

STATUTORY RIGHTS OF CRIME VICTIMS

BACKGROUND

The Law and Justice Interim Committee (LJIC) selected the implementation of Marsy's Law (or CI-116) as one of its committee issues of interest for the interim. In 2016, Montana voters enacted the constitutional initiative to add various rights and protections for victims of crime to the Montana Constitution. However, after Marsy's Law was voided by the Montana Supreme Court, the LJIC members chose to examine the existing statutory rights of and services for crime victims. Specifically, the LJIC members posed the following questions on this topic that they hoped citizens and other criminal justice system stakeholders could discuss with them at a future meeting:

- What statutory changes could or should the LJIC or Legislature consider?
- What are the laws now and what do our constituents think of them?
- What gaps can be filled?
- Are the existing laws being followed/enforced?
- What is the funding situation? How are services funded now and is it adequate?

This paper reviews the existing statutes that grant rights or outline services that can or should be provided to victims of crime and witnesses. The LJIC members will hear more about this topic during a panel presentation at the May 2018 meeting.

STATUTORY REVIEW

Although a number of statutes mention witnesses to or victims of crime and touch upon the rights due to them, most rights or services due to victims are grouped in two chapters of law: Title 46, chapter 24 (Treatment of Victims and Witnesses), and Title 53, chapter 9 (Services for Victims of Crime). Generally, those rights and services can be grouped broadly into the following categories:

- Rights to receive information, including about the victim's rights, the services available, and court cases;
- Rights to notice of proceedings or events related to the crime, court processes, or offender;
- Rights to be consulted and to provide information and statements or to be present at various points in the criminal justice process;
- Rights to privacy and protection, including having an advocate present when the victim is interviewed about the crime;
- Rights to compensation or restitution.

Right to Receive Information and Notice

Crime victims have statutory rights to receive certain information from law enforcement personnel, prosecutors, and courts, including that:

May 2018

Statutory Rights of Crime Victims
Law and Justice Interim Committee
Rachel Weiss

- law enforcement personnel must give a victim of a partner or family member assault information about the availability of shelters or other community resources and how to obtain an order of protection ([section 46-6-602, MCA](#));
- a victim is entitled to one free copy of all public documents filed in a court file, with exceptions for transcripts, exhibits, certain documents in youth cases, and “documents the prosecutor determines would adversely affect the prosecution if released” ([section 46-24-106, MCA](#));
- law enforcement officers should provide the victim written notice about the rights given to the victim in law, including to certain compensation, information, and the role the victim may play in the criminal justice process. The officer must also give the victim written information about community resources and the contact information for the investigating officer and the prosecuting attorney ([section 46-24-201, MCA](#)).
- law enforcement officers and prosecuting attorneys must provide a victim or witness with information about the availability of services to protect the individual from intimidation and how to obtain an order of protection ([section 46-24-202, MCA](#));
- a victim must receive information about appeals or other postconviction proceedings ([section 46-24-211, MCA](#)).

As provided in [section 46-24-203, MCA](#), if a victim provides “the appropriate official” with current contact information, the victim is entitled to receive:

- advance notice (when possible) of certain events in a criminal proceeding, including the arrest of an accused, the pretrial release of that accused, entry of pleas, setting of a trial date, convictions, sentencing hearings and decisions, and information about the convicted person’s incarceration;
- information about the offense with which the accused is charged, including an explanation of the elements of the charge;
- the function and the author of a presentence investigation report (PSI), if one is requested for sentencing;
- notice of the victim’s right to provide information for a presentence investigation report, to be present at sentencing, and to provide a written or oral victim’s statement at sentencing. The victim must also be told about the offender’s right to be present at sentencing and to have access to the PSI and the victim’s statement at sentencing.
- notice that the victim of certain sexual offenses or the victim’s family may request that a sentencing order or condition of probation or parole direct the convicted person not to have contact with the victim.

[Section 46-24-212, MCA](#), requires the Department of Corrections provide notification on request to the victim at several points during the posttrial period of the criminal justice process, including when an offender escapes from a facility, is released from confinement, or is transferred between facilities, as well as the offender’s estimated and actual discharge or parole dates, the time and location of parole hearings, where the offender will reside after release, and other information related to the offender’s custody and movements. The department uses an automated notification system (called Victims Information and Notification Every Day or VINE) to make some of these notifications by sending phone calls or send text messages or emails to victims who register to receive updates about a felony offender in prison, in community programs, and under probation or parole supervision.

May 2018

Statutory Rights of Crime Victims
Law and Justice Interim Committee
Rachel Weiss

Right to Be Present and to Give Testimony or Information

A crime victim has the right to be present at various times during the criminal justice process, including at trial, at hearings, and at postconviction proceedings, such as an offender's parole hearing. [Section 46-24-106, MCA](#), limits when a victim may be excluded from a trial or hearing to specific situations, including for disruptive behavior, when a judge makes a finding of specific facts for exclusion, or for certain portions of proceedings in youth courts.

A victim also has the right to testify at several points during the criminal justice process, including at sentencing and parole hearings.

In addition, a victim has the right to request that a victim advocate be present when the victim is interviewed about the offense ([section 46-24-106, MCA](#)). Certain advocates who work with victims of sexual assault or partner family member assaults are granted privilege, meaning the advocate cannot be examined or required to divulge information given to the advocate by the victim while the advocate was providing specific assistance or services to the victim ([section 26-1-812, MCA](#)). In that section, "advocate" is defined as "an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member."

Right to Privacy and Protection

[Section 44-5-311, MCA](#), generally prohibits certain information about a victim from disclosure. Information in these cases may be released if disclosure is of the location of the crime scene, required by law, necessary for "law enforcement purposes," or on a finding of "good cause" by a judge. If requested by the victim, a law enforcement agency may not disclose the victim's or victim's family members' contact information or place of employment. The law also prohibits a criminal justice agency from disclosing information that directly or indirectly identifies the victim of certain sexual offenses or human trafficking offenses unless required by one of the exemptions listed previously.

Several statutes also provide that the victim may apply to a judge for an order of protection.

Right to Compensation

Sentencing laws require a judge to make "full restitution" to a victim a part of the offender's sentence. The offender's obligation to pay restitution does not end when the offender's state supervision ends, nor is it conditioned on the offender's ability to pay.¹ Restitution can be ordered to pay for costs such as a victim's medical bills, counseling services, stolen or damaged property, lost wages due to the crime, future costs resulting from the crime, and funeral costs in a homicide.

The Department of Corrections' collection division, which was established in 2003, has collected more than \$37 million in restitution for felony crime victims since FY 2004, and more nearly \$5 million in court-ordered fees during the same time period.

¹ St. v. Brownback, 2010 MT 96, available from: <https://law.justia.com/cases/montana/supreme-court/2010/0de9a94d-6876-47b8-b2c5-f32a15d3bb14.html>.

May 2018

Statutory Rights of Crime Victims
Law and Justice Interim Committee
Rachel Weiss

Besides restitution required by a judge in a sentencing order, a victim may also be eligible for compensation from the state's Crime Victim Compensation program, which is required by Title 53, chapter 9, part 1, MCA. The program is administered by the Office of Victim Services in the Department of Justice. Funded by several sources, including but not limited to fees imposed on convicted offenders, federal matching funds, and restitution payments,² the program can reimburse eligible victims for medical expenses or lost wages or help a homicide victim's family with funeral expenses. Unlike restitution, the program can compensate a victim regardless of whether the perpetrator of the crime was apprehended. The program limits payments to a total of \$25,000, and statutes and administrative rules allow the program to receive reimbursement for expenses that it covers that are also covered by insurance, a judgment in a civil lawsuit, or by later restitution payments.

According to the Legislative Fiscal Division's Fiscal Report for the 2019 biennium, the state special revenue account for crime victims compensation was statutorily appropriated about \$441,000 for the 2019 biennium; the federal special revenue account for crime victim benefits was statutorily appropriated slightly more than \$1 million for the same time period.

Duties of the Attorney General and Prosecuting Attorneys

Title 46, chapter 24, part 1, MCA, assigns several duties to the Attorney General, the divisions of the Department of Justice (DOJ), and to prosecuting attorneys. The Attorney General is required to:

- ensure "fair and proper treatment" in the criminal justice system for crime victims and witnesses;
- prepare and distribute written notice of rights and services available to crime victims; and
- provide services and assistance when required by specific statutes.

In addition, the Montana Law Enforcement Academy, which is a division of the DOJ, must provide education and training in victim assistance to law enforcement officers and prosecutors. The DOJ also maintains a list of victim and witness advocates in towns around Montana. A recent version of this list is attached to the paper.

For their part, prosecutors must consult with victims of felony offenses, victims of certain misdemeanor offenses, or the family of a homicide victim or of a minor child victim to solicit the victim's or family members' views about how the case should be resolved. The consultation should happen "as soon as possible prior to the disposition of the case" and includes, before a dismissal of a case, pretrial release of the accused, plea negotiations, and pretrial diversion of the case. The prosecutor also needs to maintain a system to notify victims promptly when scheduling changes would affect the ability of the victim to appear at a criminal justice proceeding that the victim is going to attend ([section 46-24-204, MCA](#)).

Other Statutory References Related to Crime Victims

State law also provides that a law enforcement agency or prosecuting attorney must assist a victim or witness in informing the individual's employer if the person might need to be absent from work to assist in the prosecution of an accused ([section 46-24-205, MCA](#)). That same section prohibits the employer from discharging a victim or member of the victim's family for

² If a victim has been reimbursed for an expense from the compensation fund, the offender's restitution payments for those expenses are paid back to the fund rather than to the victim.

May 2018

Statutory Rights of Crime Victims
Law and Justice Interim Committee
Rachel Weiss

participating in or preparing for an appearance at a criminal justice proceeding, if the appearance was at the request of the prosecutor. In addition, the law requires the law enforcement agency or prosecutor to help the victim explain to creditors if the crime was a reason for serious financial difficulties.

During the 2011 interim, the LJIC studied restorative justice concepts and programs and recommended that the 2013 Legislature enact legislation to reorganize and amend laws that originally established those programs in 2001. The resulting legislation, which was enacted, requires the Board of Crime Control to seek out and offer grant funding to support restorative justice programs. The legislation also defined “restorative justice” as “criminal justice practices that elevate the role of crime victims and community members in the criminal justice process, hold offenders directly accountable to the people and communities they have harmed, restore emotional and material losses, and provide a range of opportunities for victim, offender, and community dialogue, negotiation, and problem solving to bring about a greater sense of justice, repair harm, provide restitution, reduce incarceration and recidivism rates, and increase public safety.”

The Board is required to give the LJIC a report each interim on the status and outcomes of any restorative justice grant programs it has established. A report to the 2015-2016 LJIC indicated that after a federal block grant was eliminated, the grant program has been without legislative appropriation or grant funding. The Board has not yet reported to the LJIC for the 2017-2018 interim.

Victims' Programs at Department of Corrections

The DOC recently received a \$750,000 grant from the Board of Crime Control to hire additional staff for its victim programs. Previously, only 1 staff person provided services to victims and training to DOC staff. The grant allows the DOC to hire five victim liaisons who will work in probation and parole office around the state to provide assistance to victims and DOC staff.

The DOC currently operates several programs related to restorative justice:

- A victim-initiated dialogue with the offender with the assistance of a trained facilitator;
- Victim impact panels that allow crime victims to speak to offenders directly about the impact a crime has had on the victims' lives; and
- An offender accountability letter bank, which is a repository for letters from an offender to the offender's victim(s). The victim can choose whether to access the letter.

STATUTORY REFERENCES TO ARTICLE II, SECTION 36

During the 2017 session, legislators considered at least two bills to revise victims' rights laws in response to CI-116: House Bill No 600 carried by Representative Frank Garner (R-Kalispell) and Senate Bill No 250 carried by Senator Nels Swandal (Wilsall). Both bills refer specifically to Article II, section 36, of the Montana Constitution, which was the official placement of Marsy's Law, and both bills were enacted and codified into the Montana Code Annotated. A third bill, House Bill No 168 carried by Rep. Zach Brown (D-Bozeman), also refers to Article II, section 36, as part of an expungement process for certain misdemeanor offenses. Because the bills created specific references to a constitutional provision that is now void, the LJIC might wish to recommend legislation to the 2019 Legislature to remove references to the now-voided Article II, section 36.

May 2018

Statutory Rights of Crime Victims
Law and Justice Interim Committee
Rachel Weiss

SOURCES AND RESOURCES

- Ballot language and the complete text of CI-116: www.sos.mt.gov/Portals/142/Elections/archives/2010s/2016/CI-116.pdf?dt=1506705002560
- Board of Crime Control’s report to the 2015-2016 LJIC on restorative justice: www.leg.mt.gov/content/Committees/Interim/2015-2016/Law-and-Justice/Committee-Topics/Required-Reports/mbcc-restorative-justice-report-ljic-march-2016.pdf
- Department of Corrections’ VINE system: www.cor.mt.gov/Victims/VINE-Information
- Department of Corrections’ victim information page: www.cor.mt.gov/Victims
 - Restitution data: www.cor.mt.gov/ProbationParole/RestitutionCollected
 - Restorative justice programs: www.cor.mt.gov/Victims/Restorative
 - “Department’s First VOCA-Funded Victim Liaison on Board in Great Falls P&P Office”: <http://cor.mt.gov/Publications/Media/departments-first-voca-funded-victim-liaison-on-board-in-great-falls-pp-office>
- Department of Justice’s Office of Victim Services: <https://dojmt.gov/victims/>
- Legislative Fiscal Division, *2019 Biennium Fiscal Report* for the Legal Services Division of the Montana Department of Justice: www.leg.mt.gov/content/Publications/fiscal/Budget-Books/2019/Fiscal-Report/section_d/4110-01.pdf
- [Section 44-2-601, MCA: Notification of escape or release from confinement](#)
- [Title 46, chapter 24, MCA: Treatment of Victims and Witnesses](#)
- [Title 53, chapter 9, part 1, MCA: The Crime Victims Compensation Act of Montana](#)

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