, Kansas, Maryland, Missouri, Ohio, Utah, and Wisconsin. *See id.*

⁶¹The eight states adopting constitutional amendments in 1996 were: Connecticut, Indiana, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, and Virginia. *See id.*

⁶²*See id.* While Montana does not have a constitutional amendment analogous to these states, in November 1998, Montana voters approved a more limited constitutional amendment that broadens the state's criminal justice system to include restitution to the crime victim. *See* MO. CONST. art. I, § 32 (1992).

Additionally, Oregon voters ratified a crime victims' rights amendment to the state constitution in 1996. *See* OR. CONST. art. I, § 42 (1996). The Oregon VRA was the most comprehensive of any of the state amendments, providing 14 enumerated rights for crime victims. *See id.* In 1998, however, the Oregon Supreme Court invalidated the amendment on the ground that it combined several distinct constitutional amendments that should have been voted on separately under the state's constitutional provisions governing amendments through an initiative petition. *See Armatta v. Kitzhaber*, 959 P.2d 49 (Or. 1998).

In addition to Montana and Oregon, the remaining states without a state constitutional amendment that provides victims' rights are: Delaware, Georgia, Indiana, Kentucky, Maine, Massachusetts, Minnesota, New Hampshire, New York, North Dakota, Pennsylvania, South Dakota, Vermont, West Virginia, and Wyoming.

⁶³*See* Appendix B (providing a state-by-state index of crime victim rights).

⁶⁴*See id.*

⁶⁵*See id.*

⁶⁶*See id.*

⁶⁷*See id.*

⁶⁸*See id.*

⁶⁹*See id.*

⁷⁰*See id.*

court proceeding that may necessitate the absence of the victim from work for good cause.”⁷¹

The actual terms of the VRAs tend to either be short, broad versions of the intended language or detailed enumerations of an individual’s rights.⁷² For instance, Florida’s amendment simply states that victims are “entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of the criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.”⁷³ Similarly, Colorado’s amendment states that victims “have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process.”⁷⁴ On the other end of the spectrum are amendments in Arizona and South Carolina that each enumerate twelve specific rights of crime victims.⁷⁵

Half of the state amendments are silent on the question of enforcement.⁷⁶ Another third provide that a violation of the rights shall not be a cause for civil damages, but do not preclude actions for injunctive relief.⁷⁷ There are a variety of approaches to enforcement and limitations on the remedies provided victims. The Texas VRA specifically forbids a victim standing as a party in a criminal proceeding, and denies the right to contest the disposition of any charge.⁷⁸ The Maryland VRA prohibits the victim from being able to stay a criminal justice proceeding.⁷⁹

⁷¹N.M. CONST. art. II, § 24(10).

⁷²See NATIONAL VICTIM CENTER, THE 1996 VICTIMS’ RIGHTS SOURCEBOOK: A COMPILATION AND COMPARISON OF VICTIMS’ RIGHTS LAWS (1996) (providing a state-by-state index of enforcement language or restrictions in the state constitutional amendments).

⁷³FLA. CONST. art. I, § 16(b).

⁷⁴COLO. CONST. art. II, § 16a.

⁷⁵See ARIZ. CONST. art. II, § 2.1; S.C. CONST., art. I, § 24.

⁷⁶See NATIONAL VICTIM CENTER, *supra* note 72.

⁷⁷See *id.*

⁷⁸See TEX. CONST. art. I, § 30(5)(e).

⁷⁹See MD. DECL. OF RIGHTS art. 47(c).

The Ohio VRA is more general and “does not confer upon any person a right to appeal or modify any decision in a criminal proceeding.”⁸⁰ The VRAs for Idaho, Illinois, Kansas, Missouri, and New Mexico, although silent as to a victim’s standing, contain language limiting the impact of the VRA on the disposition of cases.⁸¹

B. Appellate Interpretation of State Victims’ Rights Amendments

To understand the potential interpretations and implications of the language in the proposed federal VRA, it is helpful to consider how state appellate courts have interpreted VRAs. This section considers relevant state appellate court interpretations of language in state VRAs similar to the proposed federal constitutional amendment.⁸² In addition, other issues confronted in interpreting state VRAs are discussed including various state appellate court decisions that construe the definition of a victim. Also examined are decisions considering the appropriate result when a victim’s constitutional rights conflict with a defendant’s constitutional rights.

The proposed federal amendment includes eight rights for crime victims: (1) the right to “reasonable notice” of public proceedings relating to the crime; (2) the right not to be excluded from public proceedings; (3) the right to be heard during proceedings to determine conditional release, acceptance of a negotiated plea and sentence, and parole proceedings; (4) the right to notice of release or escape from custody; (5) the right to be free from unreasonable delay; (6) the right to an order of restitution; (7) the right to have safety considered in determining conditional release from custody; and (8) the right to “reasonable notice” of these rights. The interpretation of each of these proposed rights under analogous state VRA provisions is analyzed in this section.

⁸⁰OHIO. CONST. art. I, § 10(a).

⁸¹See IDAHO CONST. art. I, § 22(10); ILL. CONST. art. I, § 8.1(10)(d); KAN. CONST. art. 15, § 15(c); MO. CONST. art. I, § 3(4); N.M. CONST. art. II, § 24(B).

⁸²The scope of consideration in this section is limited to state appellate court decisions promulgated under a state VRA, and does not include decisions decided under implementing statutes for the VRAs.

1. The right to “reasonable notice” of public proceedings relating to the crime

The first right of a crime victim in the proposed federal amendment is the right “to reasonable notice of . . . any public proceedings relating to the crime.”⁸³ The right of the crime victim to be notified of proceedings involving his or her case is found in nearly every state constitutional amendment.⁸⁴ Several cases have interpreted the victim’s right to be notified of proceedings involving the victim’s case. In *People v. Superior Court*,⁸⁵ the Court of Appeal of California held that the failure of a probation officer to comply with that officer’s duty to notify the crime victim of the probation and sentencing hearing did not deprive the trial court of jurisdiction to proceed.⁸⁶

In *State v. Holt*,⁸⁷ a Kansas court considered whether, under the Kansas state VRA, a crime victim is entitled to notice when a district court grants parole to a defendant convicted of a misdemeanor who has partially served the sentence.⁸⁸ The Supreme Court of Kansas held that the granting of parole to such a defendant was at the discretion of the trial court; therefore, crime victims did not have the right to be notified when the trial court determined, *sua sponte*, to grant parole to the defendant.⁸⁹ Although the Kansas Constitution provides crime victims with “the right to be informed of and to be present at public hearings,”⁹⁰ in considering the appeal, the court noted that the implementing statutes to the state VRA lacked “any mandatory rights for crime victims, and the provisions are merely directive or permissive [and] there are no provisions

for enforcement of the suggested rights and no sanctions imposed if they are not followed.”⁹¹ The court found that a public hearing for the purpose of granting parole to a misdemeanor defendant who has served a portion of the sentence was not purely discretionary and that no abuse of discretion had been shown.⁹² In dicta, the court encouraged trial courts in cases involving parole to “carefully consider holding a public hearing and notifying crime victims in cases where the court deems it advisable and when it can be accomplished without undue burden on the judicial system.”⁹³

In 1998, the Rhode Island Supreme Court considered whether a cause of action for monetary damages accrues against the state or its officers when there is a failure to notify the crime victims of their constitutional rights.⁹⁴ The court found that crime victims could not sue the state in an effort to compel the state to inform them of their rights.⁹⁵ In *Bandoni v. State*,⁹⁶ the victims were injured after being hit by a drunk driver.⁹⁷ The victims requested the state to update them on the criminal case against the driver.⁹⁸ The defendant was permitted to plead no contest to a lesser charge without the victims’ knowledge.⁹⁹ Thereafter, the victims brought action against the state for failure to advise them of their rights as crime victims contrary to the Rhode Island VRA and Victim’s Bill of Rights.¹⁰⁰ The victims alleged a negligence theory against the state for failure to notify them of the pending criminal case and demanded monetary damages under the

⁸³S.J. Res. 3 § 1, 106th Cong. (1999).

⁸⁴For a chart illustrating the states that afford the right to be notified of proceedings, see Appendix B.

⁸⁵202 Cal. Rptr. 585 (Ct. App. 1984).

⁸⁶See *id.* at 586-87.

⁸⁷847 P.2d 1183 (Kan. 1994).

⁸⁸See *id.* at 1186.

⁸⁹See *id.* at 1187.

⁹⁰See *id.* at 1185 (quoting KAN. CONST. art. 15, § 15(a)).

⁹¹See *id.* at 1186 (referring to KAN. STAT. ANN. § 74-7333(a)(1994)).

⁹²See *id.* at 1187.

⁹³*Id.* at 1188.

⁹⁴See *Bandoni v. State*, 715 A.2d 580 (R.I. 1998).

⁹⁵See *id.* at 601.

⁹⁶See *id.* at 583.

⁹⁷See *id.*

⁹⁸See *id.*

⁹⁹See *id.*

¹⁰⁰See *id.*

state VRA.¹⁰¹ The trial judge dismissed the action for failure to state a claim upon which relief could be granted.¹⁰² The appellate court declined to recognize either claim and found that there was no action for negligence arising from the Victim's Bill of Rights.¹⁰³ The court further held that the VRA was not self-executing, and "[did] not provide a sufficient rule by which the rights given may be enjoyed or protected."¹⁰⁴ In so holding, the court stated that the cause of action "must arise from the floor of the General Assembly and not from the bench of the supreme court."¹⁰⁵

Significantly, none of the VRAs, including the proposed federal VRA, provide a cause of action for damages in the event that officials who are charged with informing crime victims of their rights fail to provide such notice. Like the proposed federal amendment, approximately one-half of the states have VRAs providing that an official's noncompliance will not result in a cause of action for damages or the right to vacate an otherwise lawful conviction.¹⁰⁶ The remaining states have VRAs that are silent on the matter or empower the legislature to enact enforcement provisions.¹⁰⁷

2. The right not to be excluded from any public proceedings

Twenty-six state amendments include the right of victims to attend proceedings.¹⁰⁸ This right, however, is not uniform among state VRAs. Instead, the right to attend proceedings is granted in different degrees using varying language. In particular, some of the state VRAs do not

refer to the right in the negative sense, "not to be excluded;" rather these state VRAs provide the affirmative right to attend proceedings. Appeals based on this right typically take the form of a defendant claiming that the victim's presence at the proceeding interfered with the right to a fair trial. Several state appellate courts have considered a victim's constitutional right to be present at proceedings related to the crime.¹⁰⁹

In *State v. Beltran-Feliz*,¹¹⁰ the Supreme Court of Utah held that a victim exercising her state constitutional right to be present during the trial did not violate a defendant's rights under the Fifth Amendment of the United States Constitution.¹¹¹ The Utah Constitution provides that a victim has the right "[u]pon request to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a lawful representative, once a criminal information or indictment charging a crime has been publicly filed in court . . ."¹¹² State legislation further articulated the victim's right not to be excluded from trial.¹¹³ On appeal, the defendant contended that the combination of the victim's presence in the courtroom, the victim's testimony as the last witness for the State, and a reference to the victim by the prosecutor as "our victim," had the cumulative effect of denying the defendant a fair trial.¹¹⁴

The court in *Beltran-Feliz* held that to sustain this constitutional challenge, the defendant had the burden of proving that he was denied a fair trial, and must "show

¹⁰¹See *id.* at 582.

¹⁰²See *id.* at 583.

¹⁰³See *id.* at 584.

¹⁰⁴*Id.* at 589.

¹⁰⁵*Id.* at 596.

¹⁰⁶See NEV. CONST. art. 1, § 8(3); UTAH CONST. art. 1, § 28(2).

¹⁰⁷See MICH. CONST. art. 1, § 24(2); NEB. CONST. art. 1, § 28.

¹⁰⁸For a table indicating which states provide specific rights, including the right of victims to attend proceedings, see Appendix B.

¹⁰⁹Although not a state appellate court case, the "Oklahoma City Bombing" case dealt with mass tort victims seeking to be present at trial without being barred from giving victim-impact testimony at sentencing. See *United States v. McVeigh*, 958 F. Supp. 512 (D. Colo. 1997). For discussion of the quest of these victims to be present at the trial, their subsequent denial to be present, and other implications relevant to the proposed federal VRA, see *The Rights of Crime Victims: Hearings on S.J. Res. 44 Before the Senate Committee on the Judiciary*, 106th Cong. (1997) (statement of Paul G. Cassell, Professor of Law, University of Utah College of Law).

¹¹⁰922 P.2d 30 (Utah Ct. App. 1996).

¹¹¹See *id.* at 35.

¹¹²See *id.* at 32-33 (quoting UTAH CONST. art. 1, § 28(b)).

¹¹³See *id.* at 33 (quoting UTAH CODE ANN. §§ 77-38-4(1) & 77-38-2(5)(e)).

¹¹⁴See *id.* at 32-34.

more than the mere possibility that [the victim] conformed her testimony to that of other witnesses.”¹¹⁵ The court found that the defendant’s assertion, based only on a single reference that the victim’s testimony was tailored in what was not suggested to be a critical element of the case, was insufficient to meet the burden of proving the defendant was prejudiced by the victim’s rights.¹¹⁶

The Arizona Supreme Court has also considered a victim’s exercise of the right to be present at jury selection. In *State v. Gonzales*,¹¹⁷ the court held the presence of victim of aggravated assault and armed robbery in a courtroom during jury selection did not prejudice or deny the defendant’s right to a fair trial.¹¹⁸ The court recognized that the victim had a constitutional right to attend all of the same criminal proceedings that the defendant had a right to attend.¹¹⁹ The court also noted that there was no evidence that prospective jurors noticed the victim or knew who she was during jury selection.¹²⁰

Florida’s appellate courts have considered a victim’s right not to be excluded from proceedings on several occasions. In *Bellamy v. State*,¹²¹ the defendant in a sexual battery prosecution claimed that his accuser could not be classified as a “victim” where the jury was not made aware that the accuser was declared a “victim” under the VRA amendment.¹²² The court held that because the State did not attempt to call the accuser as a rebuttal witness,

and because the accuser did not display any emotion or otherwise draw attention to herself while sitting in the courtroom, the Florida VRA did not destroy the defendant’s presumption of innocence, or otherwise prejudice the jury against the defendant.¹²³

In *Gore v. Florida*,¹²⁴ a defendant was convicted of first-degree murder and sentenced to death.¹²⁵ The defendant appealed the trial court’s decision on the ground that the court erred in excusing the victim’s stepmother from the rule of witness sequestration because she was a relative of the victim.¹²⁶ The court determined that the presence of the victim’s stepmother in the courtroom during the trial did not prejudice the defendant in this case.¹²⁷ Notwithstanding, the court cautioned, “while in general relatives of homicide victims have the right to be present at trial, this right must yield to the defendant’s right to a fair trial.”¹²⁸

After *Gore*, the Florida Supreme Court heard *Martinez v. Florida*,¹²⁹ in which a defendant appealed his conviction on the grounds that the victim’s constitutional right to be present conflicted with his right to a fair trial by having the witness sequestered. The court held that the victim should not have been permitted in the courtroom during opening statements.¹³⁰ Nevertheless, the court found this was a harmless error and affirmed the defendant’s conviction.¹³¹

¹¹⁵See *id.* at 35.

¹¹⁶See *id.* at 34. In dicta, the court expressed concern that its decision “may give rise to constitutional challenge every time a victim is allowed to remain in the courtroom during a criminal trial.” *Id.* at 35 n.6. To avoid this effect, the court reiterated that inconsistent statements by a witness or victim is an issue of credibility for the fact finder to consider, and under state precedent there have been numerous findings of no prejudice in allowing a victim to remain present throughout the trial even if he or she later testifies. See *id.*

¹¹⁷892 P.2d 838 (Ariz. 1995).

¹¹⁸See *id.* at 848.

¹¹⁹See *id.* (citing ARIZ. CONST. art. 2, § 2.1(A)(3)).

¹²⁰See *id.* at 848-49.

¹²¹594 So. 2d 337 (Fla. Dist. Ct. App. 1992).

¹²²See *id.* at 338.

¹²³See *id.*

¹²⁴599 So. 2d 978 (Fla. 1992).

¹²⁵See *id.*

¹²⁶See FLA. CONST. art. I, § 16(b) (affording next of kin of homicide victims “the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused” (emphasis added)).

¹²⁷See *Gore*, 599 So. 2d at 986.

¹²⁸*Id.* at 985-86.

¹²⁹664 So. 2d 1034 (Fla. 1996).

¹³⁰See *id.* at 1035.

¹³¹See *id.* at 1036.

3. The right to be heard

The right to be heard under the proposed federal amendment includes the right to be heard, if present, at a "proceeding to determine conditional release, acceptance of a negotiated plea, or a sentence . . . [and] at a parole proceeding that is not public, to the extent [] afforded to the offender."¹³² Most state VRAs provide victims the right to be heard in criminal proceedings, particularly at sentencing hearings.¹³³ This right typically is exercised via oral or written victim-impact statements presented at sentencing.¹³⁴

In 1991, the United States Supreme Court addressed the use of victim-impact statements in capital sentencing. Although the Court in *Payne v. Tennessee*,¹³⁵ did not consider a state constitutional amendment, its ruling has been significant in a number of subsequent state-appellate court cases addressing VRAs and victim-impact evidence.¹³⁶ In *Payne*, the United States Supreme Court held that the Eighth Amendment to the United States Constitution, prohibiting cruel and unusual punishment, does not bar "the admission of victim-impact evidence during the penalty phase of a trial."¹³⁷ This holding specifically

¹³²S.J. Res. 3 § 1.

¹³³See ALASKA CONST. art. I, § 24; ARIZ. CONST. art. II, § 2.1(A)(4); COLO. CONST. art. II, § 16(a); FLA. CONST. art. I, § 16(b); IDAHO CONST. art. I, § 22(b); ILL. CONST. art. I, § 8.1(a)(4); KAN. CONST. art. 15, § 15(a); MD. DECL. OF RIGHTS art. 47(b); MICH. CONST. art. I, § 47(b); MO. CONST. art. I, § 32(1)(2); N.M. CONST. art. II, § 24(A)(7); R.I. CONST. art. I, § 23; UTAH CONST. art. I, § 28(1)(b); WASH. CONST. art. I, § 35; WIS. CONST. art. I, § 9(m).

¹³⁴Whether victim-impact statements should be admitted during capital sentencing is a very controversial issue, producing considerable scholarly debate, but is not within the scope of this article.

¹³⁵501 U.S. 808 (1991) (overruling the Court's earlier decisions in *Booth v. Maryland*, 482 U.S. 496 (1987) (holding by a 5-4 majority that victim-impact evidence was inadmissible at capital sentencing)); see also *South Carolina v. Gathers*, 490 U.S. 805 (1989) (holding by a 5-4 majority that evidence concerning victims in the sentencing phase of a capital case was inadmissible).

¹³⁶See *supra* notes 60 to 84 and accompanying text.

¹³⁷*Payne*, 501 U.S. at 811.

relates to the use of victim-impact evidence at the sentencing phase of a capital crime.¹³⁸ Chief Justice Rehnquist, writing for the majority, traced the historical development of criminal sentencing philosophy, and noted that most of the states had approved admitting victim-impact statements at sentencing.¹³⁹ *Payne* resulted in an elimination of the constitutional bar to victim-impact statements in death-penalty cases. Consequently, *Payne* has allowed state courts to uphold victim-impact statement language in state constitutions and statutes.

i. Victim-impact evidence in state appellate courts after *Payne*

In view of the Supreme Court's holding in *Payne*, state appellate courts have consistently rejected defendant claims of due process, equal protection, right to confrontation, and cruel and unusual punishment violations in capital-sentencing cases where victims were permitted to introduce victim-impact evidence.

In *State v. Gentry*,¹⁴⁰ the Washington Supreme Court became the first state appellate court to consider victim-impact evidence while taking into account the holding in *Payne* and the Washington VRA.¹⁴¹ The court in *Gentry* found that the state constitutional rights of a victim in criminal cases under the Washington VRA must be harmonized with a defendant's rights, including due process rights during the sentencing phase of trial.¹⁴² The court acknowledged the "potential tension between the

¹³⁸See *id.*

¹³⁹See *id.* at 820-21.

¹⁴⁰888 P.2d 1105 (Wash. 1995).

¹⁴¹In *State v. Maxwell*, 647 So. 2d 871 (Fla. Dist. Ct. App. 1994), the Florida District Court of Appeals responded to a certified question about the constitutionality of a state statute admitting victim-impact evidence in a felony sentencing. The court briefly discussed *Payne* and the state's victim's rights constitutional amendment in upholding the use of the statute. It held that victim-impact evidence may be admitted because "such evidence is relevant in sentencing, as it informs the jury . . . of the particular harm caused." *Id.* at 872.

¹⁴²See *Gentry*, 888 P.2d at 1138.

due process rights of the capital case Defendant” and the victim’s rights that are created by the VRA.¹⁴³ Despite this tension between rights, the court held that victim-impact evidence was admissible at a proceeding considering death sentencing.¹⁴⁴ The court in *Gentry* explicitly limited its holding to the admissibility of victim-impact evidence in the sentencing phase of capital cases.¹⁴⁵

Subsequent to the holdings in *Payne* and *Gentry*, other states also considered the admissibility of victim-impact statements. In *Kansas v. Gideon*,¹⁴⁶ the Supreme Court of Kansas held that when victim-impact statements are made to a judge, not a jury, the victim’s right to make a statement at a sentencing proceeding under the state’s VRA did not violate the defendant’s constitutional right to confrontation, equal protection, or due process.¹⁴⁷ At trial, over the objection of the defendant, the deceased victim’s family made statements regarding how the victim’s death had affected them.¹⁴⁸ On appeal, the defendant argued that a sentence was imposed “under the influence of passion, prejudice, or other arbitrary factors.”¹⁴⁹ The court held that although the trial court had mentioned the family’s statements before sentencing, this did not

demonstrate improper consideration of the victim’s statements.¹⁵⁰

In *State v. Muhammad*,¹⁵¹ the New Jersey Supreme Court reversed the lower court’s denial of a victim’s right to be heard at the sentencing hearing for a defendant charged with kidnapping, rape, and murder. Unlike Washington’s VRA, the New Jersey VRA did not specifically allow for victim-impact statements at sentencing hearings.¹⁵² As such, the court relied on *Payne*, the New Jersey VRA, and enabling legislation, which mandated that such statements could be admitted under certain circumstances.¹⁵³ The court noted that “[i]n the absence of the Victim’s Rights Amendment, we might have continued to hold that victim-impact evidence should not be admitted during the sentencing phase of a capital case. However, the electorate, by passing the Victim’s Rights Amendment . . . have mandated that victim-impact evidence be admitted.”¹⁵⁴

Similarly, Arizona courts have held that a judge’s decision to impose the death penalty is not affected by

¹⁴³*Id.*

¹⁴⁴*See id.* at 1141 (stating that “the categories of evidence which are admissible at a death sentencing proceeding can be expanded to include victim-impact evidence”). In dicta, the court cautioned, that “[b]ecause we conclude that victim-impact statements do not per se violate the Washington Constitution, this does not mean that any and all such evidence is admissible.” *Id.* at 1142.

¹⁴⁵*See id.* at 1142 (indicating that trial courts should exercise discretion in deciding the scope of permissible victim-impact testimony on a case-by-case basis).

¹⁴⁶894 P.2d 850 (Kan. 1995).

¹⁴⁷*See generally* Shannon E. Giles, *Victim-Impact Evidence and Sentencing for Premeditated Murder in Kansas*, 42 KAN. L. REV. 55, 72 (1994) (providing analysis of the requirements in Kansas for victim-impact testimony).

¹⁴⁸*Gideon*, 894 P.2d at 862-63.

¹⁴⁹*Id.* at 864.

¹⁵⁰*See id.* at 864. The court cautioned that:

When victims’ statements are presented to a jury, the trial court should exercise control. Control can be exercised, for example, by requiring the victim’s statements to be in question and answer form or submitted in writing in advance. The victim’s statement should be directed toward information concerning the victim and the impact the crime has had on a victim and the victim’s family. Allowing the statement to range far afield may result in reversible error.

Id.

¹⁵¹678 A.2d 164 (N.J. 1996).

¹⁵²*See* N.J. CONST. art. 1, § 22.

¹⁵³*See* N.J. STAT. ANN. § 2C:11-3(c)(6) (West Supp. 1997).

¹⁵⁴*Muhammad*, 678 A.2d at 174-75.

victim-impact evidence.¹⁵⁵ In *State v. Mann*,¹⁵⁶ victim-impact evidence was allowed to rebut a capital-murder defendant's mitigation evidence. The record did not indicate that the sentencing judge improperly gave weight to the opinions of the victim's immediate family members that the death penalty should be imposed.¹⁵⁷ The sentencing judge stated that the finding of aggravating circumstances was based solely on evidence adduced at trial, and that he understood the family's feelings.¹⁵⁸ In upholding the decision in *Mann*, the Arizona Supreme Court endorsed the use of victim-impact evidence in capital sentencing.

ii. Sentence recommendations by crime victims

The Supreme Court in *Payne* made a distinction between victim-impact evidence "concerning a murder victim's personal characteristics or the impact of the crime on the victim's family and community," and victim-impact evidence providing the "opinions of the victim's family about the crime, the defendant and the appropriate sentence."¹⁵⁹ The Court did not address the issue of the constitutionality of a sentence recommendation by a victim in a death penalty case. Likewise, the state courts discussed above distinguished between the two types of statements, specifically approving descriptions of the impact of the crime on the victim's family.¹⁶⁰

In *State v. Heath*,¹⁶¹ the Kansas Court of Appeals approved the use of a sentencing request by the victim's family. In *Heath*, the defendant, who was accused of driving while intoxicated, pled "no contest" to a charge of involuntary manslaughter.¹⁶² State sentencing guidelines called for a presumptive prison term of up to five years, but the trial judge placed the defendant on five-years probation.¹⁶³ The court's decision to reduce the sentence was influenced by the urging of the victim's father.¹⁶⁴

Similarly, in *Salt Lake City v. Johnson*,¹⁶⁵ the Court of Appeals of Utah held that the trial court had authority to dismiss a domestic violence charge at the victim's request.¹⁶⁶ In another case regarding sentence recommendations by victims, the Missouri Court of Appeals in *Sharp v. State*,¹⁶⁷ held that a victim was permitted to make a sentencing recommendation despite the public prosecutor's plea agreement with the defendant not to recommend a sentence.¹⁶⁸

4. The right to notice of release or escape from custody

The proposed federal amendment and seventeen states provide the right to notice of sentence, release, or escape from custody.¹⁶⁹ Currently, no state appellate cases have substantially considered this constitutional right of crime victims.

¹⁵⁵See *State v. Mann*, 934 P.2d 784 (1997); see also *State v. Gonzales*, 892 P.2d 838 (Ariz. 1995)(holding that a capital murder defendant failed to establish that aggravated assault victim's recommendation that defendant receive death penalty affected sentencing decision); *State v. Gulbrandson*, 906 P.2d 579 (Ariz. 1995)(stating that in capital cases the admission of statements of the victim's family regarding impact of crime did not violate constitutional rights of defendant convicted of first-degree murder and did not require vacating a death sentence; and noting that there was nothing in the record to indicate that trial judge, in determining sentence, gave weight to the victim's family's statements).

¹⁵⁶See *id.*

¹⁵⁷See *Mann*, 934 P.2d at 788.

¹⁵⁸See *id.*

¹⁵⁹*Payne*, 501 U.S. at 832-33 (O'Connor, J., concurring).

¹⁶⁰See, e.g., *Gentry*, 888 P.2d at 1140.

¹⁶¹901 P.2d 29 (Kan. Ct. App. 1996).

¹⁶²See *id.* at 31.

¹⁶³See *id.*

¹⁶⁴See *id.* at 31-32.

¹⁶⁵959 P.2d 1022 (Utah Ct. App. 1998)

¹⁶⁶See *id.* (citing UTAH CONST. art. I, § 28; UTAH CODE ANN. § 77-36-2.7 (Supp. 1997) (allowing a trial court to dismiss charges of domestic violence "at the request of the victim if the court has reasonable cause to believe that the dismissal would benefit the victim"))).

¹⁶⁷908 S.W.2d 752 (Mo. Ct. App. 1995).

¹⁶⁸See *id.* at 755.

¹⁶⁹For a table designating rights provided by each state VRA, including the right to notice of sentence, release, or escape from custody, see Appendix B.

5. The right to be free from unreasonable delay

The proposed federal amendment and twelve states provide the victim with the right to be free from unreasonable delay. This right can be analogized to a defendant's right to a speedy trial. While much case law has developed interpreting a defendant's right to a speedy trial, no state appellate courts have decided issues regarding a victim's right to be free from unreasonable delay.

6. The right to an order of restitution

Nineteen states provide the right to an order of restitution in their VRAs. Appellate courts in Arizona and Michigan have considered this right. In *State ex rel. McDougall v. Superior Court In and For County of Maricopa*,¹⁷⁰ the Court of Appeals of Arizona held that a motorist, who pled guilty to leaving the scene of an automobile accident involving injury, could not be ordered to pay restitution for injuries resulting from the underlying accident where none of the injuries for which the state sought restitution was caused by motorist's criminal conduct of leaving the scene of accident. The Arizona Constitution provides victims with a right to restitution. Under article 2, section 2.1(A)(8), crime victims have a right to "receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury."¹⁷¹ According to the court, the plain language of the constitutional provision "requires restitution only for losses caused by the criminal conduct for which [the] defendant was convicted."¹⁷² Because the injuries for which restitution was sought involved the violation of a civil traffic offense, restitution was not warranted.

In *People v. Peters*,¹⁷³ the Supreme Court of Michigan also considered a crime victim's constitutional right to restitution. In *Peters*, the trial court entered a restitution order under authority of the Michigan VRA.

On appeal, the Supreme Court of Michigan considered whether an order of restitution should abate where a convicted criminal defendant died pending appeal of his conviction.¹⁷⁴ The court reasoned that because the provision of the Michigan VRA providing crime victims the right to an order of restitution was primarily intended to compensate crime victims, rather than penalize a defendant, a restitution order should be enforced after a defendant's death.¹⁷⁵ The restitution amount approximated losses incurred by the city fire department and amounts paid by defendant's insurer as a result of twenty-five fires in which arson was suspected, and the restitution order was entered under authority of the Michigan VRA and Crime Victim's Rights Act.¹⁷⁶ The court distinguished between an instance where a defendant dies pending an appeal of a criminal conviction, and the status of fines, penalties, and orders that may accompany a criminal conviction.¹⁷⁷ The court held that where the intent behind a fine or order is to compensate the victim, the fine or order may survive the death of the offender.¹⁷⁸

7. The right to consideration of safety of victim in determining conditional release

Ten states provide crime victims the constitutional right to be protected from the accused. Not all of these states consider safety in determining conditional release. To date, no state court opinions have directly interpreted this constitutional right.

¹⁷⁰920 P.2d 784 (Ariz. Ct. App. 1996).

¹⁷¹ARIZ. CONST. art. II § 2.1(A)(8).

¹⁷²*State ex rel. McDougall*, 920 P.2d at 786.

¹⁷³537 N.W.2d 160 (Mich. 1995).

¹⁷⁴*See id.* at 161.

¹⁷⁵*See id.* at 167.

¹⁷⁶*See* MICH. CONST. art. 1, § 24(1); MICH. COMP. LAWS ANN. § 780.766(2)(West 1995).

¹⁷⁷*See Peters*, 537 N.W.2d at 167.

¹⁷⁸*See id.*

8. The right to reasonable notice of rights

Ten states provide crime victims the constitutional right to be informed of their rights.¹⁷⁹ Arizona's intermediate appellate court considered the state's failure to inform a victim of her constitutional rights as provided by the Arizona constitution.¹⁸⁰ In *State ex. rel. Hance v. Arizona Board of Pardons & Paroles*, a rape victim brought a petition before the Court of Appeals of Arizona requesting that the court vacate an order by the Arizona Board of Pardon and Paroles (the "Board") releasing a prisoner.¹⁸¹ The victim complained that she did not receive prior notice of either the parole hearing or her constitutional rights.¹⁸² The Board had sent notice of the first parole hearing, however, the notice was sent to the victim's last known address and was returned as undeliverable.¹⁸³ No additional efforts were made to contact the victim and when the prisoner was released eight years after the initial hearing, the victim sued the Board.¹⁸⁴ In addition to not receiving proper notice of the hearing, the "victim was never informed of her constitutional right to request notice of and to participate in post-conviction release proceedings."¹⁸⁵

The Arizona Constitution provides that crime victims have the right "to be present at and, upon request, to be informed of all criminal proceedings where the defendant has a right to be present," as well as the right "[t]o be heard at any proceedings involving a post-arrest release decision, a negotiated plea, and sentencing."¹⁸⁶ In addition, the Arizona Constitution provides victims the right

to be informed of their constitutional rights.¹⁸⁷ Pursuant to these constitutional provisions, the Arizona Court of Appeals acknowledged that the state has an affirmative obligation to inform victims of their state constitutional rights.¹⁸⁸ The court refused to allow the victim's failure to request notice of the proceedings, as required under implementing legislation, to serve as a defense because the victim was not first informed of her constitutional rights.¹⁸⁹ In so holding, the court stated:

The constitutional mandate is clear: victims must be informed of their rights. Armed with this knowledge, victims may choose to exercise these rights. Conversely, an uninformed victim may not exercise her rights because she is unaware of them, or unaware that the right to notice of a release hearing requires that she first file a request for such a notice.¹⁹⁰

The court held that the failure to inform the victim of her constitutional right to request notice of and to participate in the proceedings violated her constitutional rights and rendered the release proceedings defective.¹⁹¹

In *Hance*, the court further found that the Board failed to make "reasonable efforts" to locate the rape victim.¹⁹² As a result, the victim's right to be informed of her state constitutional right to request notice of and to participate in the post-conviction proceedings concerning her attacker was violated.¹⁹³ The Arizona Court of Appeals held that the Arizona Constitution protects a victim's due process rights,¹⁹⁴ but due process requires only that efforts to

¹⁷⁹See Appendix B.

¹⁸⁰See *State ex. rel. Hance v. Arizona Board of Pardons & Paroles*, 875 P.2d 824 (Ariz. Ct. App. 1993).

¹⁸¹See *id.* at 826.

¹⁸²See *id.*

¹⁸³See *id.*

¹⁸⁴See *id.* at 831.

¹⁸⁵See *id.* at 830.

¹⁸⁶*Id.* at 829 (citing ARIZ. CONST. art 2, § 2.1(A)(3)-(4)).

¹⁸⁷See *id.* (citing ARIZ. CONST. art. 2, § 2.1(A)(12)).

¹⁸⁸See *id.* at 830.

¹⁸⁹See *id.*

¹⁹⁰*Id.*

¹⁹¹See *id.*

¹⁹²See *id.* at 830-31.

¹⁹³See *id.* at 830.

¹⁹⁴See *id.* at 831 (citing ARIZ. CONST. art. 2, § 2.1(A)).

provide notice must be “reasonably calculated” to notify the individual.¹⁹⁵ Under these circumstances, the court found that the Board not only had failed to make reasonable efforts to locate the victim, but also had made no efforts to locate the victim “since it sent a letter to her last known address in 1984, a decade after the conviction.”¹⁹⁶ Although the Board asserted that it satisfied its obligation to notify the victim by notifying the county attorney of the upcoming hearings, the court failed to find that notifying the county attorney was sufficient to provide notice to the victim.¹⁹⁷ The court in *Hance* held that, pursuant to Arizona statute, the appropriate remedy for the violation of the victim’s right to notice of her constitutional rights was for the result of the release hearings to be set aside and have a new hearing ordered.¹⁹⁸

C. Appellate Interpretation of Crime Victim Attempts to Enforce State Constitutional Rights

Section two of the proposed federal amendment states that standing to enforce the amendment is limited to “the victim or the victim’s lawful representative.”¹⁹⁹ In enforcement of victim’s rights and standing, the differences in state court interpretations also appear to be a result of the differing language and limitations of each state’s VRA.

Appellate courts in Colorado, Texas, Arizona, and Rhode Island have specifically held that crime victims cannot achieve standing under their respective state VRA. In *Gansz v. People*,²⁰⁰ the Colorado Supreme Court refused to allow a disgruntled crime victim to contest the

dismissal of a case. In *State ex. rel Hilbig v. McDonald*,²⁰¹ a Texas appellate court ruled that a crime victim lacked a constitutional right to review a prosecutor’s file. In *State v. Lamberton*,²⁰² the Arizona Supreme Court held that the state VRA did not provide crime victims the right to file petitions for review in criminal cases.

In *Bandoni v. Rhode Island*,²⁰³ victims of an automobile accident caused by a drunk driver brought an action for alleged violations of the state VRA and Victims’ Bill of Rights. The Supreme Court of Rhode Island held that there was no cause of action for negligence in tort arising from the Victim’s Bill of Rights.²⁰⁴ Furthermore, the court refused to create a new cause of action.²⁰⁵ Therefore, there was no monetary award for failure to comply with the VRA because it failed to provide for a private cause of action.²⁰⁶ The court concluded that the state’s VRA merely indicates principles, but lacks any rules by which to enforce those principles.²⁰⁷

The New Jersey Supreme Court, in *State of New Jersey in the Interest of K.P. D.O.B. 3/31/81*,²⁰⁸ held that a victim had standing to oppose a petition by a newspaper to open a juvenile sexual assault trial.²⁰⁹ The court found that crime victims have an inalienable right to be present during a criminal proceeding subject only to rules concerning sequestration.²¹⁰

¹⁹⁵*See id.* (quoting *Matter of Gila River*, 830 P.2d 442, 448 (Ariz. 1992) (in turn quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318 (1950)).

¹⁹⁶*Id.*

¹⁹⁷*See id.*

¹⁹⁸*See id.* at 831-32.

¹⁹⁹S.J. Res. 3, 106th Cong. § 2 (1999).

²⁰⁰888 P.2d 256 (Colo. 1995).

²⁰¹839 S.W.2d 854, 856 (Tex. Ct. App. 1992).

²⁰²899 P.2d 939 (Ariz. 1995).

²⁰³715 A.2d 580 (R.I. 1998).

²⁰⁴*See id.*

²⁰⁵The court also held Rhode Island’s VRA is not self-executing. *See id.* at 589.

²⁰⁶*See id.* at 585-86.

²⁰⁷*See id.* at 586.

²⁰⁸*See id.* (citing N.J. CONST. art. 1, § 22).

²⁰⁹*See State of New Jersey in the Interest of K.P. D.O.B. 3/31/81*, 709 A.2d 315 (N.J. 1997).

²¹⁰*See id.* (citing N.J. CONST. art. 1, § 22).

D. Other Issues Considered by Appellate Courts Interpreting Victim's Rights Amendments

This section addresses state appellate court decisions considering the definition of a victim and the appropriate result when a conflict arises between the constitutional rights of both the victim and the defendant.

1. Determining who is a victim

The definition of "victim" for most VRAs extends at least to the immediate family of the one who has been killed or is otherwise unable to speak. Some state appellate courts have interpreted this to include extended family, such as a sister-in-law.²¹¹

In *Kansas v. Parks*,²¹² the court held neither the state VRA, nor statutory bill of rights for crime victims, barred a murder victim's sister-in-law from submitting a victim-impact statement or from making a statement at the sentencing hearing. The court held that the VRA does not restrict the ability of non-victim and non-family members to testify and submit statements during the sentencing phase of criminal proceedings.²¹³ The court noted that the purpose of the enactment is "to guarantee rights, not restrict rights."²¹⁴

In *State v. County of Maricopa*,²¹⁵ the Supreme Court of Arizona held that the VRA does not require a victim to suffer personal injury in order to fall within definition of "crime victim." The court found that the owner and driver of an automobile damaged by an intoxicated driver qualified as a "victim" under the state's VRA, even though the owner was not injured.²¹⁶ Similarly, in *People*

v. Beck,²¹⁷ the California appellate court held that the term "victims" was not limited to natural persons.

Arizona courts have also held a victim cannot be the "accused." The victim must be a victim as to the alleged criminal offense with which the defendant is charged.²¹⁸ In *Knapp v. Martone*,²¹⁹ the Arizona Supreme Court held that the mother of two children alleged to have been murdered was a "victim" under the Victims' Bill of Rights. As a victim, the mother could properly refuse a request of the defendant, her husband, to depose her, even though the defendant was charged with murder.²²⁰ As an accessory, the mother was an unnamed and uncharged co-conspirator, but not an accused.²²¹ Similarly, in *Stapleford v. Houghton*,²²² the Arizona Supreme Court held that a person is not a victim for the purposes of the state constitution's Victims' Bill of Rights if that person is in custody or is the accused.

2. Balancing the rights of victims and defendants

One of the more important observations about VRAs is its potential for victims' rights to encroach upon the well-established constitutional rights of the criminal defendant. When faced with the issue, state appellate courts typically have sided with the countervailing rights of the defendant.

In *State v. Bible*,²²³ the Arizona Supreme Court held that victims of crime and their families have certain rights, but those rights do not, and must not, conflict with defendant's right to a fair trial. In *Bible*, the prosecutor indicated in closing argument that not only did the defendant have rights, such as the right to a fair trial, but the victim

²¹¹See *Kansas v. Parks*, 962 P.2d 486, 490 (Kan. 1998).

²¹²*Id.*

²¹³See *id.* (citing KAN. CONST. art. 15, § 15).

²¹⁴*Id.* at 490.

²¹⁵909 P.2d 476 (Ariz. 1996).

²¹⁶See *id.* at 478 (holding that the owner and driver of an automobile damaged in a collision with an intoxicated driver was a "victim" within meaning of VRA, even though the owner was not physically injured).

²¹⁷21 Cal.Rptr.2d 250 (Ct. App. 1993).

²¹⁸See *Knapp v. Martone*, 823 P.2d 685 (Ariz. 1992); *Stapleford v. Houghton*, 917 P.2d 703 (Ariz. 1996).

²¹⁹823 P.2d 685 (Ariz. 1992).

²²⁰See *id.* at 686-87.

²²¹See *id.* at 687.

²²²917 P.2d 703 (Ariz. 1996).

²²³858 P.2d 1152 (Ariz. 1993).

also had rights under the Arizona VRA.²²⁴ The prosecutor further suggested that it was the jurors' duty to protect the rights of both the defendant and the victim.²²⁵ The court held that these comments, coupled with the prosecutor's opening statement that the goal of the trial was not necessarily to give the defendant a fair trial, but to do justice, were improper.²²⁶

Similarly, the Arizona Supreme Court in *Romley v. Superior Court in and for County of Maricopa*,²²⁷ found a direct conflict between a defendant's constitutional right to due process and the Victim's Bill of Rights. The court held that the due process clause of United States Constitution takes precedence over the provisions of a state constitution.²²⁸ In *Romley*, the defendant, relying upon a justification defense, required access to medical records in order to cross-examine and impeach the victim.²²⁹ The court recognized the right of the victim to refuse a defendant's discovery request for medical records, however, the court held that when the information is exculpatory and essential to presentation of the defendant's defense, or is necessary for impeachment of the victim, then the right of the victim must fail.²³⁰

IV. DISCUSSION

Victim participation is an important element of our criminal justice system. We rely on victims to report the crime, testify, and facilitate prosecution. It is therefore reasonable that victims expect certain rights in the

²²⁴See *id.* at 1205.

²²⁵See *id.*

²²⁶See *id.* at 1206.

²²⁷836 P.2d 445 (Ariz. Ct. App. 1992).

²²⁸See *id.* at 449.

²²⁹See *id.* at 447.

²³⁰See *id.* at 452; see also *State v. Superior Court in and for County of Maricopa*, 836 P.2d 445 (Ariz. Ct. App. 1992) (holding that under certain circumstances, a defendant's right to gather exculpatory information can take precedence over the victim's constitutional right to be left alone). *But see State v. O'Neil*, 836 P.2d 393 (Ariz. Ct. App. 1991) (holding victims' bill of rights abrogated the defendant's right to interview or otherwise seek discovery from unwilling victim).

prosecutorial process. The criminal justice system is beginning to recognize the necessity of treating crime victims with fairness, dignity, and respect.

Balancing the rights of victims with the rights of defendants has proved to be a challenge to our system of criminal justice and has stirred much debate. Although some of the rights afforded crime victims by state VRAs have not been difficult to enforce—such as the right of the victim to provide victim-impact testimony at sentencing—upholding the rights of victims prior to the defendant's conviction presents a more serious challenge. For example, a jury may be unduly influenced by the victim's right to remain present during proceedings, or a defendant may be unjustly prejudiced by a victim's participation in the process. The rights of victims make it more difficult for the court to strike a fair balance between the defendant's right to a fair trial, and the victim's rights under a VRA. This difficulty undoubtedly has resulted in numerous appeals by defendants, a factor to be considered in any judicial economy analysis.

In view of the state appellate case law that has developed concerning the VRAs, problems have arisen that do not appear to be remedied in the drafting of the currently proposed federal VRA. As a practical matter, if a conflict arises, it is much easier for a judge to deny a victim his or her rights rather than provide a defendant an arguable issue to raise on appeal. Moreover, if the judge opts to deny the victim his or her state constitutional rights, it is difficult for the victim to obtain redress. A criminal defendant, however, who is denied his or her constitutional rights may have a conviction overturned or seek civil damages under civil rights law. No such remedies are provided to the victims of crime. Thus, the proposed federal constitutional amendment appears to fall victim to the problems suffered by its state counterparts, in that there is no legitimate enforcement mechanism. The proposed federal amendment explicitly limits the remedies provided, while establishing none.

Notwithstanding the lack of an explicit enforcement mechanism, the case law that has developed under the state counterparts of the proposed federal VRA tend to reveal only limited problems with the enactment of such a Constitutional Amendment. This survey of case law reveals that state appellate courts have addressed the largest fears of those opposing a federal VRA—that a defendant's

rights will be hindered. When faced with legitimate conflicting rights, state appellate courts have consistently acknowledged that the liberty rights of defendants are paramount.

V. CONCLUSION

Amending the United States Constitution is a long and arduous process. Even if Congress approves the proposed amendment, ratification by three-fourths of the state legislatures within seven years is still required. In this country's history, it is rare that an issue has garnered enough support to warrant the substantial step of a Constitutional Amendment. Only time will tell if the political momentum of the modern victims' rights movement will endure to effectuate an amendment to the Constitution of the United States to protect the rights of crime victims.

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APPENDIX A

STATE VICTIMS' RIGHTS AMENDMENTS:
ENACTMENT DATE AND PERCENTAGE OF
ELECTORAL SUPPORT²³¹

State	Year Passed	Electoral Support
Alabama	1994	80%
Alaska	1994	87%
Arizona	1990	58%
California	1982	56%
Colorado	1992	86%
Connecticut	1996	78%
Florida	1988	90%
Idaho	1994	79%
Illinois	1992	77%
Indiana	1996	89%
Kansas	1992	84%
Louisiana	1998	68%
Maryland	1994	92%
Michigan	1988	84%
Mississippi	1998	93%
Missouri	1992	84%
Nebraska	1996	78%
Nevada	1996	74%
New Jersey	1991	85%
New Mexico	1991	68%
North Carolina	1996	78%
Ohio	1994	77%
Oklahoma	1996	91%
Rhode Island	1986	Passed by Constitutional Convention
South Carolina	1996	89%
Tennessee	1998	89%
Texas	1989	73%
Utah	1994	68%
Virginia	1996	84%
Washington	1989	78%
Wisconsin	1993	84%

²³¹See NATIONAL VICTIMS' CONSTITUTIONAL AMENDMENT NETWORK, NVCAN BACKGROUND KIT, at 14 (April 1998).

APPENDIX B

SUMMARY OF STATE CONSTITUTIONAL RIGHTS OF CRIME VICTIMS

	To be Treated with Fairness and Respect	To be Informed of Rights	To Notification of Proceedings	To Notice of Sentence, Escape, or Release	To Attend Proceedings	To be Heard at Proceedings	To Confer with Prosecutor	To Speedy Disposition	To be Protected from Accused	To Refuse an Interview with the Defense	To Restitution	To Rights at the Juvenile Level	To Read Pre-Sentence Reports	TOTAL
Alabama			•		•									2
Alaska	•		•	•	•	•	•	•	•	•	•	•	•	11
Arizona	•	•	•	•	•	•	•	•		•	•			10
California										•				1
Colorado			•		•	•								3
Connecticut	•		•	•	•	•	•	•	•		•			9
Florida		•			•	•								3
Idaho	•		•	•	•	•	•	•		•	•	•	•	11
Illinois	•		•	•	•	•	•	•		•				9
Indiana	•		•		•		•							4
Kansas			•		•	•								3
Louisiana	•	•	•	•	•	•	•	•		•	•		•	11
Maryland	•	•	•		•	•								5
Michigan	•		•	•	•	•	•	•	•		•			9
Mississippi	•		•		•	•								4
Missouri		•	•	•	•	•		•	•		•	•		9
Nebraska			•	•	•	•								4
Nevada			•		•	•								3
New Jersey	•				•									2
New Mexico	•		•	•	•	•	•	•	•		•			9
North Carolina		•	•	•	•	•	•			•				7
Ohio	•	•	•						•					4
Oklahoma		•		•	•	•					•			5
Rhode Island	•				•					•				3
South Carolina	•	•	•	•		•	•	•	•		•	•	•	11
Tennessee	•	•	•	•	•	•	•	•		•				9
Texas	•		•	•	•	•			•		•			7
Utah	•		•		•	•						•		5
Virginia	•		•	•		•	•		•		•			7
Washington			•		•	•								3
Wisconsin	•		•	•	•	•	•	•		•				8
TOTAL	20	10	26	17	26	25	15	12	10	3	18	5	4	

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