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Finally Getting Victims Their Due:
A Process Evaluation of the NCVLI Victims'
Rights Clinics

Abstract

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August 29, 2009

This report describes a process evaluation conducted by the RAND Corporation and National Center for Victims of Crime of the National Crime Victim Law Institute (NCVLI) state and federal victims' rights clinics. The clinics were conceived as a response to the fact that, in spite of burgeoning victims' rights legislation in all states, many victims still are not receiving the rights they are entitled to under law. The NCVLI clinics were intended to promote awareness, education, and enforcement of crime victims' rights in the criminal justice system. In establishing the victims' rights clinics, NCVLI sought to change the legal culture with respect to observance of victims' rights. The vehicle for doing this was providing direct representation to individual victims in criminal court. By giving victims attorneys, NCVLI hoped that it could increase the observance of rights in those particular cases. But it also hoped that the presence of victim attorneys in some cases and trainings held for court officials would result in an increased attention to victims' rights by prosecutors, judges, and police officers in all cases – not just in the cases where victims were represented by attorneys.

The process evaluation placed a significant focus on how the clinics approach their work. We noted that the clinics ranged in their organizational aegis from being housed within victim services programs to being located within a law school to being one component within a full service law firm, and that these arrangements had implications for how the clinics conducted their work. We noted that every clinic has made an effort to train pro bono attorneys and refer cases to them. However, the experience has not always been positive because pro bono attorneys often do not have the knowledge, commitment, or availability to be of significant help. We noted that, while their primary focus has always been on addressing violations of clients' legal rights, most of the clinics also have developed a focus that includes addressing all of victims' crime-related needs, either directly or through referrals to other service providers. We noted that there is a large disparity between clinics in the number of cases opened annually and the geographic coverage of each across the states in which they are located.

The report finds that clinics have dealt with a range of victims' rights issues in trial courts including the right to be present, right to be consulted about plea offers, right to make an impact statement, right to be notified of changes in defendants' detention status, right to restitution, right to privacy, and so forth. However, the principal issue has been victim standing before the court to enforce their rights. In some states, standing has been acknowledged, at least in limited ways. In other states, clinics have made or are making steps toward such recognition, or have been successful in representing victims without the issue being directly confronted. In one state, the ability of attorneys to represent victims in criminal court is currently in serious question. The report also discusses how some clinics have won significant gains at the appellate and federal court levels concerning victim standing, the rights to be consulted and heard, and the right to privacy.

Based on the information we gathered during the course of the process evaluation, we believe that the state clinics are beginning to fulfill the intentions of their architects and funders. All of the clinics have pushed the envelope of victims' rights in their state courts. Some have won significant victories in gaining standing for victims and expanding the definition of particular rights. Others are enjoined in the battle. But all have raised awareness of victims' rights with prosecutors, judges, defense attorneys, and police officials.

Securing Rights for Victims:
A Process Evaluation of the National Crime Victim
Law Institute's Victims' Rights Clinics

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I. INTRODUCTION

This report describes a process evaluation conducted by the RAND Corporation and National Center for Victims of Crime of the National Crime Victim Law Institute (NCVLI) state and federal victims' rights clinics. The clinics were conceived as a response to the fact that, in spite of burgeoning victims' rights legislation in all states, many victims still are not receiving the rights they are entitled to under law. The NCVLI clinics were intended to promote awareness, education, and enforcement of crime victims' rights in the criminal justice system.

NIJ's evaluation plan proposed a two part effort: A process evaluation that would be descriptive in nature, followed by an impact evaluation that would attempt to determine measurable benefits of the clinics. We interpreted this to mean an initial phase of work that would feature case studies of NCVLI and the eight clinics.¹ The case studies of NCVLI and each of the eight clinics, presented in this report, examine the implementation process, the environments in which the clinics operate, problems encountered, and solutions. This report synthesizes commonalities of experiences among the eight clinics as well as differences in their approaches and environments. During the course of the process evaluation, we also constructed a logic model to describe the goals and measurable outcomes of the clinic's work, which was vetted with NCVLI. In the second phase of work, we will conduct theory-based evaluations of the effects that the clinics have had on enforcement of victims' rights in the criminal justice system in the states and localities where they are based. This phase of work will be based on the clinic logic model refined during the earlier phase of work. The impact evaluation will assess the impact of the clinics on the individual level, the system level, and the community level.

Topics Addressed in the Process Evaluation

The process evaluation addresses a number of NIJ/OVC interests. First, an assessment of implementation problems faced by the clinics: How were they accepted by the state criminal justice community? How did they publicize their existence? From what sources did they get case referrals, and did the referral sources change over time? Second, an examination of ways that the clinics have been able to leverage federal resources, particularly through the use of law students and pro bono attorneys: How successful have efforts been to recruit low cost or free sources of labor? Is training that students or pro bono attorneys receive on victims' rights issues useful when they go on to other endeavors? Third, an evaluation of how successful clinics have been in changing the legal landscape: What kinds of appellate decisions have they been involved in as a party or in an *amicus curiae* ("friend of the court") capacity, and what is the significance of the cases? Have appellate losses led to changes in victims' rights statutes? Have there been changes to court rules that promote enforcement of victims' rights? A list of topics covered in the process evaluation is contained in Table 1 below.

¹ The original number was nine clinics, counting Arizona's state and federal work as two separate clinics. However, the state and federal sides of Arizona's Crime Victim Legal Assistance Project have since merged into a single clinic, hence this report deals with eight clinics.

Table 1: Process Evaluation Issues

Information about Clinic Activities

- Major clinic activities and approximate proportion of staff time devoted to each
- Changes over time in clinic goals and activities
- Number of individual clients represented, number of motions filed, numbers of court appearances on behalf of clients, number of trainings by clinic staff

Criminal Justice Context

- Geographic dispersion of courts in which clinic staff have represented clients
- Extent to which victims' rights statutes facilitate or hinder the work of the clinic
- Jurisdiction in which clinic has done the most work (target jurisdiction)
- Receptivity of judges, prosecutors to victims' rights and work of the clinic
- Principal victim service organizations; nature of cooperation with clinic

Pro Bono Staff

- How many pro bono attorneys has the clinic worked with?
- How successful have these arrangements been?

Recruiting and Screening Mechanism for Selecting Clients

- Eligibility criteria for representing victims (eg., types of cases, types of issues)
- Sources through which clients are referred and any changes over time
- Number of cases identified or referrals determined to be eligible for clinic services; numbers accepted
- Numbers of cases determined to be eligible that were not accepted for assistance; reasons for not taking cases
- Outreach mechanisms clinic staff use to identify and reach victims in need of assistance; any efforts made to reach underserved populations

Information for Impact Study

- What does clinic staff believe are the best ways to assess the impact of their clinic? What data do they have to evaluate these program effects? How do they define success?
- Ways in which the clinic has changed the climate for victims' rights in state
- Any unintended consequences (positive or negative) of the clinic
- Would they be willing to participate in an impact study?

Suggestions to Improve Clinic Operations

- Obstacles faced in meeting clinic goals; steps taken to overcome those obstacles
- Suggestions to improve the effectiveness of the local clinic or effectiveness of NCLVI program generally

Evaluation Methods

Much of the information for the process evaluation came from interviews conducted with clinic staff, criminal justice officials familiar with the work of the clinics, and from clients of the clinics. Initially, we sought and received approval for interview procedures, informed consent statements, and data safeguarding procedures from RAND's Institutional Review Board (IRB). In all interviews conducted, one project staff person had principal responsibility for asking questions from a list of topics and another staff person took written notes.

In order to gain information on the above topics to construct the series of case studies, we carried out site visits to each of the clinics. During the multi-day visits, our principal source of information came from interviews with the clinic director and staff. Clinic directors and their staff were all generous with their time and, we believe, forthcoming about their experiences and problems. A list of topics covered in the interviews is contained in Appendix C.

Each of the site visits entailed one or more focus groups with victims who were past or present clients of the clinic. We requested that each clinic director attempt to recruit 6-8 of their clients to participate in a ninety-minute focus group. All were able to gather together a group of victims who provided a client perspective on the clinics and helped us further refine questions and measures for the subsequent impact study. Illustrative focus group topics included:

- How did they learn about the clinic?
- What types of services were provided by clinic staff?
- How did the services they received help them?
- Were they satisfied with the people who provided the services?
- What suggestions do they have for improving the criminal justice process?

Victims received a stipend of \$25 to cover the cost of travel to the 1-1/2 hour meeting. (Some participants traveled as long as two hours to participate.) We did not record names of the participants and notes of the meetings do not contain identifiers. Refer to Appendix C for a complete list of topics covered in the focus groups.

It was our aim to collect from each clinic information on the number of victims represented, types of cases and victims' rights issues the clinics were involved in, county and court in which cases originated, clinic actions on behalf of victims and the results of those actions, and demographics of victims represented. Because of confidentiality concerns, it was not possible for the research staff to abstract information from the files. Instead, staff at each clinic agreed to gather the information for us according to our instructions. This raises some concerns about the consistency of how information was categorized, especially information on the types of rights issues in clinic cases. If a victim failed to be consulted about a potential plea agreement, for example, one clinic may have coded the rights issue as failure to be consulted about a plea agreement, while another may have coded it as a violation of the victim's right to be notified and present.

Moreover, it turned out that clinics collected little or no demographic information on clients. We believed (and still do) that one of the important questions about the clinics is whom they are representing. There is reason to suspect that the relatively few victims who become clients (of

the large number who probably have their rights violated in one way or another) tend to be especially vocal and aggressive – and probably better educated and relatively well-off. One of the questions that we would have liked to address in the process evaluation is what the demographic profile of clients looks like. Although information was not available during the process evaluation period to answer this question, NCVLI did instruct the clinics to begin to gather basic demographic information on new cases in the fall of 2008. Within a few months, there should be enough new cases in each site to begin to create profiles of each clinic's clientele.

While we were on site, we developed with each clinic director a list of positional informants -- people in the criminal justice community who were knowledgeable about their work. We requested that the list include both individuals supportive of the clinic's work and those who had been critics. Interviewing these individuals – judges, prosecutors, victim advocates, and defense attorneys – was an important way to corroborate or challenge what we learned from the clinic staff (who understandably want to portray their program in the best light). We aimed to interview two individuals within each of the aforementioned four groups of criminal justice professionals and, in most instances, we met that goal. The 15-20 minute interviews with positional informants asked about respondents' opinions on the need for the clinics, on the work that the clinics are doing, and on the extent to which criminal justice officials support victims' rights. Because the individuals interviewed were hand-picked by the clinic directors, we cannot know whether the samples were representative of professional opinions of the clinics. We do know, however, that we did encounter in the interviews statements that were critical of aspects of the clinics' work. Refer to Appendix C for topics covered in interviews with positional informants.

Research project attorneys prepared a compendium of victims' rights legislation in the states of each clinic visited. They also summarized any appellate cases and published opinions about victims' rights. We attempted to ascertain from the clinics which of these legislative and case law developments the clinic staff had been involved in.

For each site visited, we prepared a report describing the operations of the clinic and what we learned from all components of the site visit. The site reports described the legal context within which the clinics work, clinic operations, obstacles encountered and responses to those obstacles, and measures that would best assess clinic impact.

Finally, we conducted two visits to NCVLI offices in Portland, once at the start of the process evaluation and another after the clinic site visits had been completed. The interviews with NCVLI's director gathered information about the motivation and history of the clinic program and goals for the program. We also used the visits to gain feedback on our impressions and conclusions from the site visits.

Layout of the Report

This body of the report summarizes what we have learned during the course of the process evaluation. Following this introduction, the second section discusses the development of victims' rights in America. The third section describes NCVLI and the goals of the clinics. The

fourth section summarizes changes to the legal landscape for victims' rights in the states where the clinics are located, both through appellate cases and through changes in victims' rights statutes, some of which clinic cases have instigated. The fifth section describes clinic operations – the types of business models adopted by the clinics, their experience with pro bono attorneys and student help, and their approach to serving their clientele. The sixth section presents data gathered from clinic case files on referral sources, caseload size and composition, types of rights issues dealt with by the clinics, and geographic diversity of the clinics' caseloads. The seventh and eighth sections deal with clinic work at the trial court and appellate levels, respectively. The ninth section discusses how the clinics have dealt with implementation challenges. Finally, the conclusion draws lessons learned from the process evaluation.

The report contains two sizeable appendices. Appendix A contains the individual site reports for each of the clinics visited. The individual site reports provide more detail from each site on issues discussed in the body of the report. Appendix B presents a detailed description of victims' rights legislation and case law in the eight NCVLI clinic states, which is summarized in the fourth section of the body of the report.

II. THE DEVELOPMENT OF CRIME VICTIMS' RIGHTS IN AMERICA

Legal rights for crime victims have been developed and expanded over the past three decades. These rights have transformed the relationship between the crime victim and the criminal justice system, as victims gained the rights to be informed, present, and heard during the criminal and juvenile justice processes. This change has been driven largely by crime victims and survivors, with the support of advocacy organizations, leaders within the criminal justice field, and policymakers.

The adoption of victims' rights accelerated in the early 1980s following the release of the Final Report of President Reagan's Task Force on Victims of Crime. That Task Force had been assembled to investigate the treatment of victims by the criminal justice system. Its 1982 Final Report defined an agenda for bringing a balance between the rights of defendants and victims. It called for increased participation by victims throughout criminal justice proceedings, and restitution in all cases in which victims suffer financial loss.²

At the same time the Task Force was undertaking its work, Congress was developing legislation to provide protections for victims at the federal level. The 1982 Victim Witness Protection Act authorized victim restitution and the use of victim impact statements at sentencing in federal cases.³ It also required the Attorney General to issue guidelines for the development of further policies regarding victims and witnesses of crimes. Soon after, the 1984 Victims of Crime Act (VOCA) implemented more of the Task Force's recommendations on victim compensation and assistance. This second act by Congress redistributed monies levied from federal offenders to states, funding local aid to victims.⁴

In 1990, Congress passed the Victims' Rights and Restitution Act, giving crime victims in federal cases the right to notification of court proceedings and the right to attend them, the right to notice of changes in a defendant's detention status, the right to consult with prosecutors, and the right to protection against offender aggression.⁵

In 1994, the Violent Crime Control and Law Enforcement Act gave victims in federal cases the right to speak at sentencing hearings, made restitution mandatory in sexual assault cases, and expanded funding for local victim services.⁶ Rights for federal crime victims were further strengthened as part of the Antiterrorism and Effective Death Penalty Act of 1996, and the Victims' Rights Clarification Act of 1997.⁷

² Presidential Task Force on Victims of Crime, *Final Report* (Washington, DC: Government Printing Office, 1982).

³ 96 Stat. 1248 (1982).

⁴ 98 Stat. 2170 (1984). "Constitutionalizing Crime Victims' rights," *Criminal Law Bulletin* 33, No. 5 (1997): 395-423, 398; Barbara E. Smith and Susan W. Hillenbrand, "Making Victims Whole Again: Restitution, Victim-Offender Reconciliation Programs, and Compensation," in *Victims of Crime*, 2nd edition, eds. Robert C. Davis, Arthur Lurigio, and Wesley Skogan (Thousand Oaks: Sage Publications, 1999), 247-249.

⁵ 104 Stat. 4820 (1990).

⁶ 108 Stat. 1796 (1994).

⁷ 110 Stat. 1214(1996); 111 Stat. 12 (1997).

Then in 2004, Congress passed the Crime Victims' Rights Act (CVRA) as part of the Justice for All Act of 2004.⁸ The CVRA generally strengthened the rights of federal crime victims and transferred them from Title 42, the Public Welfare Code, to Title 18, the Criminal Code, elevating their profile within the federal justice system. The rights protected under the CVRA include the right to be reasonably protected from the accused; the right to be informed of criminal proceedings and the custody status of the defendant; the right to be present in the courtroom; the right to be heard at proceedings involving release, plea agreement, sentencing, or parole; the right to confer with the prosecutor; the right to restitution from the defendant; the right to proceedings free from unreasonable delay; and the right to be treated with fairness, dignity and respect.

Victims' rights at the state level also progressed dramatically during this same time period. By the early 1980s, four states had broad laws providing a range of rights to victims, eight required a victim impact statement at sentencing, six had open parole hearings, and eight mandated restitution for victims.⁹ The first state victims' rights legislation was largely advisory; many were called "guidelines" for the treatment of victims, rather than "rights."

As at the federal level, the release of the Final Report of the President's Task Force in 1982 spurred the states to strengthen and expand victims' rights. By the early 1990s, every state provided violent crime victims the right to victim compensation and provided victims of serious crime with a set of legal rights including the rights to be informed, present, and heard during the criminal justice process and to receive restitution from the offender.¹⁰ Many also gave victims rights to protection from the defendant, speedy trial, privacy, and other rights to fair treatment by the criminal and juvenile justice systems.

Along with statutory rights for victims, thirty-two states amended their constitutions to provide additional protection for the rights of victims. While amending a state's constitution is a cumbersome process, typically requiring multiple levels of approval by a state legislature as well as ratification by the voters, victim advocates pursued these amendments for the additional authority they give to victims' rights. Rights protected by the constitution cannot be diminished by anything in a state's statutes, court rules, or administrative code provisions. A constitutional amendment also provides a level of permanency to the victims' rights, since they can only be changed by another cumbersome, multiyear amendment process. And constitutional rights offer a level of implied enforceability.

State victims' rights amendments generally take one of two forms. The first is a short and broad statement of rights. Colorado's amendment takes this approach:

Any person who is a victim of a criminal act, or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice

⁸ 118 Stat. 2260 (2004).

⁹ *Four years later: A Report on the President's Task Force on Victims of Crime*, United States Department of Justice. (May 1986).

¹⁰ Every state provides rights to victims of violent felonies. Most states extend rights to victims of any felony as well as any violent misdemeanor. A few states provide rights to a victim of any crime.

process. All terminology, including the term "critical stages", shall be defined by the general assembly.¹¹

In contrast, Arizona's amendment provides a list of twelve rights, as well as a definition of "victim" and other language to guide implementation.¹²

Most of the state amendments mandate notification of victims concerning events in court and the parole or release of offenders, and permit victims to participate in their case through oral or written input at sentencing. Fewer state constitutions extend other rights, such as the right to a speedy trial and the right to participate in parole proceedings or proceedings involving pretrial release.

States also began to amend their court rules of criminal procedure and evidence to incorporate the rights of victims. While victims' rights across the states are not uniform in scope or application, most victims of serious crime are entitled to basic rights under the law.

Enforceability of Crime Victims' Rights

Despite this remarkable progress in the passage of crime victims' rights, advocates have been dismayed to see that, too often, victims' rights were violated with impunity. An NIJ-funded survey of crime victims in 1998 found that even within states with strong victims' rights legislation, "many victims were not notified about key hearings and proceedings, many were not given the opportunity to be heard, and few received restitution." Although victims in these states generally fared better than those in states with weak victims' rights legislation, as many as one-third of victims in strong-protection states were not afforded the opportunity to exercise certain rights.¹³

Few states—even those that have adopted constitutional amendments—provide recourse to victims when their rights are not honored. With the exception of Arizona, all states ban any civil action for damages caused by a violation of rights. State victims' rights laws also typically provide that a violation of rights will not constitute grounds for a new trial or to overturn a sentence or other disposition. Several states restrict enforceability even further, providing that the victims' bill of rights creates no cause of action against the state. In those states, the term "cause of action" is not specifically limited to actions for damages, so the language could be interpreted in some courts to bar any action to enforce the rights of victims.¹⁴ Two states, New York and

¹¹ Colo. Const. art. II, § 16a.

¹² Ariz. Const. art. II, §2.1.

¹³ Dean G. Kilpatrick, David Beatty, and Susan Smith Howley, *The Rights of Crime Victims: Does Legal Protection Make a Difference?* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1998).

¹⁴ This is not necessarily the case, however. Florida's victims' bill of rights both provides that "Nothing in this section or in the guidelines adopted pursuant to this section shall be construed as creating a cause of action against the state or any of its agencies or political subdivisions" and gives crime victims standing to assert their rights. See Fla. Stat. § 960.001(5) and (7). Thus, it would seem that the intent of "cause of action" here is restricted to monetary damages, although it is not specifically stated.

North Dakota, have legislative language providing that a violation of their victims' bills of rights gives rise to no cause of action for money damages or injunctive relief.¹⁵

Only four states—Arizona, Florida, Indiana, and Texas—provide victims express legal standing through their constitution or statutes to assert their rights.¹⁶ Another two—Maryland and Utah—provide a clear right for victims to seek an appeal where their rights are denied,¹⁷ and several others expressly allow a limited legal remedy, such as authorizing the prosecutor or a state victim advocate to assert a victim's rights, or allowing the victim or others to seek a writ of mandamus ordering an official or agency to comply with the victims' rights law.¹⁸

At least nine states have created or designated an entity to receive and investigate reports of violations of victims' rights. These may take the form of a state ombudsman, a committee or board, a state victim advocate or victims' rights office, or another designated office or individual.

The issue of enforceability of victims' rights came to the federal level in 2004, when Congress passed the Crime Victims' Rights Act (CVRA) as part of the Justice for All Act of 2004. Along with listing the rights of victims, the CVRA also gave victims legal standing to enforce their rights in court and called for the creation of a mechanism to receive and investigate reports of victims' rights violations. The larger Justice for All Act also promoted the enforceability of victims' rights at the state level by authorizing funding for legal clinics to represent the rights of victims in criminal proceedings.¹⁹ The statute specified that funding would be provided to the Office for Victims of Crime for the National Crime Victim Law Institute to provide grants and assistance to lawyers to help victims of crime in court.

¹⁵ N.Y. Exec. Law § 649(2008); N.D. Cent. Code § 12.1-34-05(2008). In both of these states, however, this prohibition is limited to the general listing of rights, in both states called the Fair Treatment Standards, and does not appear to apply to other, discrete rights of victims that appear elsewhere in the code, such as the right to be heard at specific proceedings or the right to restitution.

¹⁶ Ariz. Rev. Stat. § 13-4437 (2008); Fla. Stat. § 960.001(7) (2008); Ind. Code § 35-40-2-1 (2008); Tex. Const. art. I, § 30 (2008).

¹⁷ Md. Code Ann. Crim. Proc. § 11-103 (2008), Md. Rules 8-111 and 8-204 (2008); Utah Code Ann. § 77-38-11 (2008).

¹⁸ *E.g.*, Ala. Code § 15-23-83 (2008)(authorizing attorney general or district attorney to assert victims' rights); Conn. Gen. Stat. § 46a-13c (2008) (authorizing the state Victim Advocate to file a limited special appearance for the purpose of advocating for a victim's rights); N.C. Gen. Stat. § 15A-840 (2008) (authorizing a victim to seek a writ of mandamus enforcing the victim's rights).

¹⁹ 118 Stat. 2260, Sec. 103 (1994).

III. NCVLI AND CLINIC GOALS

The National Crime Victim Law Institute (NCVLI) was established in 2000 in an effort to promote the enforcement of victims' rights as well as awareness and education in the area of crime victims' rights. According to its website, NCVLI was conceived as "a national resource for crime victim lawyers and victims to support the assertion and enforcement of victims' rights in criminal and civil processes." Its mission is to promote balance and fairness in the justice system through crime victim centered legal advocacy, education, and resource sharing. To achieve its mission NCVLI seeks:

- To promote victims' rights, including those of underserved and marginalized victims, in the criminal and civil justice systems.
- To conduct, support, and promote impact litigation through NCVLI's independent participation.
- To provide support, and promote legal technical assistance to victims' attorneys and others serving victims.
- To educate primarily lawyers, judges, law students, victims, victims' advocates, the law enforcement community and the public.
- To reform law through model laws and protocols, public policy advocacy, and advocacy assistance.

NCVLI hosts an annual conference on crime victims' rights law and has a membership organization, the National Alliance of Victims' Rights Attorneys (NAVRA). NAVRA is an "alliance of attorneys committed to the protection, enforcement, and advancement of crime victims' rights nationwide." NAVRA currently has 631 members, of which 268 are attorneys, 296 are advocates, and 67 are others interested in victims' rights. NCVLI provides NAVRA members with a listserv, conference call training on crime victims' rights issues, quarterly Case Updates, which are case summaries compiled by rights topic, email updates on *New & Noteworthy* cases immediately upon the decision issuing, a weekly digest on news touching on victims' rights both domestically and internationally, a bi-annual newsletter with substantive articles on victim law, a discount at NCVLI's annual conference, and access to NCVLI's brief and memoranda bank.

In 2002, to help secure enforcement of victims' rights through direct pro-bono representation of victims in the criminal justice process, the Office for Victims of Crime within the U.S. Department of Justice entered into a cooperative agreement with NCVLI to establish pro bono legal clinics in several jurisdictions. The "State and Federal Clinics and System Demonstration Project" was created to advocate for victims' rights in criminal justice systems and to educate legal professionals about victims' rights law. In 2004, the federal Crime Victims' Rights Act, 18 U.S.C. § 3771, passed and included an authorization for an appropriation of funds to help protect the newly provided victims' rights, as well any substantially equivalent rights found in states, through direct representation. The first funds appropriated under this authorization came in 2005.

According to NCVLI's director, the strategy for advancing victims' rights came, in part, from the NAACP's legal strategy against segregation. According to an authoritative book on that legal battle,²⁰ the NAACP strategy involved both intelligent general litigation and local support. The national litigation was considered to be an ad hoc exercise, requiring flexibility and a recognition that setbacks are inevitable and part of the process. Local communities provided plaintiffs as well as political support. This seems to fit well our observations of NCVLI's strategy that combines a focused strategic litigation program that capitalizes on opportunities presented by local complainants with efforts to win the "hearts and minds" of local criminal justice officials.

In launching the Project, including establishing the victims' rights clinics, NCVLI sought to change the legal culture with respect to its treatment of crime victims such that the system would see the victim as a participant with legally cognizable rights. One vehicle for doing this was providing direct legal representation to individual victims. By giving victims attorneys, NCVLI hoped that it could increase enforcement of rights in those particular cases. But it also hoped that these cases would establish precedent that would lead to enforcement of rights in future cases, and that the mere presence of victim attorneys in some cases and trainings held for court officials would result in an increased compliance with and enforcement of victims' rights by prosecutors, judges, and police officers in all cases – not just in the cases where victims were represented by attorneys.

Moreover, initiating strategic litigation at the appellate level was designed to expand judicial enforcement of victims' rights in state and federal court and create precedent. This could happen through published, or even unpublished, appeals court opinions. In NCVLI's view, when victims' rights are litigated well, even losing cases at the appellate level could result in long-term gain; cases that are lost can clarify the law and show what victims' rights statutes actually mean. The new clarity may impel legislators to enact new and broader statutes. In addition, change of the criminal justice culture could be achieved through changes to court rules.

The individual clinics share the same goals as NCVLI. An examination of their funding proposals to NCVLI revealed that all espoused the goals of providing effective representation to crime victims and educating criminal justice professionals—judges, prosecutors, police officers, and victim advocates—on victims' rights issues; assessing victims' crime-related needs and making appropriate referrals; and establishing a network of pro bono attorneys. The Utah clinic listed training law students as one of its goals.

Although the goals of NCVLI and the state clinics are congruent, there is a difference in emphasis. NCVLI is focused on system change. NCVLI argues that it is not the number of victims represented or even the number of appellate decisions that matters, but the quality of the opinions and the extent to which they broaden the definition and enforceability of victims' rights. On site visits to state clinics, we often heard clinic staff emphasize their duty to their clients. For example, while a clinic attorney might want to appeal a lower court decision in order to get a published opinion that clarifies certain rights, he or she will respect the wishes of victims who do not want to go forward with an appeal. In deciding whether to take a case, a state clinic is likely to consider need of the victim as seriously as the potential of the case to result in an outcome that

²⁰ Tushnet, M.V. (2005). *The NAACP's legal strategy against segregated education, 1925-1950* (2nd edition). Chapel Hill: University of North Carolina Press.

will help to change the culture. This tension between the goal of changing the legal culture and the duty to act as advocates for individual victims should not be overstated. The directors of all the clinics are intent on using the clinics and litigation to expand victims' rights, exactly as intended by NCVLI, just as NCVLI acknowledges that system change work must always bow to the interests of the individual client. The difference is one of perspective: NCVLI staff are able to take a long view, while state clinic attorneys are "in the trenches" dealing with people who have been hurt and who have immediate needs—psychological, financial, and physical—as well as legal.

Clinic Grant Requirements

The grant programs through which NCVLI receives federal funds and sub-grants them to the clinics have undergone several iterations since the beginning of the Demonstration Project in 2002. NCVLI received its first grant that year to develop the clinic program, and the first clinic to come on board was Arizona in 2003, followed by Maryland, New Mexico and South Carolina, (as well as California and Missouri, which are no longer in the program) in 2004. The Arizona clinic was selected as the clinic to undertake federal work that same year. In 2005, NCVLI added the Idaho, New Jersey, and Utah clinics to the Demonstration Project. The Demonstration Project officially ended in 2009, although the clinics wrapped up their efforts prior to this date, and since then the clinics have been funded under additional federal grants for victims' rights enforcement, with all clinics now having the ability to do both federal and state work.

With each new federal grant and its attendant sub-grants, the requirements for the clinics have changed somewhat. Core to every grant has been the requirement that the clinics provide free legal assistance to crime victims in criminal court, including motions practice.²¹ Because motions practice is the core strategy for NCVLI's goal of changing the legal culture to more regularly afford victims' rights, it has also been the key requirement of all clinics from their inception. The initial grant included a requirement for the clinics to recruit, train, and use pro bono attorneys, but NCVLI has since reduced the stringency of the pro bono requirement, making it an aspect of achieving effective representation for victims rather than a separate goal and objective of the clinics. Conversely, the requirement for the clinics to help crime victims secure nonlegal "support services," has strengthened over the different grant versions, with the original requirement being the development of a victim services network and more recent grants requiring assessment of victims' needs and coordinating access to social services. Some clinics achieve this through their own in-house victim advocates while others do it through referrals to local victim service providers. NCVLI sub-grant funds may be used for these nonlegal support services, as long as the provision of legal services remains at the forefront of the clinics' work.

NCVLI Support for the Clinics

NCVLI supports clinic activities in a variety of ways. NCVLI technical assistance generally breaks down into three categories: general organizational development support, direct TA to an

²¹ The term "motion practice" refers to an attorney filing motions with the court. Motion practice is central to NCVLI's legal strategy, because it is the only way to inject victims' rights issues into the court's written records and to spur judicial decisions on victims' rights matters. While other forms of practice, such as letters to prosecutors and courts, may help individual victims and advance rights, they generally cannot create precedent and therefore do not substantially advance victim law as a field.

individual clinic on a legal issue or upcoming training, and fostering peer support among the network of clinics and NAVRA members

General Organizational Support

As an intermediary organization that “passes through” government grant funds, NCVLI has an essential role in ensuring that its subgrantees—the clinics—follow all federal rules and procedures for handling grant funds. This may include helping the subgrantees to set up or modify their accounting and data tracking procedures in ways that ensure compliance with grant requirements, advising them on hiring and training new staff and setting up supervision procedures, and other types of organizational support.

Direct Legal Technical Assistance

Each legal clinic is assigned one attorney staff member at NCVLI as its primary contact for legal technical assistance. That NCVLI attorney, together with the NCVLI program manager and executive director (also attorneys), will work with the individual clinic as much or as little as is needed, according to the experience of the clinic staff and the specific challenges being encountered. The general rule is that NCVLI holds an individual check-in call with new clinics monthly for the first six to nine months of the clinic’s existence, to monitor its start-up period and ensure a solid foundation. For all clinics—new and more experienced—the assigned NCVLI attorney, program manager, and the executive director are available as needed for help with legal research and guidance with preparing motions, briefs, oral arguments, and training materials.²² According to NCVLI’s director, the frequency with which the clinics take advantage of these services ranges from only the check-in calls to several times per week. Finally, NCVLI files *amicus curiae* briefs on important victims’ rights issues in state and federal cases, sometimes in cases unrelated to the clinics and sometimes in cases where a clinic is directly representing the victim.

Fostering Peer Support

NCVLI undertakes several activities to foster peer support and knowledge-sharing among the clinics. It holds regular conference calls with all clinics during which NCVLI gives general grant guidance and the clinics share recent successes and challenges and learn from each other’s experiences. The frequency of these conference calls has changed over the years since the inception of the clinics, from monthly to bi-monthly to quarterly. (New clinics that need more frequent guidance receive individual calls as described above.) Another way that NCVLI helps the clinics to learn from each others’ work is through its “brief bank”—a collection of legal briefs filed by victim attorneys on various victims’ rights issues—that can help jump start the drafting of a brief or legal argument by other victims’ rights clinics or attorneys. NCVLI also encourages the clinics to use a clinic listserv to conduct “case rounds,” in which a clinic will present a case or an issue they are working on to the other clinics and pose questions that tap the other clinics’ experience with similar cases or issues. This same listserv is also used to highlight successful legal and educational strategies, as well as to identify hurdles experienced.

NCVLI’s signature peer learning event, which was mentioned by nearly all clinic attorneys as being extremely helpful, is its annual clinic cluster meeting and national conference. The cluster

²² While each clinic has an assigned attorney, the technical assistance requests are often spread to other attorneys and law students working within NCVLI.

meeting is a day-long meeting of staff from all NCVLI-funded clinics. Evaluation staff attended the cluster meetings in 2008 and 2009 and observed three principal activities: presentations by NCVLI staff to provide guidance on grant requirements and perspective on the overall victims' rights movement; presentations by the clinic attorneys to their peers on specific aspects of victims' rights practice with recent case examples; and social support and networking among the clinic staff. Because the clinics are dispersed geographically, this is generally the one time each year that the staff members of the different clinics see each other in person. Clinic staff reported that this aspect of the meeting—simply getting together with others who are engaged in the same challenging work—is one of the most important to them, as it helps to keep them grounded and motivated in the difficult work they are doing. The cluster meeting, which is exclusively for the clinics, is followed by a two-day victims' rights conference that is open to anyone and generally draws an audience of over 125 attorneys, victim advocates, counselors, and others interested in victims' rights laws and their enforcement. The clinic attorneys regularly present sessions at the conference, along with other presenters who are national experts in different aspects of victims' rights.

IV. VICTIMS' RIGHTS DEVELOPMENTS IN CLINIC STATES

Each of the eight clinic states has a long history of support for crime victims' rights. All have protected the rights of victims through amendments to their state constitutions, and have adopted statutory victims' bills of rights. Some have worked steadily to expand victims' rights laws beyond the amendments and bills of rights, incorporating victims' rights wherever appropriate throughout their criminal procedure and corrections codes, in their court rules of criminal procedure and evidence, and in their administrative codes. Arizona, Maryland, and Utah provide the best examples of this evolution in victims' rights.

Certain developments in victims' rights in the clinic states have directly affected the ability of clinics to represent victims; others have affected the issues the clinics have addressed.

Victim Standing

One significant area of legal development—and one that directly affects the work of the clinics—has been the issue of crime victims' legal standing to assert their rights.²³ Crime victims do not automatically have legal standing in criminal proceedings, since they are not a party to the action. Instead, criminal actions represent a contest between the state and the defendant. However, some form of legal standing is essential if victims are to be able to assert their rights in the criminal case. What's more, legal representatives—in this case, the clinics—are limited by the scope of legal standing given to the victims themselves. Therefore, crime victim legal standing underpins the viability of the legal clinics.

While most states—even most states with funded victims' rights clinics—do not have express victim standing to enforce their rights, standing can be implied where those rights are guaranteed by constitution. Since the United States Supreme Court's ruling in 1803 in the case of *Marbury v. Madison*, it has been understood that “where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear, that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.” *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60 (1803). While this is a contestable legal argument, it has been used by advocates as a basis for inferring victim standing.

Arizona

Of all the clinic states, Arizona has the clearest law providing crime victims legal standing to assert their rights. Legislation adopted to implement the state's victims' rights amendment in 1991 gave victims standing and provided that victims could be represented by private counsel.

²³ The federal legislation authorizing funding through OVC for the support of victims' rights clinics restricts that funding to those serving victims in “Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code.” Chapter 237 is the Crime Victims Rights Act, which not only sets out the legal rights of victims but provides that victims or their lawful representatives and the federal prosecutor have the ability to assert those rights. The CVRA also permits the victim to seek a writ of mandamus from The U.S. Court of Appeals to enforce the victim's rights.

Thus, all clinic states, in securing federal funding, had to demonstrate that they had enforceable victims' rights. Indeed, crime victim standing to assert their rights is key to the functioning of the clinics, since they would be powerless to assist victims who had no legal ability to assert their rights in court.

That statute has been expanded over the years, and today provides that “The victim has standing to seek an order, to bring a special action or to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims under the [constitutional amendment], any implementing legislation or court rules. In asserting any right, the victim has the right to be represented by personal counsel at the victim's expense.” Ariz. Rev. Stat. § 13-4437. The statute also gives the prosecutor the right to assert the victim’s rights, and gave victims the right to bring a civil action for damages where the victim’s rights were intentionally violated.

In 2005 the law was extended to require that the victim’s attorney if present must be included in all bench conferences, chambers meetings, and sessions with the trial court where those proceedings involve a victim’s constitutional right. The legislature also gave the victim standing to file a notice of appearance in an appellate proceeding, at the juvenile or criminal level, seeking to enforce any right or challenge an order denying any victim’s right. And it gave victims who file a notice of appearance the right to respond to a request for an extension of time to file a brief in any appellate or other post-conviction proceeding in a capital case.

This law has been further extended. In 2006, the legislature provided that failure to comply with a victim’s right is grounds for the victim to request a reexamination proceeding within 10 days of the violation or with leave for the court with good cause shown. The court must reconsider any decision arising from the proceeding at which the victim’s rights were not protected. This right to reexamination, however, does not give the victim grounds to seek to set aside a conviction after trial or provide grounds to seek a new trial.

In 2007, Arizona law was further amended to give victims the right to receive, at no charge, the minute entry or portion of the record of any court proceeding reasonably necessary for the purpose of pursuing their rights.

Maryland

Maryland’s journey toward legal standing has also evolved over time. The Maryland legislature first gave victims of violent crime the right to seek the appeal of the denial of certain of their rights in 1993. It provided that “Although not a party to a criminal proceeding, the victim of the violent crime for which the defendant is charged has the right to file an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider” the rights to be informed of their rights, to be present, to be heard, and to receive an order of restitution. Md. Code Ann. Crim. Proc. § 11-103.

Since that time, due to the efforts of the Maryland clinic’s parent organization (the Maryland Crime Victims Resource Center) and, indirectly, through the work of the clinic, victim standing has been further developed. The legislature extended the statutory right to seek appeal to victims of violent offenses committed by juvenile offenders. Court rules facilitating the right to seek an appeal (Md. Rules 8-111 and 8-204) were adopted. And, perhaps most significantly, a court rule was adopted that authorizes a victim’s attorney to enter a formal appearance in a criminal or juvenile case to represent the rights of the victim. Md. Rule 1-326.

Utah

Utah included various measures victims could take to secure their rights as part of the implementing legislation adopted for its victims' rights amendment in 1994. These measures include the right to "bring an action for declaratory relief or for a writ of mandamus defining or enforcing the rights of victims and the obligations of government entities under this chapter," the right to petition to file an amicus brief in any case affecting crime victims, and the right to appeal adverse rulings on these actions. In 1995, this statute was expanded to permit victims to appeal adverse rulings "on a motion or request brought by a victim of a crime or a representative of a victim of a crime."

This general right of victims to appeal adverse rulings relating to their rights has been affirmed by the state's Supreme Court. *State v. Casey*, 2002 UT 29, 44 P.3d 756, 762 (2002). (The victim in that case was represented by NCVLI staff and Paul Cassell, one of the founders of the Utah clinic and author of the state's amendment and implementing legislation.)

South Carolina

South Carolina does not provide crime victims express legal standing to assert their rights. However, in the victims' rights amendment to its constitution it does provide that victims' rights "may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services." The constitution is silent on the question of who has the authority to seek such a writ.

The ability of attorneys to represent victims with regard to their legal rights was recently affirmed by the South Carolina Attorney General. In 2007, the clinic was involved in a criminal domestic violence case, and the solicitor (prosecutor) failed to notify the victim's attorney (the clinic director at the time) of a bond hearing for the defendant. After being contacted by the clinic's parent organization, a state senator requested an opinion from the Attorney General regarding the solicitor's obligation to give notice of judicial proceedings to attorneys who have filed a formal notice of appearance on behalf of a crime victim. In his written opinion, the Attorney General reviewed the statutory requirements regarding victim notification and the legislature's intent that victims' rights be protected to the same degree as the rights of defendants, and noted that the state constitution protected victims' right to be informed. The Attorney General ruled that where a formal notice of appearance has been filed by a victim's attorney, the attorney should be provided written notice contemporaneously with the prosecution and defense of all court hearings, and that if an attorney files notice with law enforcement and prosecuting agencies that also have a responsibility to notify victims, those agencies should also attempt to send notice to the attorney as well as to the victims. SC Attorney General Opinion No. 07-034.

The remaining states have no statutory or constitutional provisions expressly providing victims a general or limited ability to assert their rights.

New Jersey

New Jersey law does not expressly provide legal standing to victims to enforce their rights. However, the courts have considered crime victim actions relating to their rights. In 1997, a

judge in a division of the appellate court specifically held that the victims' rights amendment "provides victims with specific rights, and that these rights carry with them standing for a victim to voice their concerns and protect their constitutional rights." In re K.P., 709 A.2d 315, 321 (NJ Super. Ct. Ch. Div. 1997). In its decision, the court noted a prior New Jersey Supreme Court case that referenced the voters' expression of support for that state's victims' rights amendment in upholding one of the statutory rights that implemented it. *State v. Muhammad*, 145 N.J. 23, 678 A. 2d 164 (1996). Although there has been no appellate case denying victim standing and one that upholds it, the New Jersey clinic considers the issue unsettled and is hoping to see victims explicitly granted standing in a future revision of the statutory victims' bill of rights.

New Mexico

New Mexico's laws are also silent on the ability of victims to assert their rights. In fact, as noted earlier, New Mexico's statute provides that violation of the victim's rights does not create any cause of action against an official or agency responsible for enforcement of those rights. Even so, the New Mexico clinic has been successful in obtaining an *unreported* Supreme Court order granting standing to the victim in the case at issue. *Nasci v. Pope et al.*, No. 29,878 (N.M. Nov. 8, 2006). While the language of the order was limited, when considered in conjunction with the pleadings of the victim, defendant, and an amicus brief from the state criminal defense attorney association, the statutory language providing that violation of rights creates "no cause of action" in the statutory enabling legislation was determined to only refer to *monetary* causes of action, because action by the legislature to refuse victim standing would exceed its authority under the separation of powers under the New Mexico Constitution – as standing to assert constitutional rights is a matter for the courts to determine rather than the legislature. The result was that victims have standing to assert a claim for injunctive relief under the Victim's Rights Constitutional Amendment. Ordinarily, unpublished orders have no precedential value in other cases. However, because the New Mexico Supreme Court considered the issue *en banc* and was unanimous in its decision, the clinic considers this order a monumental step, and they have actively and successfully made use of it to promote victim standing in trial courts.

Colorado

Colorado's laws, too, are silent on victim standing. The Colorado Supreme Court has addressed a limited question of victim standing. In the case of *Gansz v. People*, a victim sought to appeal the dismissal of criminal charges. The Supreme Court ruled that the victim did not have standing to appeal a dismissal of criminal charges. Importantly, this action was outside of the scope of the crime victims' rights laws. "There is no statutory right to be heard at a hearing on a district attorney's motion to dismiss criminal charges." The Supreme Court has not ruled, generally, on the victim's ability to assert his or her legal rights. *Gansz v. People*, 888 P.2d 256, 19 BTR 46 (Colo. 1995).

Idaho

Idaho's laws make no mention of victims' ability to assert their rights, and there has been no appellate level consideration of the victim's standing in that state.

Laws that Further Crime Victim Representation in Criminal Matters

While laws providing victims the authority to assert their rights are most important to the functioning of the clinics, a few states have also seen legal developments that financially support or in other ways facilitate the work of the clinics.

Maryland created a source of financial support for the clinic or other efforts to represent crime victims. It amended its restitution law to provide that restitution collected for a victim who cannot be located will be deposited into a fund to provide grants for victim legal representation.

New Jersey added new duties to the victim-witness rights information program, requiring that victims be informed about their constitutional and statutory rights and about obtaining legal advice or representation, and requiring the information program to conduct trainings for attorneys. The state also amended its victim compensation law to authorize the compensation program to reimburse the victim for attorneys fees for legal assistance in any legal matter relating to the offense. There is a cap on the amount of such fees that can be claimed. Previously, the law limited compensation for attorneys fees related to legal representation of the victim on matters regarding the compensation claim itself—for example, appealing the denial of a claim.

Crime Victims' Right to Privacy

Another area of development in victims' rights common to several of the states relates to the victims' right to privacy. These developments have opened up a new area for legal representation of victims.

Two states—Arizona and Utah—have taken on the issue of abuse of blank subpoenas by defense counsel to request the private records of victims, usually including counseling records. In 2006, Arizona passed a statute prohibiting the use of blank subpoenas to access the records of a victim, providing that records relating to recovered memories may be subpoenaed only if certain conditions are met, and giving victims the right to be notified and heard at any proceeding involving a subpoena of their records.

Utah passed similar restrictions through amendments to its court rules in 2007. The revised rule requires that before a victim's records can be requested, the court must first hold a hearing and determine that the defendant is entitled to such records. The revision also requires that the prosecutor and any attorney representing the victim be informed of the request for subpoena. Additional protections are included. Notably, an Advisory Committee note to the rule amendment states that the addition of this new subsection is “intended...to adopt a procedure consistent with current applicable law that balances a victim's state constitutional right ‘[t]o be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process,’ with a defendant's constitutional right to due process. Requiring a defendant to apply to the court for the production of a victim's records ensures that a victim or his or her representative will have an opportunity to assert any privileges or reasons why the records should not be subject to either release or *in camera* review.”

Other provisions addressing victim privacy have also been adopted in clinic states during the time the clinics have been functioning. Arizona passed a law protecting victim information in publicly accessible records relating to the case, with an exception for the victim's name and the location of the crime; Colorado made victim compensation records confidential; Idaho protected the social security numbers of persons contained in court records. Maryland amended court rules to prevent remote electronic access to information pertaining to victims and non-party witnesses in criminal cases, and to shield information in court records pertaining to a person who sought a protective order or who is a victim of domestic violence. New Jersey added an administrative code provision that denied convicted offenders access to a government record containing the personal information about a victim or the victim's family. South Carolina required that victim information be kept confidential by custodial authorities. Utah created a court rule addressing the selective closing of court records relating to victims and witnesses for safety and privacy reasons. And Colorado, Idaho, Maryland, and New Mexico all created address confidentiality programs that provide alternative official addresses for domestic violence victims and certain others.

Other Changes

All of the clinic states continued their general drive to expand the rights of victims, extending the right to be informed to additional proceedings and events, clarifying the right to restitution and improving the process for collection, extending the victims' rights at parole, and increasing the rights of victims of juvenile offenders. These changes are detailed in Appendix B.

V. CLINIC OPERATIONS

The NCVLI clinics work to promote observance of victim rights by representing victims in individual cases and by working to change the legal culture through example, trainings; and appellate decisions and court rules that acknowledge victim rights. When they become aware of a potential rights violation, the first step may be to place a call to a criminal justice official to see if the condition can be easily remedied. For example, they may try to convince police to file a case with the court or to convince a prosecutor to advance a trial date. Or they may ask a prosecutor to oppose a defense motion to order a victim to release medical records. Clinic attorneys also file motions in trial courts on behalf of their clients. In some states, clinic attorneys have filed motions to amend a plea to include restitution or other conditions based on statutory rights. Other attorneys have filed writs with appeals courts to get victims admitted into the courtroom after they were denied the right to be present by a trial court judge. Finally, clinic attorneys work at the appellate level to seek published rulings that clarify or expand the scope of victim rights on critical issues like victim standing and privacy.

While clinics share these common interests and activities, their ways of going about their work differ in some important respects. In this section of the report, we discuss differences in the ways that clinics are structured and how they operate. Differences along these dimensions have potential implications for the number and geographic diversity of cases that clinics handle, sources of client referrals, types of cases handled, and funding sustainability.

Type of Business Model

There is great diversity in the way that clinics have been structured. Clinics we have visited have ranged in their organizational aegis from being housed within victim services programs to being located within a law school to being one component within a full service law firm. Each of these arrangements has implications for how the clinics function.

Law clinic model

Two clinics are formally affiliated with law schools. The Idaho clinic, as one of eight clinical programs at the University of Idaho College of Law, receives considerable benefits from the law school, including office and classroom space, use of the office manager and financial manager for the general clinics program, travel support, and supplemental funding. Third-year law students registered for the three credit clinic course represent victims under direction of a supervising attorney. Since the students leave after a semester or an academic year at best, the supervising attorney's involvement is essential to continuity with the cases and clients. As a component of the law school, the clinic's first priority is educating students by exposing them to litigation and its secondary mission is to ensure access to justice. This is a clear distinction from the victim focus and interest in helping with all of victims' needs that are the aims of most of the clinics.

The Arizona clinic, while not technically a law school clinic, is affiliated with Arizona State University law school, where the founder teaches a class. Most of the students in the class volunteer for the clinic in order to receive extra credit for the class. The class is not qualified as a

“true clinic” by the law school because the students do not directly represent clients. Rather, they assist the clinic’s two contract attorneys by conducting legal research. In contrast to the Idaho clinic, the Arizona clinic emphasizes full representation of its clients, including a social worker as well as an attorney in a team approach. The team generally accompanies victims to all court proceedings. Staff emphasized that, once they enter into a representation agreement, they “stick” with the client even absent any victims’ rights problems.

There are several advantages of the law school clinic model. First, the connection with a university law school provides some stature to programs that they might not have if they were independent programs. Second, the use of free student labor potentially allows clinics to take on a much larger caseload than would otherwise be possible on a fixed budget. Finally, while it is unlikely that students who participate in a clinic will take on victims’ rights work as their primary vocation, they will take their knowledge of victims’ rights and use it in their jobs as prosecutors, public defenders, guardians ad litem, or advocates for victims in civil cases.

Statewide victim service provider model

Three of the clinics are under the umbrella of statewide victim service providers. Perhaps the clearest example is the Maryland clinic where the clinic resides within the Maryland Crime Victims’ Resource Center (MCVRC), an organization that takes a “full service” approach to victim assistance and serves victims of all types of crime. The clinic shares general staff and overhead costs with MCVRC, including rent, utilities, equipment, and supplies. MCVRC staff conducts client intakes, ensuring that each client receives the unique set of services he or she needs. Clients are referred to caseworkers within MCVRC or to social service agencies throughout the state that can address their specific needs. In addition, social workers and staff attorneys help clients to understand their legal rights and educate clients on what they can expect during each stage of the legal process. While assessing victims’ needs, intake staff note whether there are restitution or other potential victims’ rights issues, and clients with rights issues are referred to the clinic.

The South Carolina victims’ rights clinic has a slightly looser relationship with its sponsoring victim advocacy organization. The clinic is housed within the South Carolina Victim Assistance network (SCVAN), a statewide victim advocacy organization that provides training, referrals, and direct service. While SCVAN provides administrative support and grants management as well as some outreach efforts, the clinic’s director is solely responsible for all legal matters handled by the clinic. Intake on clinic cases is not conducted through the parent organization, as is the case in Maryland. However, like the Maryland clinic, the South Carolina clinic benefits from being nested within a victim service organization. Victims seeking help from SCVAN that have legal issues are referred to the clinic. Conversely, clinic clients in need of additional services can easily access them through SCVAN’s services and network.

The fledgling Colorado clinic is also based within a state network of victim service providers, the Colorado Organization for Victim Assistance (COVA). Like the South Carolina clinic, the Colorado clinic will share offices and some administrative staff with its parent organization, but maintain a separate intake process.

The statewide victim service provider model has several arguments in its favor. Sharing intake, office, and administrative costs with a host organization keeps clinic costs down. Typically, the host organization is well-established in the victim service field, and lends the clinic stature that it would otherwise have to earn as well as invaluable connections through its board of directors and other contacts. These connections can help get the word out quickly and help bring in referrals. Moreover, in some cases, the host organization is able to engage in lobbying efforts – forbidden to the clinics on federal dollars – that build on clinic appeals cases to improve legislation.

Other partnership models

The Arizona clinic is under the umbrella of the Arizona Voice for Crime Victims (AVCV) and has no separate legal or organizational identity. AVCV is not a victim services organization, but rather an advocacy organization which, in addition to operating the clinic, advocates for improvements to victims' rights at the state level in Arizona. This relationship has been very beneficial to furthering Arizona's extensive legal rights for victims, as the clinic cannot conduct legislative advocacy with its federal funding, but it can make AVCV aware of issues that arise in its cases, and AVCV then undertakes legislative advocacy with private funding.

The Utah and New Mexico clinics are housed within local, crime-specific victim-serving organizations (a sexual assault program and a drunk driving prevention and victim services program, respectively) and benefit from inexpensive office space. The New Mexico clinic is headed by the executive director of the DWI Resource Center, who employs a part-time staff attorney for clinic work. Although the Utah clinic may get occasional referrals from its landlord, there is no formal coordination between the work of the clinic and the work of the host sexual assault agency.

Independent law firm model

Only the New Jersey clinic is based within a private law firm founded by the clinic director. The clinic director dedicates his full time efforts to victims' rights cases. NCVLI funds cover the salaries of the director and an assistant. The director is partnered with two attorneys with whom he runs a full service law firm. The two other attorneys handle real estate law, matrimonial issues, and other civil cases, while each dedicates 25 hours per week to victims' rights work on a pro bono basis. This continues the original New Jersey model in which—before federal funding—proceeds of the law firm were used to fund victims' rights work. Eventually, the Center director hopes that monies brought in from settlements won by the law firm's civil litigation caseload will be able to sustain the victims' rights work.

There are at least two advantages to this arrangement. One is that, if the director's vision is fulfilled, there is a clear path to independence from grant funding toward a stable source of permanent funding. The other is that the New Jersey clinic has been able to sustain a caseload far in excess of the other clinics, in spite of the fact that it has the geographically most dispersed caseload of all the clinics.

Use of Pro Bono Attorneys and Student Help

Although every clinic has made an effort to train pro bono attorneys and refer cases to them, we have heard many reservations about the use of pro bono attorneys from the clinic directors. Most clinic directors argued that pro bono attorneys seldom have the knowledge, commitment, or

availability to be of significant help. The most strident objection came from the New Mexico clinic. Prior to the New Mexico Supreme Court recognizing standing, the clinic did not feel that it was wise to let other attorneys control the litigation. Even now that the New Mexico Supreme Court has recognized victim standing, the clinic staff is concerned that other attorneys will not adequately protect victims. The clinic's cardinal rule is, "First, do no further harm (to victims)," and they felt that involving pro bono attorneys might jeopardize that principle. One concern mentioned was that the outside attorneys may put their own egos ahead of the needs of the victim and that they will "re-victimize the victim in the hope of saving them." Another concern, based on prior experience with pro bono attorneys, was that these attorneys would give paying clients priority over non-paying clients. This was summed up in the remark, "You get what you pay for."

The New Jersey clinic director also has reservations about using pro bono attorneys. However, the clinic has successfully used a few pro bono attorneys who are acquaintances of the director to handle cases in disparate parts of the state. This may be part of the reason that the clinic has been able to open up a large number of cases throughout the state. The clinic also uses occasional student interns in an administrative capacity.

The Maryland clinic has taken an intermediate stance on the pro bono issue. It uses a small panel of pro bono attorneys to handle mostly collateral civil cases (e.g., estate, housing, or creditor issues), which fall outside the scope of clinic funding. The clinic also uses pro bono attorneys to help to collect restitution and to aid in writing *amicus* briefs for appellate cases. The clinic finds that using pro bono attorneys in this way avoids some of the problems associated with using pro bono attorneys in criminal cases—insufficient knowledge of victims' rights issues and criminal procedure, extensive need for training, and schedules that did not permit them to make necessary court appearances in clinic cases on short notice. Law courses taught by the clinic director ensure a supply of law student interns who help clinic attorneys with case research and assist other clinic staff with intake and administrative tasks.

Other clinics, while acknowledging limitations, have more fully embraced the concept of free help. The Utah clinic has been assisted by three pro bono attorneys representing victims in court. Two of those were identified by actively calling around in each judicial district to try to identify an attorney willing and able to take the cases. The third pro bono attorney is a retired prosecutor, who, after initially acting as a pro bono attorney, now works as a part-time contract attorney for the clinic. Moreover, the clinic plans to expand its use of pro bono attorneys through targeted recruiting—reaching out to victim advocates for the names of potential pro bono attorneys. The clinic is developing a free continuing legal education course for attorneys in exchange for their taking one victim case within the year following the training. (Some of the other clinics have also offered CLE courses for pro bono attorneys.) The Utah clinic also has a very active intern program. Each semester they recruit two to four law student interns from nearby law schools, as well as four interns over the summer. Interns contribute 100-200 hours per semester (typically one full day per week).

The South Carolina clinic is proud of its success at implementing a pro bono attorney network. Early directors of the clinic used personal contacts with lawyers across the state to develop the pro bono attorney pool. Currently the clinic has a pool of 13 pro bono attorneys who handled 18

percent of the cases the clinic opened in 2007. The clinic reports that the pool is of high quality and well placed geographically around the state. Pro bono attorneys have been especially helpful in working with clients in areas that are more distant from the clinic's offices. Pro bono attorneys take cases from start to finish. As the program grows, the clinic sees the role of pro bono attorneys expanding to help manage a growing caseload. The clinic is likely to seek the help of pro bono attorneys in cases in distant counties, where it would be difficult for clinic staff to make an appearance in court and/or in cases involving relatively simple victims' rights issues (for example, the ability to offer a victim impact statement). The clinic also tends to use pro bono attorneys in cases where there are civil legal issues that clinic staff is not allowed to address. This situation works well since the pro bono attorneys are permitted to collect a fee for the civil legal assistance while representing the victims in their criminal cases free of charge. A change currently under consideration to a requirement that all lawyers in South Carolina take appointments referred by the court would count pro bono work on behalf of victims as credit toward their state requirements.

We have already discussed in the section above the benefit that the Arizona and Idaho clinics receive from student help as a result of their law school affiliations. The models differ – in Idaho, students represent victims in court, while in Arizona, their efforts are confined to conducting legal research to assist clinic attorneys. Both applications of student help can reduce the costs of running victims' rights clinics. Idaho has not found a need for pro bono attorneys beyond the law students, as its caseload has remained small to date. Arizona does make limited use of a few trusted pro bono attorneys.

NCVLI has developed a circumscribed view of the utility of pro bono attorneys to contribute to the state clinics. Where once pro bono attorneys were envisioned as the long-term solution to victims' rights enforcement, now the NCVLI director sees pro bono attorneys as helpful in a more limited fashion. From a systems change perspective, they often are unable to get up to speed in time for cases capable of pushing forward the victims' rights agenda. The NCVLI director believes pro bono attorneys are best used in cases where victims' rights issues are less complex—for example in arguing for restitution for victims.

If an appropriate model is used, there are obvious benefits to using pro bono or student help in order to leverage the relatively small budgets that clinics operate on. The Utah plan to develop a course to train private attorneys who are seriously interested in victims' rights work should remove two of the objections to the use of pro bono attorneys: Taking the course will ensure that volunteers are both interested and satisfactorily trained in victims' rights law.

We learned that there are hard limits on what can be expected by using free help, whether it be in the form of pro bono attorneys, law student clinics, or interns. We believe that each has their place, and all clinics employ at least one of these resources. There may be room for law students to play a significant role in litigation activities – this idea has not been well-tested. Also, pro bono attorneys who are exceptional in their interest, time commitments, and training in rare cases may be able to accept responsibility for litigating some cases in counties that are inaccessible to clinics. With those possible exceptions, however, we conclude that free sources of help can play a significant support role for clinics, but are not a substitute for litigators trained in victim rights law and committed to the work of the clinic.

Addressing Victims' Non-Legal Needs

While their primary focus has always been on addressing violations of clients' legal rights, all of the clinics also have developed a focus that includes addressing all of victims' crime-related needs, either directly or through referrals to other service providers. This orientation is clearest in the two clinics that are under the umbrella of statewide victim service providers. As discussed above, in the Maryland clinic, the director of services of the parent organization meets with the victim advocates and the clinic's legal staff weekly to develop service plans for each client. We also noted that, in the South Carolina clinic, clinic clients in need of additional services can easily access them through the parent organization's network of service providers. The Utah clinic receives many referrals from victim advocates of clients who already are connected with service providers, and the clinic itself has a VOCA-funded victim advocate on staff. In Arizona, every case is assigned both an attorney and a social worker, who is responsible for accompanying victims in court, providing emotional support, and ensuring the victims are connected with any non-legal services they need. The New Mexico and Idaho clinics have developed extensive referral networks.

Perhaps surprisingly, the most holistic approach is taken by the New Jersey clinic which is not affiliated with any victim service provider. Like other clinics, the New Jersey clinic aids victims in getting help with emotional and practical problems stemming from crime, aiding victims in filing applications for state compensation and referring them to a network of trusted therapists experienced in dealing with victimization issues, and to other service providers as needed. In addition to attending to victims' non-legal needs, the New Jersey clinic's holistic approach also encompasses handling civil issues for clients as well as violations of victims' rights in criminal proceedings. The two types of cases are mutually reinforcing. According to the director, "A lawyer does not wear one hat. I see that as one of the biggest weaknesses out there. You can't parcel the issues with your client. If you're the victims' rights lawyer, you're their lawyer on everything to do with the victimization. You can't say 'I don't do that.'" The New Jersey clinic is unique in providing both civil and criminal legal help to victims, on top of emotional support, advocacy, and referrals.

The fact that the clinics have concerned themselves with the totality of client needs – not just the potential value of cases in litigating rights issues – highlights the way that the clinics' and NCVLI's approaches complement one another. Clinic attorneys appropriately act as client advocates for many crime-related needs. NCVLI, meanwhile, maintains its focus on changing the legal landscape and keeping an eye out for the cases that are likely to push its reform agenda significantly ahead.

VI. OUTREACH AND SOURCES OF CLIENTS

In this section we discuss variations between clinics in recruitment methods and implications for referral sources, number of cases and types of cases represented, and types of victims' rights issues dealt with. To its credit, NCVLI has not insisted on a single model for the state clinics. As discussed in the last section, there are substantial variations in business models adopted by the clinics and in their use of pro bono attorneys and student help. As this section shows, there also are significant differences in recruitment and caseloads. The freedom that the clinics have in developing different methods allows evaluation of how differences affect clinic outcomes.

As mentioned earlier, because we did not have direct access to client files, it is likely that there are inconsistencies from site to site in how information on rights issues was coded. The reader should also note that the data presented in this section may disagree in minor ways with data presented in the individual site reports. This is due to the fact that, in order to combine data across the clinics for this section, we created broader categories than were used in the site reports. For example, one of the categories in the table on referral sources for the Arizona clinic is "Parents of Murdered Children." In the corresponding table in this section, these cases appear in the category, "Community program/therapist/doctor."

Referral Sources

Table 2 displays sources of referral for the clinics. As the table makes clear, different clinics relied on different methods of recruitment. The Utah and South Carolina clinics received nearly half of their referrals from prosecutor victim advocates, while all of the other clinics had less than 20 percent of caseloads referred by prosecutor victim advocates. The director of the Utah clinic, a former prosecutor, has made special efforts to reach out to prosecutors. Prosecutor referrals are especially common in cases where the defense is seeking private records of the victim. It is interesting to note that staff of the South Carolina clinic did not name prosecutors as a major source of referral in our interviews and, in fact, indicated that there had been some friction between former clinic attorneys and prosecutors in the past. Staff did report that they conducted 27 trainings sessions for prosecutors in the second year of the project.

Table 2: Referral Sources

	MD	SC	NJ	NM	ID	UT	AZ
Prosecutor	11%	0%	16%	10%	24%	13%	44%
Police victim assistant/prosecutor victim assistant	11	45	18	10	10	46	0
Community program/therapist/doctor	14	32	42	20	21	22	26
Website, brochure, friend/self referred	46	0	14	40	21	4	7
State or local official	14	14	4	5	3	0	4
Police, probation officer, corrections, private atty	3	9	6	10	0	6	7
Solicited	0	0	0	0	7	0	0
Other	0	0	0	1**	9*	9**	11***
	100% (n=35)	100% (n=22)	100% (n=50)	100% (n=20)	100% (n=29)	100% (n=85)	100% (n=27)

* Referrals from within the university system (3 cases)

** Unknown (8 cases)

*** Referrals from NCVLI (3 cases)

The Maryland and New Mexico clinics had a plurality of referrals from their websites, brochures, and word of mouth. This squares with comments of the director of the Maryland clinic, who noted during our site visit that the clinic received many referrals from its website. Websites and brochures are relatively easy and inexpensive ways to garner more referrals, and do not depend on the good will of system actors. In that respect, they may be especially useful for start-up clinics working in hostile environments. In the case of New Mexico, the clinic director told us that prosecutors' advocates sometimes make "secret" referrals, asking not to be identified as having provided the referral, for fear of angering the prosecutors (their bosses). These "secret" referrals probably make up a portion of the cases listed as self-referred.

The New Jersey and South Carolina clinics received more than one in three referrals from therapists or community organizations. That makes sense given what we learned about both of these clinics. The New Jersey clinic has a well-developed network of therapists and community organizations that it works with. The South Carolina clinic is located within a state victim advocacy organization that consists of a network of grassroots programs.

Maryland and South Carolina – states that both have state victims' rights compliance officers -- each received 14% of their cases from state and local officials, while other clinics received less than 5% from officials. (New Mexico also has a state victim compliance officer, but she contributed only one clinic referral.) Finally, Idaho was unique in that it solicited a small proportion (7%) of its clients involved in high-profile cases that resulted in media coverage. This unique attempt to generate additional clients early in the clinic's career is a good example of how freedom of clinics to experiment with different methods of operations led to creative solutions to

problems (in this case, low case numbers due to the clinic's rural location and newness on the scene).

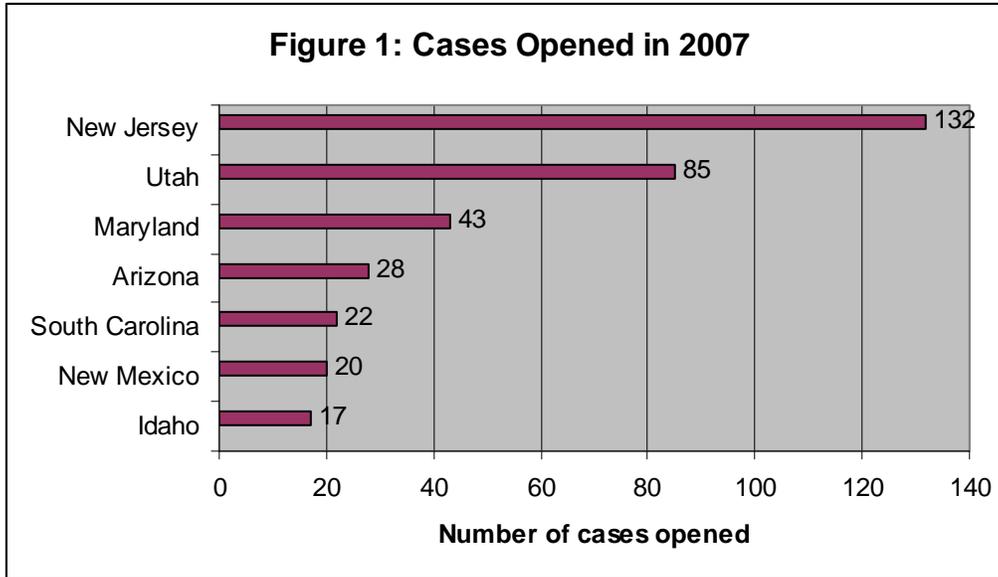
Caseload Size and Composition

Clinics take different approaches to representing clients. Some accompany victims to all court hearings, while others may make only a single appearance at a critical stage in the proceedings. Additionally, some cases are more time-consuming than others (a capital murder case will require much more attorney time than a domestic violence protective order case, for example). Additionally, the different clinics do not necessarily have common definitions of what they count as a "case." For all of these reasons, caseload is not a perfect measure of the amount of advocacy activity undertaken by the state clinics. However, in the absence of more precise statistics, caseload does provide at least a gross measure of clinic success in gaining referrals.

Figure 1 shows that the largest caseloads tend to be associated with clinics that are built on the work of individuals who already had stature as leaders in victims' rights in their states, likely reflecting greater acceptance by prosecutors and victim advocates. The New Jersey, Utah, and Maryland clinics opened far more cases than the other state clinics, signing 132, 85, and 43 representation agreements in 2007, respectively. The less mature clinics (South Carolina, New Mexico, and Idaho) have not yet achieved the same level of acceptance, as gauged by the number of referrals. Each is making efforts to train prosecutors, victim advocates, and judges about victims' rights and about the availability of legal representation for victims. These clinics are fighting battles for acceptance of the idea of legal representation for victims. Each has felt itself in an adversarial role vis-à-vis criminal justice officials as they struggle for legitimacy, although the South Carolina clinic has made a concerted effort recently to conduct quiet diplomacy with prosecutors or law enforcement officials where possible rather than immediately filing motions to remedy failure to observe the rights of clients.²⁴ The Arizona clinic has a relatively low caseload because the clinic is selective in taking cases that can be used to further victims' rights issues in significant ways, and because it accompanies its clients to every court proceeding—thus each case take a significant amount of attorney time.²⁵

²⁴ The South Carolina clinic believes it achieves more success for individual victims by taking this non-confrontational route, and NCVLI confirms that South Carolina has, indeed, achieved much through its diplomacy with prosecutors and judges. On the other hand, this approach, if taken exclusively, precludes the possibility of creating case law that furthers the victims' rights movement. There is an ongoing dialogue among NCVLI and the clinics on the merits of diplomacy vs. aggressive litigation (and the continuum between these end points).

²⁵ We note that the substantial differences between clinics in the number of clients may reflect different size populations in each state. For example, although the Idaho clinic has the fewest clients and the New Jersey clinic the most, the rate of clients per 1,000 state population is similar.



We noted substantial diversity on the types of crimes dealt with by the state clinics. Table 3 displays the types of cases in which clinics signed representation agreements with victims. Nearly two-thirds of the New Mexico clinic’s caseload consists of sexual assaults. Relative to the other clinics, Utah’s clinic handles a large proportion (40%) of domestic violence and stalking cases. About three in ten of the New Jersey and Arizona clinics’ caseload involved child abuse charges. Arizona also represented a far larger proportion (44%) of homicide victims than the other state clinics.

Table 3: Types of Crimes in Cases Where Representation Agreements Were Signed

	MD	SC	NJ	NM	ID	UT	AZ
Sexual assault	14%	29%	27%	60%	28%	24%	0%
DV/stalking/harassment	19	24	5	10	28	40	7
Child abuse	0	0	29	0	10	16	33
Homicide/manslaughter	23	10	14	20	3	9	44
Assault/robbery	19	14	24	10	21	7	0
Other*	26	24	2	0	10	5	15
	100% (n=43)	100% (n=21)	100% (n=49)	100% (n=20)	100% (n=29)	100% (n=85)	100% (n=27)

* Includes Voyeurism, fraud, compensation claims, parole violation, burglary, witness tampering, DWI victim, and human trafficking

Rights Issues Dealt with in Cases Opened by the State Clinics

We are least certain about data on the kinds of victims’ rights issues addressed in cases opened by the state clinics. Information on rights issues is most subject to differences in interpretation by the different individuals doing the coding in each of the clinics. Moreover, categorization may be influenced by the wording of particular victims’ rights statutes. Table 4 suggests that the New Mexico clinic is more active in plea agreements than the other clinics. While all but one of

the clinics had a good number of cases involving the right to be notified/present/heard, these issues formed a majority of the caseloads of the South Carolina and Utah clinics. Maryland was the only clinic that represented a number of victims in state compensation claims.²⁶ The Idaho clinic was relatively more active than others in representing victims at the point of charging and on restitution issues.

Table 4: Victims' rights Issues in Clinic Cases

	MD	SC	NJ	NM	ID	UT	AZ
Charging decision	5%	0%	12%	0%	28%	0	0%
Plea agreement	0	5	8	35	28	0	7
Right to be notified/present/heard	33	67	38	0	3	60	22
Speedy trial	0	5	2	5	0	5	19
Right to privacy	13	0	7	10	3	6	26
Safety from harassment/ Restraining order issues	0	10	13	5		19	19
Restitution	13	5	2	5	21	4	7
Respectful treatment	0	10	6	40	10	6	0
General/other issue*	36	0	12	0	7	1	0
	100% (n=39)	100% (n=21)	100% (n=39)	100% (n=20)	100% (n=29)	100% (n=85)	100% (n=27)

* Includes legal representation, assistance with compensation claim, referral for services

Geographic Diversity of Caseload

It is very difficult for a small budget victims' rights clinic to represent cases from all over the state. In this section of the report, we examine the extent to which clinic caseloads are geographically diverse or concentrated in the locale where the clinics reside. We note that clinics do not have to serve the entire state to be successful in NCVLI's mission to promote victims' rights. However, since it has also been acknowledged that it is a purpose of the clinics to represent individual victims in need, it follows that representation ought to be available to victims in all parts of a state.

One of the pieces of data that we asked the clinics to abstract for us was the counties in which 2007 cases originated. When we examined the distribution of cases by county, it immediately became clear that clinics varied considerably in terms of the geographic diversity of caseloads. As Figure 2 shows, cases of most of the clinics were concentrated in the counties where the clinics were based. The New Jersey clinic appeared to have the greatest diversity, with cases in all but two of the state's 21 counties and just 10% of its caseload originating in the clinic's home county. In contrast, 53 of the Utah clinic's 85 cases originated in Salt Lake county, where the clinic is based. For the other clinics, between a third and half of their caseloads consisted of local cases.

²⁶ According to NCVLI, other clinics have helped victims with compensations claims over the years if they arose in the course of their case, but Maryland specifically marketed its services in the compensation arena and therefore did many more compensation cases, until the terms of the federal grant changed and such cases were disallowed in 2008.

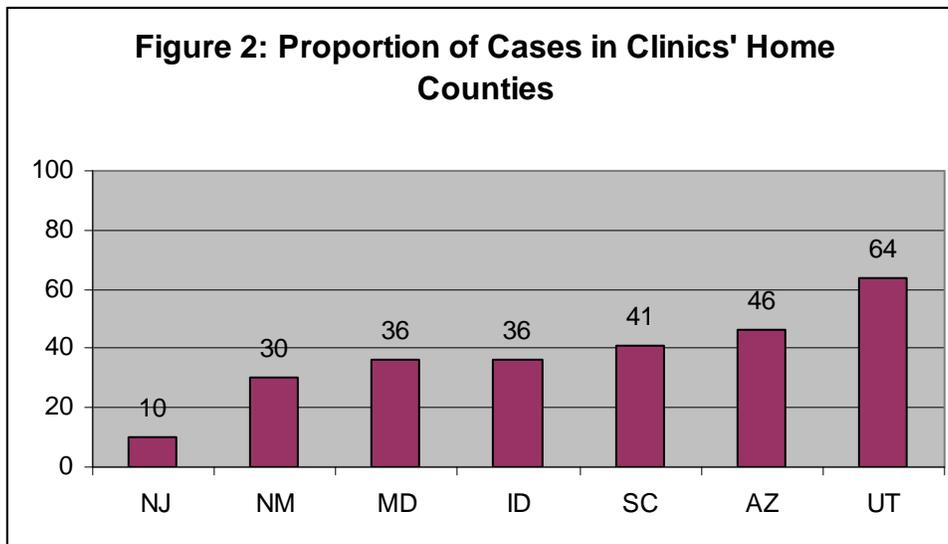


Table 5 summarizes the preceding discussion of contrasts between the clinics on a number of the dimensions discussed in this section. Entries in the cells denote strong, moderate, or weak positions on each dimension.

Table 5: Comparisons of Clinics on Key Process Measures

	MD	SC	NJ	NM	ID	UT	AZ
Relationship to victim organization	S	S	W	M	W	M	W
Specialize in violence against women	M	S	M	S	S	M	W
Holistic approach to client services	S	S	S	W	W	M	M
Community or victim advocate as major source of referrals	M	S	S	M	M	S	M
Caseload size	M	W	S	W	W	M	W
Geographic caseload diversity	M	S	S	M	M	W	M

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VII. CLINIC WORK IN TRIAL COURTS

Trial court advocacy is at the heart of the clinics' work on behalf of victims. Although the general outlines of this advocacy are the same in each clinic, there are some differences among them based on both the laws and legal culture of the states in which they operate and the differing approaches of the clinic directors. In general, the clinics receive a call from a victim, conduct some type of intake screening, open a case, and then proceed—according to the victims' needs in the case—to do one or several of the following: contact the prosecutor, file a notice of appearance with the court, attend court proceedings to accompany the victim, raise oral arguments, file briefs and motions, and connect the victim with non-legal services as needed.

Standing to Appear Before the Court

Although every state with a victims' rights legal clinic in this evaluation has some form of victims' rights in its state constitution as well as state statutes, it is still unclear in several of those states whether victims have legal standing to assert their rights in court.²⁷ Although the argument could be made—and has been made, by NCVLI and some of the clinics—that victims' rights are meaningless without victim standing to assert them, some judges, prosecutors, and defense attorneys have been slow to accept the idea of victims and their attorneys being allowed to go before the judge and make oral arguments, file motions, or submit briefs. Where the statute or constitution does not explicitly spell out victim standing to assert their rights, and where challenges to standing have arisen, the clinics and advocates for victims have gone about trying to establish victim standing in different ways.²⁸

Appealing a denial of standing to a higher court is one route to establish the right of victims and their attorneys to argue before a judge on matters affecting the victim's rights. However, clinics have had to tread carefully when considering appealing such denials, because losing an appeal of that nature would achieve the opposite of the desired outcome: it would establish precedential law that victims do not have standing to seek enforcement of their rights in criminal court. The New Jersey clinic, for example, had a case where the victims were denied the right to be present at a waiver hearing and the judge refused to discuss the issue with the clinic director. Normally in such a case the clinic would ask the prosecutor to file an appeal to assert the victims' right to be present. However, in this case, the prosecutor declined to file the appeal, and so it was up to the clinic and the victims to decide whether to appeal. In this case, the victims and the clinic together decided not to appeal, because the clinic director feared not only losing the appeal on their right to be present, but being challenged on the victim's standing to file the appeal in the first place, and thereby creating bad law on standing.²⁹ Instead, the New Jersey clinic director has gone the route of working with state legislators to draft legislation that would revise the

²⁷ A detailed discussion of the legal foundation for victim standing in each clinic state is included in Section IV of this report.

²⁸ Currently victim standing is explicit only in Arizona's law and, to a more limited extent, Utah's and Maryland's. The South Carolina clinic has never been challenged on standing. The rest of the clinics have had to confront the issue in various ways.

²⁹ It is because of the lack of clarity in New Jersey law on victim standing that the clinic usually tries to have prosecutors file appeals on behalf of victims. The clinic director's reading of the current make-up of appellate court judges causes him to fear that the appeals courts would reject an appeal from him based on lack of standing, and should that happen, a victim's lack of standing to appeal would be enshrined in precedential case law.

New Jersey victims' bill of rights to explicitly give victims standing to assert their rights. This legislation has passed the state Assembly and is awaiting action in the state Senate.

The New Mexico clinic did mount a successful appeal to a denial of standing. However, the decision was unpublished and therefore not technically binding precedential authority applicable to other cases. Despite the fact that it is not a formal opinion, the clinic lawyers have often successfully cited it as persuasive authority to establish standing when challenged.

In Maryland, victim standing was established through a series of appellate decisions as well as several statutory changes advocated by the clinic's parent organization, the Maryland Crime Victims Resource Center. Once standing was established in law, but not yet in practice, the clinic director provided assistance to a judge in drafting a rule to clarify the right of a victim's attorney to enter an appearance to represent the rights of the victim. The rule was subsequently adopted, and the clinic cites it whenever they are challenged on standing. They have had no further problems entering appearances on behalf of victims.

Idaho is the clinic that has experienced the most serious setback when it comes to victim standing. After having accepted the clinic attorney's presence in court on a number of cases, a local judge took it upon himself to seek explicit legal authority for the clinic's appearances in the courtroom. Finding none, he sent the clinic a letter asking them to justify their participation in criminal cases on behalf of victims. The clinic's response failed to persuade the judge, and he ordered his clerk to stop accepting filings from the clinic's attorney. Subsequently, another judge in a neighboring district followed the first judge's example and refused to accept the clinic's notices of appearance. The clinic is hoping a new rule can be adopted to clarify the issue and get them back in those courtrooms where individual judges have denied them standing, despite the existence of victims' rights in the Idaho state constitution.

Clinics' Approach to Trial Court Advocacy

Within the NCVLI Legal Clinics project, there is an ongoing dialogue among NCVLI and the clinics about the system-level and client-level goals of the clinics' legal work, as described in Section II. NCVLI approaches the issue of victims' rights enforcement from a global systems perspective and has the broad goal of changing the criminal justice system and the legal culture so that victims' rights become as natural a part of the system as defendants' rights are currently. The primary system-level goal of the clinics project is to create case law that fleshes out the victims' rights already in states' statutes and constitutions so that enforcement of those rights becomes commonplace. A second aspect of this movement to establish more enforceable victims' rights law is to use the cases the clinics lose to demonstrate the need for better legislation, pass that legislation, and then, again, test it in court to establish precedential case law.³⁰ A third aspect of creating systems change is to educate all actors in the criminal justice system, but especially judges and prosecutors, so that victims' rights is no longer a novel concept but a natural part of the legal culture.

Broadly speaking, the legal clinics share these goals of NCVLI, but also have client-focused goals which at times do not align with the larger system-level goals. Legal ethics bind the clinic

³⁰ Neither NCVLI nor the clinics use federal funds to lobby for legislation. They conduct all legislative advocacy either as individuals on their own time or under non-federal funding.

attorneys to represent their clients' interests to the best of their abilities. This means that if an individual victim seeks some action that will not further the system-change goals, the clinics must pursue it anyway. And conversely, if there is a victims' rights issue that the clinic believes it can use to establish good case law, but the victim in that particular case is not interested, the clinic must forego the action that could be beneficial to the movement as a whole. According to the clinic staff we interviewed, these differences arise in only a small number of cases. For the most part, what is good for individual victims is good for the movement. Also, from NCVLI's perspective, the systems approach must always bow to the interests of the individual victim when the two do not align.

Another way in which these different emphases can be felt is in how the clinics prioritize the cases they accept. A more systems-focused outlook would prioritize cases with the best potential for establishing case law favorable to victims' rights. This approach is generally followed by the Arizona clinic. A more client-focused outlook prioritizes helping as many victims as possible, whether or not their case has the potential for establishing legal precedent. This is the approach of the New Jersey clinic. But most of the clinics report taking all appropriate cases that are referred to them, which means that by and large the clinics are not turning away victims because their cases are not of interest to the victims' rights movement.

Sometimes the clinics pursue an issue that does have the potential for establishing a written record, but the issue is resolved in such a way that it does not enter into the written record of the court, resulting in a win for the individual victim but no potential for impacting future cases. For example, the Maryland clinic represented a victim seeking funeral expenses through restitution. The judge inappropriately capped the amount of the restitution for this expense based on estate law, and when the clinic filed an application for leave to appeal, the defense offered to pay the full amount the victim sought. Thus the victim's goal was met without a need to appeal the trial court's decision to cap restitution. This was good for the victim in that case, but it also eliminated the possibility of establishing a precedent through appeal in favor of the general victims' right to full restitution.

The clinics, and many of the criminal justice professionals and victims we interviewed, also believe that the mere presence of an attorney for the victim compels better behavior from all actors in the courtroom with regard to victims' rights. Again, this may be to the benefit of the current victim, but without repercussions for future victims, if the behavior change is limited to those cases in which the attorney is physically present. Or it may suggest the need for victims' attorneys to always be present, just as defense attorneys are, to see that their clients' rights are enforced. The matter of short-term versus long-term behavior change in criminal justice officials will be explored in the impact evaluation.

Another important difference among the clinics is the degree to which they practice informal advocacy on behalf of victims versus motion practice in court. Following on the above discussion, only motion practice (which creates a written record) can achieve the result of establishing new case law that advances the victims' rights legal movement. On the other hand, an individual client's problem may be more efficiently resolved with a call to the prosecutor which, if successful, spares the victim from having to spend time in court fighting for the right. Most clinics have found it beneficial, for their own ability to function, to try to work actively

with prosecutors to ensure victims get their rights, and to file motions only when this approach is unsuccessful or insufficient. The one exception is the New Mexico clinic, which began with a more informal and cooperative approach toward prosecutors and has determined that more litigation is necessary to achieve success for its victims. The South Carolina clinic takes a different approach, spending much more time and energy on out-of-court work on behalf of victims than on motion practice in court.

Related to the emphasis on informal versus formal legal work is the question of when and how the clinics open a case, and which services they provide to victims with and without a formal representation agreement. Arizona and New Jersey represent the two ends of the spectrum. In New Jersey, the clinic director will meet personally with any victim and make calls on the victim's behalf to the compensation board, the prosecutor, therapists, or other community resources, all without a formal representation agreement. According to the clinic director, if a victim comes in for a meeting and afterwards there is further work to be done, then a case is opened and a representation agreement signed. With or without this agreement, the clinic makes every effort to connect victims to the resources they need, in many cases with a personal call from the clinic director to ensure the connection is made. In Arizona, on the other hand, the clinic attorneys will not perform any informal advocacy on behalf of victims unless and until a representation agreement is signed, because Arizona legal ethics, in their view, dictate that either they represent a client or they do not, and if they do not, then any informal advocacy is prohibited as unauthorized practice of law. If the Arizona clinic cannot represent a victim for whatever reason, they will refer the victim to another resource.

Victims' Rights Issues

Although the rights enumerated in each state's laws (constitution and statute) are somewhat different from state to state, the basic core of victims' rights is similar, and many of the same issues regularly come up for all of the clinics.

Pre-charge cases

One issue the clinics have had to contend with is whether to accept cases before charges are filed. For many victims, the initial complaint is that the investigation is not progressing or that the prosecutor is declining to file charges. Clinics have approached this issue differently. Some have sought meetings with the prosecutors and the victims to find out whether anything can be done to advance the case (or, alternatively, to help victims understand why the case can't proceed if the clinic is in agreement with the prosecutor); New Jersey often takes this approach. In the first year of the Idaho clinic, many of its cases were of this type, and the law students worked actively with police and prosecutors to try to push cases into prosecution. They had some success in getting cases that were still under investigation moved into prosecution, but no success in changing prosecutors' previously made decisions not to proceed with a case. The Arizona clinic currently does not take state cases prior to charges being filed. They have found that pre-charge cases are time-consuming and technically are not victims' rights cases, since victims' rights do not attach until a case is filed in court under Arizona state law. Under federal law, however, victims' rights attach upon the commission of the crime, so the Arizona clinic will take federal cases pre-charging.

Confer with the prosecutor.

Victims' right to confer with the prosecutor on plea agreements is an important area being addressed by all of the clinics. Many victims have turned to the clinics when they learned that prosecutors were accepting pleas to much lower offenses than those charged and/or with little to no jail time. In cases where the victim is aware of the potential plea offer before it is submitted to the court, the clinic has an opportunity to intervene with the prosecutor and potentially offer arguments from the victim's perspective that cause the prosecutor to change aspects of the plea offer. Or, if the prosecutor is not willing to change the plea offer, victims can exercise their right to be heard and ask the judge not to accept the plea. In cases where victims were not notified of the plea offer before it was submitted and accepted by the court, the clinics have sought redress of the violation of the victims' rights to be notified and heard, generally by asking that the plea be vacated and a new hearing held.³¹

Right to privacy.

Privacy of victim records, especially in sexual assault cases, is a significant area of concern for many of the clinics. According to clinic directors, defense attorneys sometimes attempt to gain access to victims' confidential medical or counseling records through use of subpoenas during the discovery process or through challenges to restitution orders that include counseling expenses. The clinics and victim advocates are concerned about the erosion of rape shield protections when defense subpoenas for victim records are allowed, and they fear that this may lead to fewer sexual assault prosecutions. Prosecutors seem to share this concern, and several of the prosecutors we interviewed reported that having the clinics represent the victim's interest in these privacy cases has been very helpful. Judges appreciate hearing from both the state and the victim on these issues, according to both prosecutors and judges we interviewed. Challenges to defense subpoenas of victim records are generally premised on the victims' right to privacy, dignity, respect, and/or to be free from harassment, as well as the states' specific rape shield laws.

Right to be heard.

Although victim impact statements at sentencing are now fairly common in most jurisdictions, the clinics continue to litigate some issues involving the victim's right to be heard. These often involve the rights of more than one victim to be heard (for example, several survivors of a homicide victim), or the use of photos or audio or video recordings of the victim as part of the victim impact statement. Some of the clinics have also litigated cases challenging the prohibition on sentencing recommendations from victims in death penalty cases. The clinic cases on this issue have often involved a victim who wanted to advocate for a sentence other than death, but was ordered to limit testimony to the impact of the crime and refrain from making any specific recommendations about the sentence. The clinics have also represented victims seeking to be heard on plea agreements, which is an area where prosecutors in some jurisdictions continue to move quickly and neglect to hear from victims or inform them of the status of plea negotiations or even of hearings on plea agreements.

Right to review the pre-sentence report. In some states, victims have a right to view the pre-sentence report. Pre-sentence reports are important because the court frequently bases sentences upon the recommendations contained therein, and errors may result in unjust sentences. This is

³¹ A New Jersey case of this type is discussed in Section VIII.

obviously important for defendants, but it also matters for victims, as some of the information in those reports pertains to the victim and the impact of the crime. This is a newer area of victims' rights, and victims are only granted the right to see these reports in a few states (Arizona, Idaho, Colorado, and to a limited extent Utah). The federal Crime Victims' Rights Act does not include explicit permission for victims to have access to these reports, and the Arizona clinic argued unsuccessfully for such access in one federal case, In re Kenna, 453 F.3d 1136 (9th Cir. 2006). In state court, the Arizona clinic generally does not have problems gaining access to presentence reports. In Idaho, victims are granted access to pre-sentence reports; however, courts have been slower to allow access to victims' attorneys. The Idaho clinic has had both successes and failures at gaining access for its attorney and the victim to the pre-sentence report.

Other Types of Assistance

The clinics also offer some assistance to victims in venues other than trial or appellate court. The New Mexico clinic fought for a victim's right to be present at parole hearings. They threatened to litigate, but in the end didn't have to. The parole board changed its procedures and now routinely allows victims to be present at parole hearings.

The clinics often will continue to help victims seek enforcement of restitution orders, even after these have been converted to civil orders. The Arizona clinic routinely files liens on behalf of victims with the Department of Motor Vehicles, the Secretary of State, and the Recorder of Deeds, in order to capture restitution when an offender attempts to sell a car, boat, house, or other property.

Federal Cases

In the time since this evaluation was first funded, all of the clinics have expanded the scope of their work to include federal cases. However, for purposes of this evaluation, only federal work being done by the Arizona clinic was included, as that was the only clinic doing federal work when NIJ solicited proposals for the evaluation.

Most of the victims represented by the Arizona clinic in federal court are cases referred from tribal courts. The clinic has done outreach on several Indian reservations and is building a reputation there as a valued outside party: not the government and not the defense. As a result of its work in one particular case, referrals have sharply increased from one of the Apache reservations in Arizona. In tribal cases, the clinic will start with the victim in tribal court and help ease the transition when the case moves from tribal to federal court, which can be an extremely intimidating process for victims. They must go from the reservation (wherever in the state that may be) to Phoenix, and from a system that is based in their own culture and community to a large federal system. The legal issues in these cases tend to be the same or similar to the issues that arise in other cases, with the addition at times of working to get the federal courts to recognize certain aspects of the Native culture where appropriate. For example, in one case, the Arizona clinic helped a domestic violence victim get restitution to cover the costs of a Navajo cleansing ceremony she sought to aid her healing from the severe beating she experienced.

VIII. CLINIC WORK AT THE APPELLATE LEVEL

When the clinics are successful at the trial level, there is no opportunity to bring cases up on appeal and establish precedential case law. In this way, appellate practice is often a judgment call related to service to the individual victim: the clinics must decide whether to push an issue they are likely to lose *so that* they can appeal, or whether they should not push the issue to spare the victim going through the appellate process, especially where the potential benefit to that particular victim may be minimal. Conversely, there may be issues that specific victims want to press on appeal, but the clinic must weigh the possibility of losing the appeal and creating bad law. In considering taking a victims' rights case up on appeal, it is important to have a victim who understands the risks of both filing and not filing an appeal and can make an informed decision. Defense-initiated appeals, on the other hand, do not present the same issues: if the defense appeals a victim's assertion of their right, and the court accepts the case, the victim's side must be argued. When they do not represent the victim, the clinics still can provide the court with arguments based on victims' rights laws by filing *amicus curiae* ("friend of the court") briefs.

When the clinic loses an appeal, this can help demonstrate the need for new legislation. The advocacy partners of the clinics often then take up those causes and win the passage of new legislation remedying the need discovered through the lost appellate case. The NCVLI clinics have had both wins and losses, and have filed numerous *amicus* briefs as well, in state appellate and supreme courts. The signature wins have come on the issues of victim standing, the right to be heard, and the right to privacy. The losses primarily relate to the lack of remedies in the law for violations of victims' rights. Such losses play an important role in highlighting the need for new legislation to ensure the enforceability of crime victims' rights.

Clinic Cases Representing Victims

The Maryland clinic has had three appellate cases related to victim standing. In the first, *Surland v. State*, 895 A.2d 1034 (Md. Ct. App. 2006), the clinic represented the parents of a murder victim. The defendant was convicted and immediately filed an appeal. The defendant then died while the appeal was pending, and the defense attorney moved to have the court dismiss the appeal and vacate the conviction. Both the state and the victims opposed the defense motion to dismiss the conviction, with the clinic arguing that such a dismissal constituted unfair treatment of the victims, a violation of their rights under the law. When the defense attorney filed a petition with the state's highest court, the victims (through the clinic) filed a petition of their own, and the Court of Appeals ruled that the victims were not a party to the case and did not have standing to file petitions with the court. The case was therefore a loss on victim standing; however, it can be seen as contributing to the further evolution of victim standing in Maryland by illuminating the need for clearer rules and legislation with regard to standing. On the issue of unfair treatment, ultimately the victims did get what they wanted: the defense was given sixty days for the deceased defendant's estate to appoint a substitute for the defendant so that the appeal could continue; when no substitute was appointed, the murder conviction was left intact.

In the second case related to victim standing, *Lamb v. Kontgias*, 169 Md. App. 466 (2006), a registered victim of child sexual abuse was not notified of a hearing to reconsider her assailant's

sentence. The question was whether the victim had standing to challenge a judgment vacating the original conviction and sentence. The Court of Special Appeals (Maryland's intermediate court of appeal) held that the circuit court had jurisdiction to decide whether the victim had standing to challenge the revised judgment. However, the court also determined that the victim could not challenge the sentence. The court held that any available remedy depended on legislative expansion of the victim's right to appeal.

The Maryland courts further clarified the issues of victim standing and remedies for violations of rights in the case of *Hoile v. State*, 2008 Md. LEXIS 248 (2008). In that case, the clinic represented a victim who was not notified of hearings reconsidering the sentence of her assailant, and, thus, was denied an opportunity to be heard at those hearings. The clinic, on behalf of the victim, sought to vacate the altered sentence on the grounds that she had been denied her rights. The trial court granted her request, and the defendant appealed.

The court found, significantly, that under the newly expanded court rule, Maryland Rule 8-111, the victim had the right to participate in a criminal appeal in the same manner as a party regarding issues that directly and substantially affect the victim's rights. Clinic staff, therefore, was authorized to represent the victim in this case, including by participating in oral argument and filing a brief in the case.

However, the court in *Hoile* went on to find the victim was not entitled to relief in the case. The legislature had not permitted a victim to seek invalidation of an otherwise legal sentence merely because the victim's rights in regard to imposition of that sentence had been violated. The court noted "Although a victim now has more opportunity to participate in an appeal, there remains no effective tangible remedy for a victim to seek to 'un-do' what already has been done in a criminal case." Thus, the *Hoile* case was a win on standing and a loss on remedies for victims' rights violations.

In a fourth case litigated by the Maryland clinic, *Lopez-Sanchez v. State*, 388 Md. 214 (2005), the Court of Appeals examined the question of whether a victim of a crime committed by a juvenile offender was entitled to seek reconsideration of a Consent Order for Restitution that the trial court had approved without affording the victim his rights to notification or the opportunity to be heard. The court found that the right to seek a special appeal for a denial of victims' rights under section 11-103 of the Criminal Procedure Article did not extend to victims of delinquent acts, and because the victim is not a party to a delinquency proceeding, a victim cannot exercise a general right to appeal.

The *Lopez-Sanchez* case is perhaps the best example of a clinic's loss at the appellate level leading directly to legislative change. A member of the clinic's pro bono panel that had represented the victim in *Lopez-Sanchez* successfully ran for state delegate during the period of representation. As a delegate, and following his loss in the courts, he co-sponsored legislation to establish that victims' rights to appeal a denial of their rights also applies to victims of juvenile offenders. The legislation passed in 2006.

The New Mexico clinic had one successful appellate case in 2006 on victim standing, and although it resulted only in an unpublished opinion, the clinic has been successful in citing it as

persuasive authority in other cases. In that case, *Nasci v. Pope et al.*, No. 29878 (N.M. Nov. 8, 2006), the clinic had represented a sexual assault victim who sought to file a motion with the district court to attend all public court proceedings that the offender has a right to attend. After oral argument by the clinic attorneys, the Supreme Court issued an order of remand granting the victim standing to assert her rights and ordering the district court to try to maximize the constitutional protections available to the victim under the state's statutes and constitution and the rules of procedure and evidence.

The Utah clinic has one appellate case currently pending, in which it is representing two widows whose husbands were killed in a drunk driving crash (the widows were injured in the crash). The victims allege that the prosecutor deliberately misled them about her planned plea agreement with the offender and then gave them the wrong hearing date so that they would not be there to object. Contrary to what the victims had initially been told by the prosecutor, the deal included no conviction if the offender complied with the conditions of the plea and limited restitution to \$1500, which the prosecutor then converted to a court fee, leaving the victims with nothing. The clinic seeks to have the court set aside the plea agreement on grounds that the victims' rights to notice, to be heard, and to be treated with fairness, dignity, and respect were violated, and also that the prosecutor committed a fraud upon the court when she asserted that the victims had been informed of the plea agreement and agreed with it.

The New Jersey clinic was also involved in an appellate case involving the failure to properly notify a victim of a plea agreement. In *State v. Means*, the New Jersey Supreme Court considered the question of whether a trial court could set aside a plea agreement solely because the prosecutor failed to notify the victims before entering a plea agreement. In the case, a child abduction and molestation, the trial court accepted a plea without notifying the victim's parent as required under the state's victims' rights laws. The Law Center filed a motion to vacate the plea, and the motion was granted. The defense appealed, and the Law Center filed an amicus brief in the resulting state Supreme Court case opposing the defendant's request to have the original plea bargain enforced. The Supreme Court ruled that the failure to notify the victim was insufficient grounds to vacate a plea agreement. In its ruling, the Supreme Court explained that while a trial court should consider the victims' concerns, it also may not impinge on a defendant's constitutional rights. The ruling noted that the trial court had vacated the guilty plea without having information to fairly evaluate the victim's concerns, because it did not know whether the victims had an objection to the plea agreement. Instead, the ruling continued, the trial court could have heard from the victims at sentencing, at which time it would have been in a better position to decide whether to continue to accept the terms of the plea agreement or to reject the plea. The matter was remanded to the trial court.

In an important Arizona privacy case, *P.M. v. Gould*, 136 P.3d 223 (Ct. of App. 2006), the clinic represented a victim with cerebral palsy who was retarded and had been molested by her father. When the state informed the court of its intention to call the victim's counselor as a witness to prove the aggravating factor of emotional harm, the defense subpoenaed the victim's counseling records, arguing that it needed the records to prepare for cross-examination of the counselor. The state agreed that the defense could have the records, and the trial court ordered an *in camera* review of these records. The clinic appealed with a special action to the Arizona Court of Appeals. That appellate court found that the trial court should first determine whether the

victim's counseling records or the counselor's testimony were essential to the state's effort to seek an aggravated sentence. The appellate court further declared that the trial court should balance the victim's constitutional right to refuse discovery against the state's interest in calling the counselor, especially in light of the fact that the state intended to prove six aggravating factors to the crime and only one was needed for the aggravated sentence. Furthermore, the appellate court indicated that if the trial court still considered that the state's interest in calling the counselor to prove emotional harm was compelling, it should consider whether the counseling records were really necessary to cross-examine the counselor.

The clinics are not always successful in their appeals. For example, the Arizona clinic was especially disappointed in *State v. Glassel*, 116 P.3d 1193 (Az. 2005) in which the Arizona Supreme Court rejected the argument that the victim had a right to inform the jury that he would prefer the defendant to be sentenced to life in prison rather than death. In this case, the victim was the widower of a homicide victim—his wife had been shot at a homeowner's association meeting by a disgruntled resident. The couple were two months short of their 50th wedding anniversary. The surviving victim had been in law enforcement his entire life and was aware that if the defendant was sentenced to death, the case would not be over in his lifetime. Therefore he wanted to ask for a sentence of life in prison during his victim impact statement, but he was not allowed by the court to make a specific sentencing recommendation. Nationwide courts are split on this issue and the clinic staff is hopeful that the issue will be resolved by the United States Supreme Court.

At the federal level, the Arizona clinic has had one big win and two losses. The win and one of the losses were both tied to the same case, that of Moshe and Zvi Leichner, a father and son, who defrauded numerous victims out of nearly \$100 million. Mr. Kenna was one of their victims. In *Kenna v. United States District Court for the Central District of California*, 435 F.3d 1011 (9th Cir. 2006), the clinic won Mr. Kenna the right to be heard at the sentencing of the second defendant, after the judge had refused to allow the same victims that had spoken at the sentencing of the first defendant to speak again. Kenna filed a petition for writ of mandamus with the Ninth Circuit, and the court concluded that under the CVRA, "[v]ictims now have an indefeasible right to speak, similar to that of the defendant," and found that Mr. Kenna's statutory right was violated when the district court denied him the right to speak at Zvi's sentencing.

Mr. Kenna's second attempt to assert a victim's right—to read the pre-sentence report—was not successful, however. Although this right is explicitly accorded to victims in some states, including Arizona, it is not spelled out in the CVRA, and therefore the clinic's seeking this right for Mr. Kenna in the federal case was a bit of a long shot. In that case, *In re Kenna*, 453 F.3d 1136 (9th Cir. 2006), Mr. Kenna petitioned for a writ of mandamus to order the district court to release the presentence report to the victims. The U.S. Court of Appeals for the 9th Circuit denied the petition holding that the U.S. District Court for the Central District of California did not abuse its discretion or commit legal error when it found that the Crime Victims' Rights Act does not confer a general right for crime victims to obtain disclosure of a defendant's presentence report.

The Arizona clinic also received special permission to represent some victims in the Enron-related proceedings, which was in the 5th federal circuit (the clinic normally practices in the 9th circuit). Because the defendant, Ken Lay, died during the pendency of his federal direct appeal, restitution orders were voided. The clinic argued (unsuccessfully) that the victims should receive restitution from his estate, despite his death in *U.S. v. Lay*, 456 F.Supp.2d 869, *mand. denied*, (06-20848) (5th Cir. 2006).

The Idaho, Colorado, and South Carolina clinics have not yet taken any cases up on appeal.

Clinic as Amicus

When not directly representing the victim, the clinics will at times file *amicus curiae* (“friend of the court”) briefs on victim-related issues before the appellate courts. According to the New Jersey clinic director, it is sometimes preferable to participate in a case as *amicus*, because it provides the opportunity to lay out all the relevant legal issues in an extensive brief, something which might not be appropriate in the context of representing the specific victim’s interests. Among the *amicus* briefs filed by the clinics that we are aware of, two were in cases won by the victim. The other briefs either were not mentioned in the court’s ruling or are in cases that are still pending.

One case was an appellate win on victims’ right to privacy in New Jersey. The case, *State vs. Gilchrist*, pitted a rape victim’s right to privacy against the defendant’s right to confront his accuser. During his prosecution for aggravated sexual assault, kidnapping, burglary, and criminal restraint, the defendant filed a discovery motion requesting that a photograph of the victim be taken and provided to him. The trial court granted the request over the objections of the prosecutor. The appellate court reversed, stating that any possible benefits to the defendant from a court-ordered photograph were speculative, and were outweighed by the victim’s “right to privacy; her right to be treated with fairness, compassion, and respect; her right to be free from intimidation; and the need to encourage crime victims to cooperate and participate in the criminal justice system.” The Law Center got involved as *amicus* when the defense appealed the case to the state supreme court. However, the case never made it to oral argument, because the defendant withdrew his appeal as part of a plea deal. Thus the appellate ruling in favor of the victim stood, which was significant because it pitted the right to privacy against the right to discovery.

The other successful victim case was *Opert v. Criminal Injuries Compensation Board*, in which the Maryland clinic filed an *amicus* brief and also helped the victim’s attorney to write his reply brief. Although the court declined the clinic’s brief, the clinic notes that many of the arguments made in its declined *amicus* brief were in fact asserted in the court’s opinion. The case involved a motorcyclist, Opert, who had been injured in a crash on the Baltimore beltway when a pedestrian walked out onto the highway with or on a bicycle in violation of the law. The issue was whether Opert was a “crime victim” for purposes of victim compensation. Lower courts and the compensation board had ruled he was not. The Court of Appeals found he was. Though the language of the statute was ambiguous, after examining the legislative history the Court agreed that finding Opert a “victim” was more likely reflective of the legislative intent.

Several of the briefs in unsuccessful or pending cases revolve around evidentiary issues in child sexual abuse cases, such as whether to admit evidence or accusations of other assaults and whether to admit statements made by the victim to a social worker, as well as the protection of victims' private records. The South Carolina clinic filed a brief in a 2004 case arguing against a defense request for a psychiatric evaluation of a child sexual abuse victim, but the state's Supreme Court found the examination proper. The dissent echoed many of the arguments in the clinic brief.

Despite not yet having taken any clients, the Colorado clinic has filed one *amicus* brief on behalf of a dating violence victim who was being asked to provide explicit proof that the relationship was "intimate" in order to invoke a domestic violence sentencing enhancer. The case is pending. *State v. Disher*, 2008 Colo. LEXIS 432 (Colo. 2008)

The NCVLI victims' rights clinics are actively pursuing appellate actions when: (a)victims are denied their rights at the trial level, (b)a victim desires to press their case forward, and (c)when the clinic sees an opportunity to advance victims' rights through appellate case law. Though not all clinics have yet filed appeals, all report waiting for "the right case" to take up on appeal; that is, a case that offers both an opportunity for clarifying or broadening a victim's right and a good chance of the victim winning.

IX. IMPLEMENTATION CHALLENGES

This section will discuss some of the implementation challenges the clinics have faced in their first few years of federal funding, and how they have worked to overcome them. Some of the challenges, such as initial resistance from prosecutors and funding limitations, have affected all of the clinics, while other challenges have been experienced by only a few of the clinics.

Resistance to Change

Perhaps the biggest implementation challenge for the clinics overall has been finding ways to break down the resistance of prosecutors, and some judges, to the idea of victims being represented by attorneys in court. Although, as detailed in Section II, victims' rights legislation has been in existence for more than thirty years, the NCVLI legal clinics represent the first concerted effort for victims to enforce those rights in court. For the two-party U.S. criminal justice system, the integration of attorneys for victims has presented a significant challenge to traditional thinking.

The degree of prosecutor and judicial resistance has varied in the different clinic sites. As a former prosecutor, the director of the Utah clinic has been able to ease her former colleagues into an understanding of how victims' attorneys can support and not undermine the prosecutorial role. The New Mexico clinic, on the other hand, reports opposition so strong from prosecutors that one sought to eliminate the clinic's funding while another "threw" a case because of the clinic's involvement. All of the clinics have had to conduct ongoing education campaigns, introducing themselves and the clinic's work to prosecutors time and again and clarifying the role they seek in helping victims to enforce their rights. New Mexico reports that crimes against children have served as a "bridge issue," as everyone seems to recognize the legitimacy of a child victim being represented by an attorney. These cases can help pave the way for adult victims' attorneys to also be accepted in court. With the clinics (with the exception of Colorado) now in their fourth or fifth year of operation, most report that prosecutor distrust has eased significantly over time, if not evaporated altogether.

Staff Turnover or Inexperience

Attorneys who are well-suited to victims' rights work are not necessarily easy to find and keep, and this has proven to be another challenge for some of the clinics. There has been significant turnover of clinic leadership in South Carolina and Colorado (a clinic that has not yet taken any cases but is already on its third director). The Idaho clinic has transitioned from a supervising attorney who was a former judge, though not necessarily steeped in victims' rights, to a relatively inexperienced attorney whose background was in defendants' rights. There are various reasons for staff turnover, but the common thread for a number of the staff vacancies has been the uncertain funding stream. Attorneys who have families to support are apt to be lured by offers of more money and greater job security. According to NCVLI, an additional factor in attorney turnover may be vicarious trauma—attorneys may not have training in handling the emotional impact of working with crime victims day in and day out.

Based on our interviews with both clinic staff members and criminal justice professionals, the turnover and lack of experience in these three clinics has impeded their progress to some degree. On the other hand, the clinics in New Jersey, Arizona, and Maryland are headed by three of the most prominent voices in the victims' rights movement nationally (the Arizona clinic's founder is not on staff, but the clinic is associated with his name regardless). The Utah clinic also benefits from the distinguished victims' rights history of one of its board members. In these four clinics, the founder/directors' long personal histories in victims' rights and strong personal reputations among criminal justice professionals has clearly benefitted the clinics, giving them access to a pre-existing network of relationships statewide, including prosecutors and legislators. In New Mexico, the clinic director is a long-time and well-known victim advocate, but there has been some attorney turnover; additionally, that clinic appears to have encountered even more resistance among prosecutors to the idea of victims' attorneys than other clinics have.

In those clinics with less well-known attorneys and directors, outreach has proven to be somewhat of a challenge. Caseloads in several of the clinics have been surprisingly low: just 17, 20, and 22 cases opened in 2007 in Idaho, New Mexico, and South Carolina, respectively. These clinics have to work harder both to get the word out about their availability for victims and to build confidence in their work among potential referral sources. All of the clinics with low caseloads (based on the number of cases opened in 2007) report that their caseloads are increasing as they become better known around the state and as criminal justice system resistance to victims' attorneys lessens.

Demand for Services

Some clinics have had the opposite problem: more cases than they can comfortably handle. The Arizona clinic has recently implemented a waiting list, maxing out at about 40 cases (representing 55 to 60 victims) open at one time, while the New Jersey clinic may have as many as 100 cases open at any given time. The difference between these two clinics appears to be the amount of time spent in court: while the Arizona clinic attorneys attend every court proceeding with victims, the New Jersey attorneys attend court only when they expect a victims' rights issue to arise, and they instruct victims to call them if anything comes up when they are not there. The New Jersey clinic director also regularly works more than 80 hours per week. In Utah, the high demand for services led to their inability to screen cases quickly, which they believe led to a subsequent drop in referrals. However, they recently added a new attorney and believe that referrals will pick up again, as has happened in the past when word got around that their staff had increased.

Sustainability

Another significant implementation challenge for the clinics is securing funding. The federal funding under which the clinics currently operate has not always been secure from year to year, and non-federal funding has been hard to come by. None of the clinics evaluated felt it could survive without the federal grants, with the possible exception of Idaho, which is well-integrated into the law school's clinical program. Several of the clinics did have additional sources of funding, most commonly state VOCA grants, and these funds allowed them to pay victim advocates or outside contract attorneys for a certain number of hours (often less than full-time). When we asked the criminal justice officials we interviewed about potential sources of funding for victims' attorneys, most felt that to keep programs like the clinics going, or to pay other

attorneys for victims, states would need to set aside a portion of offender fines (or levy new fines) for victim legal services, or continued federal funds would have to be available for legal representation of victims.

As a way of controlling costs, NCVLI and the clinics initially envisioned making broad use of free help in the form of pro bono attorneys and law students. However, as the clinic implementation has progressed, NCVLI and most clinic directors have come to the conclusion that pro bono help is not as promising as was once thought, primarily because of a lack of the specialized knowledge that is required in victims' rights cases. Because it is a relatively new and complicated area of the law, a good deal of expertise is needed to be successful in many cases of the types taken by the clinics. Pro bono attorneys who specialize in other areas of the law require a good deal of training in victims' rights law. Law students have been helpful to some of the clinics with research, but their helpfulness is also bounded by their limited knowledge of the law and criminal procedure.

Clinic sustainability will be examined in more detail in the impact evaluation through interviews with each clinic on their past, current, and projected future sources of funding, as well as other topics related to organizational sustainability.

X. CLINIC SUCCESSES AND PROMISING PRACTICES

All of the clinics were able to point to numerous trial court successes in ensuring that victims' rights were honored, and four of the seven active clinic sites had had at least one successful appellate case. Victims interviewed at each site sang the praises of the clinics and left no doubt that the clinics' work in individual cases was highly valued.

The different clinics had, mostly through trial and error and sometimes on instinct, developed certain practices that helped overcome challenges and led to specific successes. Below we highlight some of these "promising practices."

Offering help to prosecutors. Several of the clinics were able to gain the good will of prosecutors by pointing out how their efforts could aid the prosecutors and/or save the prosecutors and their staff time. The most common ways that clinics make themselves helpful to prosecutors are by:

- Filing motions to protect the privacy of victim records. We were told several times in interviews with both prosecutors and judges that when the clinics assert victims' privacy rights it is more persuasive to judges than the prosecutor's argument alone.
- Helping victims gather their paperwork on crime-related losses and calculate the amount of restitution to be requested. According to prosecutors interviewed, this saves an enormous amount of time for their victim advocates. From the clinic perspective, it also means that victims stand a better chance of receiving full restitution.
- At times brokering the relationship with dissatisfied victims by helping them understand the legal system and why the prosecutor's office might be taking (or not taking) certain actions.

Offering free Continuing Legal Education (CLE) training for pro bono attorneys. Several of the clinics had offered or planned to offer free training for pro bono attorneys, for which the attorneys could receive CLE credit. This is a practice that could potentially overcome some of the hurdles to involving pro bono attorneys with victims' rights cases: specifically, their lack of knowledge of both victims' rights and criminal procedure, and the apparent lack of interest and willingness to take cases of this type. Many clinics noted that law schools focus almost exclusively on defendants' rights and therefore most practicing attorneys know little about victims' rights and don't even realize it is a potential area of practice or pro bono work.

Writing detailed and well-researched briefs on victims' rights issues. The New Jersey clinic director told us that, "You have to blow everyone out of the water with your brief." Because the clinic attorneys are generally the most knowledgeable parties in the courtroom on victims' rights legal issues, their briefs should reflect that expertise. According to the New Jersey clinic director, when faced with a detailed and well-researched and documented brief, defense attorneys will often accede to the victim attorney's request rather than attempt to write a response brief on legal issues with which they are unfamiliar. Judges also appreciate these briefs because they serve to update them on a new area of law, and prosecutors, even when they know victims' rights laws, generally do not have the time to author such briefs.

Being willing to take a risk. When a victim is willing to go through the appellate process, following that process to the end can pay major dividends for future victims. The New Mexico

clinic's success in establishing standing for victims the *Nasci v. Pope* case was a result of the courage of the victim and the clinic's willingness to go with her all the way to the state's Supreme court.

Using losses to spur change. NCVLI and several of the clinics noted that a courtroom loss can be a win for the movement, because it often provides a concrete example of why current victims' rights legislation is not working. Several of the clinics hold regular meetings with advocacy groups (either internal or external to their organizations) to communicate about "holes" in victims' rights laws that are revealed by the cases the clinics lose, and to strategize about advocating for legislative fixes for these holes.

Positioning the clinic as the expert on victims' rights. One successful form of outreach for gaining referrals was the New Jersey clinic's e-mail list, through which they send case updates and information on victims' rights to a wide array of criminal justice practitioners and interested parties throughout their state. They also publish a magazine once a year that provides in-depth analysis of important victims' rights cases and issues. These informational resources are appreciated by prosecutors, who view the clinic as the statewide expert on victims' rights and are likely to call them for assistance and refer them cases when victims' rights issues arise.

Gaining word-of-mouth referrals. In the words of the South Carolina clinic director, "Do a good job on every case, and more cases will come, and change will come." Several of the clinics noted how one case in a particular community or from a particular referral agency led to more referrals from that community or agency when they saw and appreciated what the clinic did. Cultivating community-based referral sources was a very important strategy for gaining more cases and increasing the clinics' reach.

Offering services to victims in high-profile cases. The Idaho clinic, the only clinic situated in a rural area, watches the local news for crime cases and seeks out referral to those victims by contacting other professionals who may be in touch with the victims and asking them to provide the victims with the clinic's information. According to the Idaho clinic attorney, this entrepreneurial spirit is essential in an area that is somewhat remote and has fairly low crime rates.

Thinking outside the box on sustainability. While most if not all clinics had applied for other grants in addition to NCVLI funding to sustain their clinic work, some had also come up with more innovative ways to stretch their grant dollars. Of particular note were the Arizona clinic's subsidized office space provided by a corporate donor, and the New Jersey clinic's law firm model, through which the clinic director's salary is covered by the NCVLI grant, and his two law firm partners work on typical civil legal cases and donate a portion of their profits, as well as pro bono hours, to the work of the clinic. The clinic also refers victims to the civil practice when appropriate, with fees from those cases contributing to the law firm's revenues. The Colorado clinic is exploring possibilities for direct funding from the state's 13 judicial districts, each of which has public funds it can dedicate to criminal justice programs.

XI. CONCLUSIONS AND RECOMMENDATIONS

Based on the information we gathered during the course of the process evaluation, we believe that the state clinics are beginning to fulfill the intentions of their architects and funders. All of the clinics have pushed the envelope of victims' rights in their state courts. Some have won significant victories in gaining standing for victims and expanding the definition of particular rights. Others are enjoined in the battle. But all have raised awareness of victims' rights with prosecutors, judges, defense attorneys, and police officials.

How far the clinics have managed to alter the legal culture remains to be determined through the second, or impact, phase of this evaluation. Two significant parts of that effort will be to (a) determine how court officials' opinions and observance of victims' rights has changed and (b) assess the extent to which basic victims' rights such as being informed of rights or receiving restitution has increased since the clinics opened. We plan to assess the former issue through systematic surveys with judges, prosecutors, victim advocates, and defense attorneys who deal with felony cases and the latter issue through examination of case files before and after the clinics opened their doors.

One of the good things about how NCVLI has gone about setting up the state clinic program is that it has funded different clinic models, as defined by where the clinics are housed, what kinds of cases they tend to specialize in, whether they use litigation as a first or last resort, and how much use they make of pro bono attorneys or student help. This diversity creates the ability to explore the kinds of outcomes achieved by different models, in terms of the numbers and types of clients served, in terms of getting favorable published opinions or changes to court rules, and in terms of changing observance of victims' rights by court officials. For example, it may be that a successful pro bono program is associated with a greater number of clients served, while a focus on litigation is associated with successes in obtaining favorable published opinions on victims' rights. Although the small number of clinics and model types make definitive statements about the impact of the model type on the clinic outcomes impossible, we will explore these factors in the impact evaluation and attempt to identify any correlations between model types and outcomes.

One thing that the process evaluation has made clear is that clinics that build on the networks and reputations of experienced clinic directors and boards have an easier time of it than clinics that have to start from a zero point. Clinics with directors and boards that are well-connected gain more referrals and have more success getting prosecutors and judges to accede to their desired outcomes, even without having to litigate. A good part of their success may also result from trust that the directors have built up with local officials in their years of victims' rights work. It will be instructive to see whether the clinics starting from a zero point are able to make up ground over time and develop the same kinds of respect and relationships that the Maryland, New Jersey, and Arizona clinics enjoy as a result of their directors' contacts or the Utah clinic enjoys as a result of contacts of board members.³²

³² Of course, one of the dangers of an organization built upon the strength and reputation of a single individual is that the organization may collapse when the individual leaves. It is not clear that this presents an immediate danger since the clinics are still young and the directors are relatively young and very dedicated to their work.

Thoughts on the Future of the Demonstration Project

To the extent that we can tell at this point, the clinics have made significant progress in gaining acceptance for victims' rights. For the most part, they have done this by focusing on a small number of cases that have the potential to set precedent that will strengthen and expand the definition of victims' rights. Thus, they have acted, as NCVLI intended, to increase court officials' awareness of victims' rights and to create new interpretations of law.

It is certainly true, however, that the clinics serve only a tiny fraction of victims in their states whose rights are not honored. The clinic model was never intended to accommodate large numbers of cases, yet the clinics' experience has pointed out that many court officials still feel that victims' rights are only to be accommodated when it is convenient or when they coincide with the interests of the justice system. It seems to us that the clinics have a significant role to play in thinking about how a larger number of victims could have recourse to assistance with rights issues – at a cost that is politically feasible.

The victims' rights clinics currently play at least three somewhat distinct roles. Although the attorneys probably do not intentionally segment their work in this way, in our evaluation we observed that the work could more or less be divided into three categories: informal advocacy that does not involve litigation (e.g., serving as a bridge between the victim and the prosecutor when there are disagreements); litigation of the more common victims' rights issues (e.g., the ability to give a victim impact statement or receive an order for full restitution), and litigation of more complex cases, including those that go up on appeal and have the potential for establishing appellate case law.

It strikes us that, perhaps, these three roles could actually be played by different groups of professionals to increase efficiency and reduce costs. The first role, that of intervening with prosecutors or other actors in the criminal justice system in ways that are short of litigating, could be played by state compliance officers, which already exist in some states and perform this work to a limited extent. The second role, that of litigating the more common rights violations, could potentially be played by pro bono attorneys who have completed required training and with technical assistance from an organization such as NCVLI. The final role, that of litigating the more complex and cutting-edge victims' rights cases, could be played by the more experienced paid victims' rights attorneys at the NCVLI clinics. A limited expansion of this cadre to cover each state with at least one or two paid, experienced victims' rights litigators might do the job.

This model presents significant challenges. For example, the way that most state compliance officers currently operate would not be sufficient to fill the role of what we are calling "informal advocacy," because compliance officers' work most often happens after the fact and is geared more toward changing the system for future victims than for righting a wrong to a particular victim. For such professionals to be effective in current, ongoing cases, their mandate would need to be modified and prosecutors would have to be legally required to inform victims of the existence of such professionals so that victims could call upon them in a timely manner. Victim advocates would have to be trained and encouraged to alert compliance officers to potential problems at a stage when action can be effective and not after a plea has been taken or a sentence

issued. Even so, many of the actions brought by a compliance officer would be too late to help a particular victim and would involve trying to change a pattern of rights violations emanating from particular counties or particular courtrooms.

The other weakness of using compliance officers for informal advocacy is that such advocacy by non-attorneys may not carry the same weight as informal advocacy by attorneys who have the ability to eventually litigate if the informal route proves unproductive. Therefore, such a compliance scheme would have to be designed with some sort of “teeth” that would provide a source of reserve power to the compliance officer comparable to that which attorneys possess by virtue of their ability to go before a judge.

There is also some risk in separating what we are calling “common” victims’ rights issues from “complex” victims’ rights issues. At the start of a case, it may not be apparent which category a case may fall into: a case that looks routine at the beginning may run into complexities that would entail the need to call in more experienced litigators. Such transitions from one attorney to another might be upsetting and disruptive for victims and make for less effective legal work than if the same attorney or team of attorneys stuck with a case from beginning to end. This possibility would have to be balanced against the potential benefit of having many more victims represented under this scheme.

Notwithstanding the limitations outlined here, the three-role concept represents a potential way to expand protections to a larger number of victims. There are surely other schemes that could be developed, and the impact phase of this evaluation may point the way to even more effective practices for achieving more consistent enforcement of victims’ rights laws and helping more victims.

Thoughts on Future Evaluation Work

One thing that we noticed during the course of the process evaluation is that the clinics varied in the sophistication of their record-keeping systems. The emphasis of the clinics is, appropriately, on serving clients and maintaining confidentiality of client information. We note, though, that in order for NCVLI and outside evaluators to be able to assess the work of the clinics, comprehensive and consistent record-keeping is important.

We recommended – and the clinics agreed – to collect data on client demographics, essential to understanding the client base that the clinics serve. We also noted in this report that the clinics have different ways of recording the presenting problems that brings clients to the clinics and the type of service that the clinics provide. Comparison of clinics would be facilitated if this information was recorded consistently from one clinic to the next. Developing consistent coding would entail NCVLI developing categories for recording data on these two dimensions and definitions of what those categories consist of. This would allow, for example, comparing the kinds of legal needs of families of homicide victims to the needs of sexual assault victims.

Formal tracking and reporting of requests for clinic services and clients turned away or wait-listed would also help NCVLI to evaluate staffing levels of the clinics and make the argument that more staff was needed in particular states. It would also be useful if the clinics tracked and reported the number of attorney hours spent on gathering information from potential clients,

conferencing with clients, advocating for clients' legal needs, spending time in court, and connecting clients with needed social services. That would allow NCVLI and others interested in measuring clinic performance to compare NVCLI's statistics to public service standards for reasonable caseloads per attorney and determine how efficiently clinics are serving their clients.

Lastly, the client satisfaction surveys should be expanded and reported with greater regularity. Client satisfaction is an important yardstick to gauge how the clinics are doing. Surveys are done now, but they are few in number and not reported on a consistent basis. NCVLI should insist that clinics forward satisfaction surveys for all cases that are opened by the clinics (or a written record of unsuccessful attempts to conduct the interviews). NCVLI should also consider contracting this function out in order to reduce bias that is likely to occur when the same individual who provides service to victims also queries them about their satisfaction with those services.

This process evaluation has begun to shine a light on the work being done in eight state clinics on very limited budgets; more remains to be seen about the effectiveness of this work and the best ways to obtain for all crime victims the rights, respect, and dignity for which countless advocates have long struggled.

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APPENDIX A: SITE REPORTS

Arizona Crime Victims' Legal Assistance Project

Legal Context

Compared to other states, support for victims' rights in Arizona is very strong. Arizona has an extensive bill of rights for victims, and a separate bill of rights for victims of juvenile offenders. Victim provisions are also incorporated throughout the state code, where relevant. Victims' rights advocates in Arizona also ensured that victims' rights were incorporated into the rules of criminal procedure.

The Arizona victims' rights' amendment includes the most common rights of victims, as well as some unusual constitutional provisions. These include the right "to have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights." It also includes the right for the victim to refuse an interview, deposition, or other discovery request by defense counsel; and the right to review the presentence report if it is available to the defendant. The amendment received a relatively low voter approval rating in 1990: 58%. According to the clinic founder, who also drafted the amendment, the low approval rating can be attributed to the extensive reach of the amendment, which included many more provisions than other states' amendments.

The implementing legislation was noteworthy because of its enforcement provisions, giving crime victims explicit standing to enforce their rights, and the ability to seek injunctive relief, and even the ability to bring a civil action for damages in the case of a willful violation of rights.

Moreover, unlike in most other states, the Arizona courts decided some early pro-victim cases. As far back as 1994, the Arizona Supreme Court granted victim standing in *State ex rel Hance v. Az Pardons and Parole*, 875 P.2d 824 (Az. Ct. of App.1994). In that case, the parole board did not tell the victim of a parole hearing and voted to release the defendant. The victim filed a petition to the Arizona Court of Appeals which ordered a "do-over" of the parole hearing. This case established that victims had appellate standing and that victims' rights were enforceable, long before the clinic was developed.

Project History

The Crime Victims' Legal Assistance Project (CVLAP) is a project of the Arizona Voice for Crime Victims (AVCV), a victims' rights organization founded in 1996. AVCV's mission is to "ensure that crime victims receive their rights to justice, due process and dignified treatment throughout the criminal justice process." The organization grew out of the founder's efforts to advocate for an amendment to the Arizona state constitution by ballot initiative in the late 1980s. The founder is a former Chief Assistant Attorney General of Arizona with a longstanding interest in victims' rights issues. He has worked to promote victims' rights for more than 30 years, providing assistance to Congress, state legislatures, tribal governments, and local organizations in drafting, passing, and implementing victims' rights statutes and amendments. He authored the Arizona constitutional amendment for victims' rights and the Arizona Victims' Rights

Implementation Act and has served as an informal advisor on other victims' rights legislation. He was also one of the founders of NCVLI in 2004.

Having been instrumental in enacting both an Arizona constitutional amendment and enabling legislation, the clinic founder initially believed that the clearly enumerated victims' rights would be enforced by prosecutors and judges. By the late 1990s, however, he realized that very little had changed and that victims' rights were going to have to be enforced by attorneys, in the same way that defendants' rights are enforced. The idea of modeling the enforcement of victims' rights on the enforcement of criminal rights for defendants has been an important principle for the clinic.

AVCV's founder started the Crime Victims' Legal Assistance Project at Arizona State University law school in 2001, after receiving a state VOCA grant. The clinic began representing clients in January 2002, operating out of a small space at the law school with initially one paid staff attorney--a former prosecutor--and another attorney assisting in a pro bono capacity. Initially, law students were involved in most aspects of the clinic functioning, but the law students' role has diminished over time, as the clinic staff's specialized expertise has developed.

After the initial VOCA grant, the clinic secured a federal grant as part of the NCVLI demonstration project in 2005 to continue its work enforcing victims' rights in Arizona state courts. Then, in 2006 the clinic secured a separate grant directly from OVC to work on enforcing the Crime Victims' Rights Act in federal court. This grant required the clinic to keep its federal and state court operations completely separate. For one year, the clinic maintained separate staff and offices for its state and federal work.

Since the initial federal enforcement grant concluded, the clinic has been able to use both VOCA and federal (OVC, through NCVLI) grant funds to work on both state and federal cases. In February 2008, clinic staff began outreach to the Apache reservation tribal courts, as well as several other Native communities around the state. Since that time, a majority of the clinic's federal case load has been from tribal courts.

Business Model

The clinic is under the umbrella of the Arizona Voice for Crime Victims and has no separate legal or organizational identity. The clinic founder is the president of the board and plays an important role in the organization, though he is not a paid staff member.

The clinic only has two employees – the paralegal and the office assistant. Two attorneys and two social workers are independent contractors. The paralegal also handles some of the accounting work, which has allowed the clinic to cut back on outside accounting services. The clinic also occasionally employs an information technology consultant.

The clinic is affiliated with Arizona State University law school, where the founder teaches a class. Most of the students in the class volunteer for the clinic in order to receive extra credit for the class. The class is not qualified as a "true clinic" by the law school because there are many students in it and the students do not directly represent clients. The clinic staff felt that while

having students work directly on cases was sometimes helpful, it also took a great deal of time to supervise. Working with students is seen as a way of educating future lawyers rather than a viable way to actually represent more clients than would otherwise be possible. The students do contribute to the clinic's work by doing legal research that is relevant to clinic cases.

The clinic emphasizes full representation of its clients with a team of a social worker and an attorney generally present with the victim at every proceeding in the victim's case, from pre-trial status conference to sentencing. Clinic staff teach a "Trial 101" class to victims and their families so that they know exactly what to expect and what not to expect from the process. The staff emphasized that once they enter into a representation agreement, they "stick" with the client even absent any victims' rights problems.

The clinic does not undertake informal advocacy, such as phone calls, on behalf of victims it does not formally represent. The clinic lawyers believe that this would constitute the improper practice of law under the relevant Arizona rules of professional responsibility. If the clinic is unable to represent a victim, either because of a full caseload or because the victims' needs are outside the usual scope of the clinic's services, the clinic will attempt to refer the victim to another appropriate agency or attorney. The clinic will, however, offer informal technical assistance to prosecutors who contact the clinic about a victims' rights issue.

According to clinic staff, their relationship with prosecutors and law enforcement is excellent and they often receive referrals from prosecutors and victim advocates at prosecutor's offices. Clinic staff state that victims who work with them create less work and fewer headaches for prosecutors and judges. The clinic welcomes victims that prosecutors see as "difficult." For example, in one case they represented a victim who had been shot in the head. The brain damage he suffered made him impulsive and very difficult to work with. He was also the only witness to the completed murder of his friend. The clinic represented both him and the family of the deceased victim (assigning a separate attorney to each family) during the trial to make sure there were appropriate accommodations made for his disabilities, and to secure his testimony about the murder of his friend, the clinic's other client.

The clinic mentioned only one difference in the way that state and federal cases are handled. In state court, victim's rights "attach" or come into effect only when a defendant is formally charged. As a result, they tend not to take state cases prior to a defendant being charged. According to clinic staff, pre-charge cases are very resource intensive and there are more resources available from other organizations to aid victims pre-charge. In contrast, under federal law, the victims' rights attach upon the occurrence of the crime. As a result, they sometimes take federal cases prior to any charges being filed.

The clinic receives modest corporate contributions which have allowed it to occupy an attractive suite in a downtown office building. The clinic's founder indicates that these contributions are not sufficient to allow the clinic to continue functioning absent the state and federal grants.

The founder believes that ultimately any victim who wishes to have counsel should receive it and that victims' rights are best advanced by loosely following the pattern of the expansion of defendants' rights – litigating rights in the courts.

Staffing

The clinic staff includes two attorneys, two social workers, a paralegal, and another assistant, although, as stated above, all but the paralegal and the assistant are contract employees. Each case is generally staffed by an attorney and a social worker. The paralegal provides additional assistance and, with a background in victim advocacy, sometimes attends court to help support victims, particularly in cases with large numbers of victims or on days when several cases are in court at the same time. The social worker and the paralegal also allow the attorney to focus more on the legal aspects of the case and less on the victims' immediate needs.

The clinic has relationships with five or six attorneys that accept victim cases on a pro bono basis. The clinic attorneys know these attorneys and know that they will do a good job. One larger local firm also takes a few cases, particularly cases in which the clinic has a conflict of interest. Originally, the clinic envisioned a large network of pro bono counsel, but gradually realized that the necessary knowledge and expertise were very specialized. In particular, the emotional skills necessary to interact sympathetically and professionally with a victim are not possessed by every attorney. The law firm does a good job, but it takes about two weeks for the firm to undertake its conflict of interest check and for some clients, this delay is problematic.

The clinic also tries to get pro bono attorneys involved in restitution issues as a case is concluding. These are fairly straightforward and require fewer specialized skills.

How the Clinic Gets its Clients

The clinic advertises its existence through a website and ongoing training sessions around the state, litigation, and occasional contacts with local media. Most clients were referred through law enforcement agencies and the victim advocates in the prosecutor's offices. They have also created a brochure. While the previous director engaged in more media contact, the current director has generally avoided press conferences. The clinic also works with advocacy groups like Parents of Murdered Children and other community groups, which are another significant referral source. Most cases now come through word of mouth, as the clinic's reputation has grown.

Geographically, the clinic estimates that approximately 60% of their caseload comes from Maricopa County (where Phoenix, and the clinic, is located). This estimation is consistent with the case statistics that were provided for all the cases that were opened in 2007. However, as a result of their recent outreach on an Apache reservation about three hours from Phoenix, many of the newer cases are coming from there.

When the clinic is contacted by a potential client, one of the two social workers conducts a thorough intake. In some cases, the victim is obviously seeking services that the clinic cannot provide. In these instances, the social worker attempts to refer the caller to the appropriate resource. Originally students were tasked with doing intakes, but results were more uneven and students were not as aware of available social service agencies.

The staff then reviews the intakes and meets weekly or close to weekly to decide which cases to take. The clinic recently had to institute a waiting list as a result of demand for their services

exceeding supply. This makes them somewhat wary of advertising or trying to increase the public profile of the clinic. As they close cases, they are able to take cases from the waiting list, which currently runs about four to six months. Some homicide cases, for example, typically last 3-5 years. While they look for victim's rights violations, they are not a prerequisite to the clinic accepting the case.

Cases are not necessarily taken from the waiting list in the order they were put on it. Some cases are considered "have-to" cases by the clinic. Clinic staff cited child victims, high-profile media cases, and death penalty cases as "have-to" cases. Also, if a victims' rights violation occurs in a case on the waiting list, it may be bumped into active status so the clinic can help on the immediate issue. The clinic attempts to take as many cases as the staff feel they can responsibly handle, and the staff exercises quite a bit of discretion in determining which cases need immediate attention and which can stay on the wait list a bit longer.

Altogether, clinic staff estimated that the clinic presently represents about 55-60 clients in about 40 cases. The discrepancy between number of cases and number of victims results from cases in which there are multiple victims, often many family members who were affected by the offense.

Table 1: Source of Referral

Source of Referral	Percentage
Website	4%
Unknown	4%
Prosecutor's Office (including victim advocates)	43%
NCVLI	11%
Police Department	0%
Friend/Acquaintance of Victim	4%
Parents of Murdered Children	25%
Judge or other court official	7%

Training Criminal Justice Officials

Clinic staff members have trained prosecutors, judges, victim advocates and some of the religious community who work with victims. The clinic has also been invited to a national training for state judges. They recently conducted a continuing legal education (CLE) session for lawyers. They would like to be able to conduct more training but they are limited by their case load.

In Arizona, for the last three years, they have participated in the two-week orientation program for new judges by leading a two hour training session on victim's issues. The clinic has also

presented at state judicial conferences, where they brought in five victims to speak. The clinic has also trained probation officers.

Victims' rights have powerfully affected the local criminal justice culture. For example, the clinic has been asked to help redesign the courthouse to make it more victim-friendly, by, for example, creating separate seating areas for the victims apart from the family members of the accused.

How the Clinic Affects the Exercise of Victims' Rights in the State Courts

By being present at every proceeding, the clinic attorney protects and enforces the victims' rights under Arizona and federal law.

Clinic staff report that after some initial resistance from some prosecutors and judges, the criminal justice system adapted to victim representation well. In one early isolated case, the Arizona Attorney General said that the presence of an attorney for the victim makes the AAGs look like they cannot do their job well. The clinic feels as though they are helping the prosecution stretch their limited victim advocate resources. They are "not bomb-throwers" and emphasize their willingness to cooperate with judges and prosecutors. When they first started, both judges and prosecutors were nervous but they saw that represented victims were easier to deal with, particularly victims who had a reputation for being difficult. Judges appreciated an "unfiltered" expression of the victim's position. The clinic's policy of representing the client throughout the case (and not just when the prosecutor or judge violates the victims' rights) probably facilitated acceptance by prosecutors and judges. The victim advocates also appreciate the fact that their workload is lightened by the support the clinic social workers provide to victims on their cases.

According to clinic staff, defense counsel perspectives remain mixed. The more accepting defense attorneys understand that the clinic attorneys are representing their clients' interests and accept their role. Some defense attorneys have referred cases to the clinic. Others fear that the victims' active involvement usually means worse outcomes for the defendant. The clinic emphasizes that that is not always the case and that both in death penalty cases and in others, the victim sometimes prefers something less than the maximum penalty. The clinic is frustrated that victims are not permitted to give their opinion as to the appropriate sentence in death penalty cases. Particularly in cases where surviving victims are against the death penalty, having to restrict their statement to the impact of the crime on their family may leave the impression that they want death for the defendant when in fact they do not.

The clinic staff also emphasized the fact that conversations between victims and the clinic social workers are legally privileged (under an extension of attorney-client privilege) and thus not discoverable by the defense. According to the clinic, it is more uncertain as to whether or not conversations between victims and victim advocates from prosecutor's offices were potentially discoverable by the defense.

Table 2: Victims' Rights Issue in Cases Opened by Clinic

Reason for Clinic Involvement	Percentage*
Right to Privacy (refusing defense interview)	25%
Right to be present/heard	29%
Victim Sought Fairness and Respect	11%
Right to Protection/Safety	29%
Restitution	7%
Right to Notification	7%
Right to timely disposition	7%
Represented victim as guardian ad litem	7%
Other Victim Issue	11%

*The total is more than 100% because some cases involve more than one issue.

Right to be heard issues often arise, particularly in homicide cases where there are multiple survivors who wish to be considered victims for the purposes of the right to be heard.

Restitution issues often arise. The clinic aggressively pursues restitution in every case, even when the defendant appears indigent. This includes filing liens with the Department of Motor Vehicles, the Secretary of State and the Recorder of Deeds. In the clinic's experience, even indigent defendants occasionally attempt to transfer title to a car or boat. The clinic also believes that these liens eliminate incentives that defendants might have to profit from their crimes with book deals or sales of items related to the crime. This also makes it unnecessary for victims to hire their own private lawyers to seek restitution.

About 25-30% of the clinic's clients are Spanish-speaking. The attorneys are not fluent in Spanish, but the paralegal does speak Spanish. Clinic attorneys often ask for and receive a dedicated victim interpreter for court proceedings.

How the Clinic Affects the Exercise of Victims' Rights in the Federal Courts

In federal court, the clinic staff indicates that it is more difficult to represent victims. For example, they have had some difficulty in obtaining the pre-sentence report prior to sentencing. Since the judge relies heavily upon the pre-sentence report in deciding the appropriate sentence, an inaccuracy can make a large difference. The clinic attorney reported that the federal courts are about where the state courts were a few years ago. Awareness on the part of judges and U.S. Attorneys is still at an early stage compared to Arizona state and county officials.

Clinic staff members were particularly proud of recent outreach that they made to victims at the Apache reservation. According to the clinic staff, there is a very high crime rate and methamphetamine production and consumption are big problems. Law enforcement can be indifferent and there is frequent prosecutor turnover. By serving as outside observers, clinic staff members feel as though they help prevent corruption. They found that victims and witnesses were often being intimidated by the families of the criminal defendants. By filing for orders of protection, they were able to prevent this from occurring. The clinic staff feels as though positive word of mouth is spreading and that they have helped facilitate a movement towards a culture of

safer streets and being willing to testify. The clinic has also met with the prosecutor in the Navajo tribal courts and represented one victim from Navajo reservation.

The clinic's familiarity with Phoenix and federal court also helps tribal victims if the cases are pursued in federal court. The staff provides a constant to ease the transition between the tribal prosecutor and the Assistant U.S. Attorney. There is also substantial turnover in both local prosecutors assigned to tribal court and the assistant U.S. Attorneys that prosecute these cases. The clinic staff also felt that there was sometimes a reluctance to prosecute tribal cases in federal court and that some Assistant U.S. Attorneys see tribal victims as "uncooperative." Clinic staff can help educate prosecutors about cultural issues that may be at play for tribal victims and advocate for full prosecution of their cases. By being accessible to victims and reaching out to them, the clinic also ameliorates some of the suspicion of the federal government many tribal victims possess.

Clinic Work on the Appellate Level in State Court

The clinic has been very active in developing victims' rights case law in the state appellate courts, having been involved in more litigation than clinics in most other states.

In *P.M. v. Gould*, 136 P.3d 223 (Ct. of App. 2006), the clinic represented a victim with cerebral palsy who was retarded and had been molested by her father. The defense subpoenaed the victim's counseling records and the trial court had ordered an *in camera* review of these records. The clinic appealed with a special action to the Arizona Court of Appeals. That Court found that the defendant had to prove the records were essential to the case before permitting the trial court to examine the records.

They are not always successful. For example, the clinic was especially disappointed in *State v. Glassel*, 116 P.3d 1193 (Az. 2005) in which the Arizona Supreme Court rejected the argument that the victim had a right to inform the jury that he would prefer the defendant to be sentenced to life in prison rather than death. In this case, the victim was the widower of a homicide victim—his wife had been shot at a homeowner's association meeting by a disgruntled resident. The couple was two months short of their 50th wedding anniversary. The surviving victim had been in law enforcement his entire life and was aware that if the defendant was sentenced to death, the case would not be over in his lifetime. Therefore he wanted to ask for a sentence of life in prison during his victim impact statement, but he was not allowed by the court to make a specific sentencing recommendation. Nationwide courts are split on this issue and the clinic staff is hopeful that the issue will be resolved by the United States Supreme Court.

Clinic Work on the Appellate Level in Federal Court

In federal court, the clinic litigated *Kenna v. United States District Court for the Central District of California*, 435 F.3d 1011 (9th Cir. 2006). In this case, Moshe and Zvi Leichner, father and son, defrauded numerous victims out of nearly \$100 million. After each defendant pleaded guilty, more than sixty victims submitted written impact statements, and at Moshe's sentencing, several victims, including Mr. Kenna, delivered an oral impact statement. *Id.* at 1013. At Zvi's sentencing, which was three months later, Mr. Kenna was present again to verbally allocute, but the district court denied him the opportunity, stating that after reviewing all the victims' written statements and listening to the victims at the prior sentencing, "I don't think there's anything that

any victim could say that would have any impact whatsoever." *Id.* Kenna filed a petition for writ of mandamus with the Ninth Circuit. Noting that the CVRA sought to change the criminal justice system's assumption "that crime victims should behave like good Victorian children -- seen but not heard," the court framed the issue presented as the proper scope of the right to be reasonably heard. Turning to the legislative history of the CVRA, the court determined that the law disclosed "a clear congressional intent to give crime victims the right to speak at proceedings covered by the CVRA." *Id.* at 1016. The court then concluded that under the CVRA, "[v]ictims now have an indefeasible right to speak, similar to that of the defendant," and found that Mr. Kenna's statutory right was violated when the district court denied him the right to speak at Zvi's sentencing. *Id.*

The clinic was also involved in a second case involving victim's rights and Mr. Kenna: *In re Kenna*, 453 F.3d 1136 (9th Cir. 2006). In that case, the victim also petitioned for a writ of mandamus to order the district court to release the presentence report to the victims. The U.S. Court of Appeals for the 9th Circuit denied the petition holding that the U.S. District Court for the Central District of California did not abuse its discretion or commit legal error when it found that the Crime Victims' Rights Act does not confer a general right for crime victims to obtain disclosure of a defendant's presentence report.

The clinic also received special permission to represent some victims in the Enron-related proceedings. The clinic required special permission because it was in a different federal court. Because the defendant, Ken Lay, died during the pendency of his federal direct appeal, restitution orders were voided. The clinic argued (unsuccessfully) that the victims should receive restitution from his estate, despite his death in *U.S. v. Lay*, 456 F.Supp.2d 869, *mand. denied*, (06-20848) (5th Cir. 2006).

Legislative Efforts

Each year, the the clinic's founder asks clinic staff if they encountered particular problems that might be remedied by legislative action. Since the founder receives no money from the grant funds, he is able to lobby the legislature on matters that concern victims that arise during the clinic's work. Other clinic staff can do so on their own time (for example, if they take a vacation day).

Arizona Voice for Crime Victims has been successful in the legislature and the clinic founder obviously wields considerable influence in the body. To give one telling example, he hopes to change the scope of the spousal privilege to allow the state to prosecute one particular defendant whose wife initially reported the defendant's confession but then indicated that she would execute the privilege and not testify against him. While this change might affect a small number of other cases that might arise in the future, it would primarily affect one particular case in which the victim is represented by the clinic.

In 2003, AVCV was influential in eliminating the exception to rape that immunized husbands from being prosecuted for the rape of their wives. Prior to this change, spousal rape was a minor felony that did not carry much punishment.

The main victims' rights enforcement statute, Ariz. Rev. § 13-4437, was amended in 2005 to provide: "On the filing of a notice of appearance and if present, counsel for the victim shall be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve a victim's right enumerated in article II, section 2.1, Constitution of Arizona." The 2005 amendment also gave victims standing to file a notice of appearance in an appellate proceeding seeking to enforce any right or challenge an order denying a victim's right. The same changes were made to the juvenile victims' bill of rights, § 8-416.

Also in 2005 Arizona expanded the victim's right to be notified and heard regarding any proposed modification of probation. The right used to be limited to modifications that would affect the offender's contact with or safety of the victim, or restitution or incarceration status. Now it includes any modification.

In 2006 the procedures to enforce victims' rights were amended, to provide that failure to comply with a victim's constitutional or statutory right is a ground for the victim to request a reexamination proceeding within 10 days of the violation -- or with leave of the court for good cause shown. The court shall reconsider any decision that arises from a proceeding in which the victim's right was not protected (but is not cause to seek to set aside a conviction after trial or provide grounds for a new trial). In some situations the victim may move to reopen the plea or sentence if the victim was not given the right to be heard, and the defendant didn't plead to the highest offense charged. The statute states this statute does not affect the victim's right to restitution, which the victim can enforce at any time.

In 2006, the legislature restricted defense counsel's use of blank subpoenas. According to clinic staff, the clinic was aware of defense counsel using these subpoenas to obtain sensitive information about victims, and brought the problem to the attention of the clinic founder for his legislative advocacy agenda.

In 2006, victims received the right to get a copy of the police report at no charge, and in 2007 the right to the "minute entry" or portion of the record of any proceeding in a case that arises out of the offense committed against the victim that is reasonable necessary for the purpose of pursuing a claimed victim's right. (§39-127).

In 2007, Arizona expanded the victims' right to speedy trial to include requests for continuances. The amendment states that the prosecutor must notify the victim of any request for a continuance or if the victim is represented by counsel who has filed a notice of appearance, the court must make reasonable efforts to notify counsel of the request for continuance. The court must then consider the victim's views on the request and the victim's right to speedy trial before ruling on the request. (§13-4435) Similarly, as of 2005, if a victim files a notice of appearance in an appellate proceeding in a capital case then the victim has the right to respond to a request for an extension of time to file a brief in that case.

In 2007, Arizona amended victims' right to be notified of any post-conviction or appellate proceeding and related decisions to require that notice be given "immediately." Also the court must send the victim a copy of the court's decision or opinion at the same time it is sent to the parties. If the victim is represented by counsel, notice shall be provided to counsel.

In all of these instances, the clinic's identification of a problem that could be cured by legislation was instrumental in the legislation coming to be passed.

The clinic has also had failures. They attempted and failed to get the legislature to require courts to reasonably accommodate victims' schedules when scheduling a hearing to determine whether a capital-charged defendant was mentally retarded.

Changes to Court Rules

The clinic founder and staff have also been involved in changing court rules. The Arizona Supreme Court has a victim's committee which advises it on rules changes. According to the clinic founder, one associate justice is currently interested in creating a rule requiring victim representation on every death penalty case.

The Arizona Supreme Court is also considering creating a mitigation special master for death penalty cases. This would be a judge who would supervise the defense's production of mitigation evidence and rule on requests for orders of production of documents in order to speed the capital litigation process. This would ordinarily be an *ex parte* process so the defense does not have to disclose its specific defense strategy to the prosecution. However, the clinic staff is concerned about possible victims' rights violations if the victim (or counsel) is not present during this process, and has been active (on personal time) in opposing the establishment of a separate proceeding for defendants from which victims are excluded.

Role of NCVLI in Supporting Clinic Activities

The clinic founder helped to create NCVLI, although he is not involved in its day-to-day operations. Clinic staff members we interviewed reported that NCVLI support on their cases was very helpful, and they found the annual conference an excellent opportunity to compare notes from a shared perspective and learn about relevant developments in other states. They also find the NCVLI executive director to be extremely accessible and helpful with legal research assistance. In some instances, they have literally called her from the courthouse during a break in proceedings to get advice on how to proceed in a case. They find her expertise invaluable.

The clinic staff report that NCVLI's monthly conference calls and e-mail case rounds are also very helpful and interesting.

Opinions of Criminal Justice Officials about the Clinic

We conducted structured interviews with eight criminal justice professionals about the clinic and its effect on victims' rights in Arizona. These included judges, prosecutors, and victim advocates. All of the people with whom we spoke were suggested by the clinic.

The criminal justice actors were uniformly positive in evaluating the clinic and discussing its effects.

According to prosecutors, a respect for victims' rights was already firmly embedded in Arizona prosecutorial culture, including in the U.S. Attorney's Office, but the clinic has furthered institutionalized it. The prosecutors also found the clinic useful in being able to litigate victim

issues that the prosecutor's office is unable to address. In one instance, a prosecutor disagreed with a judge on a victim right's issue but was reluctant to antagonize the judge. The prosecutor was pleased that the clinic was there and available to aggressively litigate the issue without this risk of the prosecutor antagonizing the judge. The U.S. Attorney's Office provides the clinic's information as a referral resource to all its victims, and has brought the clinic into some child victim cases to serve as *guardian ad litem*.

Maricopa county prosecutors and victim advocates discussed a few "intense confrontations" that arose when the clinic was first starting up. A few line prosecutors were defensive and resistant to the idea that victims needed lawyers apart from the prosecutors. Similarly, some victim advocates were initially fearful that the county was going to "outsource" their services. In both instances, increased familiarity with the clinic, and meetings between the prosecutor's office and clinic staff alleviated these concerns, and now the general tone is one of cooperation and mutual respect. Some of this comes from the large reservoir of respect that the clinic founder has accumulated by advancing victims' rights over the last thirty years.

Prosecutors noted that the clinic attorneys were more effective and professional than the private attorneys who occasionally represented victims in court. When asked about problems raised by victim representation, their examples came exclusively from cases where victims were represented by non-clinic attorneys.

The victim advocate with whom we spoke was generally happy with the clinic and said that they were very helpful, especially in cases where the victims were unhappy with the prosecutor's office. In those instances, sometimes, the clinic staff could spend more time with victims and explain why the prosecutors were doing something with which the victim disagreed. Similarly, the victim advocate indicated that when there were many victim family members, it was useful to have the clinic to provide extra assistance.

The prosecutors and victim advocates also said victim representation was instrumental in getting judges to respect victims' rights. Before the clinic, judges would sometimes conduct hearings even if the victim was not present. Once judges realized that they would be required to conduct the hearing again, they stopped doing this.

The judges to whom we spoke were also generally pleased with the clinic. One commented that the victim representation provided them a more accurate view of the victim's perspective in the case than was obtainable from the prosecutors. Particularly in child molestation cases, the prosecutor has a policy of seeking sentences that are often far longer than those desired by the victims.

Restitution issues were another area where judges thought the clinic was particularly helpful. According to one judge to whom we spoke, many prosecutors lack the civil law background to effectively litigate restitution claims. In contrast, the clinic attorneys consistently did an excellent job on restitution issues.

Victim Perspective

To ascertain victims' perspective of the clinic, we conducted a focus group with five victims represented by the clinic staff.

The first victim was the sister of a man who had been murdered in retaliation for his testimony against a gang member who had robbed and assaulted him. According to this victim, there was no continuity at the prosecutor's office and the murder case had been assigned to three different prosecutors at different times. No one informed her of her rights as a victim. She was frustrated by the fact that a continuance would readily be granted if the defendant was not feeling well, but that she had to cancel a prepaid vacation trip to accommodate the defendant's schedule. More generally, she felt that she did not receive respect. The clinic represented her family. According to the victim, when the clinic's founder (who did some litigation in the clinic's first year) stood up to represent her in court, the entire atmosphere of the courtroom changed. "All of a sudden, we counted." That was "the beginning of the end of the horribleness." That day, the defendant did not get the requested continuance because the clinic attorney was at the hearing. The clinic helped seek restitution from the defendant. To this day, the victim receives \$12 every few months from the defendant that he earns at his prison job. Even though the amount is very small, this is deeply satisfying to the victim.

The second victim was the widow of a murder victim. When she initially reported her husband missing, the police were dismissive -- they suggested that her husband had another family somewhere and refused to investigate the disappearance. Eventually, after media pressure, it was discovered that her husband had been murdered on his way to work. She reports having an overly-rosy view of how the criminal justice system would work and being extremely upset to learn how poorly it treated victims. She indicated that having the clinic lawyer made an enormous difference and that the "fact that they care" is the most important thing about the clinic. She emphasized how overwhelming it is for a victim to go into court. At trial, the defense was very aggressive and moved for a mistrial whenever she sniffled. She felt like she was being re-victimized by the defense. It was very helpful and comforting to have someone from the clinic there. When things became too overwhelming, she would leave the courtroom and the clinic staff would relay to her what was happening in as much or as little detail as she wished. Eventually, clinic staff also helped her obtain the largest restitution order in Arizona history.

The third victim was the father of a young woman who was murdered. She was at a friend's home and her friend was also shot, but he survived. The victim's father was familiar with the clinic and had actually done some technical consulting for the organization in the past. After the murder, he was very concerned for his and his son's safety in case the killing was gang related. It was later discovered that the two young people had been shot by the former roommate of the male (surviving) victim, whose father had accompanied him to the apartment to settle a score over a pet iguana. Both the father and son were named as defendants, however the surviving victim was only able to testify about the son shooting him, and he did not know which of the men had shot his friend (the daughter of our focus group participant). The victim's father reported being frustrated by the fact that the defendant has all the rights in the court system and the victims just have to sit there and "take it." When the clinic attorney introduced herself to the judge as the attorney for the victims, it provided a very strong sense of security for him and his family. The clinic would also correct misstatements made during the trial by the defense that

were not picked up on by the prosecution. The clinic was very supportive and instrumental in helping the surviving victim testify against his former roommate. The victim's father thinks that but for the clinic's involvement in helping to prepare the surviving victim—who was brain-injured—for court, the prosecution would not have called him as a witness and would have settled for a very light sentence. Instead, the defendant was sentenced to natural life after being convicted of attempted murder. The wife and mother of the defendants had made a statement to the police that her husband had told her he was the one to shoot the female (deceased) victim, however she later changed her mind about testifying against her husband, and without her testimony there was not enough evidence to convict the second defendant (father of the first defendant) in the woman's murder. Arizona Voice for Crime Victims is working on legislation that would disallow the marital privilege in such a case and would compel the woman to repeat her earlier statement on the witness stand, allowing for prosecution of the person believed to be the shooter of our focus group participants' daughter.

The fourth victim was the former wife of the third victim and the mother of the murdered woman. She echoed her former husband's comments and also commented that the clinic helped her go to the prosecutor's office to look at the crime scene and autopsy photos privately prior to trial. She said this viewing, though distressing, was "key" for her and helped her not to break down when the photos were shown in the courtroom during the trial. She also mentioned that the judge apologized to the victims whenever there was a continuance and checked with the victims when scheduling future court dates. She attributes this respect for the victims to the work of the clinic attorneys.

The fifth victim lives on the Navajo reservation and was in a relationship with a man who was very controlling. At one point, he began violently assaulting her and kicked her in the head and ribs with steel-toed boots while she was on the ground, and her two young children were nearby. After the assault she escaped the house and went to her neighbor's and called the police. She also implored her neighbor to go and get her children out of the house, which the neighbor did. The police took several hours to arrive. According to the victim, local tribal prosecutors are extremely reluctant to prosecute domestic violence cases. The victim had a friend in the FBI who referred the case to the federal prosecutor, who filed a case in federal court. The clinic helped her understand how federal court operates and what to expect. The clinic was also very helpful in investigating treatment facilities for the defendant because the victim knew that the defendant would be on the street again at some point and she wanted him to receive counseling. Because she knew the defendant, she also knew that a non-secure treatment facility would be unlikely to hold him. The clinic was able to successfully argue for GPS monitoring of the defendant for the victim's safety. Soon enough the defendant proved the need for it by walking away from the treatment facility to which he had been ordered. Fortunately he was quickly picked up and returned to the facility. The clinic also got the victim's address redacted from PACER (the federal court's online court files system). The clinic was also helpful in getting restitution for her to cover the expenses of a Navajo cleansing ceremony that she undertook to aid her healing from the experience.

The focus group participants were all very enthusiastic about the clinic's representation of them and attribute the respect they received during the process to being represented by the clinic

attorney, contrasting that respect with the poor treatment they received prior to the clinic's involvement.

Data Availability and Possible Impact Measures

According to the clinic's founder, there is not much data collected statewide on the percentage of victims who are informed of their rights. He did indicate that the Attorney General's office collected some data on victims' rights issues, but he was skeptical of the utility of this data in gauging a true picture of victims' rights in a particular state. He thinks that changes in cultural attitudes are the most important sign of change but did not have specific suggestions as to how best to measure those attitudinal shifts.

Colorado Crime Victims Legal Clinic

Legal Context

Colorado has a history of broad support for crime victims' rights, passing its first victims' rights laws in 1984. However, victim advocates later realized the need for an amendment to better protect those rights. The state created a broad network of criminal justice and nonprofit supporters who were active in every judicial district. Legislators, with input from criminal justice and victim services professionals, crafted the amendment, implementing legislation, and enforcement mechanism simultaneously. The victims' rights amendment was passed by the legislature with nearly unanimous support, and adopted by 84% of the voters in 1992. Following adoption of that amendment, the Colorado Organization for Victim Assistance was funded to provide statewide training on victims' rights for law enforcement officers, victim advocates, nonprofit organizations, and district attorneys, which continues through this day (except for district attorneys, who are now trained by the state's Division of Criminal Justice).

Colorado's victims' rights compliance process reflects the same collaborative approach. A subcommittee of the Governor's Victims' Compensation and Assistance Coordinating Committee, the Victims' Rights Subcommittee, is designated to receive and investigate victim complaints that their rights have been violated. A range of criminal justice and victim service professionals serve on that seven-member committee.

This broad support for victims' rights may be threatened by recently-realized effects of a 1994 voter referendum limiting all local elected officials, including district attorneys, to two consecutive terms in office. The results of these term limits began to be seen in 2004. Victim advocates in Colorado see this forced turnover of district attorneys to be extremely disruptive to the victims' rights movement. Many career prosecutors were early and strong advocates for the Victims' Rights Amendment and other legislative and policy changes that were favorable to victims. The field now perceives a need to constantly educate new prosecutors on victims' issues, and also perceives a different class of prosecutors coming into office, more politicians than law enforcement officers at heart. The lack of career prosecutors is seen as particularly troublesome in light of the fact that there are many career defense attorneys, and there will no longer be a steady voice for victims on the other side of the courtroom.

Clinic History

The victims' rights community in Colorado has been interested in starting a legal clinic for years, according to the executive director of the Colorado Organization for Victim Assistance (COVA). When OVC issued its solicitation for victims' rights legal clinics in 2007, NCVLI applied for continuation funds for its existing legal clinics as well as funding to start one new clinic. At the same time, several organizations applied directly to OVC for clinic funding, and COVA was among those. COVA was not funded directly by OVC, but two other new clinics were (one in Ohio and one in Oklahoma). After NCVLI received its clinic funding and assessed its budget to determine what it had available for the start-up clinic, OVC provided NCVLI with the top non-funded applications of those organizations that had applied directly to OVC for clinic funding. Colorado was then chosen to be the start-up clinic under NCVLI's umbrella.

COVA received its first NCVLI grant of \$40,000 for assessment and planning in February 2008. This grant was due to expire in October 2008, but was extended through January 2009. At that time, NCVLI and COVA expect the second-year funds (\$130,000) to become available, which will allow for full clinic implementation.

The clinic hired a director in February 2008, but there was not a good fit between the director and COVA, and she left after six months. COVA is now in the process of recruiting a new director. According to the clinic's advisory board, in the six months that the first director was there, she did complete much of the planning work for the clinic and laid the foundation for the clinic to be able to start representing clients, which is scheduled to happen in February 2009.

Business Model

The CCVLC will be housed within COVA, a statewide network of victim service providers. Three of the clinics share this business model (Maryland, South Carolina, and Colorado). Because COVA is well-established and well-regarded in the state's criminal justice and victim services community, the clinic will begin with "instant credibility," according to COVA board members. COVA's extensive contacts are expected to provide the clinic with a good number of referrals from the outset. Perhaps the most important benefit will be COVA's extensive victim services referral network, which will allow the clinic attorney to ensure that clients' non-legal needs are also met. The clinic director will be supervised by the President of the COVA Board, who is an attorney, and will be able to make use of COVA's office resources.

Staffing

The clinic will open with a director (attorney) and a part-time paralegal. The clinic's advisory committee would like to hire a victim advocate as well, but the current grant is not sufficient to fund that position. They are hoping to raise additional funds from the state and from local judicial districts that will enable them to hire an advocate to ensure that the clinic's clients are connected to non-legal services as needed.

The clinic also plans to recruit and train a network of pro bono attorneys to handle cases in more remote areas of the state (the clinic is in Denver). The clinic has developed a training outline for pro bono attorneys that covers the history of victims' rights, victims' rights laws and cases, an overview of the criminal justice system, working with trauma survivors, and secondary trauma. The clinic plans to hold regional trainings for the pro bono attorneys, or even go to them individually to train them if necessary.

The current plan is for the part-time paralegal, when hired, to be trained as a victim advocate, so that victims calling the clinic can be properly screened for both legal and non-legal needs by a competent victim service professional. The paralegal will also provide administrative support to both the clinic attorney and pro bono attorneys.

How the Clinic Will Get its Clients

COVA staff and board members feel confident that they will have no trouble acquiring cases. COVA has been including information about the legal clinic in all of its presentations and trainings for the past year, and has already started receiving referrals for the clinic (though it has

not yet started serving clients). COVA will use its established communications with its network (regular e-mails, meetings with regional representatives, training events) to announce the clinic's opening and start recruiting clients. Additionally, the District Attorney of Denver is on the clinic's advisory board and has agreed to have Denver serve as a pilot site for the clinic attorney to work with his prosecutors on behalf of victims. One of the clinic's advisory board members is a public relations officer for another district attorney, and she will take charge of putting out a news release and getting media coverage of the clinic once its doors are opened.

The first clinic director and COVA's executive director have met with or plan to meet with various stakeholders from around the state about the clinic, including the statewide sexual assault and domestic violence coalitions, the Colorado District Attorneys Council, and the statewide groups of victim advocates from law enforcement departments, district attorneys' offices, and probation. COVA's executive director reports that the clinic's long start-up trajectory has afforded her the opportunity to listen to people's concerns and fears about the legal clinic and respond to them, and she reports successfully converting some initial resisters into supporters of the clinic through these dialogues.

COVA reports having very good relationships with several underserved communities as well, including people with disabilities, victims of juvenile crime, and minority groups to whom they have reached out through ethnic churches. COVA will use these relationships to recruit clinic clients from among these populations of underserved victims. Additionally, one of the clinic's advisory board members is an attorney in private practice who specializes in representing crime victims. The clinic also expects him to refer cases that he can't take for one reason or another.

Training

The clinic has plans to conduct training not only for pro bono attorneys, but also for judges, prosecutors, and others around the state. A member of the clinic's advisory board reports that the aim is not only to train people about the clinic and what it does, but also about the importance of victims' rights, the victims' rights laws in Colorado, and how to comply with them.

Affecting the Exercise of Victims' Rights in Trial Court

COVA staff expects that the clinic will serve primarily sexual assault victims, child victims, and families of homicide victims. There is a series of specific victims' rights issues that COVA expects to arise and would like to see addressed in the courts once the clinic opens. These priority issues include the right of victims and their families to be present in the courtroom (and putting the burden on the defense attorney to justify their exclusion), the right to be heard (and clarifying whether that right applies to oral or written statements or both, and when it is triggered), the right to be free from harassment, intimidation, and harm (including clarifying the connection between the victims' rights amendment and witness protection efforts), victims' right to privacy (including quashing defense subpoenas for victim records and maintaining the confidentiality of victims' address information), and the right to restitution (and ending a defense practice of using challenges to restitution orders as a back-door way of getting access to victims' confidential records).

Clinic advisory board members also expect the issue of speedy trials to come up. Although the defendant also has a right to a speedy trial, if the defendant waives that right, it becomes very

difficult to get a trial expedited. Advisory board members said that when the defense asks for a continuance, it is generally granted, even over the objections of the victim. However, if judges are convinced that the defense is stalling they may deny the continuance. This also helps the judges show efficiency in their courtrooms. Having a victim's attorney also remind the judge of the victim's right to a swift and fair resolution of the case may help combat some of the stalling tactics used by defense attorneys.

Geographically, the clinic's plan is to represent victims statewide through the network of pro bono attorneys, though most cases initially will probably come from Denver, given the District Attorney's participation in the advisory board and his open invitation to the clinic attorney. A COVA board member described the Denver collaboration as "potentially prophylactic" and anticipated that the more challenging cases of victims being denied their rights would emerge in more rural areas of the state.

This same board member thought that, given the efforts of the state's compliance program over the past ten years, more problems were likely to come from judges than from prosecutors. As he described it, Colorado's Victims' Rights Amendment contains few specific prescriptions on judges and therefore the compliance process touches them less frequently. They are "independent operators" and some are not yet aboard the victims' rights train. He also felt that, despite the fact that the Denver Chief of Police is a "full-blown victim advocate," many line officers are not, and there may be some victims' rights violations by law enforcement that come to the attention of the clinic.

Denver's district attorney felt that the main objection from judges to the clinic's participation in trials would be their concern about time and trying to keep their dockets moving efficiently. He said that one way to get judges on board would be through the clinic submitting briefs on the victims' rights legal issues. If the briefs are well-written, this could eliminate the need for judges to hear oral argument on those issues, which would expedite the process and earn favor for the clinic in the eyes of the judge.

One advisory board member said that in some smaller jurisdictions, the elected DA is the only one trying cases. Because they don't have any help, they may accept inappropriate pleas to avoid going to trial. The clinic could be of good use to victims in those situations.

In terms of the clinic's approach to the criminal justice system, a COVA board member said that COVA's extensive relationships in the criminal justice system should make for more of a problem-solving and less of a litigious approach, although the clinic will retain the option of litigating when necessary.

Appellate Work

The issue of victim standing to enforce their rights in court through an attorney is not clear in Colorado law. Victims' rights attorneys known to COVA have never been denied standing, but COVA would eventually like to see victim standing clarified, perhaps through a state Supreme Court case. If challenged on standing, this is something the clinic would consider taking up on appeal to establish victim standing through precedential law.

Despite not being officially open for business, the clinic has drafted and submitted one amicus brief—with assistance from NCVLI—on behalf of a dating violence victim who was being asked to provide proof that the relationship was “intimate” or sexual in nature in order to invoke a domestic violence sentencing enhancer. As of the date of our site visit, there had been no action on the issue yet.

Legislative Efforts

As the clinic has not yet taken any cases, it has not had a chance to impact victims’ rights legislation through its casework. COVA, as an organization, has been deeply involved in victim-related legislative issues in Colorado for many years.

The Role of NCVLI

The COVA executive director reports that COVA and NCVLI have had a good working relationship that predates the clinic grant. As they have undertaken the planning stage of the clinic, NCVLI has helped by connecting them with other clinics whose model is similar to Colorado’s and providing them with model policies (such as a privacy policy) from other NCVLI clinics. The clinic has also begun to participate in NCVLI’s regular technical assistance conference calls with the other clinics. The COVA executive director reports taking the idea of establishing an advisory board from one of the other NCVLI clinics, and that is something that is working very well.

Other Criminal Justice Professionals

COVA has strong relationships with criminal justice professionals throughout the state, including both system-based and nonprofit victim advocates, prosecutors, and police. COVA operates a statewide network of law enforcement advocates and attends the quarterly meetings of the state’s association of prosecutor-based victim-witness coordinators. These two groups, along with nonprofit community-based victim advocates, make up COVA’s core constituency. COVA holds an annual conference that attracts 1100 participants from around the state.

Additionally, COVA’s executive director serves on the statewide committee responsible for responding to complaints of rights violations from victims. The committee has the authority to compel agencies of the criminal justice system to take corrective action when it finds them out of compliance with Colorado’s Victims Rights Amendment. The head of the state Office for Victim Programs, which oversees the committee, is on the advisory board for the clinic. Therefore, Colorado appears poised to strike an excellent partnership between the state’s official victims’ rights compliance process and the legal clinic for enforcing victims’ rights. As explained by members of the clinic’s advisory board, the state’s compliance efforts are geared toward system change and generally come after the fact: they usually involve remedies such as apologies to victims, additional training for prosecutors or judges, or the implementation of new procedures to ensure that victims’ rights are upheld in the future. These board members see the clinic as playing a different, and complementary role: intervening in cases that are still going on, where a more immediate remedy to the rights violation may be available to the specific victim of that violation. The clinic expects to make and receive reciprocal referrals with the compliance committee.

Data Availability and Possible Impact Measures

According to the COVA executive director, victim satisfaction will be an important measure of the clinic's success, in addition to the clinic's ability to win in court. Because the Colorado clinic is brand new, it presents the best possible scenario for data collection and outcome evaluation. The clinic will be using an online legal files system developed in Denver through the Victim Services 2000 project. They have developed a standard intake form to be used with all clients, and are open to collecting certain demographic data on those forms that would help with outcome evaluation. Additionally, Colorado District Attorneys' Offices have computerized case systems that record such things as notices provided to victims. Most of the state uses a program called ACTION that was developed by the Colorado District Attorneys Council, with Denver and Boulder using a different system (Justware). Evaluators will need to examine both systems to see what types of data related to victims' rights are collected, but the possibilities are promising.

University of Idaho College of Law

Victims' Rights Clinic

Legal Context

In Idaho, the rights of crime victims are largely contained within the state's constitutional amendment and a single implementing statute. The amendment was adopted in 1994 with the support of 79% of the state's voters. The rights apply to victims of any felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense, or to any victim of a juvenile offender who commits an offense equivalent to a felony. Victims must have suffered direct or threatened physical, emotional or financial harm.

Unlike most states with victims' rights constitutional amendments, however, the rights have not been widely incorporated throughout the criminal and juvenile justice codes, or reflected in the court rules. There are no statutory provisions for enforcement of victims' rights, and no state entity has been created to receive and investigate victim complaints.

Clinic History

The Victims' Rights Clinic was founded with a grant from NCVLI in 2005. Two attorneys active in victims' rights in Idaho originally applied for a grant from NCVLI in 2003 but did not receive funding. One of these attorneys then reached out to a friend who was a former judge and a visiting professor at the University of Idaho College of Law, and they worked together to revise and resubmit the proposal for a clinic based at the law school. This proposal was accepted for funding in 2005. The clinic began under the supervision of the visiting professor, who also supervises the law school's general services clinic. The other attorney served in an advisory role, referring clients from the Boise area and doing some training around the state. The second attorney involved in the original application is now the prosecuting attorney for the city of Lewiston and has taught classes at the law school and supervised students when they had cases in Lewiston. Currently, both of the attorneys who originally applied for the Idaho clinic grant have only peripheral involvement in the clinic.

Near the end of the demonstration period, in May 2007, the clinic hired a new supervising attorney who had experience in defense work and was active in the Idaho chapter of the American Civil Liberties Union. The law professor remained involved to help supervise the students and train the new attorney in victims' rights law. As an attorney with less than five years of practice experience, the new hire by law could not serve as the supervising attorney of law students appearing in court, so the law professor continued to take this role until the supervising attorney reached the five-year mark in September 2008.

Business Model

The clinic is one of eight clinical programs at the University of Idaho College of Law, and enjoys considerable benefits from the law school, including office and classroom space, use of the office manager and financial manager for the general clinics program, travel support, and supplemental funding.

Third-year law students can register for the clinic class, which is a three-credit course. Students are required to put in 180 hours over the semester between office hours, one-on-one supervision, and class time. Although it is not required, students are encouraged to remain with the clinic for two semesters, one of which may be the summer semester. The clinic can support up to seven students, each with two cases. The students conduct the intake, and then the students and supervising attorney jointly prepare cases and talk with clients. Since the students leave after a semester or an academic year at best, the supervising attorney's involvement is essential to continuity with the cases and clients.

As a component of the law school, the clinic's first mission is to educate the students. Its second mission is to ensure access to justice. (This is true for all eight of the law school's clinical programs.) The clinic's first supervising attorney feels that, for the legal interns to get the most educational value out of the experience, the clinic needs to do more litigating and less "social work/legal work." This presents an important difference with the other clinics, whose first mission is to help victims. Clinic staff report that they have been clear about their educational mission throughout their relationship with NCVLI, and note that access to justice issues are, in fact, a large part of the teaching in the clinical programs.

The connection with the University provides some stature to the program that it might not have if it were an independent program. The Director of Clinical Programs at the law school pointed out that it is helpful for the clinic's supervising attorney to have the backing of a law school when she challenges prosecutors or judges on victims' rights. Because it is a new and controversial area of the law, practicing in the victims' rights field is not without risks to the attorney's reputation and referral sources, which could potentially affect the livelihood of an attorney in private practice. In this context, the Director of Clinical Programs commented that students just graduating from law school are not likely to take on victims' rights work as their primary job; however, if they take the knowledge of victims' rights and use it in their jobs in prosecutor's offices, public defender's offices, and law firms, then that will be a success of the educational mission of the clinic. To date, the clinic has not made a systematic effort to recruit graduates of the clinic into a pro bono network of victims' rights attorneys. They say that with the full-time supervising attorney, they have not had much need for pro bono help.

Staffing

The clinic has one full-time attorney who supervises seven to ten law students each semester. The supervising attorney receives advice and consultation from the Director of Clinical Programs as well as the original supervising attorney of the victims' rights clinic, who now oversees another of the law school's clinics. All eight legal clinics share a clinical services coordinator and an administrator. The coordinator does case management, answers the phone, does initial client screening and refers potential clients to the legal interns to complete the intake process. She is also responsible for making the office as "paperless" as possible, and trains students on the electronic legal files system. The administrator is responsible for the financial management, grant reporting, and data collection for all the clinical programs.

The support of the administrative staff is a clear benefit of the clinic's being situated in a law school. Record-keeping appears to be efficient, and the senior faculty running the clinical

programs have decades of legal experience. The supervising attorney, however, is quite new to both the legal profession (five years) and victims' rights work (one year). By her own admission, the learning curve for her has been steep, and after 16 months on the job, she is still learning about the application of victims' rights in criminal court.

How the Clinic Gets its Clients

The supervising attorney noted that it has taken time to build a client base. Early numbers of victims served were low, and they have improved only gradually as a result of more aggressive outreach efforts. Since the current supervising attorney came on board, she has met with local health officials, nearby victim advocates, and representatives of the Coeur D'Alene Indian tribe.

The clinic's outreach efforts consist mainly of placing brochures in various courthouses around the state, talking about the work of the clinic with local service providers, and occasional press releases and coverage in the university and local newspapers. There is also a general website for all the law school clinics and a newsletter put out annually by the law school describing the work of all eight clinical programs. This newsletter goes to deans and directors of law schools, as well as to the entire state bar of Idaho. According to clinic staff, Idaho's state bar and judiciary are very small, and news spreads quickly by word of mouth. According to staff, the clinic is beginning to have a reputation in legal circles around the state for its work on behalf of victims.

According to clinic staff, nearly half of its current cases come from nearby jurisdictions, many referred by victim advocates and the prosecutor's office. The victims' rights clinic also gets some cases as referrals from other law school clinics, particularly the clinic for violence against women. Accordingly, the supervising attorney estimates that half the clinic's caseload consists of cases involving violence against women. The supervising attorney has built relationships with victim advocates and prosecutors in a few other jurisdictions around the state, and these have started referring victims to the clinic. Additionally, the supervising attorney takes an "entrepreneurial" approach, seeking out victims whose cases appear in the media and offering them assistance. She commented, "In a rural area like this, you have to have that mentality. If we just sat back and waited for victims to come to our doorstep, we wouldn't get very many."

Based on an analysis of the 29 most recent clinic cases (those opened between January 1, 2007 and September 30, 2008), the most common referral source was prosecutor's offices (7), followed by community-based programs or counselors (6) and cold calls to the clinic (also 6). Table 1 below details the referral sources of the most recent clinic cases.

Table 1: Referral Sources

Referral Source	Percentage of clinic cases
Prosecutor's office	24%
Community program or counselor	21%
Cold call to clinic	21%
Prosecutor-based victim advocate	10%
Solicited by clinic	7%
University of Idaho	3%

Individual connected to the clinic	3%
Other U of I legal clinic	3%
Victim compensation	3%

The geographic focus of the clinic is primarily in Northern Idaho, with some cases from other areas of the state. Ten of the clinic's 29 recent cases (34%) came from Latah County, where the clinic is located, and another nine (31%) are from Kootenai County, which is 90 minutes to the north of the clinic. Other counties represented in the past year's caseload included Ada, where Boise is located (3 cases), Canyon (2 cases), and one case each from Lewis, Payette, Bonner, Bingham, and Jerome Counties.

Training

Early on in the clinic's existence, the attorney who spearheaded the first and second applications for clinic funding did some training around the state on victims' rights on behalf of the clinic. Since the new supervising attorney was hired a year ago, the only formal training she has done was for victim advocates at a local anti-violence program. She reports not feeling prepared yet to train judges or prosecutors. She felt that perhaps she and the senior clinical faculty could put together a continuing legal education (CLE) class for prosecutors and other attorneys, but this has not been done yet.

Affecting the Exercise of Victims' Rights in Trial Court

Many of the clinic's early cases in 2005 and 2006 were victims complaining of prosecutors declining to prosecute, or investigations going nowhere. The clinic got the students involved in requesting evidence catalogues and working with the prosecutors to try to move cases into prosecution. In some cases where prosecutors wouldn't budge, the supervising attorney appealed to the state attorney general. The clinic was never successful in overturning a prosecutor's decision not to prosecute (and in most of these cases agreed with the prosecutors that evidence was insufficient); however, they did have success in getting some cases that were still under investigation moved into prosecution. According to the law professor who was the first supervising attorney, this work was not terribly fruitful from an educational perspective, but it did get the students interacting with victims and prosecutors.

The clinic's first win in trial court came in a rape case in which the victim was denied the right to be present at trial. The clinic filed a writ with the state supreme court and got her admitted into the courtroom. Other early cases included privacy rights for sexual assault victims, restitution, notification, and the right to confer with prosecutors before plea agreements were made.

In the past year, the clinic's caseload has increased and diversified. According to the supervising attorney, more recent work has centered on victims' rights to be consulted on plea agreements, their right to read the pre-sentence investigative report, their right to information on the outcome of hearings, and helping victims collect restitution.

Table 2, below, details the victims' rights issues at stake in the clinic's most recent 29 cases. The percentages total more than 100% because some cases involved more than one rights issue.

Table 2: Victims' Rights Issue in Cases Opened by Clinic

Reason for Clinic Involvement	Percentage of Cases
Confer with Prosecutor on Charges	24%
Restitution	21%
Plea Agreement	17%
Protection/No Contact Order	17%
Notice	10%
Respectful Treatment	7%
Privacy	3%
Victim Status	3%
Be heard	3%
Victim Education	3%

The majority of these cases involved crimes of sexual assault (28%) or domestic violence (24%), followed by battery or aggravated battery (17%). The caseload also included cases of stalking or harassment (7%), child sexual abuse (7%), and single cases of murder, attempted strangulation, leaving the scene of an accident, kidnapping, and child abuse.

In the murder case, the prosecutor and defense attorney wanted to make a deal for manslaughter that did not involve incarceration. The victim's family strongly objected. The clinic's supervising attorney presented the prosecutor with new facts she learned from the victim's family, which led the prosecutor to dismiss the manslaughter charges and re-file the case as a second degree murder.

In a case that was referred from a local domestic violence program, an offender was arrested on a Sunday night for domestic violence, appeared in court Monday morning, pled guilty, paid a fine, and was back at the victim's house on Monday afternoon. The victim was not notified of the proceeding or the release of the abuser. The clinic is having students research the law with regard to the victim's right to notification in such a case and determine whether there is a gap in the law that needs to be addressed.

In a stalking case that had been dismissed on motion of the assistant district attorney, the clinic was alerted by the local victim coordinator that the victim was upset about the disposition. The supervising attorney convinced the prosecutor to re-file the case, and the defendant pled guilty to an unamended charge.

One case that occurred in May 2008 has seriously limited the scope of what clinic staff and students are able to do, in at least two jurisdictions. While neither victims nor their attorneys have had explicit standing under Idaho law, judges for the most part had been accepting notices of appearance by clinic attorneys. That changed when a local judge who had been allowing the clinic to appear in court suddenly questioned the legal justification for their appearances. The judge wrote the supervising attorney a letter asking her to justify her right to file a notice of appearance. The director responded after consultation with NCVLI and the director of the clinical programs at the university, but the judge rebutted the clinic's argument in a

“memorandum decision,” saying he had come to the conclusion that there was no basis in Idaho law for the clinic attorney to have standing to represent victims in criminal court.

Since that time, the judge has given orders to the court clerk not to accept any filings from victims’ attorneys on his cases. A judge in a nearby county also expressed concern about standing after defense counsel in one case strenuously objected to the presence of a victim’s attorney. Clinic staff report that this denial of victim standing is beginning to spread to other jurisdictions through the judicial grapevine, and they are concerned that they may be “banned” in other courts as well. Seeking a resolution to this state of affairs through an appellate case or change to court rules is now the top priority of the clinic.

The judge who is refusing to accept filings from the clinic is the same judge who was reversed by the state supreme court on the rape victim’s right to be present at the trial of her offender. Clinic staff speculate that this reversal embarrassed and upset the judge, and prompted him to more scrupulously seek the legal authority for the victims’ attorneys to be in the courtroom. Not finding specific authority in the statutes, and not wanting to be reversed again, he stopped accepting their appearances on behalf of victims. Clinic staff felt that the judge was not being vindictive, but rather wanted to ensure that he was properly following the law. They felt that a clear court rule giving victims and their attorneys standing in the courtroom would satisfy this judge, and that he would not oppose such a rule.

Appellate Work

To date this clinic has not taken any cases up on appeal. Clinic staff say that they are waiting for the right case to take up: one that has characteristics that give them the best chance of winning and establishing good precedential law in favor of victims.

Legislative Efforts

The clinic and its staff have not undertaken any efforts to change legislation. What’s more, there are no indications that recent legislative changes affecting victims’ rights were influenced by the work of the clinic. In fact, clinic staff stated that crime victim legislation in Idaho is fairly robust, and say that there is probably not much legislative change needed for victims. However, as noted above, the clinic did report that after representing a domestic violence victim who was not notified of her abuser’s release after pleading guilty and paying a fine, the students were examining the statutes to see whether a change was needed. They also report a need to clarify the issue of crime victim standing to assert the victims’ rights in court through an attorney.

Changes to Court Rules

The clinic and its work have not had an impact on court rules to date. However, clinic staff members feel that the issue of standing in the courtroom for victims and their attorneys could best be clarified through a change to court rules. They are looking at legal ways they can go about educating the rules committee on the need for such a rule. They feel that the judge who has barred them from representing victims in his courtroom would relent if a clear rule were in place, and this would alleviate the problem in other jurisdictions as well.

The Role of NCVLI

When the supervising attorney first joined the clinic, she was required to participate in monthly conference calls with NCVLI to check in on progress. She terms it being “on probation.” She reports that after six or seven months, NCVLI told her she was no longer required to have the monthly calls; she’d “graduated.” In those early months, she reports being unsure of herself and reluctant to call NCVLI for help. Now she is much more forward with NCVLI on asking for help and informing them of obstacles to the work.

NCVLI helps with legal research, especially during the summer when fewer students are available to do the research. Clinic staff said that when they request help from NCVLI, they are careful to review what is sent to them to be sure it is a good fit for Idaho. As discussed above, NCVLI helped fashion a response to the judge who denied the clinic attorney standing in his court last spring.

Opinions of Criminal Justice Officials about the Clinic

We spoke with eleven members of the Idaho criminal justice system to gather outside opinions about the clinic and its work. Those completing interviews included two county prosecutors, two assistant county prosecutors, one city prosecutor, two victim advocates, one defense attorney, and three judges. The persons we spoke with were all nominated by the staff of the clinic in response to our request to interview people in the criminal justice system familiar with the clinic’s work, both those who were supportive and those who were critical of the clinic. Interviewees represented three counties and one city, all in Northern Idaho.

The professionals interviewed had mixed opinions of the clinic and its work on behalf of victims. Three of the five prosecutors interviewed, as well as one of the victim advocates, expressed some frustration with the clinic’s intervention in their cases, saying that the clinic seemed to create friction and interfere with the prosecutor’s relationship with the victim. One of the prosecutors described the dynamic as he saw it: “Their heart is probably in the right place. But they come in as party opponents to us, and we take victims’ rights very seriously here. Our victim advocate has won awards The fact that they come in and treat us as opponents makes things very difficult.” These interviewees also expressed concern about the supervising attorney’s relative lack of experience, as well as the law students’ limited knowledge of criminal procedure and the potential for them to give victims misinformation.

All of these professionals (three prosecutors and one victim advocate) also saw possibilities for a positive impact of the clinic’s work, particularly in domestic violence cases and related civil matters, or post-sentencing issues such as collection of restitution and notification of offender status. There was agreement among these four interviewees (who came from two counties) that some clarification of the clinic’s role was needed to improve the relationship between the clinic and their office. One prosecutor summed it up this way: “We’re fans of the program to the extent that they’re an asset for some of our victims that need a heightened level of attention and support beyond what we’re able to accomplish.”

The other two prosecutors interviewed had both been involved with the clinic, one as a law student, and the other as an attorney who had helped train and supervise the students in the past. Both of these felt that the clinic was helping to raise awareness of victims’ rights in the state.

They acknowledged that at times the clinic can work at cross purposes with the prosecutor's office, but said that this may be necessary to adequately represent the interests of the victim.

The second victim advocate we interviewed felt strongly that the clinic served an important purpose in ensuring that victims' rights are respected. Although some of the prosecutors we interviewed saw conflict and overlap between the roles of the clinic attorney and the prosecutor-based victim advocate, this advocate saw no such problem. She felt that there are times when an attorney is needed to stand up to the judges or the prosecutors in ways that a victim advocate cannot due to the constraints of that position. She described the clinic this way: "I don't see problems. I think we both have the same kind of focus: to make sure the victims' rights are maintained. Sometimes that means being at odds with the prosecutor."

The defense attorney interviewed had some problems with victims' rights in general, particularly the victim's right to have no contact with the defense (which makes his job more difficult), and with the victim's right to be present in the courtroom regardless of whether they are testifying in the case (he felt that witness sequestration was based on sound evidentiary principles and it was a mistake to overlay victims' rights on well-founded legal theories.) Interestingly, this defense attorney had recently been retained by a victim's family to represent them in a juvenile delinquency matter. He felt that there was an important role for victims' attorneys in working with the prosecutor, but he did not feel that they should have standing in court to argue before the judge. The most significant problem he saw with victim standing in court was the potential for a plea agreement to be overturned because of a victim's argument against it to the judge. Overall, he thought that the clinic was generally a good idea and provided the opportunity for more people to have their interests represented in court.

The three judges interviewed expressed ambivalence about the clinic. Two of the judges were unwilling to grant that victims have standing under current Idaho statutes and court rules, and they therefore questioned the right of clinic attorneys to file a notice of appearance. Neither judge was opposed to victims having standing, but each felt that an appeals court decision or supreme court rules change was necessary to provide the proper legal foundation. Even though the two judges had posed problems for clinic attorneys, they agreed that it was a "healthy development" that the clinic had raised the issue of victim standing. The third judge did not have the same opposition to clinic attorneys filing notices of appearance, but felt there was no basis for sharing pre-sentence investigative reports with victim attorneys. He was less positive in his assessment of the clinic's impact on the observance of victims' rights, arguing that his county prosecutor's victim advocates already did an adequate job of looking after victims' interests.

Victims' Perspectives

Because of the rural location of the clinic and the fact that its cases are spread throughout the state, it was not possible to hold a focus group of victims. Instead, we interviewed one victim couple at their home during the site visit, and called two others for phone interviews after the visit.

An elderly couple, while on vacation in Mexico, had had their home burglarized. They lost many valuable possessions, and have been fighting for restitution for four years. Apparently the offender was caught in two different jurisdictions for writing bad checks and selling stolen

property. In one of the cases the couple was listed as the crime victim, but in the other they were not. The victims report that they were not notified of their rights until late in the criminal justice process. They were surprised to learn that a plea deal had been made, with the defendant getting only probation. Restitution was ordered, but the defendant has paid only irregularly. When the victims make phone calls to try to find out how to get the money that is owed them, they cannot get answers to their questions. They say that the clinic attorney has fought for them and is helping them try to get the offender's wages garnished so that more of their restitution will be paid. Although the couple was concerned about the turnover of students on their case ("People changed often – they would get involved in the case, then leave, and someone else would get assigned"), they nonetheless credit the current supervising attorney with standing up for them, and the clinic as having been "superbly helpful."

A victim of battery and sexual assault at the hands of her then-boyfriend contacted the clinic for support at his early release and hearing to have his parole supervision transferred to his home state of Washington. On the occasion of the assault, the perpetrator became jealous of friends the victim had made and engaged in a lengthy argument with her, which ended with him physically and sexually attacking her and threatening to take her car and leave her stranded in Idaho. The victim called the police, and when they arrived the offender basically admitted to everything he'd done but blamed it on the victim.

The offender pled guilty to felony battery in exchange for the felony sexual assault charge being dropped, and he was sentenced to some jail time. While he was in jail, he made attempts to locate the victim and contact her. The offender had applied for early release and a transfer of his parole from Idaho to Washington. An attorney friend of the victim encouraged her to not to attend the hearing alone. The friend found the clinic's information online, and urged the victim to call. The victim reports that the clinic attorney was able to offer important support to her in the process of testifying at the hearing. The clinic attorney helped her think through and write down her victim impact statement the night before the hearing, and also made sure that her plane ticket to attend the hearing was paid for. The victim said that it hadn't occurred to her to write down her statement for previous hearings, and she had fallen apart on the stand. She said that several people who knew the offender flew from Washington to Idaho to support him, including some who had previously been her friends. The outcome of the hearing was positive: the offender was ordered to remain jailed until the victim finished her schooling (two months after the hearing) and was denied a transfer of parole for one year, to give her time to find employment. Of the clinic attorney she said, "[She] was awesome. . . . The little bit of support she was able to offer me made a pretty big impact."

A third victim had been stalked and threatened by her husband as she was in the process of separating from and divorcing him. She reports that she obtained a restraining order against him in July 2007 and by the end of August had recorded over fifty telephone messages from him. One weekend when she was away he was seen on the property of her home, and her house sitter told her she was sure he had been in the home while she was out, because the toilet seat had been left up. He had also called the house and the house sitter's husband arrived to find the man on the front lawn speaking from his cell phone to the house sitter inside the house. On another occasion, the stalker had called the victim and when she refused to have contact with him, he told her to go look at their car parked outside the house. She went and looked and found two bullets on the

ground, and a third further away. The stalker told her one bullet had her name on it and the other had his name on it. The two have a daughter in common, and a police-based victim advocate on the case suspected the third bullet may have represented a threat to the daughter as well.

The victim reports that the prosecuting attorney's office dropped the ball on the case several times right from the beginning. At the very first hearing, the prosecuting attorney neglected to bring a copy of the restraining order and therefore could not prove that the offender had violated it, so the charges were dropped. At the next hearing, after charges had been re-filed, the defense attorney stated that she had not been served with the papers from the prosecuting attorney's office. The judge ordered the defense to accept the filing on the spot, but then again dropped the charges since the defense had not had time to read the paperwork. The victim reports that it was about this time that the clinic became involved, at the suggestion of one of the victim advocates she had been working with—she couldn't remember whether it was the prosecutor's advocate or the police-based advocate.

As soon as the clinic attorney became involved, the prosecuting attorney's office began to "dot the i's and cross the t's," according to the victim. Suddenly, copies of the restraining order were in the file, and there wasn't any more going to court and the defense attorney claiming she hadn't received the papers. The case is currently on its third prosecuting attorney and headed for a jury trial in November 2008. The victim reports that the clinic attorney had requested a change of prosecuting attorney early in the case, but the request was denied. However, the victim suspects that when the office did eventually change prosecuting attorneys it may have had something to do with the clinic's involvement. She reports that the clinic attorney's involvement has mainly been in interacting directly with the prosecuting attorney, rather than arguing before the judge. When the offender was released from jail without notification to the victim, the clinic attorney let the victim know that shouldn't have happened, and made a phone call to ensure that it would not happen again. The victim reports that the clinic attorney has been helpful, and when there have been things about the case she didn't understand, the clinic attorney either explained it to her or made calls to find out what was going on. The clinic attorney also helped her look into compensation for lost wages, as she was forced to close a home daycare business because of the stalking. Compensation denied that claim, so the victim plans to pursue restitution for the expense, with the clinic's help.

Maryland's Crime Victim Legal Advocacy Project

Legal Context

Maryland has a solid foundation of constitutional amendments and statutes to support crime victims' rights. The citizens of the state adopted their victims' rights constitutional amendment in 1994 with a voter approval level of 92 percent. Since passage of the amendment, Maryland has made steady progress in expanding and strengthening victims' rights. The state is fortunate to have strong voices for victims among prosecutors, judges, law enforcement, and corrections, all of whom have been instrumental in furthering the passage of victims' rights laws. Maryland was one of the first states to adopt any form of victims' rights enforcement, allowing victims to file a petition for leave to appeal a denial of certain rights. The state has also attempted to develop internal mechanisms to promote compliance with victims' rights laws. For example, prosecutors are required to certify that they have provided crime victims information concerning their rights. Despite this progress, however, victims' rights enforcement remains a struggle. For the past few years Maryland courts have wrestled with the question of the proper remedy when victims' rights have been violated.

Project History

Maryland's Crime Victim Legal Advocacy Project (CVLA) is based within MCVRC (Maryland Crime Victims' Resource Center, Inc.), an organization providing comprehensive services to victims statewide. MCVRC's roots go back to 1982 when Roberta and Vince Roper's daughter, Stephanie, was brutally murdered. In their daughter's memory, the Ropers founded the Stephanie Roper Committee, Inc. to advocate for more victims' rights in the criminal justice system and the Stephanie Roper Foundation, Inc. to provide information and support to victims. In 2002, the Committee and the Foundation merged to form MCVRC.

Initially, MCVRC tried to empower victims to assert their own rights in court. It developed sample "certificates of service" or letters that victims could, for example, write to judges requesting restitution. It encouraged prosecutors to raise victims' rights issues with the court and filed a few amicus briefs. MCVRC also had some success in getting laws passed but, even with the passage of a state constitutional amendment, victims' rights were still not being consistently observed by criminal justice officials. None of its efforts were enough to encourage consistent observance of victims' rights by court officials. There were no fines or other penalties nor any type of redress if victims were not allowed to exercise their rights. Victims had standing, but needed attorneys to pursue remedies.

In 1998, the Foundation with support from the Maryland Legal Services Corporation created a program to link victims to attorneys who could help them with issues relating to their rights. However, administrators soon learned that pro bono attorneys required training in the field of victims' rights and, often, in basic criminal procedure as well. They also proved difficult to recruit. With funding first from the state and almost immediately thereafter from NCVLI, MCVRC expanded its existing crime victim advocacy program by hiring a staff attorney.

Business Model

MCVRC and CVLA staff members collaborate to offer direct social and legal services to victims and to refer victims to outside agencies when appropriate. The legal clinic resides within an organization that takes a “full service” approach to victim assistance and serves victims of all types of crime. The clinic shares general staff and overhead costs with the center as a whole, including rent, utilities, equipment, and supplies.

MCVRC oversees all client intakes, ensuring that each client receives the unique set of services he or she needs. Intake phone calls are completed by victim advocates on staff, supervised by the Director of Services. Staff members who conduct client intake refer clients to caseworkers within MCVRC or to social service agencies throughout the state that can address their specific needs. In addition, social workers and staff attorneys help clients to understand their legal rights and educate clients on what they can expect during each stage of the legal process. While assessing victims’ needs, intake staff note whether there are restitution or other potential victims’ rights issues.

The Director of Services meets with the victim advocates and CVLA’s legal staff weekly and as needed to discuss the client intakes and to determine the appropriate services to be provided to each client. After a service plan has been established for a client, social workers and therapists on staff provide social services to the client, and the executive director (an attorney) and the staff attorneys provide legal services. The work done by MCVRC staff in screening, processing, and sorting intakes enables CVLA staff to focus on identifying clients and cases that are suitable for representation and/or litigation.

Even more significant than the operational advantages, this relationship enables the clinic to capitalize on the large body of victims’ rights legislation, extensive networking with criminal justice and service personnel, and substantial public awareness of victims’ rights that MCVRC has developed since 1982. The center’s founders have over twenty years of experience providing victim services and advocating for victims’ rights in Maryland. MCVRC previously received OVC funds to implement a compliance initiative in which it worked to improve an administrative system to respond to violations of crime victims’ rights. Through these efforts, MCVRC has established and maintained contacts throughout the state and helped to shape the landscape of victims’ rights legislation in Maryland. According to the MCVRC website, the center has played a role in the passage of over 70 pieces of legislation in the state since 1982. All of this makes for a better victims’ rights legal climate for the clinic attorneys.

Staffing

The clinic staff includes MCVRC’s executive director, who works for the clinic part-time, and a staff of four attorneys. The clinic’s use of free help has evolved in ways that best serve the victims and efficiency of the MCVRC. For example, the work of the clinic is aided by a small panel of pro bono attorneys. The pro bono attorneys for CVLA now handle mostly collateral civil cases (e.g., estate, housing, or creditor issues), which fall outside the scope of clinic funding. The clinic also uses pro bono attorneys to help to collect restitution and to aid in writing amicus briefs for appellate cases. The Executive Director has found that using pro bono attorneys in this way is effective in meeting the needs of clients and helps to avoid some of the problems associated with using pro bono attorneys in criminal court (i.e. insufficient knowledge

of victims' rights issues, extensive need for training, and schedules that did not permit them to make necessary court appearances in clinic cases on short notice).

In addition, the Executive Director of MCVRC teaches a course in victims' rights at the University of Baltimore School of Law to promote awareness of victims' rights issues in future practitioners and to support changing the climate of the courtroom to benefit all victims of crime. The class also helps with outreach efforts to law student interns who help clinic attorneys with case research and assist other clinic staff with intake and administrative tasks. Law students are brought on as interns for the summer to help with client intakes, legal research, and writing tasks, and then kept on in part-time roles during the academic year.

How the Clinic Gets its Clients

The clinic makes its presence known by speaking at events, distributing brochures and posters, hosting a website and a toll-free phone number (through MCVRC), and maintaining relationships with law enforcement agencies, prosecutors, and victim advocates. According to clinic staff, clients come from a variety of sources, including referral of victims from MCVRC advocates helping victims with non-rights issues and from MCVRC intake workers who make note of potential rights issues during intakes for victim services. The clinic also noted that about a quarter of their cases come from the clinic's website. Other referrals come from the state victims' rights compliance officer, domestic violence or other victim service programs across the state, prosecutors, and judges. The clinic has bi-lingual staff to work with Spanish speakers and a language line to accommodate victims who speak other languages.

A breakdown of referral sources based on 2007 case files indicated that a surprising 37% came from the clinic website. Another 22% came from victim advocates and 14% from state or U.S. prosecutors. The remainder came from a variety of sources including board members and friends of the victim.

One frustrating area for MCVRC and clinic staff is cases where victims have been denied opportunities to exercise their rights and the case has already been disposed. (Often these cases involve issues of restitution.) Under Maryland law, motions may be filed to set aside trial court rulings, but only up to 30 days following the disposition. One of the advantages of receiving most of its referrals from MCVRC intake workers is that it provides a large source of referrals of cases that are ongoing, where clinic attorneys have the most chance of being able to open a case and accompany victims to court appearances under a representation agreement.

In part because the clinic is directly linked with a more comprehensive victim assistance effort, it takes cases based on victim needs without regard to whether the case would have a broader impact on victims' rights within the state. This approach is beneficial to victims because they receive legal help if they need it in a prophylactic manner.

The clinic emphasizes direct representation of victims. The practice is to ask victims to sign a retainer agreement and for the attorneys to enter an appearance on behalf of victims. The clinic director believes that it is often productive to work with prosecutors to encourage them to accommodate the rights of victims. But he finds negotiating with prosecutors most successful

when his attorneys have the leverage of independent action by reserving the ability to request further review in trial and appellate courts.

The clinic opened 43 cases in 2007 in which it provided formal representation to victims. Cases were fairly evenly distributed between homicide and manslaughter (26%); domestic violence and stalking (19%); assault (16%); sexual abuse (14%); and compensation claims (14%). Clinic staff stated that, while their reach was state-wide, most of their cases came from the Baltimore-Washington corridor. They also noted that they had established a strong relationship with a domestic violence program on Maryland's Eastern Shore that routinely refers cases. Examination of case files confirmed a concentration of cases in the local area: Cases opened in 2007 came primarily from Prince Georges and Baltimore counties with the two together accounting for 56% of cases opened in 2007. Other counties that contributed for more than one referral include Montgomery, St. Mary's, and Anne Arundel, with two cases each.

In these cases, victims sign a retainer agreement which outlines the scope of services for the clinic attorney. Although this is a small proportion of the 700 victims that come through MCVRC each year, clinic staff believes that the clinic hasn't turned down any victim for representation it is in a position to help. Victims for whom a case is not opened receive information, referrals to support groups or therapists, or accompaniment to court. In other cases, the legal staff conducts research on an issue facing victims without entering into a formal representation. For example, staff may advise victims about the law pertaining to victims' rights or provide advice regarding victim compensation. In still other cases, attorneys may make a call to prompt a resolution, which eliminates the need for formal representation.

Another clinic service that assists victims indirectly is providing technical assistance to prosecutors who sometimes call with questions about the applicability of victims' rights in specific situations. This technical assistance is a direct result of the clinic's work in the courts, which has established its credibility with prosecutors on victims' rights issues.

Training Criminal Justice Officials

Clinic staff conducts trainings for prosecutors in Baltimore City annually. They also conduct trainings periodically for state's attorneys and judges. Recent trainings conducted by clinic staff include:

- Training of prosecutors attending a conference on compliance with victims' rights laws in January 2008
- Training of judges at the Judicial Training Center
- State-wide training for prosecutors
- State Board of Victim Services meetings and State Victim Academy trainings
- Meeting with Judicial Council on identity theft and fraud victims

Clinic staff described judges as generally "very receptive" to considering victims' rights issues. Surprisingly, defense attorneys were also described as "understanding" of the role of clinic attorneys because they appreciate the concept of representing individual clients regarding their civil rights (or "regarding their treatment by the criminal justice system"). Prosecutors were also

described as “very receptive” to victims’ rights, although some were thought to have more of a “mental block” than defense attorneys on this issue.

The MCVRC considers itself deeply involved in the crime victims’ movement in the state. The staff is networked with other providers, law enforcement, and prosecutors. Staff members participate in the Maryland Victim Assistance Academy.

How the Clinic Affects the Exercise of Victims’ Rights in Trial Courts

At the trial court level, staff attorneys (including the executive director) file motions and provide direct legal representation to victims at court appearances. This representation is intended both to change the law to benefit all victims and to promote greater awareness of victims’ rights among local prosecutors and judges through the presence of victims’ rights attorneys in the courtroom. The original intent of trial court advocacy was to create and preserve a record that could then be taken up in an appeal. But, according to clinic staff, the presence of victims’ rights attorneys in the courtroom has also resulted in trial courts adhering more consistently to victims’ rights laws. They feel that having a victim’s attorney serves as a reminder that someone else – other than the parties – has an interest and legal rights. In these cases there may be no written record indicating that the court has adhered to rights. However, the clinic considers these cases successes.

The most common types of issues in cases that the clinic deals with at the trial court level are the right to be heard, right to receive notice, right to be present at hearings, the right to restitution, and the right to privacy (for example, resisting subpoenas requiring victims to divulge confidential records). Table 1 below provides a breakdown of the issues involved in clinic cases opened in 2007.

Table 1: Victims’ Rights Issue in Cases Opened by Clinic

Reason for Clinic Involvement	Percentage
Right to be present/heard	33%
Legal representation	19%
Non-specific involvement	16%
Privacy violated	9%
Restitution	9%
Child victim representation	9%
Right to prosecution	5%

In more unusual circumstances, the clinic may get calls from prosecutors concerned that victims are not being treated fairly. For example, in a recent capital case, a judge refused to allow the victim’s mother to allocute until after the sentencing decision had been made. Clinic staff asked the judge to reconsider, but were unsuccessful. However, after filing an application for leave to appeal, the trial court judge changed her mind and allowed the family to speak before determining whether to impose the death penalty. In another case, clinic attorneys tried to block a local television news program from playing the confession of a murderer that included a description of dismembering the victim. The trial court denied that request, but stayed the

production of the DVD and that case is now before an appellate court. In another, clinic staff aided a victim in recovering Veterans' Administration records that had been subpoenaed by a defense attorney. In a domestic violence case, clinic attorneys were successful in getting a judge to reject a plea and then having the prosecutor and defense attorney to amend a plea bargain they had struck by adding a no-contact order, mental health counseling, and other conditions to the probation sentence that had been agreed upon.

In another recent case, a victim called the clinic because she was unhappy with a plea agreement. She had wanted to make a victim impact statement, and was not even aware she had a right to restitution. The clinic staff drafted a demand for restitution motion, which they presented to counsel. The defense attorney argued that since restitution was not part of the plea agreement, the judge couldn't order it after the fact. After reading the pleading, the judge decided that, since this is an independent right of the victim, the motion should be considered.

While clinic staff hopes for rulings in favor of victims' rights, this is not always the outcome. In fact, some clinic cases have been resolved in favor of the individual victim but without rights issues being resolved or clarified. In one case, for example, a victim requested \$12,000 restitution for funeral expenses, but the trial court judge capped the amount at only \$5,000. The judge was looking to estate law for guidance on this point, inappropriately. The prosecutor referred the victim to the clinic. Clinic attorneys filed an application for leave to appeal, upon which the defense attorney offered to pay the full amount of restitution. The victim got what she wanted, but the case did nothing to promote or negate victims' rights to full restitution. Staff pointed out they have an ethical obligation to the client, and that obligation trumps the interest in establishing case law in favor of victims' rights. This case highlights the tension that can arise between helping individual victims get what they are seeking and the clinic's interest in seeking cases that have the potential to result in decisions that will clarify or expand the rights of all victims. In fact, sometimes the victim doesn't want to pursue an issue, even if clinic staff believes the law is clear and they could win. In a recent case where the victim was denied the right to be present in the courtroom, she had been convinced by the prosecutor that it was in her best interest not to push the issue, and clinic staff deferred to the victim's wishes.

It is the belief of clinic staff that the presence of a victim attorney in court changes the dynamic of the courtroom. Most judges are not used to seeing an attorney for the victim: The effect is that the judge becomes very scrupulous about applying the law correctly when a victim has an attorney representing him or her. More often than not, clinic staff maintain, their argument in favor of rights for the victim prevails. An obvious question is whether the courtroom dynamic remains altered in subsequent cases once clinic staff leaves the courtroom. While that is a difficult question to answer, the clinic director cited one judge who said, "I'm never taking another plea unless the victim has been asked his opinion."

Clinic work on the appellate level

The clinic works to shape case law, attempting to bring cutting edge issues before the state's highest court, the Maryland Court of Appeals. The numbers of cases so far have been relatively few. In part, this reflects the success that the clinic has had at the trial court level, with most cases where victims are represented by the clinic being resolved in the victim's favor. However, as a result of the *Hoile* case discussed below, victims and their attorneys now have standing as a

party in the appellate process in cases where the defense appeals a trial court ruling. This is likely to increase clinic activity at the appeals level. In cases where it does not have a direct interest for a victim, the clinic may still file an amicus brief (“friend of the court” brief) on issues of interest to victims. In some cases, the clinic’s appellate work has led to revisions in the recognition of victims’ rights; in others, it has demonstrated a need for additional legislation.

One important case in which the clinic directly represented the victim was *Lopez-Sanchez v. State*, 388 Md. 214 (2005). In that case, the Court of Appeals examined the question of whether a victim of a crime committed by a juvenile offender was entitled to seek reconsideration of a Consent Order for Restitution that the trial court had approved without affording the victim his rights to notification or the opportunity to be heard. The court found that the right to seek a special appeal for a denial of victims’ rights under section 11-103 of the Criminal Procedure Article did not extend to victims of delinquent acts, and because the victim is not a party to a delinquency proceeding, a victim cannot exercise a general right to appeal.

The *Lopez-Sanchez* case is an example of clinic case work that had a positive impact on victims’ rights although the victim petitioner actually lost the case. It directly led to a successful legislative effort to extend the rights of victims of juvenile defendants (see below). In addition, the reporting of this case by the state’s highest court served to educate prosecutors and others in the legal community about crime victims’ rights. Clinic staff reported that the prosecutor heading a juvenile division in an urban court said that in reading the opinions in the *Lopez-Sanchez* case she learned for the first time about the extent of victims’ rights in Maryland.

In another case, *Surland v. State*, 895 A.2d 1034 (Md. Ct. App. 2006), the clinic represented the parents of a murder victim. The defendant was convicted and immediately filed an appeal. The defendant then died while the appeal was pending, and the defense attorney moved to have the court dismiss both the appeal and the original indictment. Both the state and the victims opposed the defense motion to dismiss the indictment, with the clinic arguing that such a dismissal constituted unfair treatment of the victims, a violation of their rights under the law. When the defense attorney filed a petition with the state’s highest court, the victims (through the clinic) filed a petition of their own, and the Court of Appeals ruled that the victims were not a party to the case and did not have standing to file petitions with the court. The case was therefore a loss on victim standing; however, it can be seen as contributing to the further evolution of victim standing in Maryland by illuminating the need for clearer rules and legislation with regard to standing. On the issue of unfair treatment, ultimately the victims did get what they wanted: the defense was given sixty days for the deceased defendant’s estate to appoint a substitute for the defendant so that the appeal could continue; when no substitute was appointed, the murder conviction was left intact.

In *Lamb v. Kontgias*, 169 Md. App. 466 (2006), a registered victim of child sexual abuse was not notified of a hearing to reconsider her assailant’s sentence. The question was whether the victim had standing to challenge a judgment vacating the original conviction and sentence. The Court of Special Appeals (Maryland’s intermediate court of appeal) held that the circuit court had jurisdiction to decide whether the victim had standing to challenge the revised judgment. However, the court also determined that the victim could not challenge the sentence. The court held that any available remedy depended on legislative expansion of the victim’s right to appeal.

Most recently, the clinic was heavily involved in the case of *Hoile v. State*, 2008 Md. LEXIS 248 (2008). In that case, the clinic represented a victim who was not notified of hearings reconsidering the sentence of her assailant, and, thus, was denied an opportunity to be heard at those hearings. The clinic, on behalf of the victim, sought to vacate the altered sentence on the grounds that she had been denied her rights. The trial court granted her request, and the defendant appealed.

The court found, significantly, that under the newly expanded court rule, Maryland Rule 8-111, the victim had the right to participate in a criminal appeal in the same manner as a party regarding issues that directly and substantially affect the victim's rights. Clinic staff, therefore, was authorized to represent the victim in this case, including by participating in oral argument and filing a brief in the case.

However, the court in *Hoile* went on to find the victim was not entitled to relief in the case. The legislature had not permitted a victim to seek invalidation of an otherwise legal sentence merely because the victim's rights in regard to imposition of that sentence had been violated. The court noted "Although a victim now has more opportunity to participate in an appeal, there remains no effective tangible remedy for a victim to seek to 'un-do' what already has been done in a criminal case."

The clinic also has filed four amicus briefs in cases involving victims' issues before the Maryland Court of Appeals. *Maryland v. Snowden*, 385 Md. 64 (2005), was a case that implicated the victim's interest, but not an issue of the victim's rights. That case involved a question of whether statements made by child sexual abuse victims to a social worker were admissible in a criminal trial. The MCVRC filed an amicus brief together with the University of Baltimore Family Law Clinic, Advocates for Children and Youth, Inc., and the Maryland Coalition Against Sexual Assault. The brief was not referenced in the court's opinion, which held that such statements were not admissible.

Similarly, another case in which the MCVRC filed an amicus brief in 2005 involved a victim's interest but not a victim's right. This, too, was a child sexual abuse case in which the defendant challenged the admissibility of a social worker's testimony at trial, the propriety of the prosecutor's closing arguments, and the admissibility of an out-of-court accusation when the accusing victim testifies and repudiates the out-of-court accusation. The opinion in *Lawson v. State*, 389 Md. 570 (2005), does not reference the amicus brief.

In contrast, the case of *Stachowski v. State*, 939 A. 2d 158 (2008), did involve a victims' rights issue: restitution. In that case, the lower court had imposed restitution in three separate cases as a condition of probation in a fourth case. However, the court dismissed the appeal, finding that the questions regarding the fourth case were not yet properly before it.

In addition, the MCVRC filed an amicus brief in a victim compensation case. The Clinic staff also helped the victim's attorney in that case to write his reply brief, and the clinic notes that many of its arguments made in the declined amicus brief were in fact asserted in the court's opinion. That case, *Opert v. Criminal Injuries Compensation Board*, involved a motorcyclist,

Opert, who had been injured in a crash on the Baltimore beltway when a pedestrian walked out onto the highway with or on a bicycle in violation of the law. The issue was whether Opert was a “crime victim” for purposes of victim compensation. Lower courts and the compensation board had ruled he was not. The Court of Appeals found he was. Though the language of the statute was ambiguous, after examining the legislative history the Court agreed that finding Opert a “victim” was more likely reflective of the legislative intent.

Legislative Efforts

Legislative change was an important part of MCVRC’s agenda early in its history. The program was a driving force in passing the state’s victims’ rights constitutional amendment and in all subsequent implementing legislation. Today, though, legislative efforts are relatively minimal. The existing rights are extensive, providing victims the rights to be notified, present, and heard throughout the criminal justice process. The clinic’s aim is to ensure that statutes already on the books are enforced, and this has involved ensuring that victims can seek redress through the courts for a violation of their rights. Maryland is the only state that has allowed victims to assert their rights by seeking leave to appeal a denial of rights to the state’s intermediate court, the Court of Special Appeals. This right was added in 2001.

The reduced focus on legislative advocacy is also due to the legislature’s unwillingness to entertain theoretical proposals simply designed to “make the system better just because.” Victim advocates must demonstrate a real need for statutory change. Today, it is often the work of the clinic that proves the need for legislation. If the clinic loses a case, or is unable to help a victim because of barriers in the system, this “failure” serves to make the case for a legislative solution. For example, in 2006 the program successfully argued for a bill expanding the victims’ rights to appeal to include issues regarding notice, restitution, and juvenile delinquency matters. This directly resulted from their work in the *Lopez-Sanchez* case, as described above. In that case, the court had found victims of a violent attack by a juvenile lack statutory standing to appeal the amount of restitution awarded. A member of the clinic’s pro bono panel had represented that victim, and during the period of representation the attorney successfully ran for state delegate. As a delegate, and following his loss in the courts, he co-sponsored the legislation extending victims’ rights to victims of juvenile offenders.

Two recent bills in the 2008 legislative session relating to victims’ compensation came directly from this type of case work: one bill to strengthen procedural due process in the compensation process, and another to broaden the types of crimes and victims eligible for compensation and make other changes. In its testimony in support of one of the compensation bills, the MCVRC stated that the legislative proposal was developed following the free representation it had provided claimants before the Compensation Board.

The same was true of an education bill MCVRC promoted during the 2008 legislative session that would give victims of school-based crimes the right to stay in the school and have the offender moved to another school. The agency had been contacted by the father of a school-aged victim who needed assistance in protecting his child following an assault by a fellow student.

Along with legislation connected to the work of the clinic, the MCVRC has advocated for victims' interests on other pending bills, such as legislation relating to mentally ill offenders and legislation regarding Internet access to court documents.

The MCVRC has also advocated for legislation that directly supports the clinic. This has included bond bills for office space (passed in 2005); legislation to allow program staff to participate in the state's health insurance program, as Legal Aid staff was already entitled to do (passed in 2005); and a bill to provide that unclaimed money from judgments of restitution could be used to make grants providing legal counsel to victims (passed in 2007).

Changes to Court Rules

An early clinic case involving a violation of a protection order tested whether victims had a right to an attorney. The circuit court judge who made the ruling suggested that a rule change was needed to clarify the right of victims to be represented by an attorney. The clinic director provided information to the judge who was drafting a rule that was adopted by the Maryland Court of Appeals. Clinic staff cites the rule, 1-326, whenever they make an appearance on behalf of a victim. This Rule was upheld in the recent Hoile case, noted above.

Role of NCVLI in Supporting Clinic Activities

NCVLI supports the work of the clinic through hosting conference calls with all the clinics that keep staff informed of what is happening in other states. These quarterly conversations may focus on a particular project or share experiences and approaches in dealing with particular issues that the clinics encounter. The NCVLI June conference includes a cluster meeting that allows face-to-face exchange of ideas between staff of the different state clinics. NCVLI maintains a brief bank containing briefs from all the clinics for each clinic to draw upon in preparing cases. It also has staff attorneys who conduct legal research for individual clinics. The Maryland clinic does its own research into Maryland cases, but has used information from NCVLI on how issues have been handled in other state or federal courts to bolster its local research. The Maryland clinic director summarized NCVLI's role by saying, "We would be many, many giant steps behind where we are if it were not for NCVLI."

NCVLI helps by providing the services of an extra law clerk. Staff of the NCVLI clinics are able to request legal research on current cases they are working on. This has enabled the Maryland clinic to get by with just 15 hours a week from its resident law clerk.

Another benefit of being part of the NCVLI family is the ability to exchange ideas and best practices with others doing similar work. This kind of peer-to-peer support even extends to the sharing of legal research between clinics.

Opinions of Criminal Justice Officials About the Clinic

We spoke with eight members of the Maryland criminal justice system to gather outside opinions about the Resource Center and its work. Those completing interviews included a judge, two members of the state attorney general's staff, two local prosecutors, two persons involved in victim advocacy work, and a public defender. The persons we spoke to were all nominated by the director of the Resource Center in response to our request to interview people in the criminal justice system familiar with the work of the Center, regardless of their opinion of the Center.

Respondents were universally enthusiastic about the work that Center staff had undertaken on behalf of victims over the years. One respondent described the Center director as being primarily responsible for enactment of the major state victims' rights statute. The Center director was described as having cultivated excellent connections with lawmakers over the years. Another said that the staff of Resource Center has been "in the forefront of making legislation happen." Several acknowledged the role of the Center in conducting appellate work on behalf of victims and one also noted the role that the Center has played in enacting court rules that respect victims' rights. In the words of one respondent, "the group is aces."

The sentiment that emerged from the interviews was that the Center plays an important role in representing victims in trial court cases as well. Several argued that victims' rights are normally respected in Maryland's trial courts, and victims need attorneys in only a handful of cases (estimated by two respondents as being less than one percent). But, while the number of cases in which victims need representation was estimated to be small, most respondents saw the availability of attorneys to represent victims in those cases as important to achieving favorable outcomes. Several of the respondents said that they occasionally referred cases to the Center when they saw rights being jeopardized. Center staff was seen as especially useful "problem-solvers" in helping victims negotiate a compensation program that was seen as difficult. Other rights issues in which respondents said they valued the work of the Center included failure to notify victims of their rights, restitution, allocution at sentencing, and unprofessional treatment of victims at the hands of prosecutors or judges.

All but one respondent thought that staff of the Center had made a significant difference in expanding awareness of and compliance with victims' rights. One respondent said that the "landscape for victims is light-years changed. Victims' rights are now on people's radar screens."

Victim Perspective

To ascertain victims' perspectives of the clinic, we held a focus group with five Resource Center clients recruited by Center staff. One woman whose husband was killed by a drunk driver was referred by a corrections official to the Center when she saw the perpetrator driving one day. The perpetrator had been released from a residential treatment facility without notice to the victim's wife. After motions were filed, the Center director learned that there was a warrant out on the perpetrator for failing to complete a mandated drug treatment program. A subsequent hearing returned the defendant to jail. The clinic continued to represent the victim in successful bids to block her release at a reconsideration hearing and then at a parole hearing.

A domestic violence victim sought help from the resource Center when her husband was about to be released from prison after serving just 1-1/2 years of a 10-year term. The state's attorney told her there was nothing he could do, but an acquaintance of the victim who was on the MCVRC board suggested that she contact the Center. Center attorneys had the hearing overturned on the grounds that the judge had acted improperly by not notifying the victim. At the new hearing, her husband's sentence was reinstated. The defense filed an appeal, and the appellate case is pending. The case has resulted in a new court rule that establishes that victims have standing before the appeals court.

The mother of a teen killed by a drunk driver found out about the Resource Center after the perpetrator was released from home detention and then defaulted on restitution payments. She complained to a probation officer, but received no help. Center attorneys requested restitution and filed a motion complaining that the mother's rights were violated when the state's attorney failed to notify the victim of the perpetrator's release.

The parents of a murdered girl heard about the Resource Center through a brochure. Their compensation claim and appeal to the compensation board had been denied on the basis that their daughter had been participating in "illegal activity" when she was killed. Center attorneys got the couple a new hearing date on the ground that there had been insufficient notice for the written appeal. A Center attorney represented the couple at the new hearing and impeached the testimony of the police detective who had made the allegations of victim wrongdoing. The appeal decision was in the parent's favor.

The victims in the focus group were unanimously enthusiastic about the service they had received. They had accolades for the staff, with one victim saying that the Center director "gets answers we can't get." Another called him "the best man around."

Data Availability

The clinic does not maintain information in a database on activities other than cases in which agreements are signed for representation. The only information available on activities such as providing information, referrals, or research are contained in the clinic's quarterly reports to NCVLI. However, the clinic director expressed concerns about whether the information contained in the reports reflected fairly the scope of activities that clinic staff performed. Open cases are entered into Foundation Software's Legal Files system.

In the state of Maryland, state's attorneys are required to provide victims with a notification request form that allows victims to indicate whether they wish to be notified of hearings and to submit an impact statement. Some victim data from sentencing guidelines worksheets are entered into a state database.. They do provide at least some information on whether victims' rights are being honored.

New Jersey Crime Victims Law Center

Legal Context

New Jersey historically has had strong support for crime victims' rights. The state's victims' rights amendment was passed in 1991 with 85% voter support. Neither the constitutional amendment nor the statutes specifically give victims standing to assert their rights. Nonetheless, New Jersey courts have found that the fact that the rights are in the state constitution as a result of overwhelming voter support to indicate that such rights must be enforceable. A 2007 amendment provided that victims and witnesses are to be given notice of their rights under the state victims' rights amendment, as well as the rights under the statutory bill of rights. Since the 1980s, New Jersey has had one of the strongest state victim service networks. The state funds victim advocates in each county prosecutor office who, although they do not get involved in rights issues, do provide notice to victims about their rights under state statutes. However, recent severe budget cuts by the state attorney general threaten to reduce the number of these advocates by as much as two-thirds.

Clinic History

The Center director has a long history of advocating for victims' rights. Following the murder of his son in 1989, he devoted his law practice to serving crime victims, opening the New Jersey Crime Victims Law Center in 1992 to represent victims pro bono. Funding through NCVLI in 2005 enabled him to devote himself full time to victims' rights legal work.

The director has been the leading figure in victims' rights work in New Jersey. He was involved in a successful effort to add a victims' rights amendment to the state constitution culminating in its passage in 1991. In 1996 he filed an amicus brief in *State vs. Mohammed* that resulted in a 4-3 state Supreme Court ruling allowing victim testimony of impact in death penalty cases. In 2003, he became chairman of what many thought was a cumbersome and patronage-laden state victim compensation board. As chairman, the director streamlined the bureaucracy and tripled the amount of money paid in claims per month.³³ He restructured the board, eliminating paid positions in favor of volunteer positions. He also established a regulation allowing up to eight hours compensation for attorneys who represent victims.

Business Model & Staffing

The Law Center director continues to dedicate his full time efforts to victims' rights cases. NCVLI funds cover the salaries of the director and an assistant. The director is now partnered with two attorneys with whom he runs a full service law firm. The two other attorneys, also interviewed, handle real estate law, matrimonial issues, and other civil cases, dedicating 25 hours per week to victims' rights work on a pro bono basis. This continues the original New Jersey model in which -- before federal funding -- proceeds of the law firm were used to fund victims' rights work. Eventually, the Center director hopes that monies brought in from settlements won by the law firm's civil litigation caseload will be able to fund the victims' rights work. In this way, the director has been able to multiply his efforts and take on a large number of cases -- 1100 since 2005.

³³ Coscarelli, K. (2003). If not for murdered teen, victims would see little help. *The Star Ledger*, September 21, p.15.

At the Law Center, changing the system is secondary to helping victims. “You see these people, they come to you wounded and you help them. That’s what it’s all about. By helping them, you begin to change the system.” The Center takes a holistic approach to aiding victims. One of the implications of this philosophy is that the Center handles civil issues for clients as well as violations of victims’ rights in criminal proceedings. The two types of cases are mutually reinforcing. According to the director, “A lawyer does not wear one hat. I see that as one of the biggest weaknesses out there. You can’t parcel the issues with your client. If you’re the victims’ rights lawyer, you’re their lawyer on everything to do with the victimization. You can’t say ‘I don’t do that.’” The philosophy of dealing with the totality of victim needs also means that the Law Center aids victims in getting help with emotional and practical problems stemming from crime. Center staff aid victims in filing applications for state compensation and refer victims to a pool of therapists experienced in dealing with victimization issues and to other service providers as needed.

The Law Center makes some use of inexpensive help, occasionally employing students as interns in an administrative capacity. It has also experimented with using pro bono attorneys, using a small cadre of lawyers in different parts of the state. However, the experience has generally not been positive. With the exception of a few trusted friends, the clinic has found pro bono attorneys to be lacking in both interest and expertise in victims’ rights statutes.

How the Clinic Gets its Clients

In New Jersey, each county has one or more victim advocates, state employees who work out of county prosecutors’ offices. The victim advocates are responsible for giving victims notice of their rights but, since they work at the will of the local prosecutor, are hesitant to “make waves.” Therefore, when situations arise where assistant district attorneys fail to observe the rights of victims, the advocates are not in a good position to push back on behalf of the victims. It is at that point that they are likely to place a call to the Law Center. Other major sources of referral according to clinic staff include prosecutors, and doctors. Based on the 50 most recent cases opened by the clinic, here is what we found regarding referrals:

Referral Sources

	Proportion of all referrals
Community program/therapist/doctor	42%
Prosecutor victim advocate	18
Prosecutor	16
Website, brochure, friend/self referred	14
State or local official	4
CJS official (other than prosecutor)	6
	100% (n=50)

The table suggests that the New Jersey clinic has an especially high proportion of cases referred by community-based programs, doctors, and therapists. This reflects the clinic's efforts to build strong relationships with service providers in order to meet client needs for mental health and social services. As suggested by clinic staff, prosecutor victim advocates and prosecutors themselves accounted for about a good proportion (about a third) of all referrals.

Initial consultations on the phone help the attorneys determine whether there have been rights violations. A case file is started when one of the attorneys meets with a client face-to-face and there is further action to take. Cases that are resolved by a phone call without a face-to-face consultation are not counted as open cases in the Center's statistics.

Clinic staff state that they are comprehensive in their coverage of the state. In fact, although the Law Center is located in the northern part of the state, it actually has at least as many cases in south New Jersey as in north New Jersey. According to the Center director, the counties from which the Center draws most heavily include Essex, Sussex, and Morris in northern Jersey and Atlantic, Burlington, and Cumberland counties in southern New Jersey. Although the Center director said that they make special efforts to recruit cases from poorer, urban counties like Essex, he acknowledges that clients skew toward better educated and more well-off victims. Based on the 50 most recent cases opened by the Center, we determined that it has the greatest geographic reach of any of the NCVLI clinics. The greatest number of cases comes from the nearby counties of Essex, Bergen, Morris, and Hudson. But, in the 50-case sample, the clinic had at least two cases from 11 counties and at least one case from 19 of New Jersey's 21 counties.

The Law Center has comprehensive outreach efforts. An information bulletin is distributed by e-mail several times each week to a list of prosecutors, private attorneys, and other interested parties. The Center also produces a magazine with the proceeds of an annual fundraising event. The magazine is distributed to 7,000 prosecutors, judges, victim advocates, police, and others with an interest in victims' rights issues. The magazine established the Center as the source to turn to on rights issues in the state. Fundraisers have paid for the magazine so far, but staff hope they will be able to bring in revenues from advertising as an ongoing source of funding. A sophisticated website provides victims with a wealth of information and steers them to the Center. The site also includes significant court decisions and other research information geared toward prosecutors and other professionals. The Center director writes op eds, makes appearances on local radio and has appeared on several national television talk shows.

The Law Center opens an exceptionally large number of cases each year – 132 in 2007. The Center attributes the relatively large volume of cases opened each year to its substantial outreach efforts and to the name recognition of its director, who became a well-known figure in the state as a result of his work on the Crime Victim Compensation Board. The Center has also garnered a good deal of media coverage, with exposure in both local media (e.g., the New Jersey Law Journal, Star Ledger) and national media (e.g., Dateline, Geraldo). Another reason cited for the large caseload was that, unlike some of the other NCVLI clinics, Law Center staff does not try to attend all court hearings with clients. Rather, they typically accompany victims to court only when there is a key issue at stake (e.g., a sentencing hearing) that day.

Training

Prosecutors in New Jersey tend to turn over quickly, with the result that there is little institutional memory for victims' rights among these offices. But, although Law Center staff feel that training is important, the Center does not have a budget for training. Moreover, there is no other state effort to train criminal justice officials on victims' rights issues. The Center director has, however, spoken at state-wide prosecutors' conferences, promoting the work of the Center.

How the Clinic Affects the Exercise of Victims' Rights in Trial Courts

The Center director sees the concept of a victim's attorney as a benefit to the justice process: "We are here to protect the rights of the victim, not at the expense of the rights of the defendant. If we can elevate everyone's rights in the system, it's a better system."

While Center attorneys consider the impact that a case may have on how laws are applied, the Law Center makes representation of clients its first priority. The Center director perceived this emphasis on client interests as somewhat different from the interests of the national organization. He saw NCVLI as more focused on setting precedents at the federal level, a goal that he did not see as important to rights issues in individual states.

Clinic staff say that they try to approach rights issues first through negotiation or, as they put it, by "working the system." Typically, they introduce themselves to the local players with a phone call to "set the stage." As they see it, simply filing a motion just creates barriers and doesn't help the victim: "If your objective is to establish a body of rights laws, then you're going to be an obstructionist." The main objective of the Center is to enable the victim to be a part of the process and to be treated decently – a goal they believe is not incompatible with an effective prosecution or defense. But, when filing motions and litigation are necessary, clinic attorneys aim to "blow the defense out of the water" with [their] briefs. Says the director, "you have to be the authority."

According to the sample of 50 recent cases provided by the clinic, the most common types of crimes that clinic attorneys became involved with were child abuse, sexual assault, and assault and/or robbery cases, each accounting for more than one in four of the cases opened by the clinic (see table below). Homicides also comprised a significant proportion of the clinic's caseload.

Types of Crimes in Clinic Cases

	Proportion of all cases
Child abuse	29%
Sexual assault	27
Assault/robbery	24
Homicide/manslaughter	14
DV/stalking/harassment	5
Other*	2
	100% (n=49)

* Includes Voyeurism, fraud, compensation claims & parole violation

According to Center staff and victim advocates, the most common types of issues they encounter involve confidentiality, an issue of special concern to the director: “Criminal trials are all about beating up the victim, delving into personal things -- fishing expeditions looking for all kinds of records to intimidate the victim.” Other common issues according to Center attorneys include victim impact statements, the right to be informed of plea offers, speedy trial concerns, and the right to be treated with respect.

Examination of the 50-case sample indicated that the right to privacy was one of the top rights issues dealt with by the clinic, accounting for about a fifth of its work (see table below). Even more common, however, was the right to be present and/or heard, accounting for two in five clinic cases. Encouraging the police or prosecutors to bring charges made up about a tenth of the clinic’s work.

Victims’ Rights Issues in Clinic Cases

	Proportion of all cases
Right to be present/heard	38%
Right to privacy	20
Charging decision	12
Plea agreement	8
Respectful treatment	6
Speedy trial	2
Restitution	2
General/other issue*	12
	100% (n=39)

* Includes legal representation, assistance with compensation claim, referral for services

Victim advocates from the Hudson County prosecutor's office – one of New Jersey's most urban jurisdictions – suggested that the failure to afford victims their rights under state law is widespread, often the fault of prosecutors. They believed that victims' rights are violated "on a daily basis" without the victims being aware that this was going on. The Center director wasn't sure what could be done to address that, noting that in New Jersey, "it took a bunch of white middle class and upper middle class people to become crime victims to get victims their rights." This raises the question of whether victims who find their way to the NCVLI clinics represent mainly the most aggressive and articulate victims, while victims less knowledgeable, less educated, and/or less aggressive have their rights violated but never ask for or receive help.

One case that Center staff thought exemplified their work involved a woman who was beaten with a baseball bat and then had her throat slit. The prosecutor wanted to take a plea to a reduced charge because he thought she was "too fat" to put on the stand. The county victim advocate called the Center – a bold move since the advocates are based in prosecutors' offices. Center attorneys were successful in efforts to have the assistant district attorney removed and obtaining a plea to attempted murder with a significant prison sentence.

Another case helped to define the meaning of victims' right to make an impact statement. New Jersey allows defendants to waive their right to be present at sentencing. The Center argued in a multiple homicide case that the defendant's intention to exercise this option obviated the victim's statement of impact at sentencing. The trial judge concurred, and the defendant was ordered to sit through the impact statements of 40 family members of his victims.

Center attorneys also established the right of family members to hold up pictures of the victim in the courtroom and to include DVDs and pictures as part of a statement of impact.

One issue that is of current concern to Center attorneys is erosion of the state's rape shield law by judges concerned about defendants' rights. If current trends continue, the Center director fears that rape prosecutions will become rare. Date rape cases are especially difficult, and the Center is considering bringing suit against a prosecutor who refused to take such a case. Center attorneys reason that, whether or not they win, the action will embarrass the prosecutor and make prosecutors more circumspect about refusing to prosecute rape cases.

Appellate Work

Although the clinic has not been involved in any changes to court rules, it has been active on the appellate level. In *State v. Means*, the Supreme Court considered the question of whether a trial court could set aside a plea agreement solely because the prosecutor failed to notify the victims before entering a plea agreement. A girl who had been abducted and molested found that the trial court had taken a plea without notifying her parent as required under the state's victims' rights laws. The Law Center filed a motion to vacate the plea, and the motion was granted. The defense appealed, and the Law Center filed an amicus brief in the resulting state Supreme Court case opposing the defendant's request to have the original plea bargain enforced. The Supreme Court ruled that such a failure was insufficient grounds to vacate a plea agreement. In its ruling, the Supreme Court explained that while a trial court should consider the victims' concerns, it also may not impinge on a defendant's constitutional rights. The ruling noted that the trial court

had vacated the guilty plea without having information to fairly evaluate the victim's concerns, because it did not know whether the victims had an objection to the plea agreement. Instead, the ruling continued, the trial court could have heard from the victims at sentencing, at which time it would have been in a better position to decide whether to continue to accept the terms of the plea agreement or to reject the plea. The matter was remanded to the trial court.

State vs. Gilchrist pitted a rape victim's right to privacy against the defendant's right to confront his accuser. During his prosecution for aggravated sexual assault, kidnapping, burglary, and criminal restraint, the defendant filed a discovery motion requesting that a photograph of the victim be taken and provided to him. The trial court granted the request over the objections of the prosecutor. The appellate court reversed, stating that any possible benefits to the defendant from a court-ordered photograph were speculative, and were outweighed by the victim's "right to privacy; her right to be treated with fairness, compassion, and respect; her right to be free from intimidation; and the need to encourage crime victims to cooperate and participate in the criminal justice system."

The Law Center got involved when the defense appealed the case to the state supreme court. This was a case that the Center director felt passionately about: "Confidentiality cases are really important to me: District trial courts are all about beating up the victim." The ruling went in favor of the victim, significant because it pitted the right to privacy vs. the right to discovery.

In a child abuse case, the defense applied for post-conviction relief asking for a new trial on the grounds that the trial court judge should not have allowed a family member to include a video as part of an impact statement. The prosecutor filed a brief supporting the conviction and the Law Center filed an amicus brief in support of the prosecution's position. The Center's position as a friend of the court allowed it greater latitude, and it submitted an affidavit of the history in New Jersey of including videos as part of impact statements.

The biggest issue outstanding is whether victims have standing in court. Victims do not explicitly have standing under New Jersey's current bill of victims' rights. Although local trial courts have established standing, the appellate level is not bound by this. Therefore, the Law Center has had to approach this issue delicately. To circumvent this problem, the Law Center normally will request that the prosecutor file an appeal. In one case where the Center represented families of three murdered children, the families were not allowed in for a waiver hearing. The judge refused the Center attorney's request to discuss the issue, and the attorney did not press it for fear of losing on the standing issue.

Legislative Work

In spite of what the Center director termed a "fractionalized advocacy community", he and other rights advocates have been very successful through the years in promoting victims' rights through legislation. He became involved in a case in the mid-1990s in which victims in a child sexual abuse case were billed for their father's civil commitment as a sexual predator. After failing in a bid to get the state to drop the fees, he instigated action to get a change in the statutes that ensured that victims could not be required to pay for sanctions imposed on offenders.

The Center director helped change state law to allow the state medical examiner to overrule county coroners after an accidental death ruling by a local coroner prevented investigation of

what the Center director believed was clearly a homicide. He also was instrumental in abolishing the seven-year statute of limitations on rapes and the statute of limitations on civil wrongful death suits when there has been a murder conviction.³⁴

According to the Center's director, today the state's comprehensive set of statutes and precedents together act to protect the rights of victims. Standing is the last major legislative issue remaining, and is included in a re-written bill of rights currently before the state assembly and senate. Additionally, the bill would provide that victims should be free of harassment or abuse by anyone involved in the criminal justice process, including anyone acting in support or of on behalf of the defendant; would ensure victims are notified if a scheduled court proceeding has been adjourned or cancelled, would require that the victim's impact statement be considered with regard to whether a prosecutor should accept a negotiated plea or a request by the defendant to enter a pretrial intervention program, would permit homicide victims to wear a button with a picture of the victim during court proceedings, would permit a homicide survivor to display a photograph, computer generated presentation, or video presentation of the victim in court.

Role of NCVLI in Supporting Clinic Activities

Law Center staff noted that NCVLI has played an important role in providing effective research on rights cases that have been decided outside of New Jersey. They said they regularly exchanged e-mails with staff of NCVLI and other clinics. They also found the annual conference useful and productive, and would like to see semi-annual gatherings of all the clinics. But they were less enthusiastic about conference calls that NCVLI sets up with the clinics. The Center director believed that younger clinics might benefit more from NCVLI's technical assistance than those clinics led by staff with extensive victims' rights resumes. He also felt that it would be a good idea for staff of newer clinics to make site visits to those who had been doing the work a long time as a way to learn from their experience.

The Center director saw differences between the orientation of the individual clinics and the orientation of NCVLI. The clinics, he thought, were necessarily focused on advocating for their clients, whether that involved negotiating a satisfactory resolution to a rights issue or filing an appellate brief. He saw NCVLI as more focused on establishing precedent, especially at the federal level. He did acknowledge, though, that their orientations had grown closer over time.

Victim Perspective

We held a focus group with six victims (two couples and two single victims) who had been clients of the Center. One victim traveled over two hours to participate.

One couple had two daughters who had been molested by an uncle. The prosecutor recommended that the couple get in touch with the Law Center. Despite threats to kill the parents, the uncle was released on bail. The Center attorney prevailed upon the prosecutor to get the uncle's guns taken away as a condition of bail. The Center attorney also persuaded the prosecutor to convince the judge to allow the child victims to testify via closed circuit television instead of in open court. He also helped them to prepare their testimony and get state compensation funds to pay for therapy for the mother and daughters. In the end, the defendant

³⁴ The Center director does not lobby with federal funds. Any legislative advocacy work is done as an individual on his own time or under non-federal funds.

was convicted and sentenced to thirty years in prison. The couple were very grateful for the help they received: “Without [the center director] we wouldn’t have known [what our rights were]. He said we could call him day or night, and there were times that we did call late at night.”

Another couple had their only two children killed by a drunk driver whose license had been revoked. Although the couple had a hard time with the local coroner’s office, the driver was eventually arrested and charged. However, months went by while the parents waited for the case to be presented to a grand jury and worried that the defendant would abscond. (The Center director speculated that the prosecutor was hesitant to present the case because it might highlight poor judgment of police officers who had stopped the defendant earlier in the evening for an assault on the freeway and let him go.) Frustrated with an unresponsive prosecutor (and receiving no help from the office’s victim advocates), the parents called the Law Center on advice of an acquaintance. The Center director attended meetings between the parents and the prosecutor and complained to the district attorney in writing, copying the state attorney general. Eventually, the family received better treatment from the prosecutor, and the case was presented to a grand jury nine months after the incident. The parents felt some satisfaction when the defendant received 125 years in a plea agreement and the attorney general found for the parents in a formal complaint filed by the Law Center. “[The director] is a bulldog... We know he is always there for us.”

The mother of a child found beaten to death in school was prevented by the judge from wearing a picture of her daughter in the courtroom. The Law Center helped the mother file an urgent appeal petitioning the court to allow the picture, but the appeals court would not hear it. The mother then worked with the Center and the speaker of the state assembly to pass an amendment to the state victim bill of rights that explicitly allows family members of victims to wear photo buttons in the courtroom. (The legislation is still pending as discussed above.)

Finally, in a federal case, a town planning board attorney pled guilty to accepting a \$26,000 bribe in exchange for favorable land deals for a local builder, but received a lenient sentence in return for cooperating with the U.S. attorney. The board of trustees of the town that employed the attorney contacted the Law Center for help getting restitution for the financial burden caused by the attorney’s illegal actions, including the town’s legal fees and fees it had paid to the attorney for what turned out to be dishonest services. The Center director filed a motion under the federal Crime Victims’ Rights Act asserting that the town was a victim in this case and was entitled to restitution. The case is significant because the U.S. Attorneys’ office, after the clinic’s involvement, now recognizes the town as a victim in what it had previously considered a victimless crime.

Focus group participants were asked for their thoughts about how the criminal justice system should be different. Victims had no shortage of ideas. The first thought expressed was better communication, starting with notification to victims of their rights and following up with a reminder in a week or two. Another idea was for prosecutors to be accountable to the attorney general for their treatment of victims. Finally, concern was expressed that victims who are afraid to go home have safe places to go while their case is being tried.

Opinions of Criminal Justice Officials about the Law Center

We spoke with eight members of the New Jersey criminal justice system to gather outside opinions about the Law Center and its work. Those completing interviews included a superior court trial judge, one local prosecutor, two assistant prosecutors, and four prosecutor-based victim advocates. The interview respondents represented six different New Jersey counties. The persons we spoke with were all nominated by the director of the Law Center in response to our request to interview people in the criminal justice system familiar with the work of the Center, regardless of their opinion of the Center.

From the interviews, it became clear that the New Jersey Crime Victim Law Center is synonymous with the name of its founder and director. Interviewees told story after story about the director's interventions in particular cases and about the personal characteristics that make him well-suited to the work of advocating for victims as an attorney. He was described as passionate and empathetic toward victims, with the ability to negotiate and to help prosecutors and victims understand each other when there are disagreements. One advocate said, "He can be the voice of reason with unreasonable people." Several mentioned his immediate response to any call for help and his willingness to work with and support any victim, regardless of victim characteristics or the type of case. They also expressed amazement at his ability to cover the entire state and to never turn down a call for help.

A few interviewees commented that at times there had been resistance on the part of prosecutors to the Law Center's becoming involved in a case, but stated that once the director came in and made it clear that he was not looking for a fight but was only looking to partner with prosecutors in support of the victim, the resistance faded away and the cases were all resolved positively.

All of the prosecutors interviewed stated that they had called upon the Law Center for help in certain cases and appreciated what its involvement added to their arguments. The prosecutors and the judge all reported that briefs and arguments advanced by the Law Center complemented what the prosecutors did and made for stronger cases. Every specific legal issue mentioned in the interviews that the Law Center worked on was resolved in favor of the victims.

Many of the interviewees reported learning from the Law Center director's presentations at trainings or events, as well as from the magazine the Law Center publishes and the e-mail updates on victims' rights that are sent out several times per week. Both prosecutors and victim advocates reported being refreshed and rejuvenated by presentations given by the center's director, which "remind you why you're in this business—for the victims."

All interview respondents felt that the Law Center, or more specifically its director, had had a significant impact on victims' ability to exercise their rights in New Jersey. They cited both the impact on specific victims with whom they and the Law Center had worked, as well as the statewide impact of the director's involvement in advancing victims' rights legislation, dating from the New Jersey Crime Victims' Rights Constitutional Amendment in 1991 through to current efforts to expand certain rights by amending the victims' bill of rights in the legislature.

Data Availability

The clinic does not keep track of work done for victims outside of open cases. In New Jersey the PROMISGAVEL and VINE systems generate notifications of court dates and release of

defendants from custody, but do not include a record of whether victims are notified of rights. Another system, VATS, contains information on services provided by victim advocates. In Hudson County, and likely others, records are kept of impact statements and victim appearance at hearings.

New Mexico Crime Victims' Rights Legal Assistance Project

Legal Context

Compared to other states, the legal context for victims' rights in New Mexico is mixed. In 1987, the legislature passed a statute providing certain victim's rights. Included in the statute was a disclaimer indicating that failure to provide victims these rights did *not* create any cause of action against any state actor in the criminal justice system. It also did not give standing to any offender if victims rights were not afforded the victims. This disclaimer appeared to prohibit any remedy to victims whose rights were violated.

The New Mexico victims' rights constitutional amendment was enacted in 1992. However, the constitutional amendment required enabling legislation to go into effect. In 1994, the legislature passed the necessary enabling legislation. This legislation included the constitutional language denying standing to an accused to raise a violation of a victims' rights, and, it still contained the disclaimer stating that the amendment created no "cause of action" for any other person. The legislature did not define the term "cause of action" and whether there was a distinction between the two clauses or they were synonymous was unclear. Neither the constitutional amendment nor the enabling statute contained mechanisms for remedy should their contained provisions be violated, and popular consensus in the state was that the amendment and statute were both exhortations rather than enforceable provision. However, despite the absence of the creation of a formal cause of action to enforce victims' rights, the legislation prompted most district attorneys to provide information to victims regarding the criminal justice process and their rights, and they also hired additional victim advocates in their offices.

In 2006, the New Mexico Supreme Court held in an unpublished order that victims had standing to enforce their rights in lower and appellate courts in *Nasci v. Pope et al.*, No. 29878 (N.M. Nov. 8, 2006). Although the issued order was terse, based on the pleadings of the Victim, defendant, and amicus from the NM Criminal defense attorney association, the "no cause of action" language in the 1994 enabling legislation was determined to only refer to *monetary* causes of action, because action by the legislature to refuse victim standing would exceed its authority under the separation of powers under the NM Constitution – as standing to assert constitutional rights is a matter for the courts to determine rather than the legislature. The result was that victims have standing to assert a claim for equitable rather than economic remedies under the Victim's Rights Constitutional Amendment. The Court also held that victims had standing in this case. Ordinarily, unpublished orders have no precedential value in other cases. However, because the NM Supreme Court considered the issue en banc (a highly unusual occurrence), and was unanimous in its decision, the clinic felt this was a monumental step and they have actively and successfully made use of this order to avoid being denied standing in numerous trial courts. To this day, no published appellate opinion exists regarding the constitutional amendment and statute protecting victims rights.

As in many states, the victims' rights statute and constitutional amendment do not apply to all crimes or to all criminal justice actors. In the statute and the constitutional amendment only certain crimes are specifically enumerated. Notably, attempted serious violent offenses or those that are not completed—including murder or rape—are not enumerated. Technically, victims' rights do not extend to victims of crimes not explicitly listed in the statute or amendment. In

practice, however, it depends on the discretion of the relevant criminal justice actor. The department of corrections, for example, will not notify victims of the pending release of an offender unless the crime of conviction is one of the enumerated offenses. If, in the plea negotiation process, the crime of conviction is pled down to one that is not listed in the statute or amendment, the rights possessed by the victim can be diminished. Similarly, county jails are not covered by the victims' rights statute or amendment and often do not notify victims of the release of offenders.

Project History

The New Mexico Victims' Rights Project ("the clinic") is a project of the New Mexico DWI Resource Center, a non-profit organization established to reduce the incidence of impaired driving in New Mexico, founded in 1993. Prior to receiving the NCVLI demonstration project, the Resource Center had received a grant from the Bureau of Justice Assistance (BJA) that included education about and enforcement of victims' rights. There was increasing concern about the consistent mistreatment of all crime victims including the victims of drunk driving. Under this grant, the Center created educational videos to educate various professionals in the criminal justice system on victims' rights in New Mexico, and a pro bono attorney entered the first appearance as a victim's attorney in New Mexico criminal court.

The work on the BJA project led to the realization that the education and outreach to the criminal justice system and the limited pro bono attorney work they were doing were not sufficient to effect change; there needed to be more litigation of victims' rights in court. As the BJA grant came to conclusion, the Center applied to NCVLI to be one of the demonstration legal clinics. The NCVLI-funded clinic program officially began on April 1, 2004. Operating state-wide, the clinic has represented clients in all but three of New Mexico's 13 judicial districts.

Initially, the clinic took more of an informal approach, by having conversations with judges and prosecutors. This approach was necessary because there was uncertainty as to whether the constitution and statute provided separate standing for the clinic attorney to file pleadings. (At the same time, the clinic was looking for opportunities to clarify standing through litigation.) Over time the clinic undertook less informal advocacy and more litigation. For two years, the clinic attorney frequently entered or attempted to enter an appearance in cases and sought to aggressively litigate on behalf of victims. According to the clinic, they were met with skepticism and opposition from prosecutors and judges. Standing was frequently either 'ignored' or specifically denied. The clinic did have some success filing amicus briefs in support of established actors in the system on behalf of victims. Eventually, in *Nasci v. Pope*, the New Mexico Supreme Court recognized the clinic's standing to represent a victim in a non-precedential order. The clinic has been able to use this order to gain more de facto recognition in courtrooms across the state.

In 2004, Governor Bill Richardson created the Governor's Office of Victim Advocacy hiring a director and an assistant. At first, the clinic staff was hopeful that this would facilitate the recognition and highlight the importance of victim's rights. The hope was that the coexistence of the clinic and a person operating out of the governor's office would make an effective team to accomplish both compliance, and, when necessary, litigation. However, the clinic staff soon

grew disenchanted with the governor's representative. The victim's rights attorney operating from the governor's office was unable to litigate cases and the clinic staff described her as just performing "glorified constituent services." Nevertheless, where a non-enumerated victim, or victim who had not yet had rights attach, contacted the clinic, the clinic refers these victims to the Governor's office to use political influence where no legal options existed.

Now that the clinic has established itself, especially through *Pope v. Nasci*, the staff hopes that litigation over standing will be less necessary, and the clinic can focus on litigation that supports specific victims' interests such as notification, conferring, presence, making impact statements, etc. The clinic's current victim advocate speaks Spanish, which will help the clinic to expand its services to include more Spanish-speaking crime victims.

Business Model

The clinic is under the umbrella of the DWI Resource Center and as such shares office space with the Center with the Executive Director overseeing both the Center and the clinic. This allows the clinic to reduce overhead cost.

In an attempt to secure support of prosecutors who have been skeptical of the clinic's role, the clinic attempts to enforce victims' rights without undermining the prosecutor in the case. They will not criticize a plea agreement to their client, for example, no matter how unjust it appears. They will assert the rights of the victim within the framework of limited rights. While this sometimes involves formally entering an appearance, it also often involves e-mails, phone calls etc. in order to get the legal system to recognize the victim's rights. As one clinic staff member put it — "we do a brisk business in shame."

They also put victims in contact with whatever additional service providers they might need and have worked to develop the appropriate networks to perform this function.

Staffing

The clinic staff includes the executive director, a staff attorney, and a staff victim advocate (not NCVLI funded) who assists with Spanish speaking clients and an office manager/bookkeeper.

One of the clinic's staff attorneys originally worked for the clinic on a *pro bono* basis. Otherwise, the clinic has made very limited use of pro bono attorneys. Prior to the New Mexico Supreme Court recognizing standing, the clinic did not feel that it was wise to let other attorneys control the litigation. Even now that the New Mexico Supreme Court has recognized victim standing, the clinic staff is concerned that other attorneys will not adequately protect the victims. The clinic's cardinal rule is, "First, do no further harm (to victims)," and they felt that involving pro bono attorneys might jeopardize that principle. The specific concern mentioned is that the outside attorney may put their own egos ahead of the needs of the victim and that they will "re-victimize the victim in the hope of saving them." They also found that with some pro bono attorneys, paying clients had priority over the non-paying clients. In regards to *pro bono* help, the clinic staff suggested, "You get what you pay for." The overall sense was that in New Mexico, the use of pro bono attorneys will come later, after the clinic has established more recognition and case law on victims rights as enforceable.

One law firm in SE New Mexico has expressed some interest in taking cases; however, that has not yet happened.

According to the clinic, the UNM Law School is very defense-focused and is therefore not receptive to the idea of a clinic on victims' rights issues. The clinic has not accepted this disinterest as final, however, and is currently strategizing about interesting the school into including a victims' rights component in their curriculum.

How the Clinic Gets its Clients

The clinic advertises its existence through a website, ongoing training sessions around the state, speaking events, litigation, and contacts with local media. Most of the clients were referred through law enforcement agencies and the victim's advocates in the prosecutor's offices. They have also produced crime victim resource cards for distribution to victims by law enforcement.

The clinic is regularly contacted by the media for comment on impaired driving and victims' rights issues. The director has established herself and the Center's credibility on the issues of impaired driving and victims rights and the media finds it useful when covering a story involving these issues. In the few years of its existence, the clinic has received additional publicity during victims' rights week in New Mexico. They have been able to publish opinion pieces, letters to the editor, and feature stories, and have had victims who wished to tell their stories interviewed on radio and TV.

Gradually, as the existence of the clinic has become better know, they have received more referrals from other community service providers. Currently the staff estimate that referrals are 33% self-referrals (from resource cards, brochures, website, etc), 33% from DA's advocates, and 33% from community advocates.

An analysis of cases opened over a one year period from July of 2007-June of 2008 indicates that referral sources vary widely and generally confirms these estimates.

Table 1: Source of Referral

Source of Referral	Percentage
Social Service Agency	25%
Website	18%
Unknown ³⁵	18%
Prosecutor	5%
Prosecutor's victim advocate	8%
Police Department	6%
Friend/Acquaintance of victim	7%
Judge or other court official	2%
Public Defender's Office	1%
Brochure	2%
Other	8%

The clinic staff estimated that they receive approximately 100-150 calls a year. Of the 150 victims, the clinic estimated that approximately 1/3 retain the clinic attorney and sign a “hire” letter. A review of the clinic’s case files indicate that from July 2007-June 2008, the clinic opened 83 case files with 19 of the victims signing a hire letter.

Because of resource constraints, they have been able to enter formal appearances less frequently. In cases in which they are unable to formally enter an appearance they sometimes provide sample pleadings to prosecutors and also provide *pro se* forms for victims to use which explicitly include their authorship on the bottom.

From July 2007 through June 2008, the clinic formally represented 19 clients. Eleven percent of these were domestic violence cases, 21% were homicide cases, and 68% of these were sexual assault cases. In 79% of these cases, the clinic attorney formally entered an appearance.

In some instances, the clinic opens case files but does not formally represent the client and no formal “hire” letter is signed. From July 2007 through June 2008, the clinic aided sixty-three (63) additional clients in this capacity. These ranged widely by type of case: 10% were battery cases of some kind, 35% were domestic violence cases, 14% were homicide cases, and 22% were sexual assault cases.

According to the clinic, the source for clients has shifted over time. In the first year of the clinic’s existence, all their cases were self-referrals. In many cases, there was nothing that the clinic could do for the victims because these were “book-end cases” — either charges had not been filed or after sentencing had already taken place. Initially, they got no referrals from

³⁵ According to clinic staff, DA’s victim advocates often make “confidential” referrals because they fear adverse reaction from their employers. This might explain the relatively high number of unknown referral sources.

community organizations because of the historical compartmentalization of victim services in New Mexico. Different victim service organizations did not communicate well with each other. Another significant issue with referral organizations was a lack of familiarity with the criminal justice system, as many of them provide support strictly within the civil case context.

In the second year, they began to receive more referrals from victim advocates that operated in the prosecutor's offices, often without the knowledge of the prosecutor. The clinic staff call these "secret spy" referrals. The prosecutor-based victim advocates tell the victim to call the clinic and might specifically ask them not to indicate that the referral was made by the advocate. According to the clinic, this is because the prosecutor's offices believed that victim representation was unnecessary and intrusive. These victim advocate-referred cases tend to be the cases in which the clinic can do the most good because the victim advocates perform a pre-screening function — they refer only those cases in which the clinic's involvement can be useful.

The clinic has been disappointed in the few official referrals from prosecutors' offices that they have received. Clinic staff indicated that they perceived that the prosecutors were dumping "difficult" victims on them only after the victims' rights had already been violated and the cases were too far along to remedy the violation.

Clinic staff alluded to the sometimes territorial nature of victim service organizations and the way that that impeded referrals. Other community organizations also don't necessarily think of litigation or focus on the victim's rights in the criminal justice system. As one clinic staff member put it: "Most community organizations don't 'do' criminal justice." Similarly, many community-based advocates don't trust lawyers or the legal system and are reluctant to refer a client to the clinic, many from the fear of clients being re-victimized. Other referrals from community-based organizations occur too late – after the victim's rights have been violated. Finally, clinic staff also alluded to myriad "political" considerations among community organizations. A recent director of the local Survivors of Homicide organization, for example, is steadfastly pro-death penalty and is suspicious of organizations that are not also. The clinic has officially adopted a neutral stance on the issue so that it can serve family members of homicide victims who hold opposing views on the death penalty issue.

Interestingly, the clinic thought that advocates for child victims are more open to victim representation – probably because children are more obviously unable to represent themselves than an ostensibly competent adult victim.

They have sought to balance outreach with the ability to provide services.

After being contacted by a victim, the clinic uses a standard intake form. Intake forms are reviewed at a staff meeting and several factors are discussed, including:

- Whether the crime is enumerated in the statute/amendment
- Judicial district
- Any research they have conducted on the case or conversations they have had with advocates.
- Any additional conversations with the victim

- Conflicts

Clinic staff talk with victims about what they want and give advice about possible outcomes, given the circumstances as they currently understand them. Given the opposition of some prosecutors to the clinic's involvement, clinic staff advise the client that the clinic's involvement may make their relationship with the prosecutor more difficult. According to clinic staff, in at least one case, a prosecutor deliberately "tanked" a case — prosecuted it half-heartedly — in order to punish a victim for contacting the clinic. Before they enter their appearance, they discuss the risks with the victim.

Geographically, the clinic has represented victims in many parts of New Mexico. Of the 19 cases in which hire letters were signed between July 2007 and June 2008, 31% (6) of them were from San Miguel County, and just 15% (3) from Bernalillo County, the county in which Albuquerque and the clinic are located. The rest were scattered over nine other counties. Interestingly, the cases in which the victim did not sign a hire letter were slightly more focused in Albuquerque. One-fourth (26% or 17) of these cases were from Bernalillo County. Overall, the clinic aided clients in 19 different counties.

Training Criminal Justice Officials

The clinic has undertaken some training and educational activities. Under the predecessor BJA grant, the clinic developed a training videotape for law enforcement and a training videotape for prosecutors that were distributed to all 13 Judicial Districts. They regularly train prosecutors at the District Attorney's fall and spring conferences and are hopeful that they will be invited again to the annual judicial conclave. The staff attorney has heard that some of the clinic's briefs on victims' rights issues are being distributed by some judges to other judges.

The clinic also trains victim advocates at the statewide victim services conference. The clinic's presence at this conference has increased over the years. Four years ago, the clinic had a booth and did a workshop. In 2007, the clinic staff attorney gave the opening and closing keynote addresses at the conference. They also do some training of SANE nurses at a public health conference, the Albuquerque Police Department's Stalking Unit, and with The Arc, an advocacy group for people with disabilities, on victims with disabilities statewide. There has been some training in Indian Country as well at Pueblos and with the Navajo Nation. A former staff attorney is currently on the State Sentencing Commission, which she feels is an important public venue for the clinic and meets quarterly. The same former staff attorney also has taught a victim's rights class as an adjunct professor at UNM law school.

Originally, the clinic suggested creating standard operating procedures for prosecutors, and law enforcement but they received very little interest from prosecutors' offices.

How the Clinic Affects the Exercise of Victims' Rights in Trial Courts

Despite the existence of a victims' right statute and constitutional amendment, enforcing victims' rights in New Mexico has been difficult. When the clinic began, prosecutors and the Attorney

General were nearly unified in *opposition* to victim representation in criminal court. According to the clinic, the prosecutors felt that they represented the victims and thought that independent victim representation was unnecessary and intrusive. The clinicians described a criminal justice system in disarray with an “unholy triage” occurring in which Spanish-speaking complainants were often considered “uncooperative” and their cases ignored. Prosecutors and judges did not want their widespread violation of victims’ rights observed or documented. Judges and prosecutors were also very skeptical that victims’ rights were anything other than unenforceable “social policy.” When the clinic attorney tried to represent victims by formally entering an appearance in court, she was repeatedly denied standing by the courts.

Clinic staff indicated that prosecutors and prosecutor-based victim advocates were reprimanded, punished, or fired for cooperating with the clinic or referring cases to them. According to the clinic, some prosecutors have threatened the victim with having their case “go away” if they seek representation by the clinic. She also reports that one prosecutor deliberately “threw” a case against a defendant in order to punish the victim for seeking representation by the clinic. According to clinic staff, there were also inquiries by prosecutors about whether it was possible to eliminate the clinic’s funding.

Reaction among the defense bar was mixed. Some quickly understood the idea of vindicating your client’s rights and accepted the idea that victims should have independent representation. Others felt that it was like having a second prosecutor and argued that allowing victims’ rights would create reversible error.

Over time, as victim representation became more common (while still very rare) and after the New Mexico Supreme Court acknowledged that victims’ attorneys have standing to appear in court, the opposition to the clinic has decreased. Crimes against children acted as bridge issue that brought the clinic some legitimacy in the eyes of the prosecutors. In those cases, the prosecutors were happy for the assistance with issues regarding defense counsel interviews, and seeking psychiatric records of the victim. Sexual assault cases similarly provided an opening for the clinic. Eventually, the prosecutors also recognized their assistance in domestic violence cases. Some prosecutors accepted and filed briefs on victims’ issues that were drafted by clinic staff. In general, the better, smarter prosecutors were more open to the clinic’s involvement, in the opinion of the clinic staff. According to the clinic staff, the less skilled, more insecure prosecutors resent the observation and intrusion and feel that the clinic interferes with their cases. Despite this progress, the current Attorney General remains opposed to victim standing. And to this day, clinic staff indicates that even when they are formally granted standing, they are often not served with filings by either the prosecution or the defense nor notified of status conferences or hearings.

The growing acceptance of the clinic’s existence has been paralleled by judges and prosecutors paying more attention to victims’ rights. As a result, clinic staff believe that rights violations are less common than they were when the clinic opened.

Concretely, the most common types of victims’ rights violations are the rights to be heard, receive notice, be present at hearings, restitution, and privacy. Table 2 below provides a breakdown of the issues involved in clinic cases opened from July 2007 through June 2008:

Table 2: Victims' Rights Issue in Cases Opened by Clinic

Reason for Clinic Involvement	Percentage
Right to Privacy	6%
Right to be present/heard	8%
Victim Sought Fairness and Respect	25%
Right to Protection	5%
General Question	17%
Restitution	2%
Right to Notification	12%
Failure to Prosecute	14%
Right to timely disposition	6%
Other Victim Issue	4%

On three occasions, the clinic achieved re-sentencing when the victim's rights were ignored. In each case, the judges believed that they might be creating constitutional issues if they sentenced the defendant differently so in each case the sentence was identical to the original sentence.

There is some risk of unintended outcomes. In one case, an inexperienced prosecutor might have accorded too much weight to the victim's desire to take the case to trial (rather than seek a plea deal) in part because the victim's rights clinic entered an appearance. The result was a trial in a weak case and an acquittal. According to the clinic, the victim might have been better served had the prosecutor exercised his discretion and proceeded with a plea.

For good or bad, judges appear more likely to impose harsher sanctions after hearing from a victim who is represented by the clinic.

Besides representing victims with respect to trial related issues, at times the clinic has assisted victims in obtaining financial assistance from the Crime Victims Reparations Commission as well as court-ordered restitution from the offender.

There were also gatekeepers at the parole board who told victims that they were not allowed to attend parole hearings. Clinic staff threatened to litigate the issue and were able to get this policy changed without litigating. The Parole Board now does direct notification of victims, but only for crimes that are specifically enumerated in the New Mexico Victims' Rights Constitutional Amendment.

Clinic Work on the Appellate Level

The clinic's overall appellate litigation strategy was fairly simple. Enter appearances frequently with the expectation that it will often be denied. Identify attractive cases to take up on appeal to the New Mexico Supreme Court on the issue of whether victims are entitled to standing in the trial court.

Because appeals from a denial of standing go directly to the New Mexico Supreme Court, the clinic has not litigated before the intermediate appellate courts in New Mexico. In addition the clinic perceives the intermediate appellate court as a comparatively unfriendly venue.

During second year of the project, they received many cases that were not well-suited to take up on appeal for a variety of reasons. They did not want to take a bad case up to the state Supreme Court on the standing issue because they knew that both the Attorney General and the local prosecutors would oppose them.

In 2006, in one case in which the clinic had sought standing, the New Mexico Supreme Court granted oral argument on the specific issue of victim standing. After the oral argument the court issued an unpublished order granting standing to the victim in the case before the court. Ordinarily, unpublished orders have no precedential value in other cases. However, the clinic felt this was a monumental step, and they have actively and successfully made use of this order to receive standing in numerous trial courts.

Legislative Efforts

The clinic has not been involved in legislative changes since the advent of the clinic. However, clinic staff in their own capacity have voiced opinions on laws that might have harmed the interests of victims. For example, a bill was proposed that would require every witness identification of a defendant (e.g., showups and lineups) to be videotaped. The purpose of the proposal was to enable a jury to judge the certainty of the identification and to fight against the tendency for witnesses to become more certain of their identifications over time. Clinic staff objected to the bill because there were no provisions for destroying the videotapes, and this raised concerns about victim privacy. The bill was ultimately defeated.

There have been some significant statutory changes regarding victims' rights in recent years. Arguably, the two most important changes occurred in 2005, one year after the clinic received its first funding.

In 2005, New Mexico amended its law to provide a form of victims' rights enforcement at court proceedings, by enacting procedures to prevent the violation of a victim's right to be heard. The amended law requires courts at any scheduled court proceeding to inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the prosecutor cannot verify that an attempt has been made, the court must reschedule the hearing and notify the victim, or continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement. This statute does not specify which proceedings the law applies to, but the title of the section is: "Crime victim presence at court proceedings; plea agreement notification" and the language tracks other states' laws regarding the rights of a victim at the plea agreement stage. According to the clinic, this statute is routinely ignored.

Another change in 2005 eliminated the requirement that the victim request that the prosecutor notify the victim of scheduled court proceedings.

Changes to Court Rules

The clinic has tried to change the court rules to reflect the New Mexico victim's rights constitutional amendment and statutes, but these efforts have been unsuccessful, in part because the clinic is not permitted to lobby with NCVLI grant money. Clinic staff participates in the Victims' Rights Alliance and has voiced its opinion about the need for appropriate rules changes in that capacity.

Role of NCVLI in Supporting Clinic Activities

The National Crime Victim Law Institute (NCVLI) has been very helpful in providing technical assistance and training to the clinic. NCVLI helped edit nearly every substantive brief filed by the clinic. They also helped tip off the clinic to various issues, such as referring to the victim's address at sentencing as allocution rather than testimony to avoid defense counsel seeking to cross-examine the victim. The clinic believes that NCVLI has helped them avoid mistakes that were made by other programs. NCVLI has been helpful in making it easier for the clinic to avoid "reinventing the wheel."

The clinic believed that NCVLI's involvement as amicus provides additional credibility to the clinic's positions. For example, NCVLI filed an amicus brief in the *Nasci v. Pope* case which recognized victim standing.

The annual national conference organized by NCVLI has been also very useful in providing general moral support, camaraderie in a sometimes traumatic job, and sense of shared purpose. Clinic staff indicated that it was difficult to actually learn from different jurisdictions because each jurisdiction has fairly unique issues and problems. Despite that it has been "priceless to be with other people going through the same thing. It confirms you are not nuts, and it's not as bad as you think."

The clinic also stressed the value of the federal funding in immunizing the clinic from local politics and the pressures that would have been brought to bear to rescind the funding had it come from the state.

Opinions of Criminal Justice Officials about the Clinic

We conducted interviews with eight participants in the New Mexico criminal justice system to learn of the clinic's reputation and get outside opinions about the clinic's work. We interviewed the former director of the New Mexico Governor's Office of the Victim Advocacy, three victim advocates, one trial judge, one police officer and two district attorneys from around New Mexico. All of the people whom we interviewed were suggested by the director of the clinic as being familiar with the work of the clinic.

Respondents were generally enthusiastic about the work accomplished by the clinic. They generally credited the clinic with raising the profile of victims' rights throughout New Mexico.

Respondents emphasized the clinic's victim advocacy in the courtroom. One judge described the clinic's attorney as "politely tenacious" in their advocacy for victims' rights. Prior to the

formation of the clinic, prosecutors and judges' awareness of victims' rights was more theoretical than practical. People were aware of the statute and prosecutors' offices had hired victim advocates but victims' rights were not always recognized by some judges and some district attorneys. Through litigation and simply existing, the clinic made participants more aware of victims' rights. While the prosecutors noted that sometimes victim representation complicated their jobs, they also credited the clinic as being useful allies when a victim related issue arose in litigation.

A district attorney praised clinic staff for their assistance in defeating a bill mandating certain procedures for witness identification of defendants. The clinic argued that the mandated procedures would be onerous on victims and the bill was ultimately defeated.

The police officer praised the training conducted by the clinic for victim advocates and other officers. While much of it was "preaching to the choir," he thought that learning the history of the legislation and the constitutional amendment was very useful and it gave him a broader perspective on the role of victims' rights in the criminal justice process.

Two victim advocates interviewed believed that the clinic had had increased attentiveness of judges and prosecutors to victims' rights. Both mentioned the New Mexico Supreme Court opinion on standing that the clinic had been involved with as a milestone. The clinic, with its independence from state institutions, was seen as fulfilling a unique role in promoting victims' rights.

A few reservations about the long-term need for the clinic were expressed. One district attorney questioned whether the money that the clinic required would be better spent by expanding victim advocacy in the district attorney's offices. He thought that this might be a more effective means of advancing victims rights. On the other hand, he pointed out that the clinic's independent role allowed it to raise issues in the press to shame judges who did not recognize victims rights in ways that his office could not. Other reservations expressed include the concern that by making victims an additional party, proceedings became more logistically complex. Other prosecutors fear that additional recognition of victims rights will interfere with the prosecutors' discretion. There was also the hope expressed that as the recognition of victims' rights became more institutionalized, the need for a legal clinic dedicated to victims' rights enforcement would lessen.

Victim Perspective

A victim focus group provided important insight about the victims' interaction with the clinic. The victims were recruited by clinic staff.

The father of an assault victim attended the focus group. In December 2007, four young people broke into the victim's home and committed a very serious assault, requiring a medical airlift of the victim from Santa Fe to Albuquerque. The prosecutor offered a plea agreement with one of the defendants who was a juvenile, without conferring with the victim or his family. One of the defendants was released without any notifications to the victim, and another defendant fled the state to Arizona and little was being done to bring him to justice. The father complained about the treatment of the case to the elected District Attorney and the Governor. A victim advocate

advised the father to call the victims' rights clinic. The father believed the prosecutor was actually afraid of the defense attorney, who was quite well known in the area. The staff attorney at the clinic argued that the victim's rights were violated when he was not informed of the plea deal and afforded the opportunity to be conferred with. A new prosecutor was assigned to the case, which the father attributes to the work of the clinic. The father pushed very hard for the arrest and extradition of the defendant who fled to Arizona. His whereabouts were known at that time and nothing was happening. The staff attorney was able to advocate with the Marshall's service to get the defendant picked up in Arizona. The victim's father states that he and the victim "would not have gotten the respect they now have from the prosecutor without the clinic's work."

Another focus group member was the mother of a child rape victim and she reported on her experiences with the criminal justice system. Her daughter was the victim of a rape. The victim and her mother were not notified of the arrest or the subsequent release of the defendant. The victim's mother made efforts to be present at each step of the proceedings, but the prosecutor's office repeatedly failed to notify her of court proceedings. Eventually, the prosecutor's victim advocate made the referral to the clinic. The staff attorney entered her appearance on behalf of the victim. The staff attorney appealed to the Supreme Court after her *in limine* motion asserting the victim's right to be present (during trial) was denied. This case (*Nasci v. Pope*) helped establish standing for victims in New Mexico as well as the victim's constitutional right to be present during trial. The victim's mother states that prior to the clinic's involvement, she had no idea she had rights. She was told that another victim was barred from the courtroom and at one point she was told by the prosecutors they were going to offer a plea but "it doesn't matter what you think." The original prosecutor told the victim's mother that she "was not a party to the process and not entitled to file motions on their behalf." The victim states that "without the clinic attorney nothing good would have come from the case. The biggest thing to happen was the Supreme Court case for other victims."

Another victim who attended the focus group was the mother of a seven-year-old girl who was molested by a 14-year-old neighbor. The mother stated she felt that "from Day One everyone dropped the ball." For example, for the first hearing the defendant failed to appear. This was followed by one delay after another. After six months, her daughter was showing reactions to the crime, such as no longer being able to sleep alone. The delays caused frustration for the victim and her mother. The mother tried e-mailing the prosecutor several times and finally found out that a plea was being offered. Three additional weeks went by with nothing happening on the case and the prosecutor reporting that he had no idea what the defendant was actually going to do. The victim's mother called the prosecutor with some frustrations about the lack of action and then proceeded to call around the state seeking help and advice. At one point the victim's mother was told by the prosecutor's victim advocate not to "make the judge mad." The mother felt that the "system allows complacency." Eventually the family was referred to the victims' rights clinic by the counselor at the rape crisis program. The staff attorney filed a motion for notifications. As a result of the clinic's involvement, the mother reported that the case seemed to be moving along better now and the next court date was set for about six weeks in the future. The victim's mother expressed significant discontent with the criminal justice system: "The system abuse was worse than the original crime." She felt that "the prosecutor's victim advocate [is] just a buffer so prosecutors don't have to deal with victims directly." The victim's mother

feels that the clinic has helped get the case “more under control” and believes that every prosecutor should give out the number of the clinic.

Another victim was sexually abused by a serial offender who was the brother of the victim’s sister-in-law. Prior to the clinic’s involvement the victim was very frustrated because the prosecutor’s office never provided any notifications of upcoming hearings or information on the status of the case. The victim did not even meet the victim advocate from the prosecutor’s office until the first day of court. The victim was also very unhappy about the proposed plea agreement. The victim’s clinic attorney entered her appearance in the case and helped facilitate the case moving forward and with the plea agreement to include the victims concerns. While the victim was not satisfied with the criminal justice system, she felt that the clinic was helpful and did the best it could under the circumstances.

The last victim we heard was the mother of a five-year-old girl who was sexually assaulted by the 14-year-old son of a friend she was visiting in New Mexico. Because she waited until she returned to Arizona before reporting the crime to authorities, the New Mexico police and district attorney were unpleasant to her. They told her that nothing would happen to her case. Eventually a new prosecutor was assigned to her case who was more professional and pursued the case more aggressively. One remaining issue was how to protect her daughter during the trial. She felt that the staff attorney was tremendously helpful in filing an 18-page motion that suggested several approaches to protecting the victim during her testimony while still accommodating the constitutional right to cross-examination.

The focus group members were uniformly supportive of the clinic. They felt the clinic’s involvement meant that good things happened in their cases and that the judge and prosecutors took them and their concerns more seriously.

Data Availability and Possible Impact Measures

The clinic staff had a number of interesting suggestions for impact measures and would be eager to assist with an impact study. They suggested measuring the production of case law and the number of victims assisted. Longer-term effects of the clinic might be measured by survey. In 2003, the clinic conducted a short survey of 155 crime victims. This indicated widespread disregard for victims’ rights by actors in the criminal justice system. In 2006, the Governor of New Mexico created the Victims’ Rights Alliance. In 2007, this Alliance conducted a study into the implementation and enforcement of victims’ rights in New Mexico that involved several data collection efforts. In conjunction with this study, there was a victim survey in 2007 of 240 victims conducted by the New Mexico Crime Victims Reparations Committee. This survey concluded that many crime victims’ rights were violated. The Alliance also conducted surveys of victim service providers which also indicated ongoing problems in the provision of victim services. Focus groups of African American, rural, Native American and immigrant communities were conducted. A statewide victimization survey was also conducted that consisted of four thousand telephone interviews to determine the prevalence of domestic violence and stalking in New Mexico.

Follow-up data collection efforts could be conducted to see if the picture of victims' rights in NM has changed. The clinic staff also suggested that one could also look at public health reporting of crime — if victims are generally empowered, reporting should go up.

The clinic also suggested examining the amount of time prosecutors devote to victims' rights issues. Evidently there was recently a three-month time study of most actors in the criminal justice system.³⁶

³⁶ New Mexico Sentencing Commission, A Workload Assessment Study for the NM Trial Court Judiciary, NM District Attorney office, and NM Public Defender Department, produced by the National Center for State Courts and the American Prosecutor Research Institute (2008).

South Carolina Crime Victim Legal Network

Legal Context

South Carolina has long struggled with the implementation of victims' rights. The first broad victims' rights statute was passed in 1984, but a survey five years later found little evidence that rights were being provided.³⁷ Only 24 percent of victims surveyed at that time said they were notified of the sentencing hearings; fewer than nine percent of the case files contained any indication that a victim impact statement had been made. In 1993, a report was released by the South Carolina Victim Assistance Network, the South Carolina State Office of Victim Assistance, and the Crime Victims Research and Treatment Center at the Medical University of South Carolina, showing strong support for crime victims' rights in the state. That report called for a crime victims' rights amendment to the state's constitution.³⁸

In 1994, the state created the office of the Crime Victims Ombudsman. A victims' rights constitutional amendment and implementing legislation were adopted in 1996. Then, in 1998, there was an attempt to limit the victims' rights amendment. An amendment to the amendment was proposed to empower the Legislature to redefine the concept of victim, and exclude victims of certain felonies or misdemeanors from the protections of the state's Victims' Bill of Rights. Proponents of the limitation argued it was too expensive to require criminal justice agencies notify all crime victims who request information about the progress of the criminal case. This amendment to the amendment was opposed by a number of victims' advocacy groups, and was narrowly defeated by a margin of 18,000 votes (two percent of the votes cast).

Project History

The South Carolina Victim Assistance Network (SCVAN) was founded in 1984 to operate the Statewide Advisory Group on Victim Issues, which is comprised of key stakeholders: victim advocates, law enforcement, judges, prosecutors, and state agency and non-profit executives. Over the years since its founding, SCVAN grew and helped to develop victim assistance programs across the state and advocate for victims' rights legislation. In part due to its legislative advocacy, in 2007 SCVAN lost its state funding to operate the Statewide Advisory Group. The new advisory group, the South Carolina Crime Victims Council, is now being coordinated directly by the state Office of Victim Assistance, within the Governor's Office. SCVAN participates in the council and continues to do legislative advocacy on its own.

SCVAN considers itself a one-stop-shop for victims. Although they do not provide direct counseling services, they do provide emergency assistance and make referrals to victim assistance programs throughout the state. SCVAN also provides training and technical assistance to a statewide network of victim advocates and victim assistance providers across the

³⁷ Kilpatrick, D.G., Tidwell, R.P., Walker, E., Resnik, H.S., Saunders, B.E. Pduhovich, J. & Lipovsky, J.A. (1989). "Victims rights and services in South Carolina: The dream, the law, the reality." Final Report for Justice Assistance Act Grant No. 86-024.

³⁸ Kilpatrick, D.G., Best, C.L., Falsetti, S.A., "South Carolina Speaks Out: Attitudes about Crime and Victims' Rights." Crime Victims Research and Treatment Center: Charleston, SC. 1993.

state. In addition to the Crime Victim Legal Network—the victims’ rights legal clinic—SCVAN operates programs including:

- Underserved Citizens 411 that teaches crime victims’ rights to the elderly, the disabled, and immigrants;
- An emergency fund for victims that pays for essential needs while victims wait for compensation to begin;
- Crime Victim Information Services System (web site, lending library, a Communications Listserv and a national and statewide resource directory);
- Training through a partnership with Medical University of South Carolina’s National Research and Treatment Center and the State Office of Victim Assistance to produce The SC State Victim Assistance Academy; and
- Victims’ Rights Week Conference, an annual conference now in its 22nd year.

SCVAN has been a driving force for the expansion of services and victims’ rights in South Carolina since its inception. The SCVAN staff has actively engaged in legislative change issues over the years and has been involved in nearly every legislative change directly related to crime victims.

Because of persistent problems with victims’ rights enforcement, even after the passage of the victims’ rights constitutional amendment, SCVAN twice sought grants from the South Carolina Bar Association’s Interest on Lawyers’ Trust Accounts (IOLTA) fund to initiate a legal clinic for victims in South Carolina, in 2002 and 2003. According to the SCVAN director, those two attempts failed due to the significant size of the request, although the application process led to meetings with the South Carolina Bar Association leadership, which did express some interest in the idea. Eventually, SCVAN did win an IOLTA grant in 2007 to do victims’ rights training for hard-to-reach populations and their service providers.

After the unsuccessful attempts to secure funding from the South Carolina Bar for a legal clinic for victims, the South Carolina Crime Victim Legal Network (CVLN) was finally brought to life with a three-year grant from NCVLI in 2004. Funding was \$50,000 in year one, \$100,000 in year two, and \$75,000 in year three. Current funding includes \$160,000 from OVC and has expanded the clinic’s catchment area to include Federal cases in North Carolina and South Carolina.

The CVLN’s first three years represent a start-up trajectory. In year one, CVLN’s staff focused on getting the project up and running, outreach, and education. In year two, the clinic conducted a major training and education “blitz” as representation of victims began and the pro bono network of lawyers was recruited. Twenty-seven training sessions were held in the 16 judicial circuits, with multiple sessions held in larger circuits. Those trainings were targeted to prosecutors (commonly called “solicitors” in South Carolina) and victim advocates. Year three was a continuation of the legal services.

Business Model

The Crime Victims Legal Network is housed within SCVAN, a statewide victim advocacy organization. According to the CVLN Director, the program “looks like an independent law firm,” and all legal matters are handled by the clinic based on the legal judgment of the Director.

SCVAN provides administrative support and grants management as well as some outreach efforts.

Because South Carolina laws are strict regarding the unauthorized practice of law, the director of CVLN must be an attorney. Because the executive director of SCVAN is not an attorney, the CVLN needs to be run by an attorney and stand alone from a legal decision point of view. However, being affiliated with SCVAN is also a strength. Both the CVLN and SCVAN serve victims statewide and take a holistic approach to meeting victim's needs. The relationship works well and victims seeking help from SCVAN that have legal issues can easily be referred to CVLN. Conversely, CVLN's clients in need of additional services can easily access them through SCVAN's services and network.

The relationship between CVLN and SCVAN is a very important element of the program's success. SCVAN brings a long history and established relationships across the state around serving and helping victims and conducting outreach and educational activities. Several current members of SCVAN's Board of Directors—including the South Carolina Crime Victims' Ombudsman, researchers from the National Crime Victims Research and Treatment Center at the Medical University of South Carolina, and the executive director of the state's domestic violence and sexual assault coalition—provide important sources of referral to CVLN. Additionally, SCVAN has been able to engage in activities including legislative efforts that CVLN cannot include in its regular activities due to the lobbying restrictions that accompany federal funding.

Staffing

The clinic has a full-time coordinator, a full-time director (attorney), and receives part-time support from the CEO of SCVAN.

CVLN has had four directors since its inception. CVLN claims that it has been a smooth succession from director to director and each director has brought his or her own personality to the effort. However, four directors in four years is a great deal of transition in the early stages of a project. It is impossible to gauge whether the number of changes really had no bearing on the program's development, or if the results would be different had there been fewer changes in leadership.

According to several sources, the CVLN directors initially took a more adversarial approach to the victims' rights work, often filing motions without first attempting to resolve victims' issues directly with the prosecutors. The current approach is more focused on meeting victims' needs through dialogue with prosecutors and other relevant parties first, withholding legal action until it becomes necessary. The clinic is trying to send a message to prosecutors and judges that their services are a resource and a tool for the criminal justice system. The philosophy of the current director is, "Do a good job on every case that comes through the door and more cases will come and change will come."

Pro Bono Attorneys

The CVLN is proud of its success at implementing a pro bono attorney network to take victims' rights cases. From the inception of the CVLN, pro bono attorneys were recruited to participate.

The early directors of the clinic used personal contacts with lawyers across the state to develop the pro bono attorney pool. Many of the attorneys wanted to help people in the criminal justice arena as either an extension of their existing work or to keep involved in the system in other ways. In fact, at least one of the pro bono attorneys is a former prosecutor. Some of the pro bono attorneys are defense attorneys. They participate to help victims and in some cases may also be seeking subsequent civil cases if one should emerge.

The pro bono attorneys take cases from start to finish. The original goal had been to have 32 attorneys (2 in each of the 16 circuits). After implementing the project, CVLN discovered that the number needed was not that great. Currently the CVLN has a pool of 13 pro bono attorneys. CVLN reports that the pool is of high quality and well placed geographically around the state. Pro bono attorneys have been especially helpful in working with clients in areas that are more distant from CVLN's offices.

In 2007, 18 percent of cases were assigned to pro bono attorneys. Almost all pro bono attorneys in the network have taken at least one case. As the program grows, CVLN sees the role of pro bono attorneys expanding to help manage a growing caseload. The clinic is likely to seek the help of pro bono attorneys in cases in distant counties, where it would be difficult for clinic staff to make an appearance in court and/or in cases involving relatively simple victims' rights issues (for example, the ability to offer a victim impact statement). The clinic also tends to use pro bono attorneys in cases where there are civil legal issues that clinic staff is not allowed to address. This situation works well since the pro bono attorneys are permitted to collect a fee for the civil legal assistance while representing the victims in their criminal cases free of charge.

One major factor in South Carolina is rule 608, which requires all lawyers in the state to take appointments or cases referred by the court (either criminal or family law cases). There is a movement now in the state to modify rule 608. The effect of the change would be to allow attorneys doing pro bono work on behalf of victims to get credit toward their rule 608 requirements. This would provide significant incentive for continued involvement of pro bono attorneys with the CVLN.

In South Carolina, third year law students are allowed to represent clients in court. The CVLN did make one attempt to engage law students in the program with the Charleston School of Law. Because the school was new and had no third year students, and ultimately did not receive accreditation, the effort was not a success. Going forward, CVLN still might consider starting a clinical program at a law school.

How the Clinic Gets its Clients

According to clinic staff, approximately 25 percent of cases involve victims who sought help on their own through SCVAN, and the other 75 percent are referrals from victim advocates or other professionals (mostly nonprofit and law enforcement-based advocates, as well as some prosecutor-based advocates, law enforcement officers, and occasionally magistrates). Referral sources include rape crisis centers and therapists at the Medical University of South Carolina, which has a program of therapists that treat post traumatic symptoms. When a victim advocate or

other professional calls to refer a victim, the clinic asks that the referral source have the victim call directly.

A review of the 22 cases opened in 2007 indicates that 45 percent of the cases were referred by victim advocates. Eighteen percent were referred by a college advisor, and another 18 percent were referred by either a social worker or nonprofit organization. Other referral sources included a judge, a state organization, and a law enforcement agency.

The clinic gets cases from around the state. Many come from the City of Columbia, although fewer than would be expected come from the county surrounding Columbia and the state's other large population centers. Clinic staff believe that, with the exception of the City of Columbia, the larger population centers have more resources for training and more victim advocates per capita, and this leads to fewer rights violations in those areas. (The city of Columbia is the exception: it is a high-crime urban area and has only three victim advocates who are extremely overworked.) Of the 22 cases opened in 2007, nine were from Richland County (which includes Columbia). There were two cases each from Darlington and Lexington Counties, and one each from Marion, Williamsburg, Colleton, Fairfield, Horry, Berkeley, Greenville, Greenwood, and Charleston Counties.

Clinic staff noted that their caseload was on the rise. They attributed part of the reason for the increase to a new SCVAN grant for outreach to the disabled and other difficult to reach groups.

Other outreach efforts include:

- a quarterly electronic newsletter that goes out to 250-300 people including prosecutors, law enforcement executives, attorneys, judges, and advocates;
- a listserv associated with the Crime Victim Information System;
- a CLE program (two hours) for prosecutors in Charleston and Spartanburg;
- SCVAN is listed on the back of every incident report in the state and by law victims are given copies;
- training at the Law Enforcement Victim Advocate Association monthly meetings and annual conference;
- presentations at the Annual Victims' Rights Week conferences and the Victim Assistance Academy; and
- a brochure and poster that were developed during the demonstration project.

Media efforts have been more limited. SCVAN does most of the media efforts around victims' rights in the state in a general way. CVLN did have a press conference with the US Attorney when they opened the Federal program. High profile cases have gotten local and national media attention.

Intake

Everyone at SCVAN answers calls from victims. SCVAN uses an intake questionnaire and an automated case tracking system. Sometimes victims call directly, especially those seeking help through SCVAN's emergency assistance fund, and if the victim also indicates there are rights

issues or the person taking the call hears that there are legal issues pertaining to how victims have been treated vis-a-vis their rights, they go through a more rigorous screening and investigation before full referral to the CVLN. These screenings are conducted by SCVAN staff or the clinic coordinator. Elements of the screening/investigation may include gathering copies of warrants and incident reports and other basic information—what happened, what county has jurisdiction, what they see as the problem—to establish that the victim has a claim. Contact is also made with the victim advocate and solicitor to establish other facts pertinent to the case.

If there is a rights violation a case is opened. Cases are sometimes opened if there is the potential for a violation based on the circumstances of the case thus far. Cases are opened based on the victims' needs and not on the potential impact of the case on establishing case law.

Once the case is taken the staff attorney handles the case from that point forward. CVLN does have a written agreement (retainer) for clients to sign. However, not all clients have been required to sign the agreement, as it is not required by South Carolina law. The clinic's goal is to have all clients sign the agreement going forward since it helps clarify the scope of representation CVLN can provide.

Training

Since the major training initiative in year two (27 training sessions for prosecutors and advocates in the 16 judicial districts), the CVLN has conducted several trainings and participates in several regular trainings around the state. A key training and education venue for the CVLN is the Bridge the Gap Training for all lawyers recently admitted to the South Carolina Bar, which gathers more than 400 new attorneys at two sessions each year. CVLN also trains all magistrates once a year and at the annual meeting of the South Carolina Summary Court Judges.

CVLN has successfully qualified its trainings for Continuing Legal Education (CLE) credit, which has made the training attractive to attorneys. This has been especially effective with pro bono attorneys. CVLN is currently working to get on the agenda of the annual prosecutors conference. In the past, there was a poor relationship between the former executive director of SCVAN (the predecessor of the current CEO) and the coordinator of the prosecutors' conference; however the current SCVAN CEO has been able to build a rapport recently and CVLN will most likely be on the agenda for next year. CVLN also has trained in individual circuits at the request of specific prosecutors.

Training has also been conducted for the domestic violence and sexual assault coalitions, and SCVAN and CVLN work closely with other nonprofits on education and training. A new effort involves working more closely with South Carolina Legal Services, which recently secured a VOCA grant to help domestic violence victims with civil legal issues. SCVAN participates in many other training events and wherever possible emphasizes victims' rights.

How the Clinic Affects the Exercise of Victims' Rights in Trial Courts

Clinic staff claims not to have turned away any cases where there was a need for legal representation. While not every call becomes a case, any time there is a victims' rights issue, some kind of help is provided. When the case requires an appearance in court or written documentation (such as a letter to the solicitor on the victim's behalf) a case file is opened.

Whenever the clinic and the client decide it is in the best interest of the victim to have the clinic represent him or her in court, the clinic attorney files a “Notice of Appearance and Demand for Victims’ Rights,” which alerts the court to the clinic’s intention to appear on behalf of the victim for purposes of enforcing the victim’s rights. The attorney will then proceed to accompany the victim to court and file appropriate motions, depending on the facts of the case. Clinic staff say that they have never been denied standing by a judge, even though standing is not explicitly granted by the constitutional amendment or other legislation or case law. It seems that judges in South Carolina have interpreted the existence of victims’ rights in the state constitution as automatically granting victims (and by extension their attorneys) standing to argue for those rights in court.

Solicitor interest in victims’ rights varies. Over time, as relationships have been established and the clinic’s approach toward prosecutors has softened, prosecutors have become more open to the presence of victims’ lawyers in court. The staff constantly reinforce that they have worked hard to develop a strong rapport with prosecutors and judges. In one case, the new “softer” approach worked to turn around a relationship with a judge who had previously been unresponsive to victims’ rights issues. The judge took it upon himself to take a plea offer off the table when he found that the solicitor had not first consulted with the victim.

Table 1 below presents a breakdown of the victims’ rights issues that were salient in the clinic’s 2007 cases.

Table 1. Victims’ Rights Issue in Cases Opened by the Clinic

Reason for Clinic Involvement	Percentage
Improper Charging	23%
Fairness, Dignity, and Respect	18%
Intimidation and Harm	18%
Notification	14%
Participation post-conviction	5%
Plea Negotiations	5%
Privacy Rights	5%
Restitution	5%
Prompt Disposition	5%
Enforcement of parole conditions	5%
Right to be heard	5%
Participation in the system	5%

There are some specific recurring rights issues for which CVLN would like to establish precedential law, if they can get appropriate cases, such as:

- Clarifying the term “reasonable notice” (notice happens at various stages and by various elements of the system).

- Ending the defense attorney practice of sending subpoenas for victim information without notifying the victim. In South Carolina defense attorneys can only send out subpoenas for people to appear in court. However, they routinely send them out seeking documents—medical and financial records—without notifying victims. In one such case in which the clinic intervened, the judge ruled that the defense had to return the records. However, since the solicitor agreed to a plea, there was no opportunity for case law to be established on this point.

In one case, a convicted sex offender challenged his conviction on the basis of ineffectiveness of counsel in an application for Post Conviction Relief filed in the Court of Common Pleas. As part of this action, defendant subpoenaed the victim to testify at the hearing on his application, and sought to raise arguments relating to the victim. The defense attorney went so far as to befriend the victim in order to get information that could discredit her. CVLN filed a motion to quash the subpoena and a motion *in limine* seeking a court order to exclude any evidence relating to the victim's post-conviction behavior, allegations of felonious conduct by the victim, or evidence relating to factual matters that were previously determined by the jury. The judge did not quash the subpoena, and the victim was called to testify. However, the judge did limit certain evidence regarding the victim's post-conviction actions to an *in camera* inspection, where he determined it was irrelevant. After the hearing, the defendant's application was denied. The CVLN attorney filed a grievance against the defense attorney for her aggressive and unethical behavior toward the victim.

Appellate work

CVLN has only engaged in limited appellate work, filing two amicus briefs in the time since it was established. In 2008 the clinic filed an amicus brief in a sexual abuse case. The case involved the grooming and sexual molestation of a minor. Evidence involving the grooming and molestation of a previous victim had been admitted at trial, but the appellate court had found the admission was in error. The brief, written by the clinic attorney together with two pro bono attorneys, argued in part that South Carolina's Supreme Court should follow the lead of its neighbors and liberally admit evidence of similar sexual crimes. The case is still pending.

SCVAN filed an amicus brief in a 2004 case on the issue of whether a court could order the mental examination of a child sexual abuse victim. This action was taken just before the clinic came into being and with the pro bono assistance of the attorney who would become the first CVLN director. In that case, a juvenile was charged with the sexual assault of a young child. The defense requested to have the victim submit to a psychological evaluation based on the revelation at trial that the victim had reported hearing voices during the time period of the assault. SCVAN argued that the court did not have authority to order such an examination of a crime victim, and that ordering such an examination violated the public policy in South Carolina as expressed through the victims' bill of rights, and the Children's Code. Moreover, they argued, permitting such an examination would have a chilling effect on crime victims from coming forward. The state's Supreme Court, in a three to two decision, found such an examination was proper. The court stated that if "compelling need" is the standard for ordering psychological evaluations of child victims, the victim's rights would not be compromised. A strong dissent by

the Chief Justice echoed many of the arguments made by SCVAN. In the interest of Michael H., 360 S.C. 540; 602 S.E.2d 729 (2004).

Legislative work

Until 2007, SCVAN had a legislative advocate and committees that developed agendas to be presented to legislators. Through these processes, SCVAN was involved in much of the legislative change that created a better environment for victims. Although budget cuts have forced a cutting back in this area, SCVAN remains active in advocating to increase penalties in DUI cases and in domestic violence strangulation cases.

During the time the clinic has been in operation, SCVAN has successfully pursued several changes to the statutory rights of victims. Many of these were unconnected to the work of the clinic. However, one significant case did come to the attention of SCVAN through the clinic.

The sister of a stalking victim had approached the clinic after her sister was murdered by the stalker upon his release from prison. The offender had first been transferred from a secure facility to a mental health program, where he was released. Automated notification to the victim had not been successful, and a letter was issued to notify her of the release. The letter arrived at her house the day after her murder. The clinic attorneys met with the victim's family and two civil attorneys to discuss the possibility of a civil suit. Separately, the victim's sister worked with SCVAN's legislative committee to advocate for changes to the law.

In 2005, a bill was passed to specify that victim notification of release or escape of an offender could not be limited to notification by electronic or other automated communication. In addition, the law required agencies to attempt personal notification of a victim before a bond or detention hearing, if automated notice to the victim has been unsuccessful. (The requirement regarding notification of bond or detention hearings was limited in 2006 to certain at-risk victim populations.)

The legislation also provided for victim notification in the case of the transfer or diversion of a defendant. Under the new provisions, victims must be given advance notice of any non-intradepartmental transfer of a defendant to a less secure facility or a diversionary program; in the case of an intradepartmental transfer, victims are to be notified following the transfer.

SCVAN has also advocated for other recent changes that were not related to the work of the clinic. For example, South Carolina recently clarified the duty of a summary court or solicitor's office to forward the victim's impact statement to other agencies, and provided that an offender is only entitled to a copy of the victim impact statement after pleading guilty or being found guilty of an offense. SCVAN, but not the clinic, was involved in this legislation. Other recent changes revised procedures for victim statements at parole hearings, providing for closed circuit capability and the scheduling of parole hearings for all cases related to the same victim for the same day. SCVAN advocated for these changes after working with a victim of multiple offenders who was compelled to travel to Columbia five times each year for the parole hearings of each offender. SCVAN successfully advocated for the law to schedule all offenders' parole hearings related to the same victim on a single day, and to allow for the possibility of closed-

circuit television testimony at parole hearings, to eliminate the need for the victim to travel to Columbia for the hearings.

In addition to the legislative changes during the clinic's existence, a recent opinion issued by the South Carolina Attorney General strengthened the ability of attorneys to represent crime victims. In 2007, the clinic was involved in a criminal domestic violence case, and the victim's attorney (the clinic director at the time) was not notified of a bond hearing for the offender. After arguing with the prosecutor about the failure to give notice, the clinic director mentioned the case to SCVAN's legislative coordinator. She in turn contacted a state senator, and he requested an opinion from the Attorney General regarding the prosecutor's obligation to give notice of judicial proceedings to attorneys who have filed a formal notice of appearance on behalf of a crime victim. In his opinion, the Attorney General reviewed the statutory requirements regarding victim notification and the legislature's intent that victims' rights be protected to the same degree as the rights of defendants, and noted that the state constitution protected victims' right to be informed. The Attorney General ruled that where a formal notice of appearance has been filed by a victim's attorney, the attorney should be provided written notice contemporaneously with the prosecution and defense of all court hearings, and that if an attorney files notice with law enforcement and prosecuting agencies that also have a responsibility to notify victims, those agencies should also attempt to send notice to the attorney as well as to the victims. SC Attorney General Opinion No. 07-034. This opinion was a victory for the clinic.

Relationship with NCVLI

NCVLI has played a pivotal role in the creation and implementation of the CVLN. According to SCVAN's CEO, "I wouldn't have known where to begin without them." SCVAN staff found the grants management training provided by NCVLI to be helpful in getting them comfortable managing the grant and complying with the grant's requirements.

CVLN staff also spoke highly of the opportunities NCVLI provides for the clinics to get together and share ideas. SCVAN and CVLN staff feel that it is important to hear what others are doing, network and get ideas, and be with people who share their passion for victims' rights. They also value the research and technical assistance NCVLI provides on individual cases, and the weekly telephone calls. The staff feel that with NCVLI's help with research, the clinic doesn't have a need for law students.

NCVLI has provided other support as well. NCVLI staff came and attended a press conference when the Federal program was launched. NCVLI's presence added legitimacy to the effort and connected the CVLN to a larger national effort. CVLN believes it shares similar goals to NCVLI

At first, there was some nervousness about being straightforward with NCVLI about the obstacles and problems in implementation. However, CVLN staff was thrilled when NCVLI not only showed an openness to problems but encouraged the clinic to bring them forward and understand them as part of the learning curve.

Lessons learned

CVLN and SCVAN would recommend that new programs:

- have one-on-one meetings with prosecutors, deputy prosecutors, and others;
- try to avoid an adversarial approach whenever possible
- Start by building relationships with prosecutors and other stakeholders
- Make sure that attorneys handling victims' rights cases are knowledgeable about criminal law in part to help victim understand how that process works.
- Don't expect results in the first year
- Create relationships with other legal service providers to address other victim needs.
- Conduct outreach and training in the first year
- take time to build up a client base
- Don't start from scratch—partner with groups already serving victims (such as the SCVAN and CVLN relationship) to build on the victim program's relationship to the community and access to other services victims need.

Opinions of Criminal Justice Officials about the CVLN

We spoke with seven members of the South Carolina criminal justice system to gather outside opinions about the CVLN and its work. Those completing interviews included the state's Crime Victims Ombudsman, two local prosecutors, a victim advocate, an assistant attorney general, an assistant U.S. attorney, and an attorney in private practice. We reached out to three judges for interviews, but two did not respond and the third reported having no knowledge of the clinic. The persons we spoke with were all nominated by the staff of the CVLN in response to our request to interview people in the criminal justice system familiar with the work of the clinic, both those who were supportive and those who were not supportive of the clinic.

The professionals interviewed had mixed opinions of the CVLN and its work on behalf of victims. One prosecutor, the assistant attorney general, and the victim advocate all had high praise for the clinic and its director. The prosecutor stated, "I can only say good things about them. They have been incredibly strong advocates and I wish we had more." These respondents described cases in which the clinic had intervened to successfully advocate for victims, including reining in a defense attorney who was relentlessly attacking a victim in a post-conviction proceeding and helping to convince a family court judge to stop ordering domestic violence victims into counseling. These respondents had also received training from the clinic staff, which they described as "great information." One respondent said, "I can go online and look at the victims' rights statutes, but it's a lot easier when I can just talk to somebody who deals with them all the time."

The other prosecutor interviewed described a case in which the clinic had intervened, and he felt there was some role confusion between the clinic staff and his victim advocates, particularly with regard to who should be helping the victim draft and deliver the victim impact statement at sentencing (something customarily done by the advocates, according to this prosecutor). The prosecutor said that the clinic staff and the victim advocate "were stepping on each other's toes." He said he didn't personally have a problem with the clinic staff and felt that part of the problem may be because it is a new effort and they are "having to figure out exactly how to do what they do and ensure their clients are represented but not be too pushy on us"

Perhaps not surprisingly, because the clinic is only beginning to take federal cases, the assistant U.S. Attorney was unsure exactly what the clinic does and how it could be useful, although she had attended a presentation by clinic staff. As the clinic is just beginning to get into federal work, professionals in that system in South Carolina likely have not yet had much experience with victim attorneys. The AUSA's impression from the brief presentation she had seen was that the clinic existed to "assist victims that aren't satisfied with us," and she went on to say that she hoped her victims never had that need.

The Ombudsman described a somewhat difficult working relationship with the clinic, despite efforts on her part to constructively work on the Ombudsman-clinic relationship. In general, there seemed to be some role confusion regarding what types of cases the clinic should take and refer, and what the Ombudsman's role should be in investigating complaints versus making referrals to the clinic. The Ombudsman is legislatively required to receive and review complaints from crime victims against elements of the criminal justice system, juvenile justice system, or victim assistance programs, according to the Victim Bill of Rights. The Ombudsman and SCVAN's CEO and director held meetings to discuss their working relationship. Although these meetings were constructive, the Ombudsman did not feel there had been great progress toward implementing the processes and procedures discussed in the meetings. The Ombudsman is a board member of SCVAN and a supporter of the clinic, and feels that it is good for crime victims to have legal representation. However, she said that she doesn't want to disregard the mandated legislative duties of her office by referring complaints to the clinic rather than investigating them herself as she is required by law to do. She expressed some sadness that the two agencies had not been able to come to a good resolution yet about how to work together without the duplication of services to crime victims.

Finally, a private attorney who had done some pro bono work for the clinic was interviewed. This attorney reported a very positive experience volunteering to help draft a brief for the state supreme court regarding a victim-related evidentiary issue. He stated that he had learned a great deal about victims' rights from the clinic director through the process and would be happy to provide pro bono help on other victims' rights cases.

Interview respondents were unsure of the clinic's impact on victims' ability to exercise their rights in South Carolina; however, this varied by jurisdiction, with those having had a case with the clinic describing its impact as "huge" and "helpful." A few interviewees thought that their own jurisdiction was strong in affording victims their rights and therefore little intervention from the clinic was needed. All of the interviewees allowed that in certain cases legal intervention on behalf of victims was necessary and a good option to have available for victims.

Victims' Perspectives

Five victims of four crimes (including one victim couple), attended the focus group. One participant was a victim of burglary by a former boyfriend, the couple was a victim of video voyeurism, and two were parents of murdered children. Overall the victims felt that CVLN and SCVAN had provided needed and meaningful assistance. Victims were not always clear on what actual steps (such as filing motions) CLVN had taken for them or exactly which of their rights had been violated. They did seem to feel that CLVN's work sped up the process and in many

cases made the system more responsive to their needs. Victims had varying degrees of satisfaction with the criminal justice process and the roles of law enforcement and the prosecutors.

The first victim was a victim of domestic violence. In the fall of 2005, the perpetrator, the father of one of the victim's children, broke into the victim's home twice in one night. He was carrying a gun and was intoxicated at the time. A neighbor saw the perpetrator in the victim's yard with the gun and called police. After his arrest the perpetrator confessed. The case languished in the criminal justice system. Months went by without contact from the solicitor's office. The case was moved to another county because of the small close-knit nature of the rural community.

The perpetrator was the member of a wealthy family in the community and the victim was being pressured by the family to make a deal. The solicitor's office was uncommunicative and the delays were so long that even the judge was perplexed by why the prosecutor had drawn out the case so long. The victim had been referred to CVLN by a friend who was aware of their services. The CVLN attorney wrote to the solicitor and the judge and got a trial date set. Finally, the trial was held in March of 2008. The CVLN attorney went to court with the victim and spoke on the victim's behalf before a plea was entered. The perpetrator pled guilty to a reduced charge of 2nd degree burglary. Although the judge was originally talking about community service, the defendant was sentenced to 30 days (served on weekends) and 6 years suspended sentence reduced to 3 years suspended.

The second victim was a couple who took a vacation and asked a neighbor to care for their pet while they were away. They provided the neighbor with a key to their home. A few days after arriving home, the ceiling fan in their bedroom failed to operate. Upon dismantling the fan in an attempt to repair it, the husband found a spy cam had been hidden in the fan housing. The police were called and the couple reported that they felt that the camera had been installed by the neighbor caring for their pet. The police took a report but seemed to not take the incident seriously. The responding officer filled out a form but made no arrest. They heard nothing from the police for a few weeks.

The victims were referred to SCVAN by a college official at the school the victims attended. The delay in the case was very disconcerting and SCVAN staff referred the case to South Carolina's Ombudsman who contacted the chief of police. Shortly after, the perpetrator was arrested. The police investigation revealed that another couple had been similarly victimized by the same perpetrator.

The clinic attorney accompanied the victims to court and introduced the victims to the court before they made an impact statement. Because CVLN succeeded in getting the defendant assigned sex offender status, he was sentenced to serve jail time on weekends in addition to registering as a sex offender and attending counseling sessions while on three years' probation.

The third victim was the mother of a homicide victim. Her son had been murdered by two young men. The perpetrators—one who knew the victim and one who did not—went on the run for a few weeks, and then one turned himself in. The other stayed on the run, committed additional crimes, and was eventually caught. Six months later they were given a bond hearing but were denied.

The mother was first told by the solicitor that the case would come to trial in a year to a year and half. She was informed that the solicitor had a victim advocate but she never heard from the advocate. Over the course of time, several different prosecutors took on the case. The victim made repeated attempts to contact the solicitor to find out the trial date, but her calls were not returned. Finally, after one call, she was told that a bond reduction hearing had taken place that morning, and one of the defendants was now out.

The victim's mother was attending Parents of Murdered Children (POMC) meetings when she was referred to SCVAN.

Once she got to SCVAN and CVLN, "the ball got rolling." The CVLN director contacted the solicitor, attended hearings, and eventually filed a motion for a speedy trial. According to the victim's mother, "without [the CVLN director], the trial may not have happened." After CVLN got involved, the solicitor told the victim's family, "You don't need a lawyer." The victim's mother was more satisfied with the solicitor and the process after CVLN's involvement.

When the case finally came to a conclusion—four years after indictment—the current clinic director was in place, and he followed through with the family, including helping the mother and her two daughters prepare victim impact statements and reading the statements on the victims' behalf (at their request).

At sentencing, the shooter received twenty years and the accomplice received 9 years. The victim's mother states that without CVLN's help she thinks she'd still be waiting for the case to be resolved.

Utah Crime Victims Legal Clinic

Legal Context

Utah first adopted a set of statutory rights for victims in 1987. Importantly, it also created a mechanism to address the violation of rights at the same time, establishing victims' rights committees in each judicial district comprised of members representing criminal justice agencies and victim services. Those committees receive and consider victim complaints that their rights have been violated and, based on the committee's investigation, make recommendations. Recommendations to agencies might include such steps as a letter of apology to the victim, additional training for agency staff, or the reassignment of personnel.

Despite the existence of legal rights for victims and a compliance system for violations, in the early 1990s victims' rights were frequently ignored by those in the criminal justice system. As an example, in a small survey conducted in 1993, 66 percent of victims stated that they were not informed of their rights by investigators. [See Cassell, Paul, "Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment," 1994 Utah L. Rev. 1373, 1383-84.]

In 1994 the state strengthened crime victims' rights by adding a victims' rights amendment to its constitution and adopting implementing legislation. The amendment was championed by the Utah Council on Victims of Crime, a diverse body created to make recommendations to the Governor, the legislature, and the Judicial Council on matters affecting victims of crime. However, voter approval for the amendment was a relatively low 68 percent.

Utah's victims' rights amendment applies to all felony cases and other crimes as designated by the legislature, currently including class A and B misdemeanors and certain juvenile offenses. The victims' rights amendment is noteworthy in that it says the right to be heard applies "either in person or through a lawful representative." Most amendments do not address representation.

Utah's implementing legislation also addressed enforcement of victims' rights. It explicitly permitted victims or others to bring an action for injunctive relief for a violation of rights, to seek declaratory relief or a writ of mandamus defining or enforcing the rights of victims, to petition to file an amicus brief in any case that affects crime victims, or to appeal a denial of their rights.

In the courts, a state Supreme Court case from 2002, *State v. Casey*, affirmed that crime victims have standing to assert their rights. In that case, the mother of a victim of sexual abuse (a class A misdemeanor), had been unable to make a statement to the court at a hearing on the plea agreement. The Supreme Court found that Utah's statutes clearly provided victims a right to appeal any adverse ruling on a motion or request brought by a victim or representative.

Utah has a very strong informal victim assistance network. It also has a formal organization, the Statewide Advocates for Victims Organization (SWAVO) which holds quarterly meetings, maintains a listserv, and generally promotes collaboration. Along with strengthening the legal rights of victims, Utah has generally looked for opportunities to expand victim services in the state. For instance, Utah was one of the first states to receive funding for a state Victim

Assistance Academy, which they began in 2000. Such academies, funded by the federal Office for Victims of Crime, are designed to provide foundation-level training in victim assistance for all new victim advocates and allied professionals.

Project History

The clinic was conceived by the Utah Council on Victims of Crime; its chair, Reed Richards, was the driving force. The application for clinic funding was a real collaborative effort, with many of the members of the Utah Council writing or securing letters of support or working on pieces of the application. Because of the breadth of membership on the Council, the various support letters demonstrated wide support for the clinic throughout the state.

The clinic operations are supported by two grants. At the outset, the NCVLI grant fully supported the clinic director and operating expenses. A year after the clinic was opened, the clinic obtained a VOCA grant which allowed the clinic to add a victim advocate. Currently, the VOCA grant pays for a victim advocate as well as 800 attorney hours. The NCVLI grant covers the remainder of the director's time, all of the staff attorney's time, all of another victim advocate's time, administrative expenses (including rent and supplies), training efforts, and actions relating to civil protection proceedings.

The clinic received its first funding in April of 2005, and the director began work on August 1 of that year. The clinic's first task was to draft a set of policies and procedures. By the end of September, they had their first case, in a rural county.

Business Model

The clinic is a separate program that is housed at the Rape Recovery Center (RCC) in Salt Lake City. The RCC charges the clinic a minimal amount for rent, which includes utility costs.

Much of its support within the broader criminal justice and victim services communities is due to its board of directors. The transition board (while the board shifts from an advisory board to a formal board of directors) includes the director of the Utah County Children's Justice Center, the victim coordinator for the Utah Department of Corrections, the co-director of clinical programs at the Brigham Young University law school, the director of Utah Legal Services, the director of the Salt Lake Legal Aid Society, the chair of the Utah Council on Victims of Crime, director of clinical programs at the University of Utah law school, and the director of the Rape Recovery Center.

Unlike many of the other clinics, the Utah clinic is not part of an organizational "full service" system. However, the clinic states that since most of their victims are referred to them by victim service providers or criminal justice officials, they are already connected to other services, and as part of its intake process the clinic assesses each victim's needs and refers each victim to the appropriate outside resources.

For the first six months of operations, the clinic would accept nearly any case that came to the staff's attention. Now the clinic adheres to its own criteria concerning the cases it will accept: those directly involving a crime victim's right in an active criminal case, which may include a post-conviction matter.

The clinic has 3 objectives: to train on victims' rights, to represent victims, and to recruit pro bono attorneys and interns. With the exception of the pro bono attorneys, they feel they have met these goals.

Staffing

The clinic staff consists of a project director, a staff attorney, and two recently hired victim advocates.

The project director was identified early on as a potential choice to lead the clinic. She had been a prosecutor for many years in Davis County, and also supervised the county attorney's victim assistance program which included ten victim advocates.

The project staff attorney was initially hired as a victim advocate and pro bono coordinator. He had previous experience running a pro bono program at Brigham Young University (BYU) law school, which matched student interns—who could conduct legal research—with attorneys who could take various cases. Since May of 2008 he has also actively represented victims.

The two victim advocates are responsible for intake and screening as well as general client contact. The clinic also plans to have the advocates develop the pro bono training project.

In addition to its paid staff, the clinic has a very active intern program. Each semester they have one or two law student interns from the University of Utah and one or two from BYU, as well as four interns over the summer. This regular participation of students from BYU is especially striking because the school is an hour's drive away from the clinic. Interns contribute 100-200 hours per semester (typically one full day per week). The clinic has a reputation for providing a high quality internship experience, so recruitment has not been a problem. Interns conduct research and share in the client intake and communication responsibilities with the victim advocates.

The clinic has been assisted by three pro bono attorneys representing victims in court. Two of those were identified by actively calling contacts in each judicial district to try to identify an attorney willing and able to take the cases. The third pro bono attorney is a retired prosecutor, who, after initially acting as a pro bono attorney, now works for the clinic as a part-time contract attorney.

The clinic plans to expand its use of pro bono attorneys. The clinic director reports that she is collecting business cards of attorneys who might be called upon in the future. They are also considering targeted recruiting – reaching out to victim advocates for the names of potential pro bono attorneys. Other plans to grow their pro bono program include a special training effort, mentioned below, the creation of a manual and “cheat sheets” on regular victim issues to make it easier for attorneys to take on victim cases, and the production of a 20-minute compilation video of some of the director's in-court arguments on behalf of victims.

Some prosecutors have expressed interest in taking victim cases, but currently may not be permitted to do so. The clinic wants to work on this ethics issue, to develop a system whereby a prosecutor in one county can take a victim case in another county – perhaps on an issue that is

new to them. For example, a child abuse prosecutor in one county might be able to take a general victims' rights case in another county.

How the Clinic Gets its Clients

According to clinic staff, most clients are referred to the clinic by victim service providers or prosecutors. A few are referred by other sources or find the clinic on their own through the Web site.

These referrals are the result of extensive outreach by the clinic director, especially during the first year of the clinic. She attended meetings of victims' rights committees in most judicial districts as well as victim service and criminal justice meetings throughout the state, to introduce the clinic to those who work closely with crime victims.

Based on a review of cases opened in 2007, law enforcement is a principle source of referrals: 28 percent of clinic cases in 2007 were referred by law enforcement, primarily victim advocates employed by law enforcement agencies. Referrals from non-system based service providers accounted for another 15 percent of cases.

Prosecutors have made a lot of referrals, with five to seven prosecutors routinely referring victims to the clinic. In 2007, 12 percent of referrals came from prosecutors, with another 14 percent from prosecutor-based victim advocates. Such referrals are especially common in cases where the defense is seeking the private records of victim, cases where the defense is harassing victims, and child abuse cases where the right to speedy trial is at issue. The clinic director, a former prosecutor herself, has reached out to prosecutors letting them know she is not seeking to duplicate their role. In many cases involving prosecutor referrals, the prosecutor may inform the clinic of the arguments expected from the prosecutor and defense counsel, and note additional arguments that could be made on behalf of the victim. In such cases the prosecutors view the clinic's victim advocacy as complementing the state's position, but not duplicating it.

Other referring sources included therapists and the clinic staff themselves.

Table 1: Source of Referral

Source of Referral	Percentage
Police victim advocate	28%
Non-system based victim advocate	15%
Prosecutor victim advocate	14%
Prosecutor	12%
Unknown	9%
Clinic staff	5%
Therapist	4%
Other	6%

The clinic does not have a paper or email newsletter due to lack of staff time. However, the Statewide Advocates for Victims Organization has a very active listserv, so word of the clinic's work gets around. This helps to reinforce the clinic's reputation and increase referrals.

The clinic opened 85 cases in 2007. However, they received two to three times that number of contacts that involved referrals and intake screenings. For example, for the period from April to June of 2007, the clinic served 111 clients, although not all of them had entered formal agreements regarding representation. Many of these might have involved referring the victim to resources or arranging for a single meeting with a prosecutor who declined a case. At the time of the site visit, the clinic had approximately seventy open cases.

More than half the clinic's clients in 2007 were victims of sexual assault, domestic violence, or stalking. Another twenty percent were victims of child sexual or physical abuse. Nearly ten percent of the cases involved murder, attempted murder, or negligent homicide.

Clinic staff typically appear at eight hearings per week, mostly in Salt Lake City. Sixty percent of the clinic's 2007 cases were Salt Lake County, with another nineteen percent located in the surrounding counties of Davis, Summit, Utah and Wasatch. This heavy representation somewhat tracks the population distribution, with those five counties accounting for nearly seventy percent of the state's population.

The clinic did note that their geographic coverage is increasing. For example, the clinic has recently taken on several cases in Kane County, a rural county in the southeastern part of the state. Their first case in that county was a success and led to several additional referrals.

Recently, the clinic has noted a decrease in referrals. They attribute this decrease to a heavy caseload during part of 2008 that left them unable to return victim contacts within 48 hours and screen each case within a week, as is their standard. However, the clinic is confident that the recent addition of two more staff members will enable them to meet those standards again. The clinic intends to publicize the recent hiring of these two advocates and expects the number of

referrals to increase. The director noted that when the clinic first hired its second staff member, word got about that the clinic had “doubled its staff” and referrals increased dramatically.

Training Criminal Justice Officials

The clinic views victims’ rights training of criminal justice officials as an essential component of its work. Initially, much of its training consisted of a five to ten minute appearance at other trainings and meetings across the state to introduce the clinic program.

The clinic currently trains between 1100 and 1500 criminal justice professionals a year. Staff members train victim advocates and other attendees every year at the victim advocate conference, as well as the entry level victim assistance academy. While both of those events are largely for victim advocates, attendees also include law enforcement, prosecutors, staff from the Division of Children and Families, and others.

The clinic director also teaches a four-hour segment on victims’ rights at the police academy. That material is incorporated into the academy’s comprehensive final exam. The clinic director trains new prosecutors every year, and provides additional training for prosecutors at two of the four annual trainings—generally, the annual training on domestic violence and the yearly spring training. The director has also written a few articles for the prosecutors’ monthly email newsletter.

Clinic staff last trained judges two years ago, but they are seeking an opportunity to repeat that training. After the clinic argued a victims’ rights issue before a Justice Court judge, the judge remarked that most judges at this lower court level were unaware of victims’ rights. In fact, victims at this lower court level have most of the rights afforded victims at the district court level, with the exception of the right to notification. As a result, the clinic is seeking an opportunity to provide training for Justice Court judges. The clinic director is also exploring the possibility of training at the District Court judges’ conference.

Pro bono attorney training is still in development, along with expanded recruitment efforts. The clinic plans to offer free continuing legal education (CLE) training to attorneys in exchange for their taking one victim case within the year following the training. One of the victim advocates was hired in part to develop this training.

The clinic director provides limited training to law students at BYU, generally working with student groups such as the women’s law group to hold a lunchtime session. A class on victims’ rights is already taught by an experienced professor at the University of Utah law school.

How the Clinic Affects the Exercise of Victims’ Rights in Trial Courts

In representing crime victims, clinic attorneys emphasize their role as negotiators in seeking the best outcome for the victim. They are only aggressive in litigation when they believe they have to be. They note that being too aggressive can have negative consequences, both for the immediate victim and for victims’ rights more broadly. An attorney may win an issue at the cost of the ability to negotiate with those same players in the future.

The clinic's style is not to involve the media. From the director's experience, the media rarely gets the facts straight and can inadvertently harm the victim's cause. However, a number of clients have issued press statements, and clinic attorneys have collaborated in these statements when requested.

In the courtroom there is no special table for the victim's attorney. That attorney may sit at the prosecutor's table, or between the prosecution and defense tables. The clinic attorney will always stand and introduce him/herself and the client at the start of the proceeding. Then at the proper time the attorney will stand and assert the victim's right. For example, the attorney may stand to request that any future requests for continuance be made and considered on the record. Staff attorneys try to attend every hearing in cases in which they represent the victim.

The clinic has worked with several recurring issues. These include:

The right to be heard. The clinic often works to protect a victim's right to be heard. This can take many forms. In some cases, the clinic has argued for the right of a non-parent family member—such as a grandparent or an aunt—to make a statement on behalf of a child victim. In other cases, the victim or family member wants to present an audio or videotaped impact statement.

The clinic encourages victims to add statements about what they want to see happen in the case. Often, the clinic attorney addresses the court following the victim's statement, and argues that the impact on the victim supports a particular sanction. As an example, in one case of child abuse by a mother and her boyfriend, the father gave a victim impact statement. After the father testified, the defense attorney attacked the father, alleging that the father was abusive himself. The clinic argued that this demonstrated the defendants were not taking responsibility for their actions, and that a punitive sanction was necessary. The clinic attorneys may argue for consecutive instead of concurrent sentences. The court often agrees.

The clinic has represented victims in cases where defendants have petitioned for a post-conviction writ, which has been as long as 20 years after conviction. In one case the judge granted a new trial. Victims want to be heard at these proceedings. Under Utah law these are technically civil proceedings, so the applicability of crime victims' rights laws isn't clear. The clinic attorneys argue that these proceedings affect the victim's right to have the criminal matter resolved, and that victims' rights apply to all collateral matters that will affect the disposition of the case.

The right to be free from threats or harassment. The Utah Victims' Rights Amendment gives crime victims the right "to be free from harassment and abuse throughout the criminal justice process." The clinic discusses safety issues with victims, and then when needed assists victims in seeking court orders and procedures to prevent harassment and abuse. This often takes the form of making the court aware of inappropriate and threatening defendant behavior while in court (such as glaring at the victim before, during, or after court). The clinic also routinely requests criminal no contact orders against defendants, especially in domestic violence and sexual assault cases. The clinic also occasionally represents victims seeking civil protective

orders or stalking injunctions, especially when the victim is ineligible for free representation by the civil legal services organizations.

In one clinic case, a father had severely abused his infant twin sons, causing multiple internal injuries as well as likely brain damage. He was permitted through juvenile dependency proceedings to speak to his older children on the phone, but not to the twins he was accused of abusing. However, the defendant would regularly have his older children turn on the speaker phone function so he could call out to the children he had abused, which frightened them. The clinic argued successfully both before trial and again at sentencing for a criminal no contact order that effectively prevented attempted contact by setting specific criminal penalties for violations.

Another case involved the violation of a protective order. A mentally ill man had broken into his ex-girlfriend's house at 1:00am, expecting a warm reception after his release from prison, in violation of a protective order that had been in place for five years. Criminal charges were filed and the clinic successfully argued that the defendant should be held in custody pending trial for the protection of the victim, and that he should be sent to the state mental hospital for her protection and for the safety of the community. The defendant was eventually found incompetent to proceed to trial. The clinic also assisted the victim in modifying and updating the terms of her civil protective order.

In another case, a victim was seeking a civil protective order against her ex-boyfriend who had been repeatedly charged and incarcerated for abusing her over several years. His prison release date was approaching, and she wanted to have a protective order in place when she was released. She would have been ineligible for assistance through the civil legal services organization because significant time had passed since he last abused her, but the clinic assisted her in petitioning for and receiving a protective order based on the history of abuse and his upcoming release from prison.

The right to speedy trial or disposition. The victim's right to a speedy trial appears twice in the Utah Code. Under the law, the defendant must make any request for continuance sufficiently in advance so as to give the prosecutor time to notify the victim. The law also provides that the victim's right to speedy trial is governed under the same rules as the defendant's right to speedy trial. Despite these laws, the victim's right to a speedy trial is frequently violated as courts issue multiple continuances of hearings and trial dates.

The clinic frequently works to assert the victim's right to a speedy trial by opposing a motion for continuance, but finds that courts rarely deny the motion. However, after hearing from the victim or the clinic attorney, a judge may say, "This is the last time," or "We will not move this trial date again." So the clinic staff believe their involvement may promote a speedier resolution even if they did not win the argument on the motion.

The clinic successfully protected the victim's right to a speedy trial in one recent case of child sexual abuse involving a 13-year-old victim. The state attorney general's office had referred the victim's family to the clinic. In that case, the homes of the victim and perpetrator were very close, and the victim's family had felt as though they had been prisoners in their home for the

year-and-a-half the case had been pending. The victims thought they had a trial date in June of 2008, but approximately a month before the trial date the defendant fired his defense attorney and hired a new one. The new defense attorney requested a continuance. After the court heard the victim's concerns, the judge ruled against the continuance, noting that the defense attorney was aware of the trial date when he agreed to take the case.

The clinic was also successful in another case involving child sexual abuse. In that case, a family had adopted many children, the oldest of whom sexually abused two of his younger brothers, who were 9 and 12 at the time of the abuse. There had been five trial dates set, and each time the defendant argued for additional time. At the pretrial hearing for the most recent trial date, the defense again requested a continuance, and there was every indication the court would grant it. The judge had expressed his view that if he denied the continuance the defense would have grounds to appeal. However, the clinic attorney successfully argued that the victims' father should have the right to address the court on the matter. The father testified about the traumatic effect of the delays on the boys, who were now 11 and 14 and who had been institutionalized as a result of the defendant's threat to kill them if they reported the offense. The judge ruled that for the mental health of the boys, the case would go to trial as scheduled.

Privacy/protection of crime victim records. A new court rule, based on existing case law, went into effect on November 1, 2007, designed to protect victims' private records. The rule presumes that a crime victim's records are confidential. The defendant can overcome this presumption by showing a likelihood that the record will exonerate the defendant, but in such cases must offer some other indication or evidence that the record in question will be helpful to the defendant's case.

The clinic had six cases in the spring of 2008 that involved a violation of that new rule. In one case, the defense directly subpoenaed a 15-year-old victim for her school and medical records. The defense had not requested court permission to seek those records. The victim made an attempt to comply with the subpoena by seeking her school records, but as the school was closed for the summer she was unsuccessful. The clinic attorney was able to get the subpoena quashed.

In another case involving alleged sexual assault of multiple victims by a physician, the defense was very aggressive in harassing the victims and in seeking their private records. One of the victims was the subject of 28 subpoenas seeking financial and medical records. The defense attorney had collected a banker's box of private records in violation of the rule. The clinic filed a motion that described the standard that should be met before the court could permit a defendant to seek private records. In that case, the judge ruled against the defendant and returned the box of records to the victim.

Victim restitution. Prosecutors should be prepared for the court to consider restitution at the time of the plea, but they tend to view it as a sentencing issue and often do not consider it until after the plea agreement or conviction. The clinic works with victims to make sure they have compiled information regarding their losses, then clinic attorneys work to have restitution ordered as part of the plea or immediately at sentencing, rather than having the issue of restitution postponed. The clinic also seeks court hearings when restitution has not been paid.

In one case, the prosecutor wasn't inclined to pursue restitution because the victim had received payment through the compensation program for most losses. The clinic helped the victim request restitution for \$1,000 in moving expenses, which the court awarded. The victim found this very validating, because it held the defendant personally accountable to the victim.

Table 2. Victims' Rights Issues in Cases Opened by the Clinic

Reason for Clinic Involvement*	Percentage
Right to be Heard	42%
Free From Harassment/Threats	42%
Right to Notice	25%
Speedy Disposition	24%
Fairness, Dignity, Respect	18%
Privacy Rights	7%
Restitution	6%

* Note: Total exceeds 100% because many cases involve multiple victims' rights issues.

Clinic work on the appellate level

The clinic has only had limited activity at the appellate level. Recently, the clinic filed an amicus brief written by NCVLI. In that case, the trial court granted the defendant's request for an in camera review of a minor victim's counseling records dating from before to after her report of sexual abuse by the defendant. The court of appeals had affirmed the trial court's ruling. The state Supreme Court agreed to hear the case. NCVLI and the clinic filed an amicus brief, arguing that the victim's rights to privacy, protection, and fairness, coupled with the importance of maintaining the confidentiality of victims' counseling records, requires reversal. A decision is pending. In that case, the clinic learned that the child's mother had been supporting the defendant. Rather than attempting to represent the child victim directly, the clinic reached out to the Guardian ad Litem program about the potential of the GAL representing the victim, and restricted its own activities in the case to working with NCVLI on the amicus brief.

The clinic also currently has limited activity in three capitol cases in which victim issues are not the subject of the appeal. Instead, the clinic is keeping the victims updated regarding the progress of the case and is monitoring the victims' right to a speedy disposition.

The clinic has been working with the victims in the case of State v. Brandon Lane for three years. That case involved an automobile crash in which two elderly brothers riding in the front seat were killed and their wives, passengers in the back seat of the vehicle, were injured. The driver was charged with a class A misdemeanor. There were two charges against the defendant. The prosecutor informed the victims that she had an agreement to take one plea in abeyance and one plea "straight up" – meaning that the defendant would be convicted of the second count and be sentenced. The prosecutor discussed with the victims their right to be heard at sentencing,

and also said that she'd seek restitution. In fact, the prosecutor had agreed to take both pleas in abeyance—which meant that there would be no conviction recorded as long as the defendant complied with the conditions of the plea. She had also agreed with the defense only to seek \$1,500 in restitution, but at the court hearing on the plea she agreed to convert the \$1,500 to a court fee, so no restitution was sought. The victims were also told the wrong date for the plea hearing. The prosecutor's notes make it clear she had lied to the victims.

The victims filed a motion with the trial court to set aside the plea agreement. That motion was denied, and the victims appealed. The trial judge did stay the abeyance during the appeal. However, pleas in abeyance are only valid for 18 months, and that time expired while the appeal was pending. The appellate court then dismissed the appeal. The victims are asking the Supreme Court to rule that the dismissal was inappropriate, since the court had stayed the plea. They also seek a "do-over" of the plea agreement and restitution.

The clinic has argued that the victims' rights to be treated with fairness, dignity, and respect were violated when they were misled regarding the plea agreement, and when the judge dismissed the appeal. The clinic is further arguing that the victims' rights to be present and heard were violated when they were told the wrong date of the hearing on the plea, and that their right to be notified of the proposed plea was violated when the prosecutor lied about the nature of the agreement. Finally, they are arguing the prosecutor committed a fraud upon the court when she asserted that the victims had been informed of the plea agreement and agreed with it. This case is still pending.

Legislative Efforts

The clinic is not directly involved in legislation. However, they do report on their work to the Utah Council on Victims of Crime, which does advocate for legislation. (One of the clinic's victim advocates happens to serve on that committee, but her involvement predated her employment by the clinic.)

The clinic's work has had an effect on legislation. As an example, Utah passed a new statute in 2008 giving victims a right to file a written statement with the appellate court. The legislation was proposed by the Attorney General's office with the support of the Utah Council on Victims of Crime. Two of the clinic's clients testified about the need for that legislation, and asked the clinic attorney to attend with them. However, the clinic did not directly advocate for the legislation.

In another example, the Council is aware of the Lane case and other cases involving violations of victims' rights, and has decided in light of those cases that Utah is lacking a remedy for many violations. The Council is considering proposing legislation to create a remedy. This remedy may be modeled on the federal Crime Victims' Rights Act, create a 10-day stay of proceedings while victim issues are underway, or may provide the court a strict timeline to consider victim motions.

Changes to Court Rules

The clinic has had only indirect involvement in any court rule changes. When a change to the rule establishing privacy of victim records was proposed, clinic staff were asked about the problems they had observed and their recommendations. However, the rule change was really driven by another attorney in a high profile case, who had written to the rules committee requesting the change.

Role of NCVLI in Supporting Clinic Activities

The clinic values the support it receives from NCVLI. This support includes monthly phone meetings, frequent contact through email, research assistance, and alerts featuring the successes of other clinics and victim attorneys. The clinic finds NCVLI's cluster meetings especially valuable, because the interaction with their peers is informative, motivating, and energizing.

NCVLI has provided important assistance in several cases. In the Lane case, referenced above, NCVLI helped conduct the legal research and write the appeals and motions, and also "moot courted" with the clinic attorney, conducting simulated questioning prior to oral argument. In another case the defense attorney sought to depose a victim, and NCVLI provided legal research which the clinic was able to incorporate into its court brief.

Clinic staff stated that the reason they have not turned to NCVLI staff more frequently for technical assistance is that they are frequently able to get what they need simply by putting out a request on the NCVLI listserv.

Through NCVLI the clinic has formed good relationships with some of the other clinics. For example, in establishing the Utah clinic staff conducted a site visit to Arizona's clinic. They continue to turn to the Arizona clinic for mentoring. Directors of the New Jersey and Maryland clinics have also provided valuable support.

The Utah clinic feels it has a similar philosophy to NCVLI, incorporating both a desire to change the system and a desire to serve the needs of individual clients. It notes that this may be due, in part, to the fact that the clinic did not exist prior to receiving NCVLI funding, so it did not have to try to adapt a previously crafted mission statement or philosophy to fit the program.

Opinions of Criminal Justice Officials about the Clinic

We spoke with five members of the Utah criminal justice system to gather outside opinions about the Clinic and its work. Those completing interviews included two local prosecutors, one member of the state attorney general's staff, one person involved in victim advocacy work, and a defense attorney. The persons we spoke to were all nominated by the staff of the Clinic in response to our request to interview people in the criminal justice system familiar with the work of the Clinic, regardless of their opinion of the Clinic.

Respondents were generally positive about the work of the clinic. Several were very enthusiastic and thought the clinic had heightened awareness of the rights of victims across the criminal justice system. One observed that "without the Clinic, Utah would be years behind in the progress we've made for victims."

Both prosecutors stated that they routinely made referrals to the clinic. As one observed, having the clinic represent victims make the criminal justice system more “user friendly” and makes the victims feel more empowered. One prosecutor thought the clinic’s involvement was especially valuable in sexual assault cases, where the victims are often viewed negatively and feel as though they are the ones on trial. Having their own attorney helps those victims feel safer and on an equal footing with the other players. The prosecutors did note that while victim representation was generally beneficial for victims and the criminal justice system, the involvement of an additional attorney did require more time, and there could be tension in those instances where the victim’s goals and the prosecutor’s goals are different.

The defense attorney respondent believed that the current clinic staff did a disservice to victims by “engendering feelings of victimhood,” encouraging victims to take personally the normal posturing that occurs during the motions process, and arguing to victims that the defendant’s failure to apologize prior to sentencing shows that the defendant doesn’t care. Even that respondent, however, believed it is often beneficial for victims to be represented by their own attorney during the criminal justice process.

Respondents were concerned about the state’s ability to fund the clinic after the grant expires. They noted that Utah is currently in dire financial straits, with criminal justice funding facing significant funding cuts. However, several suggested the clinic could be funded, at least in part, with an additional penalty on offenders.

Victim Perspective

To better understand the victim/client perspective of the work of the clinic, we interviewed two victims during our visit to the clinic. In addition, we were introduced to two additional clients preparing for a court hearing. All were effusive in their praise of the clinic’s work.

A victim of an attempted murder was referred to the clinic by a law professor. She and her boyfriend had been shot multiple times by a man who said he wanted to kill someone. Her boyfriend died instantly, and she survived by playing dead. After the offender left the scene in her boyfriend’s car, she climbed up a mountain for nearly an hour to reach help. The offender had pled guilty and was sentenced to life without parole for the murder and life with parole for the attempted murder. Years later, he appealed his convictions twice, first stating that he had entered the plea agreements when suffering from depression. The second appeal argued that his conviction violated the Vienna Convention on Consular Rights, since he was originally from Guatemala and he was not given an opportunity to speak to the consulate. At the time of the second appeal the victim was referred to the clinic.

The clinic explained that she had the right to make a statement at the hearing on the post-conviction writ. When she arrived at the hearing she was surprised to find the defendant present. The victim believes that only the support and presence of the clinic attorney enabled her to make her statement, which she found very validating. The judge also acknowledged the victim, which was very affirming.

Another client had been the victim of a stalker. The client and his girlfriend were stalked by their neighbor, who constantly harassed and threatened them over a three year period. The victims obtained a stalking injunction, which was valid for 18 months. The stalker was later arrested and he pled guilty to stalking and was put on probation. The prosecutor's office referred the victims to the clinic. The clinic attorney advised the victims they could seek a permanent protective order, and that such an order should have been automatic at the time of conviction. The clinic attorney worked with the victims to obtain the order, educating the judge who had been unaware of the law. The victim reported that the judge seemed appreciative of the clinic attorney's work and careful explanation of the law and procedure. The judge issued the order.

Two additional clients were parents of a child sexual abuse victim. The child had been victimized by an uncle two and a half years ago. The case had been pending for more than a year and a half, and had had a series of prosecutors assigned to the case. The parents were referred to the clinic by the prosecutor's office. The defense attorney was seeking the child's counseling records, and the clinic attorney was working to protect the privacy interests of the victim. The clients expressed their gratitude for the work of the clinic attorney, both in working to protect their interests and in ensuring that the clients understood the motions and arguments being made in the courtroom. The clients stated that the continual delays in the case had been very traumatic for their family. They said that if it hadn't been for the clinic attorneys, they probably would have dropped out of the case.

Data Availability

The clinic noted that most prosecutor files have a place on the case folder or on top of the table of contents where they make notes of everything that happens. This would include indications of the victim's presence, whether the victim requested an opportunity to be heard, and so forth. In addition, victim advocates in those offices maintain their own files. Either of these might be fertile sources for data mining.

Also, the prosecutors' offices use GSC software to generate letters to victims, notices of proceedings, etc. The prosecutors' offices may be able to run certain data reports from this software.

The clinic suggested that a useful indicator of their success could be a chart showing trends in referrals. Indications that referrals were increasing, or that the same agencies were regularly making referrals, might show validation of their work or reputation.

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APPENDIX B: STATUTORY AND CASE LAW CHANGES IN CLINIC STATES

SUMMARY OF STATE BY STATE STATUTES AND VICTIM RIGHTS CASE LAW

Project staff evaluated changes to victims' rights laws and the development of victims' rights case law during the time each clinic has been funded by the Office for Victims of Crime. The extent of changes varies considerably between the states, but all show continuing expansion of victims' rights.

Arizona

Changes to victims' rights laws

Arizona has continued to add to its extensive body of crime victims' rights laws in the time since the clinic first received federal funding. In 2003, the year the clinic first received its funding, Arizona amended the victim's right to be heard at sentencing, providing that the right to be heard at sentencing includes the right to address the sentence to be imposed. However, the legislation provides that this change in statute will not take effect unless, on or before June 30, 2013, the state or U.S. Supreme Court rules that it is constitutional for victims to make a sentencing recommendation in a capital case. The legislature also added a law clarifying that whenever a victim exercises his or her right to be heard in a criminal proceeding, the victim's statement is not subject to disclosure to the state or defendant and the victim is not subject to cross-examination.

Other statutory changes in 2003 included a provision that 30 percent of an offender's prison wages must be used to pay restitution, and a provision protecting the confidentiality of domestic violence victim information in voter registration records. The rules of criminal procedure were also amended in 2003, to provide that whenever the court imposes a sanction on a party for non-disclosure of pretrial information, it must consider the impact of that sanction on the victim.

No noteworthy changes were made in 2004. However, in 2005, the legislature gave the victim standing to file a notice of appearance in an appellate proceeding, at the juvenile or criminal level, seeking to enforce any right or challenge an order denying any victim's right. On the filing of a notice of appearance and if present, counsel for the victim shall be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve a victim's constitutional rights.

The legislature also provided that in cases where a criminal offense against a victim is charged by the prosecution on the count(s) involving the victim is dismissed as a result of a plea agreement and a defendant or juvenile pleads to other charges, the victim may continue to exercise all applicable rights as a crime victim, as though the count(s) involving the victim had not been dismissed. The prosecutor shall inform the probation department that the victim wishes to exercise his or her rights.

In 2005 Arizona also:

- amended the requirement that courts notify victims of juvenile dispositional hearings to include notification of the estate of a deceased victim;
- required prosecutors to notify the victim of a juvenile that a predisposition or disposition proceeding may occur immediately following adjudication;
- required victims who request notification to provide their contact information;
- added rights for victims to be informed and heard regarding any proposed modification of an adult or juvenile's probation;
- required juvenile court judges to make a statement concerning the constitutional rights of victims at the time a victim first appears in court;
- gave victims who file a notice of appearance the right to respond to a request for an extension of time to file a brief in any appellate or other post-conviction proceeding in a capital case;
- strengthened the rights of victims of juveniles to restitution and allowed the estate of a victim to submit a statement regarding losses at a restitution hearing;
- provided for the collection of interest on a criminal restitution order in the same manner as any civil judgment;
- required courts to order restitution for the value of labor or services in human trafficking cases;
- protected the confidentiality of information regarding victims of domestic violence, or stalking and persons protected under protection orders, that is contained in county indexes of recorded instruments and in documents maintained by the county assessor and county treasurer; and
- protected information about stalking victims in voter registration records.

Arizona changed the rules of criminal procedure in 2005 to:

- require that victims be notified of an intercounty transfer of probationers or other offenders by the court in the transferring county, and giving victims have the right to be present and heard at proceedings regarding such transfers;
- require a magistrate to permit the victim to comment on the issue of the suspect's release at the suspect's initial appearance, and requiring the magistrate to consider the comments of the victim concerning the conditions of release; and
- require the court to notify the prosecutor if the defendant fails to pay restitution as ordered, in cases where the defendant is not on supervised probation.

2006 saw a number of additional changes. Most importantly, the legislature clarified procedures for enforcing victim's rights, providing that failure to comply with a victim's right is grounds for the victim to request a reexamination proceeding within 10 days of the violation or with leave of the court for good cause shown. The court shall reconsider any decision that arises from a proceeding in which the victim's right was not protected. However, the law made clear that violation of a victim's right is not cause to seek to set aside a conviction after trial nor does it provide grounds for new trial. A victim who was given notice of a plea or sentencing proceeding may make a motion to reopen such proceeding only under limited circumstances.

Other changes in 2006 included:

- giving victims of serious crime the right to receive a copy of the police report at no charge;
- giving victims or prosecutors standing to contest any legal name change prior to judgment in a criminal case or up to one year after entry of judgment;
- giving the parent or guardian of a minor victim the right to refuse an interview by a juvenile or adult offender or that person's attorney;
- providing certain protection from liability to victims who use or threaten force to protect themselves against another's use or attempted use of force;
- prohibiting the use of blank subpoenas to access records of a victim, providing that records relating to recovered memories may be subpoenaed only if certain conditions are met, and requiring that victims have the right to be notified and heard at any proceeding involving a subpoena of their records;
- prohibiting the release of personal information in records of the Department of Transportation except under limited circumstances; and
- amending the rules of criminal procedure to provide for victim notification when a party is seeking an extension of time to file a brief in a capital case.

In 2007, Arizona made a number of amendments regarding victim's rights:

- strengthening the victims' right to a speedy trial by requiring prosecutors to notify victims or their attorneys of any request for continuance, requiring the court to consider the victim's views and right to speedy trial in ruling on any motion for continuance, and requiring prosecutors to notify victims of any continuance granted;
- requiring law enforcement to notify victims of their right to receive a copy of the police report;

- providing that the prosecutor must notify victims “immediately” of any post-conviction or appellate proceedings and any decisions resulting from those proceedings;
- providing that a drug offender may be released to a transition program only after the victim is given notice and an opportunity to be heard;
- requiring courts to provide to victims at no charge the minute entry or portion of the record of any proceeding reasonably necessary for the purpose of pursuing a victim’s right;
- ensuring that victims of juvenile sex offenders have rights relating to the offender’s probation review hearings;
- expanding the notoriety for profit law to include juvenile offenders;
- protecting the privacy of victim information in publicly accessible records relating to the case, except for the victim’s name and the address at which the crime occurred;
- clarifying procedures relating to the nonpayment of restitution, including increasing the amount of time probation can be extended for the nonpayment of restitution;
- requiring the department of corrections to collect restitution from a prisoner’s spendable account (and deleted the requirement that a percentage of prison wages be collected for restitution); and
- providing employment protection for victims leaving work to obtain a protective order or similar relief (applies to larger employers only).

Arizona also amended its court rules to require the court to provide at least 7 calendar days’ notice of a probation review hearing to the prosecutor, so that the prosecutor may notify the victim.

Changes continued in 2008, with legislation requiring courts at sentencing to consider the evidence and opinions presented by the victim or victim’s family at any aggravation or mitigation proceeding or in the presentence report. Arizona also amended the rules of criminal procedure to require a prosecutor to confer with the victim prior to agreeing to an extension of time to decide whether to seek the death penalty. And it added an administrative code provision relating notifying a victim of the results of court-ordered testing of a defendant for sexually transmitted diseases.

There is no clear indication the clinic was involved in any of the above changes. However, the clinic’s founder, Steve Twist, is generally active in promoting victims’ rights in the legislature, and has indicated that issues that arise in clinic cases often lead to legislation. Mr. Twist also serves on the Commission on Victims in the Courts, a commission established by the Arizona Supreme Court in 2006 to make recommendations and advise the Arizona Judicial Council on victims’ rights

issues within the court system.

Case law developments

During the time the clinic has been funded, the courts have issued opinions in a number of cases implicating victims' rights. In 2003, the state Supreme Court held that the Eighth Amendment to the U.S. Constitution prohibits victims from recommending punishment in a capital case. Steve Twist was one of the attorneys representing the victim in that case. *Lynn v. Reinstein*, 68 P.3d 412 (Ariz. 2003).

The Supreme Court issued two rulings regarding a victim's right to speedy trial, ruling in one case that a trial court has discretion in determining whether to grant a continuance made in conjunction with a motion to proceed pro se, because it must consider those requests in light of the victim's right to a speedy trial. *State v. Lamar*, 72 P.3d 831 (Ariz. 2003). In another case, the Supreme Court declined to apply an earlier ruling retroactively where defendants moved for post-conviction relief. The court concluded that vacating prisoners' sentences would violate the victims' right to a prompt and final conclusion of the case. *State v. Towery*, 204 Ariz. 386, 64 P.3d 828 (Ariz. 2003).

In a 2003 Court of Appeals case, a juvenile had challenged a restitution order for tooth repair, where the juvenile was not found delinquent of "assault causing the fracture of any body part" but was adjudicated for aggravated assault while the victim was substantially impaired. The court upheld the restitution award because the victim had sustained a loss that was 1) economic, 2) would not have occurred but for the defendant's conduct, and 3) directly resulted from the defendant's offense. *In re. Stephanie B.*, 204 Ariz. 466, 65 P. 3d 114 (Ariz. Ct. App. 2003).

In 2004, the Court of Appeals permitted the State to replace the legal guardians of minor sexual assault victims with other legal representatives, because the legal guardians were protecting the defendant and not representing the victims' best interests. The appellate court ruled that the equitable power of the trial court to replace the representatives was preserved by the Victims' Bill of Rights in the Arizona Constitution. *State ex rel. Romley v. Dairman*, 95 P.3d 548 (Ariz. Ct. App. 2004).

In another 2004 case, the Court of Appeals upheld a restitution order for the expenses of a murder victim's children incurred in attending the trial. The court ruled that the victims had a constitutional right to attend trial and the necessity for the trial was a direct consequence of the crime. Economic loss covers reasonable travel-related expenses incurred in attending the trial. *State v. Madrid*, 85 P.3d 1054 (Ariz. Ct. App. 2004).

In one Supreme Court case and two Court of Appeals cases, the victims' right to be heard at sentencing was upheld. *State v. Carreon*, 107 P.3d 900 (Ariz. 2005), cert. denied 546 U.S. 854, 126 S.Ct. 122 (2005); *State ex rel. Thomas v. Foreman*, 118 P.3d 1117 (Ariz. Ct. App. 2005); *State v. Glassel*, 116 P.3d 1193 (Ariz. 2005).

The Supreme Court again upheld the victim's right to be heard at sentencing in three cases in 2006. *State v. Ellison*, 140 P. 3d 899 (Ariz. 2006); *State v. Hampton*, 140 P.3d 950 (Ariz. 2006),

cert. denied 549 U.S. 1132; 127 S. Ct. 972 (2007); and *State v. Roque*, 141 P.3d 368 (Ariz. 2006).

A noteworthy Court of Appeals case in 2006 involved the privacy of victim counseling records in a case of sexual abuse by a defendant of his minor daughter, who suffered from cerebral palsy. The State had proposed proving six aggravating factors at sentencing, including emotional harm to the victim. The defense subpoenaed the victim's counseling records, and the victim's mother appealed on her behalf to protect those records. The appellate court ordered the trial court on remand to determine whether the State had demonstrated that the victim's counseling records or the counselor's testimony were essential to have the defendant receive an aggravated sentence. The trial court should balance the victim's constitutional right to refuse a discovery request and her claim of privilege against the state's interest in calling the counselor as a witness to prove emotional harm. The trial court should also reconsider whether disclosure of the records to the defense is necessary for cross-examination of the victim. *P.M. v. Gould*, 136 P. 3d 223 (Ariz. Ct. App. 2006). The Arizona clinic represented the victims in this case.

In 2007, the Supreme Court upheld the victim's right to be heard at sentencing in two more cases, including the admission of photographs depicting the lives of murder victims. *State v. Garza*, 163 P. 3d 1006 (Ariz. 2007), cert. denied ____ U.S. ____, 128 S. Ct. 890 (2008); *State v. Tucker*, 160 P.3d 177 (Ariz. 2007).

The Court of Appeals upheld the victim's right to refuse to be deposed or interviewed by the defense in two cases. In the first, the defendant was originally charged with aggravated assault but that Class 6 felony was subsequently changed to a Class 1 misdemeanor by court motion. The defendant argued that he was now entitled to depose the victim because he had not committed a "criminal offense" for purposes of the victims' rights implementation act, which by statutory definition does not apply to misdemeanors. However, the court of appeals held that the amended definition unconstitutionally limited the categories of victims protected by the Victims' Bill of Rights under the Arizona Constitution. *State ex rel. Thomas v. Klein*, 150 P. 3d 778 (Ct. App. 2007). In another case, the Court of Appeals held that the victim's right to refuse an interview or deposition by the defense attorney applied to a minor victim's parent or legal guardian. *Lincoln v. Holt*, 156 P. 3d 438 (Ct. App. 2007).

In 2007, the district bankruptcy court affirmed that restitution orders cannot be discharged in bankruptcy. *In re. Reif*, 363 B.R. 107 (Bankr.D.Ariz. 2007).

In 2008 the Court of Appeals found a violation of a victims' right, but found no remedy. In that case, the victim had relied on the prosecutor to timely assert his right to restitution, but the prosecutor failed to do so. *In re. Michelle G.*, 173 P.3d 1041 (Ariz. Ct. App. 2008).

Another Court of Appeals case that year involved the victim's right to refuse an interview or deposition by the defense. The issue was whether the domestic violence victim, the defendant's ex-wife was a "victim" in a case where the defendant was charged with interference with judicial proceedings by violating an order of protection that protected the ex-wife. The court determined that she was a victim in the instant case and could refuse to be deposed. *Douglass v. State*, 195 P. 3d 189 (Ariz. Ct. App. 2008).

Another important 2008 Court of Appeals decision involved the victims' right to be present in the courtroom, as well as the determination of who was a "victim." In that case, a murder victims' siblings petitioned for reconsideration of a court order excluding them from the courtroom. The court rule on witnesses exempted victims, including the parents and children of a homicide victim. However, the crime victims' rights under Arizona statutes, implementing the victims' constitutional right to attend proceedings, apply to a list of relations of homicide survivors, including siblings. The court ruled that the statutory definition applies, and the siblings have a constitutional right to be present at the trial. *Patterson v. Mahoney*, 199 P.3d 708 (Ariz. Ct. App. 2008).

In 2008, the state Supreme Court issued three rulings upholding the right of victims to make an impact statement at sentencing. *State v. Armstrong*, 189 P.3d 378 (Ariz. 2008); *State v. Bocharski*, 189 P.3d 403 (Ariz. 2008); *State v. Martinez*, 189 P.3d 348 (Ariz. 2008). The Supreme Court and the Court of Appeals also issued rulings regarding the victims' right to restitution, clarifying who may be a victim and how to determine losses. *Town of Gilbert Prosecutor's Office v. Downie*, 189 P.3d 393 (Ariz. 2008); *State v. Guadagni*, 178 P.3d 473 (Ariz. Ct. App. 2008).

The clinic was not involved in the majority of these cases, but its founder Steve Twist frequently consulted with prosecutors in those cases. The clinic did represent crime victims in *Lynn v. Reinstein and P.M. v. Gould*.

Colorado

Changes to victims' rights laws

Colorado has continued to develop rights for victims during the two years the clinic has been funded.

In 2007, Colorado strengthened the victim's right to be kept informed. It passed a law requiring that in any administrative action involving a sexual assault that is referred to the office of expedited settlement or the office of the attorney general, victim contact information must be sent to the attorney general's victim advocate. That advocate shall advise the victim of the right to pursue a criminal or civil action, the applicable statutes of limitation, and contact information for the police, sheriff, and community-based resources. Colorado also amended its victims' rights law to require that victims be informed of an attack on a judgment or conviction for which a court hearing is set, even where they have not filed a written request for notice. Victims of sex offenders must be notified if the offender files a petition to terminate sex offender registration requirements.

Colorado also created victims' rights in new areas in 2007. It created a cold case homicide team, and provided that the family member of a homicide could request that the local law enforcement agency ask the team for assistance in investigating the homicide. The local agency must inform the family whether it will seek assistance and, if it decides not to seek assistance, inform the family of its reasons.

Another new law prohibits the dismissal of charges against a person because a person has been removed or is facing removal from the United States prior to a conviction or other disposition of criminal charges. A court may not dismiss criminal charges against a person who has been convicted or pled guilty because the person has been removed or is facing removal. The defendant must serve his or her sentence and pay restitution prior to removal. Victims must be consulted in such cases, in accordance with the victim's rights laws.

The state also created a prison sexual assault prevention program, which protects the rights and interests of victims by requiring prisons to prohibit retaliation for reporting sexual assaults, take measures to ensure victim safety by separating the victim from the assailant, notify the victim about sexual assault reporting and counseling, and require confidentiality of complaints and confidential mental health counseling of victims.

Colorado passed a new law promoting the collection of victim restitution in mortgage fraud cases. That law provides that where a mortgage broker's license is suspended or revoked due to conduct that resulted in financial loss to another person, no new license should be issued or no suspended license reinstated until full restitution is made to the victim.

Other 2007 changes included making victim compensation records confidential; creating an address confidentiality program for victims of domestic violence, sexual assault and stalking; and authorizing courts in domestic violence cases to restrain defendants from ceasing to make payments for mortgages, rent, insurance, and similar costs.

In 2008, Colorado made several changes regarding juvenile offenders. It required a juvenile parole board to notify any victim of the parole hearing, if the victim has provided a written impact statement to the division of youth corrections. It also required the board to notify the victim of any changes in the juvenile's parole. It also encouraged the use of restorative justice practices at the juvenile level to promote juvenile accountability to victims, and authorized the court to order victim offender conferences among other practices.

Colorado also clarified the victim's right to be heard at any court proceeding, and added the right to be heard at a court proceeding where the court accepts a plea of nolo contendere or where the victim requests a modification of the no contact order that is mandatory in any criminal case. And it required prosecutors to inform victims of the charges to be filed, prior to filing charges, if the most serious charge to be filed is a less serious offense than the one for which the defendant was arrested and the lower charge might result in the court lowering the bond requirements.

The state also passed a law prohibiting prosecutors and law enforcement from requiring victims of sex offenses to take a polygraph as a condition of investigation or prosecution, or from requiring victims to participate in the criminal justice process as a condition of receiving a forensic exam. Administrative code provisions were adopted regarding the new address confidentiality program.

The clinic did not play a role in any of these changes.

Case law developments

The Colorado courts ruled in a number of victims' rights cases in 2007, most of which involved restitution. The Supreme Court clarified that victims were entitled to receive both pre-judgment and post-judgment interest in probationary restitution orders. *Roberts v. People*, 130 P.3d 1005 (Colo. 2007). Rulings from the Court of Appeals clarified procedures for granting restitution; the damages for which restitution may be ordered; and that restitution should be ordered for the extent of the victim's loss. See *People v. Martinez*, 166 P.3d 223 (Colo. Ct. App. 2007); *People v. Leonard*, 167 P. 3d 178 (Colo. Ct. App. 2007); *People v. Reyes*, 166 P. 3d 301 (Colo. Ct. App. 2007); *People v. Smith*, 181 P. 3d 324 (Colo. Ct. App. 2007).

Also in 2007, the Court of Appeals issued a ruling that may make it more difficult for minor victims of sex offenses to testify in court. In that case, a 14-year-old victim was permitted to testify behind a physical barrier, which prevented the victim from seeing the defendant. The Court found that this violated the defendant's right to face-to-face confrontation with the victim, who was not eligible for special protection because of her age. *People v. Mosley*, 167 P. 3d 157 (Colo. Ct. App. 2007).

In 2008, the Colorado Supreme Court issued one important opinion affirming a sexual assault victim's special right to privacy. In that case, the media filed a series of motions seeking access to an indictment in a criminal case involving numerous child abuse and assault charges. The court found that the Colorado Criminal Justice Records Act required that the indictment be made available for public inspection, with the exception of any sexual assault victims' identifying information. *State v. Thompson*, 181 P.3d 1143 (Colo. 2008).

The clinic was not involved in these cases.

Idaho

Changes to victims' rights laws

Idaho has made few advances for crime victims' rights during the time the clinic has been operational. In 2006, the legislature passed a law requiring restitution in cases of human trafficking and increasing the amount of money that domestic violence victims could pursue in small claims court.

Additional changes were adopted in 2008, including laws that: authorized a court to order a person convicted of leaving the scene of an accident resulting in injury or death to pay the victim's economic loss; created an address confidentiality program for victims of domestic violence, stalking, or sexual assault; and protected the social security numbers of persons that are contained in court documents.

None of these changes appear to have been connected to the work of the clinic.

Case law developments

Crime victim case law has also developed in Idaho, but those developments do not appear to be connected to the work of the clinic. In 2004, the victim's right to restitution was affirmed when the Court of Appeals found that a minor victim's parents were entitled to restitution for lost wages related to the victimization of their child. In the interest of John Doe, 103 P. 3d 967 (Idaho Ct. App. 2004).

In 2005, the state Supreme Court held that a defendant's criminal conviction was not abated with his death, and that the attendant order requiring payment of restitution also remained intact. *State v. Korsen*, 111 P.3d 130 (Idaho 2005). The Court of Appeals issued two opinions making clear that the victim's right to be heard is independent of the state's interests. The first found that the admission of testimony from a victim's mother at sentencing did not violate the plea agreement with the State, because there was no indication the victim's mother was presenting testimony at the request of the State. *State v. Jones*, 115 P.3d 764 (Idaho Ct. App. 2005). The second also found that admission of victim statements did not breach a plea agreement by the state; instead, the prosecutor "merely facilitated the constitutional and statutory right of the victims to make a statement." *State v. Lutes*, 120 P. 3d 299 (Idaho Ct. App 2005).

In 2006, the Court of Appeals found that use of a video as part of a victim impact statement was appropriate. *State v. Leon*, 132 P. 3d 462 (Idaho Ct. App. 2006). The Supreme Court also held in a case involving the crime of influencing or deterring a witness that the state was not required to prove that a defendant's conduct actually prevented the witness from testifying, a decision that will help protect future crime victims and witnesses. *State v. Mercer*, 138 P.3d 308 (Idaho 2006).

The 2007 appellate level decisions affecting victims' rights related to the right to restitution. These rulings clarified the type of evidence necessary to the nature and extent of a crime-related loss, the types of entities entitled to restitution, and the broader potential for restitution as part of a plea agreement. See *State v. Cheeney*, 160 P. 3d 451 (Idaho Ct. App. 2007); *State v. Gonzales*, 171 P.3d 266 (Idaho Ct. App. 2007); *State v. Shafer*, 161 P. 3d 689 (Idaho Ct. App. 2007); and *State v. Smith*, 169 P. 3d 275 (Idaho Ct. App. 2007).

There were three Idaho appellate decisions regarding the victims' right to be heard in 2008. In two, the court of appeals noted that the victims' right to be heard in death penalty cases does not include the right to make a sentencing recommendation. *State v. Deisz*, 186 P.3d 682 (Idaho Ct. App. 2008); *State v. Payne*, 199 P.3d 123 (Idaho 2008).

In the third, the Supreme Court upheld a trial court's discretion in interpreting who may be considered a victim for purposes of presenting a victim impact statement. *State v. Lampien*, 2008 Ida. App. LEXIS 138 (Idaho Ct. App. 2008). The court of appeals

There were also three restitution cases that year. In two, the court merely considered whether evidence offered in support of a request for restitution at the trial court level was sufficient. *State v. Card*, 190 P.3d 930 (Idaho Ct. App. 2008); *State v. Doe*, 192 P.3d 1101 (Idaho Ct. App. 2008). In the third, the court of appeals upheld the imposition of restitution for separate criminal transactions that were not proven at trial. The court reasoned that since the defendant was not convicted on a charge of theft of a specific amount of money, the state could pursue restitution for all transactions occurring within the same time frame and criminal theory charged. *State v. Schultz*, 2008 Ida. App. LEXIS 149 (Idaho Ct. App. 2008).

Maryland

Changes to victims' rights laws

Maryland's progress in expanding and strengthening the rights of crime victims has continued during the time the clinic has been funded.

In 2004, the legislature authorized the Secretary of Public Safety and Correctional services to adopt regulations establishing minimum mandatory standards applicable to victim notification and restitution.

In 2005, Maryland adopted three court rules that affected victim's rights. The first authorized an attorney to enter an appearance on behalf of a victim or victim's representative for the purpose of representing the rights of the victim. The second gave victims the right to file an interlocutory, or provisional, appeal alleging a denial of their rights. The third rule allows a victim or representative, who has request notice, to attend a hearing on a petition for a writ of error directed at another branch of the same court. The legislature also addressed victims' rights in 2005, strengthening the victim's right to restitution, expanding the situations in which a court could order restitution; expanding eligibility for crime victim compensation to a parent, child, or spouse of a person incarcerated for domestic violence, if the offender had resided with and provided support to that person; and expanding the crimes of inducing false testimony or to avoid a subpoena and of retaliating against victims or witnesses to provide stronger protections.

In 2006, Maryland extended the right to seek an appeal of the denial of a victim's rights to victims of violent juveniles. Maryland also provided for that victims of offenders with mental illness will be notified of the dismissal of charges against the defendant, and that such victims will be notified by the Department of Health of the escape, recapture, release, transfer, or death of the defendant. The legislature also created an address confidentiality program for victims of domestic violence, and expanded the list of persons to whom a court was authorized to order restitution and established the priority of payment of restitution to a victim over another person or a governmental unit. That same year, two court rules were amended to protect victim information in court documents.

The 2007 advances related to court rules. The provision exempting crime victims from the evidentiary rule regarding the sequestration of witnesses was expanded to include victims of juvenile offenders. The court rule regarding the entry of appearance by an attorney on behalf of a victim was extended to cases appealed to the Court of Appeals or Court of Special Appeals. The victim's right to file an application for leave to appeal from an interlocutory or final order regarding victims' rights was recognized, and another court rule regarding the right of victims to file an appeal was extended to juvenile victims.

In 2008, the restitution law was amended to provide that restitution collected for a victim who cannot be located will be deposited into a fund that will provide grants for victim legal representation. That same year a new law was passed regarding the medical parole of offenders,

which provided victims the rights to be notified and heard during proceedings to consider medical parole.

Many of these changes had been legislative priorities of the Maryland clinic's parent organization, the Maryland Crime Victim's Resource Center (MCVRC). The executive director of the MCVRC is also a clinic attorney is also the clinic director, so there is a real sharing of interests. Some of the legal changes were directly related to the work of the clinic. A prime example is the 2006 legislation giving victims of juveniles the ability to seek an appeal where their rights are violated. A pro bono clinic attorney had represented a victim of a juvenile who had attempted to appeal a denial of rights, but the court had ruled in 2005 that victims of juvenile offenders could not exercise the right to seek appeal. That pro bono attorney became a state legislator, and was responsible for the 2006 amendment extending the right to victims of juveniles.

Case law developments

Case law regarding crime victims' rights has also developed in Maryland during the time the clinic has been funded.

In 2005, Maryland's Court of Appeals—its highest court—ruled on three victims' rights cases. In the first, discussed above, the court found that the statutory right of victims to appeal a denial of their rights had not been extended to victims of juvenile offenders. *Lopez-Sanchez v. State*, 843 A. 2d 915 (2004), *aff'd*, 879 A. 2d 695 (Md. 2005). The other two decisions clarified restitution, ruling on whether restitution could be ordered for certain losses. *Goff v. State*, 875 A. 2d 132 (Md. 2005); *Williams v. State*, 867 A. 2d 305 (Md. 2005).

In 2006, the Court of Appeals and the Court of Special Appeals took up the issue of the crime victim's remedy for violation of rights. The Court of Appeals found that a homicide victim's parents lacked standing to file an answer to the defense's petition for certiorari, or to cross-petition, or to file a brief or present argument, in a case where a defendant had died while appeal was pending and the defense was seeking to dismiss the appeal and indictment. *Surland v. State*, 895 A. 2d 1034 (2006). That same year the Court of Special Appeals ruled that a victim did not have standing to challenge a sentence, where the victim had not been notified of a hearing to reconsider the offender's sentence. *Lamb v. Kontgias*, 901 A.2d 860 (Md. Ct. Spec. App. 2006), *cert. denied*, 909 A.2d 259, (2006); *cert. denied*, 909 A.2d 260, (2006); *cert. denied*, 127 S. Ct. 1875, (U.S. 2007). Also in 2006, the Court of Special Appeals vacated an order of restitution because the state had not proven the victim's entitlement to restitution or presented competent evidence of the victim's loss. *Juliano v. State*, 890 A. 2d 847 (Md. Ct. Spec. App. 2006).

In 2007 the Court of Appeals issued opinions in three restitution cases, holding that 1) a victim must affirmatively request restitution and present evidence of the victim's loss; 2) a restitution order is nondischargeable in bankruptcy; and 3) parents may be ordered to pay restitution for the criminal acts of their child. See *Chaney v. State*, 918 A.2d 506 (Md. 2007); *State v. Garnett*, 863 A.2d 1007 (Md. 2004). *State v. Garnett*, 916 A.2d 393 (Md. Ct. Spec. App. 2007), *cert. denied*, 925 A.2d 633 (Md. 2007); *Robey v. State*, 918 A.2d 499 (Md. 2007).

In 2008, the Maryland Court of Appeals ruled on two cases involving victims' rights. In the first and most significant, the court found that crime victims and their attorneys had standing to participate in an appeal. However, the court noted that "there remains no effective tangible remedy for a victim to seek to 'un-do' what already has been done in a criminal case." In that case, the victim was not notified of hearings reconsidering the sentence of her assailant and, thus, was denied her right to be heard at those hearings. *Hoile v. State*, 2008 Md. LEXIS 248 (2008). In another case, the Court held that a broad definition of crime victim applied to the victim compensation law. *Opert v. Crim. Injuries Comp. Bd.*, 943 A.2d 1229 (Md. 2008).

The Maryland clinic represented the victims in each of the above cases involving crime victim standing or remedies for a violation of rights, and provided assistance to the victim's counsel in the case of *Opert v. Crim. Injuries Comp. Bd.*

New Jersey

Changes to victims' rights laws

Recent expansion of victim protections in New Jersey has been limited. In 2005, the state adopted a new administrative code provision setting out conditions of parole supervision for life, to include a prohibition on contact with the victim without the approval of the parole officer. The legislature also gave trafficking victims the right to receive information and services, and to receive victim compensation; authorized courts to order restitution for the owner of property damaged by a tenant in retaliation for eviction; and created a civil cause of action for victims against those who committed certain forms of identity theft.

In 2006, New Jersey acted to protect victim privacy, adding an administrative code section providing that persons convicted of offenses shall be denied access to a government record that contains the personal information about a victim or the victim's family.

In 2007, New Jersey made two important legislative changes that affect legal representation of crime victims. It added new duties to the victim-witness rights information program, requiring that victims be informed about their constitutional and statutory rights and about obtaining legal advice or representation, and requiring the information program to conduct trainings for attorneys. It also made a number of changes to the crime victim compensation program, including authorizing the payment of limited attorneys fees for legal assistance in any legal matter relating to the offense that is provided to a crime victim, not merely actions relating to crime victim compensation. Other compensation changes included reorganizing the compensation administrative structure and procedures, broadening victim eligibility, and increasing the cap on emergency awards.

Other 2007 changes involved the creation of new pretrial and post-sentencing protective orders for victims of sex offenders, and a new civil cause of action for hate crimes.

Administrative code changes in 2007 authorized the release of certain information regarding juvenile offenders to victims and required the Residential Community Program Notification

Committee to review comments from victims concerning the placement of an inmate in a community-based program, and to keep those comments confidential.

In 2008 New Jersey amended its administrative code to further protect victim information from offenders.

The clinic does not appear to have been involved in most of these statutory and administrative code changes, with the exception of the 2007 compensation revisions and provision requiring victims to be informed of their rights and given information about obtaining legal assistance, where involvement by the clinic director is likely.

Case law developments.

New Jersey has only had a few recent appellate level cases affecting crime victims' rights. In one 2005 case involving aggravated sexual assault, kidnapping, burglary, and criminal restraint, the defendant filed a discovery motion requesting that a photograph of the victim be taken and provided to him. The trial court granted the request over the objections of the prosecutor. The appellate court reversed, stating that any possible benefits to the defendant from a court-ordered photograph were speculative, and were outweighed by the victim's "right to privacy; her right to be treated with fairness, compassion, and respect; her right to be free from intimidation; and the need to encourage crime victims to cooperate and participate in the criminal justice system." The clinic became involved when the defendant sought to appeal to the Supreme Court. *State v. Gilchrist*, 885 A.2d 29 (N.J. Super. Ct. 2005).

In 2007, the New Jersey Supreme Court issued two opinions relating to victims. The first upheld the admission of victim impact testimony. *State v. Wakefield*, 921 A. 2d 954 (N.J. 2007). The second was a case in which the clinic represented a minor victim of kidnapping and sexual assault. The state had failed to speak with the minor victim's father, who had expressed an interest in being present at sentencing, before presenting a plea which included a ten-year sentence. The state moved to vacate the plea; the court granted the motion. A second plea was later entered with included a higher sentence recommendation. The defendant appealed, arguing that the victim's rights did not authorize the State to withdraw a guilty plea the defendant had already agreed to. The Supreme Court reinstated the original plea. Importantly, the court gave guidance for how the victim's rights could be accommodated in such a case. *State v. Means*, 926 A.2d 328 (N.J. 2007).

In 2008, the New Jersey Superior Court, Appellate Division, determined that trial court did not err in allowing a victim to remain in the courtroom. While a defendant has no constitutional right to exclude witnesses, a victim has a state constitutional right to remain in the courtroom. *State v. Williams*, 960 A.2d 805 (N.J. Super. Ct. App. Div. 2008). Another 2008 decision by that same court division upheld the state's restitution payment system, under which multiple restitution orders are paid on a first-in-time basis, rather than a pro rata basis. *Felicioni v. Administrative Office of the Courts*, 961 A.2d 1207 (N.M. Super. Ct. App. Div. 2008).

New Mexico

Changes to victims' rights laws

New Mexico has made modest progress in rights for victims during the years the clinic has been in existence. Perhaps most significantly, in 2005, legislators created a law that requires the court to inquire—on the record—whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights at any scheduled court proceeding. If the victim is not present, the court must inquire—again, on the record—whether an attempt was made to notify the victim of the proceeding. If the prosecutor is unable to verify that an attempt was made to notify the victim the court must reschedule the hearing or continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement, and order the prosecutor to notify the victim of the rescheduled hearing. The legislature also made mandatory the victim's right to receive timely notice of any court proceeding relating to the criminal offense, regardless of whether the victim had formally requested such notice.

2005 also saw several amendments to the right to restitution, providing that a restitution order constitutes a lien against the defendant's property and allowing courts to order restitution for losses from electronic identity fraud or for vet bills for crimes involving service animals.

Statutory changes in 2007 related to the rights of domestic violence victims. These included the creation of an address confidentiality program for victims and a provision requiring local law enforcement to enter a domestic violence protection order into the national crime information center's order of protection file within 72 hours. Two court rules were also amended in 2007, permitting Magistrate and Municipal courts to refuse to allow a complaining witness or victim to post bond for the defendant, if the court finds the defendant poses a danger to the victim or witness.

In 2008, the legislature addressed victim confidentiality in criminal justice records, holding that no agency or court may make publicly available on the Internet any information likely to reveal the identity or location of a party protected by an order of protection. The also provided that simplified petition forms for orders of protection shall be made available to everyone, not merely those petitioning without an attorney, and that victims could not be charged with the costs of prosecuting a domestic violence offense or filing fees for protection orders. The legislature also passed a new law that prohibited law enforcement or prosecutors from asking or requiring any victim of a sex offense to take a polygraph examination as a condition for proceeding with the case.

The clinic was not connected to these advances for victims.

Case law developments

New Mexico has had limited development in case law relating to victim's rights during the time of the clinic's work. In 2005, the state Supreme Court addressed the issue of victim privacy in two cases. In the first, the Supreme Court found that the court rule requiring the disclosure of the

names and addresses of all witnesses the state intends to call at trial, together with any statements by those witnesses, applies also to the victim's statements to the prosecutor's victim advocate. *State ex rel. Brandenburg v. Blackmer*, 110 P. 3d 66 (N.M. 2005). In the second case, a trial court had granted defendant's motion to compel rape crisis counselors to provide statements regarding their contact with a victim, holding that, despite the passage of a statutory Victim Counselor Confidentiality Act, a victim-counselor privilege was not recognized in the Supreme Court Rules of Evidence, and therefore the statements weren't protected. The Supreme Court found that the non-disclosure provisions of the Act were consistent with the psychotherapist-patient privilege contained in the rules of evidence, and remanded to the trial court for consideration of whether the communications at issue fell within that privilege. *Albuquerque Rape Crisis Ctr. v. Blackmer*, 120 P. 3d 820 (N.M. 2005). In another 2005 case, the state's Court of Appeals upheld the imposition of a special condition of probation, prohibiting a convicted sex offender from having contact with all of his minor children, including the victim and his other children. The court found the trial court has authority to impose conditions reasonably related to the defendant's rehabilitation. *State v. Garcia*, 113 P. 3d 406 (N.M. Ct. App. 2005).

The most significant victims' rights appellate case in New Mexico took place in 2006, although it resulted only in an unpublished opinion. In that case, the clinic had represented a victim who sought a writ of superintending control granting the victim standing to file a motion with the district court to attend all public court proceedings that the offender has a right to attend. After oral argument by the clinic attorneys, the Supreme Court issued an order of remand granting the victim standing to assert her rights and ordering the district court to try to maximize the constitutional protections available to the victim under the state's statutes and constitution and the rules of procedure and evidence. The initial order of remand was replaced by an amended order of remand issued November 13, 2006, which specifically ordered the district court to maximize the protection available to the victim under N.M. R. Evid. 11-611 (requiring the court to exercise control over the mode and order of interrogation of witnesses to protect them from harassment or undue embarrassment) and N.M. R. Evid. 11-615 (exclusion of witnesses) as well as the federal Constitution. That order was unpublished, but has been influential. *Nasci v. Pope, et al.*, No. 29,878 (N.M. 2006).

In 2007, the Court of Appeals ruled that a defendant's bankruptcy filing did not void a restitution order imposed as a condition of probation.

With the exception of the 2006 *Nasci* case, none of the case law developments related to the work of the New Mexico clinic.

South Carolina

Changes to victims' rights laws

South Carolina has an active advocacy network and has worked to strengthen victim's rights. This progress has continued through the recent years the legal clinic has been in operation. In 2004, South Carolina expanded victims' rights at parole, by:

- requiring that the parole board make its administrative recommendations available to a victim before it conducts a parole hearing;

- requiring the parole board to conduct all parole hearings relating to the same victim on the same day;
- requiring the parole board to operate closed circuit television systems for use in parole hearings, giving victims access to this system in order to make their appearance before the board; and,
- at the victim's request, authorizing the board to allow the victim and offender to appear simultaneously before the board.

In 2005, for example, the state amended several laws to promote the notification of crime victims when offenders are released from custody, transferred to a diversionary program, or discharged from a mental health facility, expanding notification requirements and ensuring that custodial agencies receive victim contact information or a copy of the victim's impact statement from the prosecutor or summary court in a timely fashion. The legislature also passed laws requiring that the victim information be kept confidential by custodial authorities, and that the victim impact statement not be provided to the defendant until after the defendant has pled or been found guilty or been adjudicated. The amendments also provided that victim notification of release or escape could not be merely by electronic or automated means. Instead, after three unsuccessful attempts at electronic notification, the agency must attempt to personally notify the victim. In 2006, this requirement of additional personal attempts at notification was limited to victims of domestic violence, sex offenses, and stalking.

Also in 2006, the legislature extended the victim compensation program, providing that the manifestation of a physical or mental injury resulting from a crime committed against the person as a minor triggers the running of the time period for filing a claim for compensation.

In 2007, South Carolina passed a law regarding the use of inmate labor, and requiring that 20 percent of an inmate's wages be used for payment of restitution. Another new law prohibited victim and witness intimidation by gang members and gave victims of such intimidation a civil cause of action.

In 2008, South Carolina provided for victim notification and the right to be heard when an offender seeks post-conviction DNA testing

While the clinic itself was not involved in these legislative changes, its parent organization, the South Carolina Victims Assistance Network, advocated for many of the changes.

Case law developments

In 2006, the Court of Appeals issued an order clarifying a family court's authority to order a juvenile probationer to pay restitution, even after he had been committed for another offense. In *the Interest of Terrence M.*, 628 S.E. 2d 295 (S.C. Ct. App. 2006).

In 2007, the Supreme Court found that victims entitled to receive restitution from offenders, among others, had no private right of action against the Department of Corrections for improperly diverting the offenders' wages into a DOC surplus fund. *Torrence v. S.C. Dept. of Correction*, 646 S.E.2d 866 (S.C. 2007). In another case that same year, the Supreme Court

found no error in permitting a victim advocate to make statements at a probation revocation hearing on behalf of the victim. The court held that victims had a statutory right to attend and comment at post-conviction proceedings affecting probation. *State v. Barlow*, 643 S.E. 2d 682 (S.C. 2007).

Finally, in another 2007 case, the Supreme Court upheld the statutory requirement that persons charged with a sex offense be tested for HIV and other diseases, finding that the State had an interest in protecting the health of the victims. *State v. Houey*, 651 S.E.2d 314 (S.C. 2007).

The clinic had no involvement in these cases. However, the clinic's parent organization had filed an amicus brief in the case of *Torrence v. S.C. Dept of Corrections*.

Utah

Changes to victims' rights laws

Utah has continued to expand its legal rights for victims during the period of the clinic's existence. In 2005, it created a court rule concerning the public availability of court records, which addressed the privacy and safety reasons for selectively closing court records relating to victims and witnesses. It also made technical changes to its restitution law to allow flexibility in the ordering of victim restitution. In 2006, it expanded its statute prohibiting murderers from inheriting from their victims.

In 2007, Utah amended a court rule to provide safeguards for victims when their records are subpoenaed, requiring that before such records can be requested the court must first hold a hearing and determine that the defendant is entitled to such records. It also amended the code to provide that if a local victims' rights committee is unable to resolve a victim's complaint, it may refer the complaint to the Utah Council on Victims of Crime for its consideration. It gave victims the right to be notified and heard before a court can reduce the level of offenses for which a person is convicted. It also adopted administrative code provisions detailing implementation of the victim's rights during parole proceedings. And it made statutory and administrative code changes to promote the collection and disbursement of restitution to crime victims.

In 2008, Utah gave victims the right to submit a written statement in any action on appeal that is related to the crime committed against the victim. Utah also revised its crime victim compensation provisions, revised a statute regarding the closing of the courtroom during abuse, neglect, and dependency proceedings, revised a court rule regarding the admissibility of out-of-court statements of a child victim or witness of sexual or physical abuse, and expanded the list of those protected from civil action by an offender to include the personal representatives of a disabled or murdered victim.

Most of these changes were unrelated to the work of the clinic. Two clinic clients testified on legislation to give victims the right to submit a written statement on any appeal related to the crime. Clinic staff were also asked their opinions regarding the need for a rule change regarding the subpoenaing of victim records. However, they were not the advocates for that change.

Case law developments

During the time the clinic has been operational, there have been two reported cases of note. In a 2006 case, the Utah Supreme Court held that the Utah rules of evidence did not require the trial court to exclude a child-victim's mother from the courtroom. The court also held that it was within the trial court's discretion to allow the mother to sit behind the 8-year-old victim while the victim testified, because the court had taken precautions to ensure fairness. *State v. Billsie*, 131 P.3d 239 (Utah 2006).

In 2007, the Utah Court of Appeals held that a trial court was not precluded from ordering restitution in a cases where the defendant had undergone bankruptcy proceedings. *State v. Cabrera*, 163 P.3d 707 (Utah Ct. App. 2007).

In 2008, the Utah Court of Appeals affirmed a trial court's decision granting a defendant's motion for an in camera inspection of the victim's mental health records. *State v. Worthen*, 177 P.3d 664 (Utah Ct. App. 2008). This case has been appealed to the Supreme Court, and the clinic has filed an amicus brief.

Another Court of Appeals case that year involved the victims' right to restitution. The court affirmed that trial courts have broad discretion when ordering restitution. *State v. Hight*, 182 P. 3d 922 (Utah Ct. App. 2008).

ARIZONA

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of Change	Link to Clinic
General Victims' Rights			
2005	Ariz. Rev. Stat. § 8-382 (juvenile cases) Ariz. Rev. Stat. § 13-4401 (adult criminal cases)	Re. rights of victims of juvenile defendants, and adult defendants, replaced term "immediate family" relating to a victim who is killed or incapacitated with "spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree"	No clinic involvement indicated.
2005	Ariz. Rev. Stat. § 8-383.01 (juvenile cases) Ariz. Rev. Stat. § 13-4402.01 (adult criminal cases)	New law provides that, if a criminal offense against a victim has been charged but the prosecution on the count or counts involving the victim is dismissed as the result of a plea agreement in which the juvenile or defendant pleads to other charges, the victim of the dismissed counts may, upon request, exercise all the applicable rights of a crime victim throughout the criminal justice process as though the count or counts involving the person had not been dismissed. The prosecutor shall notify the probation department if the victim requests to exercise his or her rights. For each victim who is involved in the dismissed counts and who requested the victim's rights, the prosecutor shall forward to the probation department information within his or her possession that would enable the probation department to carry out its duties relating to victims' rights.	The clinic's founder drafted the legislation.
2003	Ariz. Rev. Stat. § 8-385.01	Amendment added graffiti and discharging a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, to the list of offenses for which a neighborhood association may request to receive notice or invoke its rights.	No clinic involvement indicated.
Right to be Informed			
2005	Ariz. Rev. Stat.	Amendment clarified the requirement that the court notify the victim of the	No clinic involvement

Year	Citation	Substance of Change	Link to Clinic
	§ 8-344	dispositional hearing to include notification of the estate of a deceased victim.	indicated.
2005	Ariz. Rev. Stat. § 8-390	Amendment provided prosecutor must also notify victim of juvenile that a predisposition or disposition proceeding may occur immediately following adjudication.	No clinic involvement indicated.
2005	Ariz. Rev. Stat. § 8-396 (juvenile cases) Ariz. Rev. Stat. § 13-4415 (adult criminal cases)	Amendment to juvenile and adult criminal provisions added the requirement that a victim who requests notification must provide an address or other contact information. The amendment also required the court to notify such victims of any hearing on a proposed modification of the terms of probation. In addition, the probation department will notify a victim who has requested notification and provided current contact information of: any proposed modification to any term of probation if the modification affected the status of restitution or incarceration or the delinquent's contact with or the safety of the victim; the right to be heard at a hearing to consider modification of the terms of probation; any violation of the terms of probation resulting in the filing of a petition to revoke probation; that a petition to revoke probation alleging that the juvenile absconded from probation has been filed with the court; and any conduct by the juvenile that raises a substantial concern for the victim's safety.	The expansion of the right to be informed of any modification at probation was spurred by the clinic's identification of the problem.
2005	Ariz. Rev. Stat. § 8-421	New law requires juvenile court judge to make a statement concerning the victims' constitutional rights at the time each victim first appears in that court.	No clinic involvement indicated.
2005	Ariz. Rev. Stat. § 13-4438	Amendment made slight changes to the court's daily statement advising victims of their rights, clarifying the right to speedy trial.	The clinic's founder drafted the amendment to this statute.
2007	Ariz. Rev. Stat. § 13-923	Re. victim of juvenile sex offender: New law requires notification of any victim or victim's of any probation review hearing of a juvenile sex offender.	The clinic's founder was involved in this legislation.
2007	Ariz. Rev. Stat. § 13-4405	Amendment added an item to the informational form that law enforcement agencies are to provide to victims: that victims are to be informed that the victim or the immediate family member of the victim, if the victim is killed or incapacitated, has the right to receive one copy of the police report from the investigating law enforcement agency at no charge.	The clinic's identification of a problem that could be cured by legislation was instrumental in the development of this legislation.

Year	Citation	Substance of Change	Link to Clinic
2007	Ariz. Rev. Stat. § 13-4409	Amendment clarified that the prosecutor's notice to victims of scheduled proceedings and any changes in that schedule includes notice of any continuances.	The clinic's founder advocated for this legislation.
2007	Ariz. Rev. Stat. § 13-4411	Amendment added a time reference to when a prosecutor's office must notify a victim who has requested post-conviction notice of any post-conviction or appellate proceedings and any decisions arising out of those proceedings. Now that notice must be given "immediately". In addition, beginning December 1, 2007, the supreme court or court of appeals shall send a victim who requests post-conviction notice a copy of the memorandum decision or opinion from the issuing court concurrently with the parties. If the victim is represented by counsel, the notice shall be provided to the victim's counsel.	The clinic's founder initiated this legislation..
2008	Ariz. Rev. Stat. § 13-4440	New law relates to proceeding in which a person's factual innocence is being considered pursuant to Ariz. Rev. Stat. §12-771. The prosecuting agency shall provide written notice to the victim of the date, time, and location of the hearing and of the victim's right to be present and heard at the hearing. If the court makes a determination of factual innocence, the prosecuting agency shall provide the victim with a copy of the court order within fifteen days after the order is entered.	The clinic's founder initiated this legislation.
2007	Ariz. Rev. Stat. § 31-281	Amendment also added a requirement that a drug offender may be released into a transition program only after the victim has been provided notice and an opportunity to be heard. The department of corrections shall provide notice to a victim who has provided a current address or other contact information. The notice shall inform the victim of the opportunity to be heard on the early release.	No clinic involvement indicated.
2006 2007	Ariz. Rev. Stat. § 39-127	New law enacted in 2006 gave the victim of a criminal offense that is a part I crime under the statewide uniform crime reporting program or an immediate family member of the victim, if the victim is killed or incapacitated, the right to receive one copy of the police report from the investigating law enforcement agency at no charge. 2007 amendment added language requiring the court or the clerk of the court	The need for this legislation became apparent in a clinic case, where the clinic needed a copy of the police report as part of its representation of the

Year	Citation	Substance of Change	Link to Clinic
		to provide, upon request and at no charge, the minute entry or portion of the record of any proceeding in the case that arises out of the offense committed against the victim and that is reasonably necessary for the purpose of pursuing a claimed victim's right.	victim.
2005	Ariz. R. Crim. P. 27.2	New rule relating to intercounty transfers of offenders requires the court in the sending county to notify victims of the proposed transfer.	No clinic involvement indicated.
2007	Ariz. R. Crim. P. 27.12	Amendment requires the court to provide at least 7 calendar days' notice of a probation review hearing date to the prosecutor in any case involving a victim. This amendment helps facilitate the prosecutor's obligation to notify the victim or the victim's attorney of the right to be present and heard that was previously required in this rule.	No clinic involvement indicated.
2006	Ariz. R. Crim. P. 31.27 Ariz. R. Crim. P. 32.10	Amendments added provisions for notifying the victim when a party is seeking an extension of time to file a brief in a capital case.	The clinic's identification of a problem that could be cured by court rule was instrumental in the development of these amendments.
2008	A.A.C. § R9-6-1104	New administrative code provision relating to court-ordered STD testing provides for informing the victim of the test results. The Department shall provide the victim a description of the results of the test to detect the sexually-transmitted disease, a written copy of the test results, and other information. The Department may choose to instead provide to the local health agency in whose designated service area the victim is living the victim's name and address, a written copy of the results of the test to detect the sexually-transmitted disease, and notice that the Department did not provide notification as specified. If a local health agency is notified by the Department, the agency shall provide the victim with the required information. If the local health agency is unable to locate the victim, it shall notify the Department.	No clinic involvement indicated.
Right to Attend			
2005	Ariz. R. Crim. P. 27.11	Amendment added transfers of probation jurisdiction (intercounty transfers) to the list of proceedings at which the victim is afforded the opportunity to be	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		present and heard.	
Right to be Heard			
2006	Ariz. Rev. Stat. § 12-601	Amendment sets out the criteria to be considered by the court when determining whether to order that a person’s name be voluntarily changed. The amendment also gives a victim or a prosecutor standing to contest any legal name change at any time before the entry of judgment or up to one year after entry of judgment.	No clinic involvement indicated.
2008	Ariz. Rev. Stat. § 13-701	The court in imposing a sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.	The need for this legislation came to light during the case of State v. Glassel. The clinic founder had consulted with the AG’s office on victim issues in that case.
2008	Ariz. Rev. Stat. § 13-703	New law set out sentencing procedures for repetitive offenders. The court in imposing a sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.	The need for this legislation came to light during the case of State v. Glassel. The clinic founder had consulted with the AG’s office on victim issues in that case.
2003	Ariz. Rev. Stat. § 13-703.01	<p>Amendment rewrote the subsection relating to the victim’s right to be heard at sentencing in a death penalty case as follows:</p> <p>“Subject to the provisions of section 13-703, subsection B, a victim has the right to be present at the aggravation phase and to present any information that is relevant to the proceeding. A victim has the right to be present at the penalty phase. At the penalty phase, the victim has the right to be heard pursuant to section 13-4426.”</p> <p>The text of this section as amended does not become effective unless on or before June 30, 2013, the Arizona supreme court or U.S. supreme court rules that it is constitutional for a crime victim in a capital case to make a</p>	The clinic’s identification of a problem that could be cured by legislation was instrumental in the development of this legislation.

Year	Citation	Substance of Change	Link to Clinic
		sentencing recommendation. As of August 1, 2008, this contingency had not been met.	
2007	Ariz. Rev. Stat. § 13-923	New law relates to probation review hearing of a juvenile sex offender. At the hearing, after hearing from those present, including the prosecutor, the probationer's attorney, the victim or victim's attorney, and the probation officer supervising the case, the court shall consider: whether to continue, modify or terminate probation; whether to continue to require, to suspend or to terminate the probationer's sex offender registration; and whether to continue, defer or terminate community notification. The court may hold a prehearing involving the persons listed above to discuss and advise the court.	No clinic involvement indicated.
2005	Ariz. Rev. Stat. § 13-4042	New law gave a victim who files a notice of appearance the right to respond to a request for an extension of time to file a brief in any capital case appellate proceeding within ten days after the filing of the request. On the filing of a notice of appearance, the victim shall serve a copy on the state and the defendant. The victim may exercise the right to respond through the state. The party requesting the extension shall notify the victim in a manner prescribed by the court. This section does not provide any party or the victim with a right to oral argument.	The clinic's identification of a problem that could be cured by legislation was instrumental in the development of this legislation.
2005	Ariz. Rev. Stat. § 13-4234.01	New law gave a victim who files a notice of appearance the right to respond to a request for an extension of time to file a brief in any post-conviction relief proceeding in a capital case within ten days after the filing of the request. On the filing of a notice of appearance, the victim shall serve a copy on the state and the defendant. The victim may exercise the right to respond through the state. The party requesting the extension shall provide notice of the request to the victim in a manner prescribed by the court. This section does not provide any party or the victim with a right to oral argument.	The clinic founder drafted this legislation.
2003	Ariz. Rev. Stat. § 13-4426	Amendment which repealed the previous version of this statute and replaced it with the following is contingent upon a ruling by the supreme court allowing crime victims to make sentencing recommendations prior to July 1, 2013. "Notwithstanding any other law or rule, as an exercise of the victim's	The need for this legislation was identified in the case of Lynn v. Reinstein, in which the homicide survivor was represented by the clinic

Year	Citation	Substance of Change	Link to Clinic
		<p>constitutional right to be heard at sentencing, before the imposition of sentence the victim in any case may address the sentencing authority and present any information or opinions that concern the victim or the victim's family, including the impact of the crime on the victim, the harm caused by the crime, the criminal offense, the defendant, the need for restitution or the sentence to be imposed at every sentencing or disposition proceeding.”</p> <p>This version does not become effective unless, on or before June 30, 2013 the Arizona supreme court or the supreme court of the United States rules that it is constitutional for a crime victim in a capital case to make a sentencing recommendation. As of September 10, 2008, the contingency had not been met.</p> <p>The text of this section as amended by Laws 1996, Ch. 158 and contingently repealed pursuant to Laws 2003, Ch. 225, §§ 5 and 8 follows:</p> <p>“A. The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding.</p> <p>B. At any disposition proceeding the victim has the right to be present and to address the court.”</p>	founder.
2003	Ariz. Rev. Stat. § 13-4426.01	New law. “In any proceeding in which the victim has the right to be heard pursuant to article II, section 2.1, Constitution of Arizona, or this chapter, the victim's right to be heard is exercised not as a witness, the victim’s statement is not subject to disclosure to the state or the defendant or submission to the court, and the victim is not subject to cross-examination. The state and the defense shall be afforded the opportunity to explain, support or deny the victim’s statement.”	The need for this legislation was identified in the case of Lynn v. Reinstein, in which the homicide survivor was represented by the clinic founder.
2007	Ariz. Rev. Stat. § 13-4435	Amendment provided that the court shall consider the victim’s views and the victim’s right to a speedy trial before ruling on a motion for a continuance.	The clinic founder was involved in this legislation. The clinic had

Year	Citation	Substance of Change	Link to Clinic
			identified the need for this legislation.
2007	Ariz. Rev. Stat. § 31-281	Amendment added a requirement that a drug offender may be released into a transition program only after the victim has been provided notice and an opportunity to be heard. Any objection to the inmate's early release must be made within twenty days after the department has mailed the notice to the victim.	No clinic involvement indicated.
2005	Ariz. R. Crim. P. 4.2	Amendment made it mandatory for a magistrate to permit the victim to comment, orally or in writing, on the issue of the suspect's release at the suspect's initial appearance. The magistrate shall consider comments offered by the victim concerning the conditions of release. Previously, the victim's right to be heard was at the discretion of the magistrate in written form only.	No clinic involvement indicated.
2008	Ariz. R. Crim. P. 15.1	Amendment increased the extension of time by which the prosecutor must notify the defendant of his or her intention to seek the death penalty, and requires the prosecutor to confer with the victim prior to agreeing to an extension if the victim has requested notice.	No clinic involvement indicated.
2003	Ariz. R. Crim. P. 15.7	Amendment requires the court to take into account the impact of the sanction on the victim when imposing sanctions for non-disclosure of pretrial information required to be disclosed by the state or defendant.	No clinic involvement indicated.
2005	Ariz. R. Crim. P. 27.2	New rule relating to intercounty transfers of offenders requires the court in the sending county to give the victim notice of the proposed transfer and to hold a hearing, if requested.	No clinic involvement indicated.
2005	Ariz. R. Crim. P. 27.11	Amendment added transfers of probation jurisdiction (intercounty transfers) to the list of proceedings at which the victim is afforded the opportunity to be present and heard.	No clinic involvement indicated.
Right to Speedy Trial			
2007	Ariz. Rev. Stat. § 13-4435	Amendment expanded a victim's right to a speedy trial to cover continuances in the case. The prosecutor is required to make reasonable efforts to notify a victim of any request for a continuance, except that if the victim is represented by counsel who has filed a notice of appearance, the court, if the request for a continuance is in writing, shall make reasonable efforts to notify the victim's counsel in the same manner in which a party is notified. A	The clinic's identification of a problem that could be cured by legislation was instrumental in the development of this legislation.

Year	Citation	Substance of Change	Link to Clinic
		<p>motion to continue shall be in writing unless the court makes a finding on the record that exigent circumstances exist to permit an oral motion. A court may grant a continuance only if extraordinary circumstances exist and the delay is indispensable to the interests of justice, and may be granted only for the time necessary to serve the interests of justice. The provisions relating to continuances do not apply to justice of the peace and municipal courts. The court shall consider the victim's views and the victim's right to a speedy trial before ruling on a motion for a continuance.</p>	
Right to Protection			
2006	<p>Ariz. Rev. Stat. § 12-716</p>	<p>New law sets out presumptions that apply to a civil liability action or claim for injuries sustained while the plaintiff is attempting to commit, committing, or fleeing after having committed or attempted to commit a felony criminal act. A victim or peace officer is presumed to be acting reasonably if he or she threatens to use or uses physical force or deadly physical force to either protect himself against another person's use or attempted use of physical force or deadly physical force or to effect an arrest or prevent or assist in preventing a plaintiff's escape.</p>	<p>No clinic involvement indicated.</p>
2006	<p>Ariz. Rev. Stat. § 8-412 (juvenile cases) Ariz. Rev. Stat. § 13-4433 (adult criminal cases)</p>	<p>Amendments re. victims of juveniles and victims of adult offenders made these sections, which give victims the right to refuse an interview conducted by the juvenile offender or the juvenile's attorney or agent, applicable to the parent or legal guardian of a minor child who exercises victims' rights on behalf of the minor child.</p>	<p>No clinic involvement indicated.</p>
2005	<p>Ariz. Rev. Stat. § 8-418</p>	<p>Amendment increased the amount of the fee that the court or juvenile probation officer can assess a juvenile offender's parent from \$15 to \$25. The amendment also added an exception from assessing the fee if the parent or a sibling of the juvenile is the victim. A definition for the term "Victim" was also added and "includes persons, corporations, partnerships, businesses, associations and other legal entities."</p>	<p>No clinic involvement indicated.</p>
2005	<p>Ariz. Rev. Stat.</p>	<p>Amendment added victims of domestic violence or stalking and persons</p>	<p>No clinic involvement</p>

Year	Citation	Substance of Change	Link to Clinic
2007	§ 11-483	<p>protected under an order of protection or injunction against harassment to the list of those who may request that the general public be prohibited from accessing the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder. They may request that the recorder also prohibit access to that person’s residential address and telephone number contained in instruments or writings recorded by the county recorder and made available on the internet. This action may be requested by filing an affidavit on an approved application form containing specified information. The amendment provides that an eligible person must include documentation supporting the person’s claim that he or she is a victim of domestic violence or stalking, such as findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records. If the victim is also requesting pursuant to Ariz. Rev. Stat. § 11-484 that the general public be prohibited from accessing records maintained by the county assessor and county treasurer, he or she may combine the two requests and file one application which will meet the requirements of both statutes. To include subsequent recordings in the court order, the applicant may present to the county recorder at the time of recordation a certified copy of the court order. The recorder shall ensure that public access shall be restricted. Definitions for the terms “Domestic violence” and “Stalking” are provided.</p> <p>2007 amendment changed the documentation requirements for victims of domestic violence and stalking who are protected under an order of protection or an injunction against harassment. Such victims may submit the order or injunction to support their claim. The amendment also added a definition for the term “Eligible person” which includes victims of domestic violence and stalking.</p>	indicated.
2005 2007	Ariz. Rev. Stat. § 11-484	Amendment added victims of domestic violence or stalking and persons protected under an order of protection or injunction against harassment to the list of those who may request that the general public be prohibited from accessing that person's residential address and telephone number that are	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		<p>contained in instruments, writings and information maintained by the county assessor and the county treasurer. This action may be requested by filing an affidavit on an approved application form containing specified information. The amendment provides that an eligible person must include documentation supporting the person's claim that he or she is a victim of domestic violence or stalking, such as findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records. If the victim is also requesting pursuant to Ariz. Rev. Stat. § 11-483 that the general public be prohibited from accessing records maintained by the county recorder, he or she may combine the two requests and file one application which will meet the requirements of both statutes. Definitions for the terms "Domestic violence" and "Stalking" are provided.</p> <p>2007 amendment changed the documentation requirements for victims of domestic violence and stalking who are protected under an order of protection or an injunction against harassment. Such victims may submit the order or injunction to support their claim. The amendment also added a definition for the term "Eligible person" which includes victims of domestic violence and stalking.</p>	
2006	Ariz. Rev. Stat. § 13-101.01	<p>New law stated additional purposes of criminal law as follows: "In order to preserve and protect the rights of crime victims to justice and the right of the people to safety, it is a fundamental purpose of the criminal law to identify and remove from society persons whose conduct continues to threaten public safety through the commission of violent or aggravated felonies after having been convicted twice previously of violent or aggravated felony offenses."</p>	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 13-4202	Amendment extended Arizona's notoriety for profit law to include juvenile offenders and made stylistic and technical changes.	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 13-4439	Amendment expands employment protection for victims by requiring employers with more than 50 employees to allow a victim to leave work to seek an order of protection, an injunction against harassment, or any other	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child.	
2003 2005 2007 2008	Ariz. Rev. Stat. § 16-153	<p>2003 amendment provided examples of documentation that domestic violence victims can submit in order to support a request that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record. Such documentation includes, findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records.</p> <p>2005 amendment added stalking victims.</p> <p>2007 amendment changed the documentation requirements for victims of domestic violence and stalking who are protected under an order of protection or an injunction against harassment. Such victims may submit the order or injunction to support their claim.</p> <p>2008 amendment deleted the reference to victims of domestic violence and stalking from the definition of "Eligible person" for the purpose of requesting that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record since those victims would already be covered under the term "person who is protected under an order of protection or injunction against harassment" which is already included in the definition and deleted definitions for the terms "Domestic violence" and "Stalking".</p>	The clinic attorney helped draft this legislation based on the experience of a past victim client.
Right to Privacy			
2005	Ariz. Rev. Stat. § 11-483	Amendment added victims of domestic violence or stalking and persons protected under an order of protection or injunction against harassment to the list of those who may request that the general public be prohibited from accessing the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder. They may request that the recorder also prohibit access to that person's residential address and	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		<p>telephone number contained in instruments or writings recorded by the county recorder and made available on the internet. This action may be requested by filing an affidavit on an approved application form containing specified information. The amendment provides that an eligible person must include documentation supporting the person's claim that he or she is a victim of domestic violence or stalking, such as findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records. If the victim is also requesting pursuant to Ariz. Rev. Stat. § 11-484 that the general public be prohibited from accessing records maintained by the county assessor and county treasurer, he or she may combine the two requests and file one application which will meet the requirements of both statutes. To include subsequent recordings in the court order, the applicant may present to the county recorder at the time of recordation a certified copy of the court order. The recorder shall ensure that public access shall be restricted.</p>	
2005	Ariz. Rev. Stat. § 11-484	<p>Amendment added victims of domestic violence or stalking and persons protected under an order of protection or injunction against harassment to the list of those who may request that the general public be prohibited from accessing that person's residential address and telephone number that are contained in instruments, writings and information maintained by the county assessor and the county treasurer. This action may be requested by filing an affidavit on an approved application form containing specified information. The amendment provides that an eligible person must include documentation supporting the person's claim that he or she is a victim of domestic violence or stalking, such as findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records. If the victim is also requesting pursuant to Ariz. Rev. Stat. § 11-483 that the general public be prohibited from accessing records maintained by the county recorder, he or she may combine the two requests and file one application which will meet the requirements of both statutes.</p>	No clinic involvement indicated.
2006	Ariz. Rev. Stat.	Amendment prohibited the use of blank subpoenas to procure discovery in a	The clinic's identification

Year	Citation	Substance of Change	Link to Clinic
	§ 13-4071	criminal case, including to access the records of a victim. Records relating to recovered memories or disassociated memories may be subject to subpoena only if the state seeks to introduce evidence of the victim's recovered or disassociated memory, the records are not otherwise privileged, and the court approves the subpoena after a hearing. The victim shall be given notice of and the right to be heard at any proceeding involving a subpoena for records of the victim from a third party.	of a problem that could be cured by legislation was instrumental in the development of this legislation. The clinic was aware of defense counsel using these subpoenas to obtain sensitive information about victims, and brought the problem to the attention of the clinic founder for his legislative advocacy agenda.
2007	Ariz. Rev. Stat. § 13-4434	Amendment added a provision to the victim's right to privacy protecting a victim's contact and identifying information in publicly accessible records pertaining to the case. A victim's contact and identifying information that is obtained, compiled or reported by a law enforcement agency shall be redacted by the originating agency in publicly accessible records that relate to the criminal case involving the victim. This does not apply to the victim's name; any records that are transmitted between law enforcement and prosecution agencies or a court; any records if the victim has consented to the release of the information; and the address or location at which the reported crime occurred.	The clinic's founder was involved in this legislation.
2003 2005 2008	Ariz. Rev. Stat. § 16-153	2003 amendment provided examples of documentation that domestic violence victims can submit in order to support a request that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record. Such documentation includes, findings from a court of competent jurisdiction, police reports, medical records, child protective services records, domestic violence shelter records, and school records.	The clinic was involved in this legislation.

Year	Citation	Substance of Change	Link to Clinic
		<p>2005 amendment added victims of stalking to those who may request that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record.</p> <p>2008 amendment deleted the reference to victims of domestic violence and stalking from the definition of “Eligible person” for the purpose of requesting that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record since those victims would already be covered under the term “person who is protected under an order of protection or injunction against harassment” which is already included in the definition.</p>	
2006	Ariz. Rev. Stat. §§ 28-455—458	New law enacted in 2006 presented Arizona’s version of the federal “Drivers’ Privacy Protection Act” prohibiting the release of personal information contained in Department of Transportation records except under certain circumstances. A person who knowingly obtains or discloses personal information or highly restricted personal information contained in these records except as provided by law is guilty of a class 1 misdemeanor and may be civilly liable.	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 39-123	Amendment added a definition of the term “Eligible person” which includes a person who is protected under an order of protection or injunction against harassment and a victim of domestic violence or stalking who is protected under an order of protection or an injunction against harassment. An eligible person is protected from disclosure from a personnel file by a law enforcement agency or employing state or local governmental entity of his or her home address or home telephone number, unless he or she consents or certain exceptions apply.	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 39-124	Amendment added a definition of the term “Eligible person” which includes a person who is protected under an order of protection or injunction against harassment and a victim of domestic violence or stalking who is protected under an order of protection or an injunction against harassment. Any person who is employed by a state or local government entity and who, in violation	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		of Ariz. Rev. Stat. § 39-123, knowingly releases the home address or home telephone number of an eligible person is guilty of a class 6 felony.	
Right to Restitution			
2005	Ariz. Rev. Stat. § 8-344	Amendment provided that a court could consider a verified statement from the estate of the deceased victim concerning damages for lost wages, reasonable damages for injury to or loss of property and actual expenses of medical treatment for personal injury, excluding pain and suffering. The amendment also deleted the 180 day limit on the length of time the juvenile court retains jurisdiction over a case after a juvenile reaches the age of 18 for the purpose of modifying the manner in which court ordered payments are to be made. The amendment also required that a copy of the order shall be sent to each person who is entitled to restitution. The amendment also provided that a juvenile restitution order does not expire until paid in full. A juvenile restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the juvenile.	No clinic involvement indicated.
2005	Ariz. Rev. Stat. § 13-805	Amendment provided for the collection of interest accruing on a criminal restitution order in the same manner as any civil judgment.	A clinic case brought to light the need for this legislation.
2007	Ariz. Rev. Stat. § 13-810	Amendment separated the consequences of nonpayment of restitution from the consequences of nonpayment of fines, fees, and incarceration costs. The new provision requires the clerk to notify the prosecutor and the sentencing court on a monthly basis when an offender defaults in the payment of restitution or of any installment as ordered. Previously, the statute required notification but did not specify how often or when the notification was to be given. The new law deleted the requirement that the clerk also notify the person entitled to restitution of the default; however, a person entitled to restitution retained the right to petition the court to require the defendant to show cause why the default should not be treated as contempt. The amendment also clarified that this is in addition to any other remedy provided by law, including a writ of execution or other civil enforcement.	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 13-902	Amendment increased the number of years for which the court can extend the period of probation from 3 to 5 years for a felony and from 1 to 2 years for a	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		misdemeanor when the court has required, as a condition of probation, that the defendant make restitution and that condition has not been satisfied. The court may do so at any time before the termination or expiration of probation.	
2005	Ariz. Rev. Stat. § 13-1309	New law requires the court to order restitution for the crimes of unlawfully obtaining labor or services, sex trafficking, and trafficking of persons for forced labor or services, including the greater of either the gross income or value to the defendant of the victim's labor or services or the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938.	No clinic involvement indicated.
2006	Ariz. Rev. Stat. § 28-672	Amendment limited restitution in cases where a person is found guilty of causing serious physical injury or death by a moving violation to \$10,000. If the person who suffers serious physical injury appears before the court in which the action is pending at any time before trial and acknowledges receipt of satisfaction for the injury, on payment of the costs incurred, the court shall order that the prosecution be dismissed and the defendant be discharged.	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 31-230	Amendment required the director of the department of corrections to withdraw a minimum of twenty per cent, or the balance owing on the restitution amount, up to a maximum of fifty per cent of the monies available in a prisoner's spendable account each month to pay court ordered restitution.	No clinic involvement indicated.
2003 2007	Ariz. Rev. Stat. § 31-254	2003 amendment added a provision that 30 % of an offender's prison wages is to be used for the payment of court-ordered restitution. 2007 amendment deleted the provision that 30 % of an offender's prison wages is to be used for the payment of court-ordered restitution.	No clinic involvement indicated.
2007	Ariz. Rev. Stat. § 31-261	Amendment required the director of the department of corrections to withdraw a minimum of 20 %, or the balance owing on the restitution amount, up to a maximum of 50 % of the monies available in a prisoner's trust fund or retention account each month to pay court ordered restitution.	No clinic involvement indicated.
2005	Ariz. R. Crim. P. 26.12	Amendment added restitution to the list of monetary obligations of which the court shall notify the prosecutor of the defendant's failure to pay, if the defendant is not on supervised probation. Previously, the rule only mentioned fines in this context. In addition, the amendment gave the court discretion to	No clinic involvement indicated.

Year	Citation	Substance of Change	Link to Clinic
		require the defendant to show cause why he or she should not be held in contempt of court for failure to pay restitution or another monetary obligation. Previously, the requirement was mandatory.	
2005	Ariz. R. Crim. P. 27.2	New rule relates to intercounty transfers of offenders. The Chief Probation Officer may request the court to conduct a review hearing to affirm and/or modify the terms and conditions of supervision to include the payment of restitution. The court in the receiving county shall be responsible for the collection of any financial obligations of the probationer.	No clinic involvement indicated.
Enforcement of Rights			
2005	Ariz. Rev. Stat. § 8-416 (juvenile cases) Ariz. Rev. Stat. § 13-4437 (adult criminal cases)	Amendment gave the victim of a defendant standing to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, article II, section 2.1, Constitution of Arizona, this article or court rules. Previously, the victim only had standing to seek an order or bring a special action mandating that the victim be afforded his or her rights. On the filing of a notice of appearance and if present, counsel for the victim shall be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve a victim's constitutional rights.	The clinic's identification of a problem that could be cured by legislation was instrumental in the development of this legislation.
2006	Ariz. Rev. Stat. § 13-4436	Amendment clarified procedures for the enforcement of victims' rights. The failure to comply with a victim's constitutional or statutory right is grounds for the victim to request a reexamination proceeding within ten days of the proceeding at which the victim's right was denied or with leave of the court for good cause shown. After the victim requests a reexamination proceeding and after reasonable notice is given, the court shall afford the victim a reexamination proceeding to consider the issues. The court shall reconsider any decision that arises from a proceeding in which the victim's right was not protected and shall ensure that the victim's rights are thereafter protected; however, the failure to use reasonable efforts to perform a duty or provide a right is not cause to seek to set aside a conviction after trial nor does it provide grounds for a new trial. A victim who was given notice of a plea or sentencing proceeding may make a motion to reopen a plea or sentence only	The clinic's identification of a problem that could be cured by legislation was instrumental in the development of this legislation.

Year	Citation	Substance of Change	Link to Clinic
		<p>if: the victim was not voluntarily absent from the proceeding; the victim has asserted the right to be heard before or during the proceeding at issue, and the right to be heard was denied; and, in the case of a plea, the accused has not pled to the highest offense charged. The victim's right to restitution is not affected because the victim may seek to enforce his or her right to restitution at any time.</p> <p>Victims retain the enforcement rights that they had under the law as it was previously written.</p>	
2007	Ariz. Rev. Stat. § 33-1361	Amendment provides that a tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or with Ariz. Rev. Stat. § 33-1318 which relates to termination of a rental agreement by a victim of domestic violence.	No clinic involvement indicated.

Arizona Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Definition of Victim				
2007	State ex rel. Thomas v. Klein, 150 P.3d 778 (Ct. App. 2007).	The defendant was originally charged with aggravated assault for knowingly touching a fifteen-year-old victim “with the intent to injure, insult or provoke her.” This Class 6 felony was subsequently changed to a Class 1 misdemeanor by court motion. The defendant then filed a discovery motion to depose the victim, arguing that “he had not committed a ‘criminal offense’ for the purposes of the Victims’ Rights Implementation Act” and, therefore, the victim could not refuse to be deposed on the basis of this statute. The trial court approved the motion and the State appealed. The court of appeals found that under the amended definitions section, section 13-4401, the Victims’ Bill of Rights protection would not apply to the victim because the case was a misdemeanor. However, the court of appeals held that because the amended definition “denies victim status to a category of people not excluded by the Victims’ Bill of Rights—those who have had a misdemeanor committed against them that did not involve physical injury, the threat of physical injury, or a sexual offense,” and because the Legislature does not have the authority to restrict rights created by the people through constitutional amendment, the amended definition unconstitutionally limited the categories of victims protected by the Victims’ Bill of Rights. The order was vacated and the case was remanded for proceedings consistent with this opinion.	Expands amended definition of “victim” to categories of victims previously unconstitutionally unprotected by the Victims’ Bill of Rights.	The clinic’s founder consulted with the country attorney on victim issues in this case on a voluntary basis.
Right to Attend				
2008	Patterson v. Mahoney, 199 P.3d 708 (Ariz. Ct. App. 2008)	The issue in this special action is whether the trial court erred when it ruled that the siblings of the decedent in a murder trial were not victims exempt from Arizona’s rule governing the exclusion of witnesses. The petitioners are sisters of a homicide victim who were called as witnesses in the trial of their sister’s alleged murderer, invoking the rule excluding witnesses. The trial court, the State, and the defendant agreed that only	Supports the expanded statutory definition of victim, extending the right to attend	Clinic was approached but could not take the case due to a conflict of interest;

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>the victim’s parents and children were exempt from the rule. The petitioners moved for reconsideration of the trial court’s order excluding them from the court room during the trial. The trial judge denied their motion and excluded the petitioners from the courtroom. The petitioners filed a petition for special action with the Arizona Court of Appeals and requested a stay, of trial, arguing that they have a right to be present under the Victims’ Bill of Rights. The Court of Appeals accepted the petition, which presents an issue of first impression, because, as non-parties, the petitioners “do not have a plain, adequate, or speedy remedy by appeal.” Under Arizona’s constitutional victims’ bill of rights, a victim is “a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse, parent, child or other lawful representative.” The amendment gives those defined as victims the right to be present at all criminal proceedings at which the defendant has that right, and authorizes the Arizona legislature to enact substantive and procedure laws implementing and protecting victims’ rights. Pursuant to this authority, the legislature enacted Ariz. Rev. Stat. §§ 13-1401—4439, establishing Arizona’s statutory victims’ rights. In 2005, the statutory definition of victim found in Ariz. Rev. Stat. § 13-1401 was amended, removing the term “immediate family” and replacing it with a list of relations, including siblings. The Arizona Supreme Court has also addressed victims’ rights in its criminal procedure rules. Rule 9.3 exempts victims, as defined in Rule 39, from the rule excluding witnesses. Rule 39(a) defines a victim as more similarly to the definition used in the victims’ rights constitutional amendment. Neither rule has been amended to reflect the Legislature’s 2005 changes to the statutory definition of victim. When a rule and statute conflict, the rule governs if the matter concerns a procedural right, and the statute governs if the matter concerns a substantive right. Here, the conflict is not a matter of enforcing rights, but defining who is entitled to those rights. Therefore, the matter at issue is substantive and the statute</p>	<p>to victims, even where court rule definition conflicts.</p>	<p>referred the case to one of their pro bono attorneys.</p> <p>The clinic’s founder consulted with the prosecutor on a voluntary basis.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		controls. Because the statute includes siblings in its definition of victim, the statutory definition must be used when applying the Rules of Criminal Procedure. The petitioners are victims, and therefore, as siblings, are exempt from Rule 39(a) concerning the exclusion of witnesses and have a constitutional right to be present at the trial and all other criminal proceedings relating to their sister's death.		
Right to be Heard				
2008	State v. Armstrong, 189 P.3d 378 (Ariz. 2008)	The defendant was convicted of murdering, and conspiring to murder, his sister and her fiancé, and the jury determined that he should receive death sentences for both murders. As a result, the case was automatically appealed to the Arizona Supreme Court. The defendant raised nine issues on appeal, including that the admission of one of the victim's mother's impact statement violated his Eighth Amendment rights and caused reversible error. The defendant contended that the subsection of Arizona's death penalty statute relating to victim impact statements is unconstitutional because victim impact statements are irrelevant to jury considerations and that it breaches the Supreme Court's rulemaking authority. The Supreme Court disagreed on the basis that these statements are relevant to the issue of harm caused by the defendant, and that the Arizona constitution grants a limited authority to the legislature to make rules defining, implementing, preserving, and protecting the specific rights unique to crime victims, including the right to be heard at any proceeding involving sentencing. The legislature exercised legitimate constitutional power to establish the right to be heard within Arizona's death penalty statute, Ariz. Rev. Stat. § 13-703.01(R). The defendant also argued that the timing and content of the victim impact statement made the statement unduly prejudicial. The victim presented her statement after the State offered mitigation rebuttal evidence and before the defendant spoke on his own behalf. The defendant claimed that this placement of the victim's impact statement negated his mitigation evidence and diminished the effect of his own statement. The	Supports the position that victims' impact statements are generally relevant to rebut mitigation evidence and that the admission of such statements after mitigation evidence has been introduced is not unduly prejudicial.	The clinic's founcer consulted with the prosecutor on a voluntary basis.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>Supreme Court has rejected these arguments, holding that victims' impact statements are generally relevant to rebut mitigation evidence and that the admission of such statements after mitigation evidence has been introduced is not unduly prejudicial. The defendant argued that some of the victim's comments regarding personal tragedies in her life were inappropriate and prejudicial because their only purpose was to create compassion for her and did not related to the impact of her son's death. While the Supreme Court acknowledged that some of the statement might have properly been excluded by the trial court, the statement was no so unduly prejudicial as to render the trial fundamentally unfair. The defendant's sentences are affirmed.</p>		
2008	<p>State v. Bocharski, 189 P.3d 403 (Ariz. 2008)</p>	<p>The defendant was found guilty of first-degree felony murder and burglary and sentenced to death. The Arizona Supreme Court affirmed the convictions, but reversed the death sentence and remanded the case for resentencing. A new jury determined that the State had established the existence of two aggravating factors and that the mitigation evidence was not substantial enough to deem the imposition of the death penalty as inappropriate. The death penalty sentence was automatically appealed to the Arizona Supreme Court. The defendant contended that the lower court erred when it allowed the jury to hear victim impact evidence during the penalty phase of a death case in violation of the Eighth Amendment because it introduced irrelevant emotion into the jury's consideration of mitigation evidence. Generally, statements regarding impact on family members and information about the murdered person are relevant to the issue of the harm caused by the defendant; however, victim impact evidence cannot be "so unduly prejudicial that it renders the trial fundamentally unfair." The Supreme Court found that the victim impact statements in this case focused on the impact of the crime on the victim's family and were not unduly prejudicial.</p>	<p>Supports that victim impact evidence offered in a death penalty case that focus on the impact of the crime on the victim's family is not unduly prejudicial.</p>	<p>The clinic's founder consulted with the prosecutor on a voluntary basis.</p>
2008	<p>State v. Martinez,</p>	<p>The defendant was convicted of premeditated first degree murder, felony murder, and kidnapping. The jury unanimously found evidence of</p>	<p>Confirms the constitutionality</p>	<p>The clinic's founder</p>

Year	Case	Summary	Implications for victims	Clinic involvement
	189 P.3d 348 (Ariz. 2008)	aggravating factors in support of the death penalty. The case was automatically appealed to the Arizona Supreme Court. The defendant raised numerous issues on appeal, including that the victim impact statement by the victim’s birth mother offered to rebut the defendant’s mitigation evidence violated his Sixth Amendment right to confrontation and his due process rights. The victim’s mother testified in her statement that her son has aspired to make something of himself and that he was loved by his family. The defendant challenged the statement on the grounds that it should have been subject to cross-examination, and that it was false and should have been corrected. The Supreme Court concluded that victim impact evidence is not put on by the state, that placing the victim’s mother under oath was unnecessary, and that cross-examination is not permitted. The victim’s right to be heard is exercised not as a witness and her opinions were her own. The defendant’s convictions and sentences are affirmed.	of allowing victim impact statements in rebuttal of mitigation evidence. Affirms that victims presenting impact statements are not subject to cross-examination and do not have to be sworn in.	consulted with the prosecutor on a voluntary basis.
2007	State v. Garza, 163 P.3d 1006 (Ariz. 2007), cert. denied ___ U.S. ___, 128 S. Ct. 890 (2008)	The defendant was convicted of two counts of first degree murder and one count of first degree burglary after murdering two people in their home. The defendant was sentenced to death for one murder and to life without the possibility of parole for the other murder. The case was automatically appealed to the supreme court, where the defendant argued that victim impact statements and victim photographs admitted into evidence were unduly prejudicial: one victim’s mother compared the effect of her daughter’s murder on her family with the effect of the September 11 th terrorist attacks; she and the other victim’s mother each displayed photographs of the victims during their statements. The supreme court held that the statement was not unduly prejudicial because she did not equate the defendant with the 9/11 terrorists, and merely “drew a comparison between an event universally painful for all Americans with the pain she and her family experienced.” The court also held that the photographs depicting the lives of the murder victims supported the descriptions of the victims’ losses. The convictions and	Affirms a victim’s right to be heard and authorizes showing of homicide victim’s photo in life as representative of loss suffered.	The clinic’s founder consulted with the prosecutor on a voluntary basis.

Year	Case	Summary	Implications for victims	Clinic involvement
		sentences were affirmed.		
2007	State v. Tucker, 160 P.3d 177 (Ariz. 2007)	The defendant was convicted of sexual assault, kidnapping, burglary, and three counts of first degree murder after entering an apartment and killing the adults occupying it—his ex-girlfriend and her brother, the brother’s girlfriend, and their infant son. He was sentenced to death for each of the murders and to prison time for the other convictions. On appeal, the defendant argued that victim impact statements were inappropriately admitted and that one of them was unduly prejudicial. The supreme court reviewed for fundamental error and found none because “[e]vidence about the victim and the effect of the crime on the victim’s family is admissible during the penalty phase as rebuttal to the defendant’s mitigation evidence” and because the statement in question, which alludes to the victim’s insecurities, was not unduly prejudicial. The three death sentences were affirmed.	Upheld admissibility of victim impact evidence to rebut mitigation evidence during penalty phase.	The clinic’s founder consulted with the prosecutor on a voluntary basis.
2006	State v. Ellison, 140 P.3d 899 (Ariz. 2006)	The defendant was convicted of two counts of first degree murder and one count of first degree burglary and was sentenced to death for each murder and to a concurrent sentence of twelve and one-half years for the burglary conviction. On automatic appeal to the supreme court, the defendant argued that the victim impact statements admitted by the trial court were irrelevant to aggravation, highly prejudicial, and too emotional in the context of jury sentencing. The supreme court held that victim impact statements were relevant to the issue of the harm caused by the defendant’s actions. It also held that the trial court properly instructed the victim to not make a sentencing recommendation and offered the defense counsel the opportunity to cross-examine her; therefore, the victim impact statements were not highly prejudicial. Finally, the supreme court held the trial court had not erred in allowing the jury to take an in-life photo of the victim to the jury deliberation room because it was “benign” compared to the post-death photos. The convictions and sentences were affirmed.	Affirmed the admission of victim impact statements as relevant to the harm caused and authorized the jury’s review of the homicide victim’s in-life photo.	The clinic represented the victims, assisted with the victim impact statement and the selection of the photos, including consulting with the prosecutor on the appropriateness of the photos.
2006	State v.	The defendant was convicted of two counts of first degree murder and	Affirmed the	The clinic

Year	Case	Summary	Implications for victims	Clinic involvement
	Hampton, 140 P.3d 950 (Ariz. 2006), cert. denied 549 U.S. 1132; 127 S. Ct. 972 (2007)	one count of manslaughter after killing two adults and one fetus. The defendant was then sentenced to death for the two murder convictions and to twelve and one-half years in prison for the manslaughter. On appeal, the defendant argued that the victim impact evidence was unduly prejudicial because one victim’s “statement exceeded the permissible bounds of relevance and [because] she testified to matters explicitly precluded by the judge.” The stricken portion of the mother’s statement included that “these people went through [the victim’s] 401K and stock money.” The court held that her testimony “focus[ed] directly on the impact of the loss of a son and [were] not unduly prejudicial” and that using the phrase “these people” did not violate the judge’s order. The convictions and sentences were affirmed.	admission of victim impact evidence and found evidence not to be unduly prejudicial.	represented the victim.
2006	State v. Roque, 141 P.3d 368 (Ariz. 2006)	The defendant was convicted of first degree murder, attempted first degree murder, reckless endangerment, and three counts of drive-by shooting after shooting at people he believed to be of Arab descent during the week after the September 11 th attacks. He was sentenced to death and aggravated sentences of twelve years each for the attempted first degree murder and drive-by shooting and one and one-quarter years for the reckless endangerment conviction. On automatic appeal to the supreme court, the defendant argued, among other things, that the victim impact statements were irrelevant and inadmissible. The court reviewed for fundamental error and found none. The court held that the defendant’s relevance argument fails because the victim impact evidence offered described how the victims’ families were affected by the victim’s death. The defendant also argued that admission of the victim impact statements was fundamentally unfair in a death penalty case and therefore violated the Arizona constitution; the court found no compelling reason to stray from precedent. The convictions and non-capital sentences were affirmed; the death sentence was reduced to natural life in prison on other grounds.	Upheld the admissibility of victim impact statements in death penalty cases.	The clinic’s founder consulted with the prosecutor on a voluntary basis.
2005	State v.	The defendant was convicted of first-degree murder, attempted first-	Affirmed the	No clinic

Year	Case	Summary	Implications for victims	Clinic involvement
	Carreon, 107 P.3d 900 (2005), cert. denied, 546 U.S. 854, 126 S. Ct. 122 (2005)	degree murder, burglary in the first degree, two counts of endangerment, and misconduct involving weapons. In the aggravation phase of the defendant's trial, the jury found, beyond a reasonable doubt, several applicable statutory aggravators and sentenced the defendant to death on the count of murder in the first degree. An automatic notice of appeal was filed by the court clerk on the defendant's behalf. The defendant argued that the admission of victim impact statements after the introduction of his mitigation evidence unduly prejudiced the jury. The state had offered the testimony of the victim's sisters to rebut the defendant's mitigation evidence. The trial court cautioned the jury not to consider the impact statements as aggravation and not to be influenced by sympathy or prejudice. The Arizona Supreme Court determined that the testimony by the deceased victim's sister about how the deceased's murder had affected his children was proper testimony within the boundaries of Arizona constitutional and statutory law and that it did not render the sentencing procedure fundamentally unfair.	admission of victim impact evidence.	involvement indicated. AG's office represented the victim's position.
2005	State ex rel. Thomas v. Foreman, 118 P.3d 1117 (Ct. App. 2005)	After the defendant was indicted for first-degree murder and sexual assault, the State filed notice that it would request the death penalty and that it may offer victim impact evidence during sentencing aggravation and penalty phases. The defendant unsuccessfully moved to prevent introduction of the victim impact evidence before requesting that the court find section 13-4426.01 unconstitutional. The trial court found that the statute conflicted with the Sixth, Eighth, and Fourteenth Amendments. On appeal, the court of appeals held: 1) the Supreme Court held that the Eighth Amendment does not pose a per se bar to admission of victim impact evidence; 2) since there is no general right to pretrial discovery in a criminal case, the Sixth Amendment does not invalidate section 13-4426.01; and 3) "[b]ecause [the] Defendant did not make any showing that victim impact information existed, or that it would be necessary during the trial or in any sentencing aggravation phase, the court erred in determining [the statute] was unconstitutional." On appeal,	Found that the admission of victim impact evidence is not unconstitutional.	County attorney's office represented the victim's position. The clinic provided technical assistance to the prosecutor.

Year	Case	Summary	Implications for victims	Clinic involvement
		the constitutional issue was not reached because the defendant did not make such a showing. The trial court's decision was vacated and remanded for further proceedings.		
2005	State v. Glassel, 116 P.3d 1193 (Ariz. 2005)	The defendant was convicted of two counts of premeditated first degree murder and thirty counts of attempted first degree murder after he opened fire on a homeowners' association meeting. The trial court imposed two death sentences for the premeditated murders and aggravated concurrent and consecutive sentences for the attempted murder convictions. On automatic appeal to the supreme court, the defendant argued that the statements by one of the victim's two daughters were unduly prejudicial because they injected into the proceedings the emotional baggage connected to other murders when she mentioned the Columbine shootings. The supreme court held that these statements did not unconstitutionally prejudice the jury, nor did the victims' emotions during presentation of their statements. The defendant also argued that the trial court erred in not allowing one victim to recommend a life sentence as opposed to the death penalty. The supreme court held that the Eighth Amendment prohibits a victim from making a sentencing recommendation to the jury in a capital case and are constitutionally irrelevant. The convictions and sentences were affirmed.	Allows victims to exhibit some emotion during presentation of victim impact statement without fear of unconstitutionally prejudicing the jury. Prohibits a victim from making a sentencing recommendation to the jury in a capital case pursuant to supreme court holding.	The clinic represented the victim. The clinic founder consulted with the AG's office on the victim issues in this case.
2003	Lynn v. Reinstein, 68 P.3d 412 (Ariz. 2003)	The defendant, Richard Glassel, opened fire at a homeowners' association meeting, killing petitioner Lynn's wife. During the murder trial, the petitioner asserted a right to tell the jurors that he believed the defendant should be sentenced to life in prison; both the trial court and the court of appeals denied his petition after objection from the State. The supreme court held that the Eight Amendment to the United States Constitution prohibits victims' recommendations to the jury regarding appropriate punishment in a capital case because such statements are "not constitutionally relevant to the harm caused by the defendant's criminal	Prohibits a victim from making a sentencing recommendation to the jury in a capital case pursuant to supreme court holding.	Arizona Voice for Crime Victims, by Steven J. Twist, was one of the attorneys representing the victim.

Year	Case	Summary	Implications for victims	Clinic involvement
		acts or to the defendant’s blameworthiness or culpability.” The trial court’s and court of appeals’ rulings were affirmed.		
Right to Protection				
2008	Douglass v. State, 195 P.3d 189 (Ariz. Ct. App. 2008)	The defendant was charged in justice court with one count of interfering with judicial proceedings after he allegedly violated an order of protection issued on behalf of the victim, his wife at the time. A motion to depose the victim filed by the defendant was granted by the court. The State filed a motion to reconsider, arguing that the victim was entitled to refuse an interview or deposition under the Victims’ Bill of Rights, Ariz. Const. Art. 2, § 2.1(A)(5). The justice court granted the State’s motion, finding that the defendant’s ex-wife was “a victim pursuant to applicable law,” and denying the defendant’s motion to depose her. The defendant sought special action relief from that order in the superior court, which was denied. The defendant appealed, contending that the superior court erred by determining that a person protected by an order of protection qualifies as a victim under the Victims’ Bill of Rights and the Victims’ Rights Implementation Act, Ariz. Rev. Stat. §§ 13-4401 to -4433. The defendant argued that the State, and not his ex-wife, was the victim of his alleged interference with judicial proceedings case, and since she was only a witness to the event, she may not invoke a crime victim’s constitutional right to refuse a pretrial interview. The court of appeals determined that, although the defendant’s ex-wife was not named as a victim in the complaint, the protected party under a domestic-violence order of protection qualifies as a crime victim when the person against whom the order of protection was issued is charged with interference with judicial proceedings by violating the order. Therefore, the victim was entitled to refuse the defendant’s request for an interview and could not be compelled to submit to a deposition pursuant to Ariz. R. Crim. P. 15.3. The order of the superior court was affirmed.	Determines that a person protected by an order of protection that is violated qualifies as a victim for the purpose of exercising victims’ rights.	No clinic involvement indicated.
2007	Lincoln v. Holt, 156	The defendant was indicted on one count of child abuse and a domestic violence offense for allegedly choking or strangling the three year old	Allows a minor victim’s parent or	No clinic involvement

Year	Case	Summary	Implications for victims	Clinic involvement
	P.3d 438 (Ct. App. 2007)	victim. The State listed the victim’s mother (“Mother”) as a witness to testify that the defendant inflicted the injury. When the defendant’s attorney requested an interview with her, she refused citing the Victims’ Bill of Rights and section 13-4433(H). The defendant moved for a court-ordered deposition, but the trial court denied the motion. On appeal, the defendant argued that the statute did not grant the specified parent or legal guardian the right to refuse a pretrial interview of that parent or legal guardian; alternatively, the statute was unconstitutional if it did grant such a right. The court of appeals held that section 13-4433(H) does allow “a minor victim’s parent or legal guardian who exercises victims’ rights on behalf of the minor to also exercise all victims’ rights specified in § 13-4433 on the parent or legal guardian’s own behalf” and that the statute is “a valid exercise of the authority granted to the legislature by the Victims’ Bill of Rights under § 2.1(D).” The trial court’s order denying the defendant’s motion for a court-ordered deposition was affirmed.	legal guardian who exercises victims’ rights on behalf of the minor to also exercise all victims’ rights specified on their own behalf.	indicated. County Attorney represented victim’s interest.
Right to Privacy				
2006	P.M. v. Gould, 136 P.3d 223 (Ariz. Ct. App. 2006)	The defendant was convicted of four counts of sexual conduct with a minor and four counts of sexual assault for molesting his daughter who suffers from cerebral palsy. The trial court found an aggravating factor, emotional harm to the victim, and imposed an enhanced sentence of twenty-five years’ imprisonment on the defendant. The defendant filed a <i>Blakely</i> motion contending that the jury was required to find all aggravating factors to support the imposition of a term greater than the statutory maximum as specified by the United States Supreme Court. The trial court granted the defendant’s motion and ordered resentencing. The State proposed to prove six aggravating factors during the resentencing proceedings, including emotional harm to the victim. The defense subpoenaed the victim’s counseling records, and the trial court ordered an <i>in camera</i> review of these records. The victim’s mother appealed on her behalf to protect her privacy by filing a petition for a	Calls for balancing a victim’s right to privacy with the State’s need for the evidence to prove its case. No clear implication with decisions seemingly made on a case by case basis.	The clinic represented the victim in this case.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>special action to the Arizona Court of Appeals. The Court of Appeals instructed the trial court to first determine whether State has shown that counselor’s testimony or counseling records are essential to state’s effort to seek aggravated sentence (state plans to pursue 6 aggravating factors and only needs to prove 1). On remand, trial court should balance victim’s constitutional right to refuse discovery with state’s interest in calling counselor. The, court should reconsider whether disclosure of records is necessary for the defense to cross-examine the counselor.</p>		
Right to Speedy Trial				
2003	State v. Lamar, 72 P.3d 831 (Ariz. 2003)	<p>The defendant was convicted of first degree murder and kidnapping and was sentenced to death for the murder conviction and to twenty-one years in prison for the kidnapping conviction. During the trial, the defendant moved the court to dismiss his attorneys; the court granted this motion. The defendant then requested to represent himself, but withdrew this motion when the trial judge denied his request for a continuance. The case was automatically appealed to the supreme court, where the defendant argued that the trial court abused its discretion in denying his request for a continuance because the denial resulted in a de facto denial of his Sixth Amendment right to self-representation. The supreme court held that a trial court has discretion in determining whether to grant a continuance made in conjunction with a motion to proceed pro se because the trial court must consider these requests in light of the victim’s constitutional right to a speedy trial. Furthermore, the court did not abuse its discretion in this case, in part because “the record provide[d] no basis for [the supreme court] to conclude that the time available to [the defendant] before trial was insufficient to allow [him] to exercise his right to self-representation.” The convictions for first degree murder and kidnapping were affirmed.</p>	Requires weighing of defendant’s request for a continuance in light of victim’s constitutional right to speedy trial.	The clinic’s founder consulted with the prosecutor on a voluntary basis.
2003	State v. Towery,	The petitioners/defendants filed separate motions for post-conviction relief on the basis that their sentences violated their Sixth Amendment	Affirms a victim’s right to	No clinic involvement

Year	Case	Summary	Implications for victims	Clinic involvement
	204 Ariz. 386, 64 P.3d 828 (Ariz. 2003)	right to confrontation, where a judge rather than a jury determined aggravating circumstances. The Arizona Supreme Court concluded that Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002), which holds that juries must decide whether aggravating circumstances exist in capital cases, does not apply retroactively to the defendants whose cases have become final. In making its determination, the court concluded that vacating prisoners' sentences would violate its duty under the Victims' Bill of Rights to ensure a prompt and final conclusion of the case.	speedy trial.	indicated.
Right to Restitution				
2008	State v. Guadagni, 178 P.3d 473 (Ariz. Ct. App. 2008)	The defendant was convicted of bigamy and ordered to pay restitution to the two women he had married. The defendant's wife requested restitution in the amount of \$1,966.74 for lost wages and travel expenses incurred to attend the trial. His putative wife requested \$2,000.00 for the cost of an annulment. Neither the defendant nor his attorney who had withdrawn from representing the defendant attended the restitution hearing. The trial court concluded that the matter was uncontested and ordered restitution for the full amounts requested. The defendant appealed his conviction, contending that his wife and putative spouse were not victims eligible to receive restitution because bigamy was victimless crime. The Court of Appeals noted that the Arizona Supreme Court has held that the elements of a crime alone do not determine whether a particular person is entitled to restitution, but that the facts underlying a conviction must be considered when determining whether there are victims of a specific crime and the amount of their recoverable loss. On this basis, the Court concluded that, under the facts of this case, bigamy, as a felony involving unlawful interaction with persons which was detrimental to them. Both women testified that they had not consented to the defendant's other marriage; therefore, the defendant committed the criminal offense against them, qualifying them as victims under the definition of "victim" found in Arizona's constitutional victims' bill of rights. The victims are entitled to restitution for the	Further clarifies who may be a victim for the purposes of receiving restitution.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>economic losses they suffered as a direct result of the defendant's unlawful marriage to them. However, the trial court erred when it held the restitution hearing without the defendant's attorney depriving the defendant to his right to counsel. The defendant's conviction is affirmed, but the restitution order is vacated and remanded to the trial court for further determination.</p>		
2008	<p>Town of Gilbert Prosecutor's Office v. Downie, 189 P.3d 393 (Ariz. 2008)</p>	<p>The issue to be determined in this case is whether the amount of restitution to be paid by a defendant convicted of contracting without a license may be reduced by any value conferred on the homeowner. The victims unknowingly hired the defendant who was not a properly licensed contractor to do remodeling work on their home and paid him \$52,784.22 over a nine-month period of time. When they subsequently learned that the defendant was not properly licensed, they filed a complaint, and the defendant was charged with and convicted of contracting without a license. The municipal court ordered him to pay restitution equivalent to the total amount paid by the victims to the defendant. In doing so, the municipal court relied on the case of <i>State v. Wilkerson</i>, a 2002 case previously determined by the Arizona Supreme Court which the municipal court interpreted as creating a per se rule that the entire amount paid by the victim to the defendant in an unlicensed contractor case is the proper amount of restitution, regardless of any benefit conferred on the victim. The defendant in the current case argued that the victims were not entitled to repayment of the entire amount since he hired licensed subcontractors to do the work, which included installing a pool, barbeque, and fire pit; moving the hot tub from one location to another; removing bushes, tree stumps, and gravel from the back yard; raising and painting the walls all around the house; performing interior remodeling work, such as moving sinks and installing doors; and obtaining the required permits. On appeal, the superior court vacated the restitution order, concluding that the <i>Wilkinson</i> case decided only whether damages for incomplete or faulty work are recoverable as restitution, and remanded the case to the</p>	<p>Establishes that value conferred on the victim should be considered when determining the proper amount of restitution.</p>	

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>municipal court for determination of the victims' loss. The court of appeals responded to the Town of Gilbert's petition for special action, reversed the superior court, and reimposed the original restitution order, with the majority noting that, while harsh, the crime was committed at the time the unlicensed contractor contracted and was paid by the victims, and that such a restitution order would deter unlicensed contractors. The Arizona Supreme Court granted the defendant's petition for review. The Arizona code does not define the term "loss" as it relates to restitution, nor does it specify whether a determination of loss permits consideration of any benefits conferred on the victim. The Supreme Court noted that restitution is not meant to penalize the defendant, and therefore, restitution should not compensate victims for more than their actual loss. The Court agreed with several other jurisdictions, concluding that value conferred on the victim should be considered when determining the proper amount of restitution. The Supreme Court also determined that the <i>Wilkinson</i> case was decided on an entirely different issue than that in the present case. <i>Wilkinson</i> explored the extent to which courts can order restitution for victims of an unlicensed contractor and whether losses not resulting from criminal conduct are subject to restitution. It did not address the issue before this Court, whether losses incurred by victim-homeowners may be reduced by benefits conferred upon them, and therefore, is not dispositive. The current case illustrates that treating <i>Wilkinson</i> as dispositive could lead to results that are contrary to the language of the restitution statute, which contemplates that victims will recover their losses, not a windfall. The opinion of the court of appeals is reversed, superior court's judgment is affirmed, and the case is remanded to the municipal court for determination of the amount of the victim's loss.</p>		
2007	In re Andrew C., 160 P.3d	The juvenile defendant was adjudicated delinquent after pleading to misdemeanor assault. He was ordered to pay \$186 restitution to compensate the victim for one culinary class he was unable to attend as a	Affirms that restitution is for the extent of the	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
	687 (Ariz. Ct. App. 2007)	result of the assault. The classes had been paid for at the beginning of the six-week course and the money was non-refundable; the victim was also not able to make up the class. On appeal, the defendant challenged the order of restitution, arguing that educational fees were not an “economic loss” because they were pre-paid and the only loss was the educational process itself. The court of appeals determined that: 1) “but for” the defendant’s delinquent conduct, the victim would have been able to attend class and there would have been no loss; 2) the loss of the class session was directly caused by the delinquent conduct; and 3) although the victim had paid in advance, his loss was still economic in nature because his loss was the consumption of those services he had paid for. The restitution order was affirmed.	economic harm caused to the victim.	
2007	State v. Dixon, 162 P.3d 657 (Ariz. Ct. App. 2007)	The defendant was convicted of theft of a means of transportation and possession of drug paraphernalia. He was sentenced to concurrent, presumptive prison terms totaling four and one-half years and was ordered to pay \$6,345 in restitution to the victims. On appeal, the defendant argued that the restitution award lacked evidentiary support and that the order was improper because “the trial court initially expressed reservations about the evidence and offered to reconsider if [the defendant] produced conflicting evidence, a portion of the ruling he contends ‘shifted the burden of proof’ to him.” The court of appeals held that there was sufficient evidence to support the restitution order because, “[a]lthough the evidence of value and absence of insurance coverage for the listed items contained in the presentence report was uncorroborated by other evidence, it was nonetheless uncontested evidence that was ‘substantiated’ by the victims’ claims.” Furthermore, since the order bore a reasonable relationship to the loss sustained and nothing in the record indicated the trial court evaluated the evidence improperly. The convictions and sentences were affirmed.	Authorizes ordering of restitution on basis of evidence substantiated by the victim’s claim even if it is uncorroborated by other evidence.	The clinic represented the victims.
2007	In re Richard B.,	The juvenile defendant pled guilty drunk driving after hitting two cars. Placed on probation and ordered to pay \$147.69 to the victim for lost	Took responsibility for	No clinic involvement

Year	Case	Summary	Implications for victims	Clinic involvement
	163 P.3d 1077 (Ariz. Ct. App. 2007)	wages (among other conditions). The juvenile court ordered the restitution even though the Verified Victim Statement had not been filed on time by the victim, who had been unaware that such a statement was required to show her losses. On appeal, the defendant argued that the court lacked jurisdiction to reopen a restitution hearing after the victim had failed to submit the correct documents and that it “abused its discretion in reconsidering the restitution deadline because of the victim’s confusion about what documents she needed to file.” The court of appeals held that the juvenile court did have jurisdiction to hold a restitution hearing and to order restitution, in part because the juvenile court had not indicated that restitution would be closed to the victim if she failed to comply with the deadline and because the court failed to notify the victim that she needed to file a Verified Victim Statement. The court did not reach the defendant’s other argument. The restitution order was affirmed.	victim’s failure to timely submit documentation of restitution losses because of the court’s failure to notify the victim of the need to do so.	indicated. Victim’s position was argued by the prosecutor.
2007	Reif v. Kaster (In re Reif), 363 B.R. 107 (Bankr. D. Ariz. 2007)	Restitution judgment of \$22,000 entered against a Chapter 7 debtor in an Arizona criminal prosecution, which was the subject of a restitution lien under this section, was nondischargeable under 11 U.S.C.S. § 523(a)(7).	Affirms that criminal restitution orders cannot be discharged in bankruptcy.	No clinic involvement indicated. Victim’s interests represented by Pima County Attorney.
2005	In re William L., 119 P.3d 1039 (Ct. App. 2005)	Trial court ordered juvenile to pay the victim restitution for stealing and totaling her car where the victim had to pay her finance company the balance due after the insurance proceeds were applied. Defendant appealed, arguing that the victim’s damages were limited to the fair market value of the car. Appellate court upheld, finding that victim sustained an economic loss as a direct result of defendant’s actions, and the fair market value should not be used as the measure for the “full amount of the economic loss” where the result would be that the victim	Recognizes that restitution should cover the full harm to the victim.	

Year	Case	Summary	Implications for victims	Clinic involvement
		was made less than whole.		
2004	State v. Madrid, 85 P.3d 1054 (Ariz. Ct. App. 2004)	The defendant was convicted of first-degree murder, theft of a means of transportation (the victim's car), and reckless burning (of that car). The trial court ordered the defendant to pay restitution for several expenses, including cost to the county attorney's office of disbursements made to the victim's children for trial attendance. On appeal, the defendant claimed that: (1) the victim's children were not entitled to receive restitution because their trial attendance was voluntary; and (2) the trial court erred by approving as part of the restitution award a per diem food allowance that the county attorney's office paid the children in lieu of actual expenses. The court held that: (1) the concept of "economic loss" as defined in Ariz. Rev. Stat. § 13-105(14) covers reasonable travel-related expenses incurred by a victim who voluntarily attends trial. Ariz. Const. Art. 2, § 2.1 confers on victims the right to attend trial, and the necessity for the trial was a direct consequence of the crime; and (2) an entity that reimburses the victim for a portion of travel-related expenses by payment of a reasonable per-diem food allowance suffers a corresponding economic loss that is not limited to the victim's actual meal expenses.		No clinic involvement indicated. Attorney General's office represented interests of victim.
2003	In re Stephanie B., 204 Ariz. 466, 65 P.3d 114 (Ariz. Ct. App. 2003)	The defendant and victim engaged in an altercation resulting in damage to the victim's teeth. The defendant was found delinquent of aggravated assault while the victim was substantially impaired, but was found not delinquent of assault causing the fracture of any body part. The court awarded restitution for tooth repair. The defendant appealed on the basis that she was adjudicated not guilty of the offense directly resulting in the victim's injury. The appellate court upheld the restitution award. The victim's loss met the three-part test for appropriateness of restitution, in that it was: (1) economic; (2) would not have occurred but for the defendant's conduct; and (3) directly resulted from the defendant's offense. Due to differing burdens of proof, a restitution award is not barred where a juvenile has been found not delinquent on a charged	Further supports the concept that restitution is to be awarded for all harm caused by the criminal or delinquent act.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		offense, provided that the juvenile is found delinquent of another criminal offense that properly supports the award.		
Enforcement of Rights				
2008	In re Michelle G., 173 P.3d 1041 (Ariz. Ct. App. 2008)	<p>The defendant appealed from the juvenile court’s 2007 order that she pay restitution to the victim of criminal damage she had committed in 2004. She contended that the juvenile court abused its discretion by ordering restitution after her disposition had become final. The Arizona Court of Appeals agreed with the defendant and vacated the restitution order. Although the victim timely submitted a restitution affidavit to the prosecutor before the original date set for the disposition hearing, a formal claim for restitution was not filed in the juvenile court until more than a year after the disposition hearing. The State’s claim that its oversight in requesting restitution on the victim’s behalf was largely due to the juvenile’s conduct was found to be invalid. While the Court of Appeals acknowledged that the victim in this case was relying on the prosecutor to timely assert his claim for restitution, and further, that this was not the first case reviewed in which the county attorney has failed in its duty to request restitution for a victim, the courts cannot save this victim from the county attorney’s negligence. Under Ariz. Rev. Stat. § 8-415, the prosecutor’s “failure to use reasonable efforts to perform a duty or provide a right is not a cause to seek to set aside an adjudication or disposition.” He may, however, have the right “to recover damages from a governmental entity responsible for the intentional, knowing or grossly negligent violation of the victims’ rights under the victims’ [constitutional] bill of rights, any implementing legislation, or court rule” pursuant to Ariz. Rev. Stat. § 8-416, although the Court of Appeals indicated that victim will face additional hurdles to restitution based on the State’s nonfeasance. In a concurring opinion, the Chief Judge felt compelled to concur, but expressed his concerns about “the unfortunate and apparently recurring circumstances that produce a result such as this-- where an innocent and diligent victim somehow gets lost in the shuffle, is</p>	Clearly acknowledges the impact of failure of criminal justice officials to perform their duties to assist victims exercise their rights.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		unable to recover on a valid restitution claim and, therefore, ends up being the real loser despite the victim’s constitutional and statutory right to receive restitution. ... Hopefully the State and the juvenile courts will take heed in the future by vigilantly and timely including victims’ restitution claims in the disposition process.”		
2004	State ex rel. Romley v. Dairman, 95 P.3d 548 (Ariz. Ct. App. 2004)	The defendant was charged with six counts of molestation of a child and dangerous crimes against children. The victims were two cousins who lived in the same house as their legal guardians and the defendant. The defendant was the brother of one legal guardian and the uncle of the other victim’s legal guardian. The State moved to replace the legal guardians of both victims with other representatives because the legal guardians were not representing the victims’ best interests and were protecting the defendant. The trial court denied the request, stating that section 13-4403(C) did not grant the trial court authority to appoint a representative “because [the] defendant was not part of either victims’ ‘immediate family.’” The court of appeals held that the equitable power of the trial court, which requires “the appointment of such a separate representative when a minor’s legal guardian is unable or unwilling to adequately represent the minor victim’s interests,” was preserved by the Victims’ Bill of Rights. The relief requested in the special action was granted.	Upheld the court’s equitable power to appoint a representative when the minor’s is not protecting the child victim’s best interests.	No clinic involvement indicated.

COLORADO

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Be Informed			
2007	Colo. Rev. Stat. § 18-3-417	New section provides that when the director of the division of registrations or a board or commission within that division in the department of regulatory agencies refers a case involving sexual assault to the office of expedited settlement or the office of the attorney general for disciplinary action, that office is required to forward the victim's contact information to a victim's advocate in the office of the attorney general. The victim's advocate shall make reasonable efforts to advise the victim of the right to pursue criminal action, the right to pursue civil action, the applicable statutes of limitations, and contact information for the police, sheriff, and community-based resources in the jurisdiction where the alleged offense occurred.	No clinic involvement indicated.
2007	Colo. Rev. Stat. § 17-1-115.5 (adult prisoners) Colo. Rev. Stat. § 19-2-214 (juveniles in detention)	New law created a prison sexual assault prevention program. The department of corrections is required to develop policies and procedures to do a number of things, including to provide, at intake and periodically thereafter, information on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in those areas.	No clinic involvement indicated.
2008	Colo. Rev. Stat. § 19-2-1002	The amendment provided additional notice for victims of juvenile offenders. Prior to consideration of the case of a juvenile for parole, the board must provide notice of the time and place of the juvenile's hearing before the board or a hearing panel of the board to a victim who has provided to the division of youth corrections or the board a written impact statement pursuant to Colorado's victims' bill of rights. The notice and subsequent interactions with the victim shall be consistent with the provisions of article 4.1 of title 24 (Crime Victim Compensation and Victim and Witness Rights).	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
		<p>Previously, the board was required to notify any victims whose names and addresses had been provided by the district attorney.</p> <p>The board shall notify the victim of changes in the juvenile’s parole, including any scheduled juvenile parole hearings and any changes in the schedule in advance of the hearing; any escape by the person while serving juvenile parole and any subsequent recapture of the person; any placement change that occurs during the period of parole that may impact the victim's safety or public safety as determined by the division of youth corrections; and any discharge from juvenile parole.</p> <p>For a youth that is currently serving parole that implicates the provisions of the Victims’ Bill of Rights, the division of youth corrections shall notify the board of any discharge and any placement change that may impact public safety or victim safety as determined by the division of youth corrections, including any escape or recapture.</p>	
2007	Colo. Rev. Stat. § 24-4.1-302.5	<p>Amendment provides that victims have the right to be informed of an attack on a judgment or conviction for which a court hearing is set without submitting a written request for notification.</p> <p>The amendment also grants a victim of a sex offense, the right to be informed of the filing of a petition to terminate sex offender registration by the offender.</p>	No clinic involvement indicated.
2008	Colo. Rev. Stat. § 24-4.1-303	Amendment requires the district attorney to inform a victim of the charges to be filed, prior to filing of the charges, if the most serious charge to be filed is lower than the most serious charge for which the individual was arrested and the filing of the lower charge may result in the court issuing a new, lower bond.	No clinic involvement indicated.
2007	Colo. Rev. Stat. § 24-33.5-425	New law creates a cold case homicide team in the Colorado Bureau of Investigation. A family member of a homicide victim may request that the local law enforcement agency investigating the homicide ask the team for assistance in investigating the homicide. Within thirty days after receiving a request from a family member, the local law enforcement agency shall notify the family member whether it will seek the assistance of the team. If the local law enforcement agency decides not to seek the assistance of the team, it shall inform the family member of its reasons for the decision in writing and provide that same information in writing to the bureau for inclusion in the	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
		database. If the local law enforcement agency decides to seek the assistance of the team, it shall contact the team and request the assistance. Within thirty days after receiving a request, the team shall notify the local law enforcement agency regarding whether it will assist the local agency. If it does not assist, the team shall inform the local agency of the reasons in writing.	
2007	Colo. Rev. Stat. § 25-3-110	New law requires all licensed health care facilities that provide emergency care to sexual assault survivors to amend their evidence-collection protocols to include informing the survivor in a timely manner of the availability of emergency contraception as a means of pregnancy prophylaxis and educating the survivor on the proper use of emergency contraception and the appropriate follow-up care. A licensed pharmacy that does not have nonprescription emergency contraception in stock is required to place a conspicuous notice in the area where customers obtain prescription drugs that states "Plan B Emergency Contraception Not Available".	No clinic involvement indicated.
Right to Be Heard			
2007	Colo. Rev. Stat. § 16-3-502	New law prohibits the dismissal of charges against a person because the person has been removed or is facing removal from the United States prior to a conviction or other disposition of all criminal charges against the person. The court may dismiss the charges upon a motion of the district attorney. A court shall not dismiss criminal charges against a person who has been convicted or pled guilty to a crime because the person has been removed or is facing removal from the United States. The defendant shall serve his or her sentence and pay all restitution prior to removal. If the victim is entitled to the rights afforded victims and witnesses, he or she shall be consulted pursuant to the provisions of Colorado's victims' rights laws.	No clinic involvement indicated.
2008	Colo. Rev. Stat. § 19-2-303	Amendment encouraged the integration of restorative justice practices juvenile diversion programs to promote juvenile offenders' accountability, recognize and support the rights of victims, and heal the harm to relationships and the community caused by juvenile crime. When applying for a contract to provide services to youths under the juvenile diversion program, a community project is now required to include a list of the restorative justice practices, included in the project, if applicable.	No clinic involvement indicated.
2008	Colo. Rev. Stat. § 19-2-708	Amendment added the possibility of the imposition of restorative justice practices, including victim offender conferences to the list of things that the court may advise a juvenile about upon the entry of a guilty plea.	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
2008	Colo. Rev. Stat. § 24-4.1-302.5	Amendment clarified the victim's right to be heard at any court proceeding and added that right to any court proceeding at which the court accepts a plea of nolo contendere or at which the defendant requests a modification of the no contact provision on the mandatory criminal protection order imposed in each case.	No clinic involvement indicated.
Right to Protection			
2007	Colo. Rev. Stat. § 13-14-102	Amendment authorizes the court to issue a temporary domestic violence injunction restraining a defendant from ceasing to make payments for mortgage or rent, insurance, utilities or related services, transportation, medical care, or child care when the defendant has a prior existing duty or legal obligation or from transferring, encumbering, concealing, or in any way disposing of personal effects or real property. The restrained party shall be required to account to the court for all extraordinary expenditures made after the injunction is in effect. Any injunction issued shall not exceed one hundred twenty days after the issuance of the permanent civil protection order.	No clinic involvement indicated.
2007	Colo. Rev. Stat. § 17-1-115.5 (adult prisoners) Colo. Rev. Stat. § 19-2-214 (juveniles in detention)	New law created a prison sexual assault prevention program. The department of corrections is required to develop policies and procedures to do a number of things, including to prohibit retaliation and disincentives for reporting sexual assaults and provide reasonable and appropriate measures to ensure victim safety by separating the victim from the assailant.	No clinic involvement indicated.
2008	Colo. Rev. Stat. § 18-3-407.5	Amendment added prosecuting officers and other governmental officials from requiring a sexual assault victim to submit to a polygraph or lie detector test as a condition for investigating or prosecuting the offense. The amendment also added a new section prohibiting a law enforcement agency, prosecuting officer, or other government official from asking or requiring a victim of a sexual offense to participate in the criminal justice system process or cooperate with them as a condition of receiving a forensic medical examination that includes the collection of evidence.	No clinic involvement indicated.
2007	Colo. Rev. Stat.	New law established an address confidentiality program for victims of sexual assault,	No clinic

Year	Citation	Substance of change	Link to Clinic
	§§ 24-21-201—214	domestic violence, and stalking.	involvement indicated.
2008	8 CCR 1505-13	New administrative code provision to clarify and carry out the provisions of the Address Confidentiality Program Act.	No clinic involvement indicated.
Right to Privacy			
2007	Colo. Rev. Stat. § 17-1-115.5 (adult prisoners) Colo. Rev. Stat. § 19-2-214 (juveniles in detention)	New law created a prison sexual assault prevention program. The department of corrections is required to develop policies and procedures to do a number of things, including to ensure the confidentiality of prison rape complaints and protection of inmates who make complaints of prison rape and provide confidential mental health counseling for sexual assault victims.	No clinic involvement indicated.
2007 2008	Colo. Rev. Stat. § 24-72-204	2007 amendment added a provision requiring a custodian of public records to deny the right of inspection of any materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential. 2008 amendment authorizes the department of revenue or an authorized agent of the department to allow inspection of records maintained by the department only by the person in interest or by an officer of a law enforcement or public safety agency to obtain a person's emergency contact information if the person is injured or killed as a result of an accident, criminal act, or other emergency situation.	No clinic involvement indicated.
Right to Restitution			
2007	Colo. Rev. Stat. § 12-61-905.5	New law enacted in 2007 provides that if a mortgage broker's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering such financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.	No clinic involvement indicated.

Colorado Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to Protection				
2007	People v. Mosley, 167 P.3d 157 (Colo. Ct. App. 2007)	The defendant was convicted of three counts of sexual assault on a child by one in a position of abuse (pattern of abuse), nine counts of sexual assault on a child by one in a position of trust, and one count of crime of violence. On appeal, the defendant argued that the trial court's placement of a physical barrier, which prevented him from seeing the fourteen-year-old victim during her testimony, violated his constitutional right to confront an adverse witness. The court of appeals agreed, holding that the trial court departed from the requirements of section 16-10-402 in three ways: 1) it dispensed with the defendant's right to face-to-face confrontation with the victim, who was not eligible for special protection because of her age; 2) it did not limit itself to the statutorily authorized closed-circuit television procedure for providing protection to victims; and 3) it did not allow the defendant to observe the victim's demeanor and body language and thus deprived him of the opportunity to aid counsel in cross-examination of the victim. The convictions and sentences were reversed and the case remanded for a new trial.	This decision will make it more difficult for minor victims of sex offenses to testify in court.	No clinic involvement indicated.
Right to Privacy				
2008	State v. Thompson, 181 P.3d 1143 (Colo. 2008)	The grand jury indicted the defendant on sixty counts, including numerous child abuse and assault charges. The indictment contained extensive factual allegations based on police investigation and interviews with the victims. The prosecution filed the indictment with the trial court and moved for the indictment to be sealed. The trial court granted the motion and sealed the indictment from public access. The Denver Post newspaper requested that the indictment be unsealed, and the defendant objected. The trial court unsealed the indictment but ordered that the victims' identities and the factual allegations underlying the offenses charged be redacted. The redacted indictment was then	This case affirmed a sexual assault victim's special right to privacy.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>made available for public inspection. The Denver Post filed a second motion requesting that the factual allegations and identities of any deceased victims be unsealed. The trial court denied the motion, noting that an indictment is a record of official action under the Colorado Criminal Justice Records Act (CCJRA) which gives the court the authority to limit access to criminal justice records when disclosure would be contrary to the public interest. The Denver Post filed a third motion requesting that the factual allegations be unsealed. The trial court entered a written order, ruling that the victims' names and the factual allegations should remain sealed. Following this ruling, the Denver Post filed a petition for a rule to show cause as to why the trial court's orders should not be vacated. The Colorado Supreme Court issued the rule to show cause and made the rule absolute. Generally, the CCJRA mandates disclosure of records of official actions, including an indictment. A record of official action must be available for public inspection unless one of two exceptions applies: (1) non-disclosure is required by the CCJRA, or (2) non-disclosure is required by other law. An exception to the mandatory disclosure of records of official actions is provided by Colo. Rev. Stat. § 24-72-304 which requires that the identity of sexual assault victims be deleted from criminal justice records prior to disclosure. The factual allegations included in the indictment, however, were not covered by grand jury secrecy, and did not fall within the CCJRA's exception permitting non-disclosure of records of official actions. The Supreme Court held that the CCJRA required that the defendant's indictment, in its entirety, be made available for public inspection with the exception of any sexual assault victims' identifying information, and remanded the case to the trial court to delete the excepted information and make the indictment, subject to such deletion, open for public inspection.</p>		
Right to Restitution				

Year	Case	Summary	Implications for victims	Clinic involvement
2007	People v. Leonard, 167 P.3d 178 (Colo. Ct. App. 2007)	The defendant pled guilty to acting as a commodity handler without a license or surety bond and was ordered to pay a total of \$83,199.46 in restitution to seven victims, farmers who had sold their seed but had not been paid for it. On appeal, the defendant argued that the trial court erred in ordering him to pay an amount of restitution greater than the amount of the surety bond he failed to post, \$10,000, and that the court also erred in not offsetting restitution by the value of three pieces of farm equipment he gave to one of the victims as partial repayment for a load of seed. The court of appeals held that the restitution order was based on a proper assessment of actual damages resulting from the defendant's criminal conduct and that the prosecution had carried its burden of disproving the defendant's claim that he was entitled to an offset in return for the farming machinery. The order was affirmed.	This case affirmed victims' right to restitution for their losses.	No clinic involvement indicated.
2007	People v. Martinez, 166 P.3d 223 (Colo. Ct. App. 2007)	The defendant pled guilty to one count of attempted theft from the person of another and was placed on probation and ordered to pay restitution. The trial court imposed \$2,978 restitution without a hearing and in the absence of the defendant, although the defendant's attorney was present. On appeal, the defendant argued that the court erred in imposing restitution in his absence and without allowing his counsel to contest the amount requested. The court of appeals held that "a court may not order restitution without a hearing when the prosecution must prove the amount of the victim's loss and its causal link to the defendant, and when defense counsel is present and prepared to contest those matters." The restitution order was vacated and the case remanded for a restitution hearing.	Ruling further clarified procedures for granting order for restitution.	No clinic involvement indicated.
2007	People v. Reyes, 166 P.3d 301 (Colo. Ct. App. 2007)	The defendant pled guilty to attempted second-degree burglary after breaking the window of the victim's office, entering the office, and then rummaging through the office before leaving bank statements outside the building. He was ordered to pay restitution to the victim for the costs of closing and then re-opening the business's bank accounts and installing locks on all its interior offices. The defendant appealed,	Clarified the damages for which restitution can be ordered.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		arguing that the victim’s generalized feeling of insecurity following the break-in did not warrant an award of restitution for the costs of installing the locks. The court of appeals agreed and the portion of the restitution order awarding the victim \$535 for the installation of the locks was vacated.		
2007	People v. Smith, 181 P.3d 324 (Colo. App. 2007)	The defendant was found guilty of criminal mischief resulting in damages of less than \$500. At sentencing, state requested a restitution hearing and sought restitution of \$3,050. The trial court denied a restitution hearing, sentenced defendant to probation, and ordered defendant to pay \$500 in restitution. The State appealed. The appellate court found that restitution was not limited by the jury's findings but includes the pecuniary loss suffered by the victim including, but not limited to, all out-of-pocket expenses and other losses or injuries proximately caused by an offender's conduct.	Case clarifies that restitution should be ordered for the extent of the victim’s loss.	No clinic involvement indicated.
2007	Roberts v. People, 130 P.3d 1005 (Colo. 2007)	The defendant pled guilty to theft from an at-risk adult and was sentenced to five years of probation and ordered to pay restitution, which included both a pre-judgment interest of eight percent and a post-judgment interest of twelve percent. The defendant appealed, arguing that the portion of the court’s order for a pre-judgment interest exceeded the court’s sentencing authority because the criminal restitution statute only provides for post-judgment interest. The court of appeals ruled that the trial court did not abuse its discretion. The supreme court held that because post-judgment interest on the restitution amount awarded has the statutory purpose to encourage speedy payment of restitution and because Colorado’s sentencing and criminal restitution statutes require trial courts to include pre-judgment interest in orders of restitution as a condition of probation to fully compensate victims for loss of use of money, the trial court must impose both pre- and post-judgment interest in probationary restitution orders. The judgment of the court of appeals was affirmed.	Case clarifies victim’s ability to receive interest on the amount ordered as restitution.	No clinic involvement indicated.

IDAHO

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Privacy			
2008	Idaho Code Ann. § 9-340C	Amendment added records in an address confidentiality program participant's file other than the address designated by the secretary of state in the list of records exempt from disclosure except to a law enforcement agency upon request or, if directed by a court order, to a person identified in the order.	No clinic involvement indicated.
2008	Idaho Code Ann. §§ 19-5701—5708	Created address confidentiality program for victims of domestic violence, sexual assault, and stalking which enables state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address. The secretary of state shall not make any records in a program participant's file available for inspection or copying, other than the designated address except to a law enforcement agency upon request or, if directed by a court order, to a person identified in the order.	No clinic involvement indicated.
2008	Idaho Misd. Crim. Proc. R. 2.1	New rule provides that if an individual's social security number is included in a document filed with the court, only the last four digits of that number should be used.	No clinic involvement indicated.
Right to Compensation			
2006	Idaho Code Ann. § 72-1003 Idaho Code Ann. § 72-1019	Added an exception to the limitation on the amount of a compensation award for mental health treatment (\$2,500) when the victim is determined to have extenuating circumstances, in which case the victim is eligible for payments up to the maximum aggregate benefit of \$25,000. The victim's qualifications for extenuating circumstances shall be reevaluated not less often than annually. “Extenuating circumstances” to mean “that a victim requires further mental health treatment due to trauma arising out of covered criminal conduct in order to perform major life functions or the activities of daily living.”	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
Right to Restitution			
2006	Idaho Code Ann. § 18-8604	New law requires court to order restitution in human trafficking cases, including the greater of: (a) the gross income or value to the defendant of the victim's labor or services; or (b) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act; and an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.	No clinic involvement indicated.
2008	Idaho Code Ann. § 19-5304	Added a provision authorizing the court to order a person found guilty of leaving the scene of an accident resulting in injury or death to pay to any victim the amount of that victim's economic loss	No clinic involvement indicated.
Right to Civil Action			
2006	Idaho Code Ann. § 39-6316	Amendment changed the written notice to be given to domestic violence victims by law enforcement to increase the amount that can be sued for in small claims court from \$4,000 to \$5,000 for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to property.	No clinic involvement indicated.

Idaho Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to Be Heard				
2008	State v. Deisz, 186 P.3d 682 (Idaho Ct. App. 2008)	The defendant was convicted of aggravated battery and aggravated assault. At the sentencing hearing, the defendant objected to the victim impact statement contained in the presentence investigation report on the grounds that it recommended a specific sentence in violation of his Eighth Amendment. The district court held that the statement would be considered as victim input but not as an interpretation of what the court should do under the law. The defendant appealed. The defendant relied on the case of State v. Lovelace, 90 P.3d 298 (2004) in which the Supreme Court held that two victim impact statements from family members advocating that the defendant be sentenced to death violated his Eight Amendment rights. That case, however, was a death penalty case, unlike the present case. The Idaho Court of Appeals determined that the defendant provided no authority to support his position that a sentencing recommendation in a victim impact statement would violate a defendant's constitutional rights outside of the death penalty context. Victims of crime in Idaho are afforded a constitutional right to be heard at sentencing. As long as manifest injustice is avoided, the sentencing court has no discretion to exclude a victim impact statement. The defendant's conviction was affirmed.	Broadly interprets the right to be heard to allow a sentencing recommendation in a victim impact statement except in death penalty cases.	No clinic involvement indicated.
2008	State v. Lampien, 2008 Ida. App. LEXIS 138 (Idaho Ct. App. 2008)	The defendant was charged with harboring a felon, her husband, who was wanted for outstanding felony probation violations. Although the defendant knew that her husband was in their apartment, she told the police and probation and parole officers who came looking for him that she had not seen him and did not know where he was. The officers did not believe the defendant and subsequently returned. They entered the apartment without their weapons drawn, and were confronted by the defendant's husband who had a gun. A struggle ensued and three of the officers were shot. The defendant agreed to plead guilty to the harboring charge on the basis that the State would recommend probation and not oppose a withheld judgment.	Upholds a trial court's discretion in interpreting who may be a victim for the purposes of presenting a victim impact statement	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>At the defendant's sentencing, the district court allowed the three injured officers to give victim impact statements over the defendant's objection. The officers recommended that the defendant receive a prison term. The district court sentenced the defendant to a term of five years, with a minimum period of confinement of three years. The defendant filed a motion for reduction of sentence, which was denied. The defendant appealed, arguing among other things, that it was an abuse of discretion and created a manifest injustice under Idaho's victims' rights statute for the district court to allow the officers to make victim impact statements at her sentencing. The district court determined that the officers who were injured suffered both direct and threatened harm as well as emotional harm because of the defendant's lie to the officers about her husband's presence in her apartment and her failure to inform the officers of his unstable mental state and prior possession of a firearm. The Idaho Court of Appeals upheld the district court's decision, finding that the defendant had not demonstrated error in the district court's conclusion that the officers were victims of her criminal offense and that Idaho Code § 19-5306 is intended to protect victims' right, not defendants' rights so the court did not create a manifest injustice by allowing the officers to make victim impact statements. The defendant's conviction and sentence are affirmed.</p>	<p>under Idaho law.</p>	
2008	State v. Payne, 199 P.3d 123 (Idaho 2008)	<p>The defendant was convicted of first-degree murder, first-degree kidnapping, rape, and robbery. The district court held a three-day sentencing hearing pursuant to Idaho's former death penalty statute, Idaho Code § 19-2515. The hearing consisted of two days of testimony and a full day of victim impact statements. The district court sentenced the defendant to death. The defendant filed for post-conviction relief, amending his petition twice. The district court granted the State's motion for summary dismissal of the defendant's claims as to all issues except his sentence. The defendant appealed on a number of issues, including whether the admission of inadmissible victim impact statements containing sentencing recommendations, characterizations and opinions about the defendant and</p>	<p>Clarifies that evidence relating to the victim's personal characteristics and the impact of the crime on the murder victim's family is admissible in</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>the crime, and appeals to use religious authority as a basis for the imposition of punishment violated his constitutional rights. The State acknowledged that portions of the victim impact statements violated the defendant's rights, but maintained that the inadmissible statements were not relied on by the district court when it crafted the defendant's sentence and so those statements were harmless. While evidence relating to the victim's personal characteristics and the impact of the crime on the murder victim's family is admissible, characterizations and opinions about the crime, the defendant, and the appropriate sentence are not. Much of the testimony presented during the day of victim impact statements and many of the letters from the victim's family members and friends contained opinions about the defendant, his character, and the crime. He was described as evil, not even human, and a pathetic monster, among other things, and one witness noted Bible passages for the court to consider. The Idaho Supreme Court found that none of these statements were admissible. The Court then reviewed the statements to determine whether their admission constituted harmless error on the basis of whether there was a reasonable possibility that such evidence contributed to the conviction. While the Supreme Court presumes that sentencing judges can glean relevant, admissible evidence from victim impact statements, the district court in this case appeared to understand that only statements advocating a certain punishment violate a defendant's constitutional rights. The record shows that the sentencing judge was not aware that opinions about the crime or the defendant's character are also inadmissible, establishing reasonable doubt as to whether the inadmissible evidence contributed to the sentence imposed. The Supreme Court vacated the defendant's sentence and remanded the case to the district court for resentencing. Because it did so, the Supreme Court also addressed the defendant's post-conviction arguments to provide further guidance to the lower court. In addition to arguing ineffective counsel for failing to exclude inadmissible victim impact statements and limit the number of statements, issues which have already been addressed, the</p>	<p>a death penalty case, but characterizations and opinions about the crime, the defendant, and the appropriate sentence are not.</p> <p>Also interprets the right to make a statement in homicide cases to extend only to the victim's immediate family members.</p>	

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>defendant asserted that the statements should also have been limited to those of immediate family members pursuant to Idaho law. The issue of whether the language of Idaho Code § 19-5306 limits victim impact statements to immediate family members in homicide cases was a matter of first impression for the Idaho Supreme Court. The Court determined that the statutory definition of “victim” is limited to individuals who have suffered direct harm as a result of the commission of the crime. In homicide cases, the statute extends the right to make a statement only to immediate family members, making it clear that the legislature intended to limit the right to be heard to only immediate family members.</p>		
2006	<p>State v. Leon, 132 P.3d 462 (Idaho Ct. App. 2006)</p>	<p>Defendant pled guilty to first degree murder in exchange for a recommendation by the State of a sentence of life in prison, rather than the death penalty. On appeal, the defendant argued that a video shown during the sentencing hearing was not an appropriate victim impact statement because it was not technically a “statement.” The court of appeals held “that video and photographic images may constitute a valid exercise of a victim’s right to be heard and, in particular, the DVD presentation in this case was a valid exercise of that right and did not result in manifest injustice.” The conviction and sentence were affirmed.</p>	<p>Strengthens broad interpretation of victim impact statement.</p>	<p>No clinic involvement indicated.</p>
2005	<p>State v. Jones, 115 P.3d 764 (Idaho Ct. App. 2005)</p>	<p>The defendant pled guilty to aggravated assault in return for dismissal of domestic battery charge and State’s agreement to make a sentencing recommendation that the court retain jurisdiction for 180 days. The trial court sentenced the defendant to a five-year unified term of imprisonment and did not retain jurisdiction. The defendant appealed. On remand, the trial court permitted a victim impact statement from the victim’s mother, who stated that the victim was fearful of the defendant. The trial court determined that the original sentence was appropriate. On appeal, the defendant claimed that: (1) the State’s presentation of victim impact testimony constituted a breach of the plea agreement because it was inflammatory evidence inconsistent with the agreement to recommend retained jurisdiction; and (2) the victim’s mother did not fall within the</p>	<p>Further validates right of victims to be heard at sentencing.</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		definition of “victim” pursuant to Idaho Code § 19-5306. The appellate court held that: (1) it could not conclude that the prosecutor acted contrary to the plea agreement because the record did not support the conclusion that the victim’s mother was presenting testimony at the initiative of or on behalf of the State; and (2) as the defendant failed to object to the introduction of the statement at sentencing, the issue of the status of the victim’s mother was not preserved for appellate review.		
2005	State v. Lutes, 120 P.3d 299 (Idaho Ct. App. 2005)	The defendant pled guilty to three counts of sexual abuse of a child under the age of sixteen in exchange for the State’s dismissal of remaining charges and for the defendant to be sentenced to prison time with retained jurisdiction. The defendant was eventually recommended for probation; at the review hearing, the victims were allowed to make statements. On appeal, the defendant argued that these statements breached the plea bargain because the bargain implied that he would receive probation and victim impact statements might prevent that. The court of appeals held that, while a prosecutor may not circumvent a plea agreement through words or actions that convey a reservation about a promised recommendation, here, “the prosecutor merely facilitated the constitutional and statutory right of the victims to make a statement.” The order of the district court was affirmed.	Gave further support to the premise that the victim’s rights are independent of the state.	No clinic involvement indicated.
Right to Protection				
2006	State v. Mercer, 138 P.3d 308 (Idaho 2006)	The defendant was convicted of influencing or deterring a witness in a criminal proceeding. On appeal, the defendant claimed that Idaho Code § 19-2604 required the State to prove that his words or actions had a causal effect on the victim’s testimony. The court held that the State is not required to prove that a defendant’s conduct actually obstructed or prevented a witness’ testimony under § 19-2604(3). The legislature did not intend to limit the criminality of a defendant’s efforts by carving out an exception where a witness withstands the defendant’s attempted intimidation.	Strengthens a victim’s right to protect. The court declined to interpret the statute in a way that would make it more difficult to prove that a defendant	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
			intimidated a witness.	
Right to Restitution				
2008	State v. Card, 190 P.3d 930 (Idaho Ct. App. 2008)	The defendant appealed the district court’s decision affirming the magistrate’s award of restitution to a victim injured in a vehicle collision that was caused by the defendant’s misdemeanor driving under the influence of alcohol offense. The defendant contended that the State did not prove that costs incurred by the victim for massages, detoxifying footbaths, and herbal colon cleansings were direct economic losses resulting from his criminal conduct. The magistrate held that the victim’s testimony was sufficient to show that her complaints were caused by the accident and that the expenses for alternative or unconventional health treatments were recoverable as direct economic losses. The district court affirmed. While trial courts are given considerable discretion when deciding whether to order restitution, Idaho’s restitution statute is not so broad as to cover every expenditure that a victim personally sees as reasonable or necessary as a result of the crime. In this case, the Idaho Court of Appeals’ review of the magistrate’s record determined that there were no doctor’s letters or notes, hospital records, or medical evidence of any kind indicating that a medical professional had found either that the victim suffered from an identifiable physical or that such condition was caused automobile collision. The victim’s request for restitution for the items challenged by the defendant was based solely on her personal assessment of the cause of her physical complaints and her own determination of what treatment would be beneficial. The defendant argued that the victim’s testimony was neither competent nor sufficient to prove a causal relationship between her medical complaints and the automobile collision. The Court of Appeals agreed that the State had not met its burden, reversed the district court, and remanded the case to the magistrate to remove the amount awarded for these treatments from its restitution order.	Requires that evidence offered in support of a request for restitution must be sufficient to establish that costs incurred for losses suffered have a causal connection to the crime. No real implications for victims as decisions regarding the sufficiency of the evidence will be made on a case by case basis.	No clinic involvement indicated.
2008	State v. Doe,	The juvenile defendant entered a plea to aggravated battery for striking the	Upheld the	No clinic

Year	Case	Summary	Implications for victims	Clinic involvement
	192 P.3d 1101 (Idaho Ct. App. 2008)	<p>victim in the head and face. At the restitution hearing, the victim testified that as a result of the battery, he had suffered a broken jaw, broken cheekbone, and several broken teeth.</p> <p>He was taken by ambulance to the hospital where he received emergency treatment for his injuries. He subsequently received dental treatment and met with a specialist to determine whether his jaw injury required surgery. As evidence of the amount of restitution requested, the State introduced a photograph of the victim at the time he was injured and copies of six different medical bills. The defense objected to the admission of the bills, arguing that there was insufficient foundation that the services rendered were reasonable, medically necessary, and caused by the defendant's actions. The magistrate agreed and continued the hearing. At the continued hearing, the State offered no additional evidence and moved for the admission of the previously submitted bills. The magistrate denied restitution on the basis that the State had not established the necessity or reasonableness of the costs and services. The State appealed to the district court which affirmed the magistrate's order because no evidence was presented that the expenses reflected in the bills submitted were related to the injuries caused by the defendant's crime against him except for the victim's testimony. To merely produce bills without providing competent medical explanation connecting the bills to the injuries resulting from the crime is insufficient. The State again appealed. The Idaho Court of Appeals reviewed the bills submitted as evidence, all of which listed the victim as the patient and were dated on or shortly after the day of the attack, and determined that all but one should have been admitted. The Court of Appeals concluded that the testimony of the victim, along with the medical bills, presented a <i>prima facie</i> case for an award of restitution. The district court's order affirming the magistrate's denial of restitution was reversed and the case remanded for the determination of the appropriate restitution amount.</p>	<p>sufficiency of evidence submitted in support of request for restitution. No real implications for victims as decisions regarding the sufficiency of the evidence will be made on a case by case basis.</p>	<p>involvement indicated.</p>
2008	State v.	The defendant was convicted of two counts of grand theft and four counts	Authorizes the	No clinic

Year	Case	Summary	Implications for victims	Clinic involvement
	Schultz, 2008 Ida. App. LEXIS 149 (Idaho Ct. App. 2008)	of forgery for filling out checks to herself and signing them with the victim's name. The defendant was ordered to pay \$ 21,985.28 in restitution. She appealed the district court's restitution order, contending that \$2,500.00 of the restitution on the count of grand theft by unauthorized control was awarded in error. On this count, the state presented evidence at trial of certain unauthorized individual transactions made by the defendants on the victim's credit cards and bank accounts between October 2003 and May 2004. At the restitution hearing, the state sought, and was awarded, restitution for additional unauthorized individual transactions during that time period that had not been presented at trial. Idaho's restitution statute authorizes the court may order restitution for crimes that are not adjudicated if the parties consent. The defendant bases her argument on the fact that, if sufficient evidence was not presented at trial concerning specific individual occurrences of theft, this criminal conduct was not adjudicated and restitution for these amounts cannot be awarded without her consent, which was not obtained in this case. While the Idaho Court of Appeals acknowledged that there must be a causal connection between the conduct for which a defendant is convicted and the damages the victim suffers and that a defendant cannot be required to pay restitution for damages stemming from separate, uncharged, and unproven crimes without consent, the defendant committed a series of transfers from the victim's credit card and bank accounts over a period of time which constitutes the grand theft offense for which she was charged and convicted. This is not a case where a defendant was convicted on an information charging theft of a specific amount of money. In this case, the State is not prohibited from pursuing restitution for similar unauthorized transactions occurring within the same time frame and criminal theory alleged in the charging document, on the ground that these additional transactions were not adjudicated by the court. The district court's award of restitution as to the defendant's grand theft conviction is affirmed.	pursuit of restitution for additional similar unauthorized transactions occurring within the same time frame and criminal theory alleged in the charging document.	involvement indicated.
2007	State v.	The defendant pled guilty to grand theft after embezzling money from her	Emphasizes	No clinic

Year	Case	Summary	Implications for victims	Clinic involvement
	Cheeney, 160 P.3d 451 (Idaho Ct. App. 2007)	<p>employer, a doctor’s office. The defendant would go to a Wells Fargo bank and deposit all the checks for the office, except one, which she would ask for in cash before pocketing the cash. She was sentenced to prison time and was ordered to pay restitution: \$48,089.55 to the doctor, \$157,500 to Wells Fargo, and \$15,000 to Stuart Allen, a collection agency. Wells Fargo had settled with the victim for \$157,500 and Safeco Insurance Company paid the victim \$15,000 for his loss; Stuart Allen then pursued the defendant on behalf of the insurance company to regain \$15,000. On appeal, the defendant argued that the trial court erred in ordering restitution to the bank and the collection agency. After noting that “the definition of victim [includes] any person or entity who suffers economic loss because such a person or entity has made payments to or on behalf of a directly-injured victim pursuant to a contract,” the court of appeals held that the trial court erred in ordering restitution to the bank and the collection agency because there was no evidence that they suffered an economic loss pursuant to a contractual agreement with the victim. However, because there was no contractual relationship to divert restitution from the doctor, the trial court was statutorily authorized to order the defendant to pay the doctor restitution for the entire amount of the economic loss the defendant stipulated to have caused, \$220,589.55. The restitution order was vacated as to the bank and collection agency, and the trial court was ordered to amend the order of restitution to the victim to equal the full amount of economic loss suffered.</p>	<p>victim’s right to receive restitution for the full amount of economic loss suffered. Interprets the definition of “victim” to limit the entities who can receive restitution.</p>	<p>involvement indicated.</p>
2007	State v. Gonzales, 171 P.3d 266 (Idaho Ct. App. 2007)	<p>The defendant entered an <i>Alford</i> plea to an amended charge of aggravated battery, originally unlawful penetration by use of a foreign object. In the presentence investigation report, the victim requested \$700 for vocational school tuition she forfeited after the crime because she was afraid to return to school; the court imposed restitution of \$369 as a condition of probation even though it was not part of the plea agreement. On appeal, the defendant argued that the restitution order was in error because the education expense was not a direct economic loss from the crime. The court of appeals held</p>	<p>Court fails to recognize true impact of crime</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>that the court was not authorized to order restitution to compensate the victim for the forfeited tuition and price of supplies because these costs were incurred due to her fear that a similar crime might happen again. The court also held that the trial court was not authorized to impose restitution as a condition of probation “over a well-founded objection that such compensation exceeded the limits set forth in [section 19-5304].” The conviction was vacated to the extent that it ordered the defendant to pay restitution for tuition and supplies.</p>		
2007	<p>State v. Shafer, 161 P.3d 689 (Idaho Ct. App. 2007)</p>	<p>The defendant pled guilty to felony leaving the scene of an injury accident after colliding with another vehicle in an intersection. As part of the plea, the defendant agreed to pay restitution to the victim as a condition of probation. The amount was later set at \$18,013.95. On appeal, the defendant argued that the trial court did not have the authority to order restitution because the victim’s losses came from the accident, not from his leaving the scene of the accident, the crime for which he was convicted. The court of appeals agreed, but further held that there was substantial and competent evidence for the trial court to have determined that the parties to the plea agreement “intended the term regarding restitution to impose upon [the defendant] the obligation to pay the losses that the other driver incurred in the accident.” The order of restitution was affirmed.</p>	<p>Broadly interprets agreement to pay restitution as part of plea agreement to include payment of all losses incurred by the victim in the accident.</p>	<p>No clinic involvement indicated.</p>
2007	<p>State v. Smith, 169 P.3d 275 (Idaho Ct. App. 2007).</p>	<p>The defendant was convicted of three counts of grand theft, sentenced to time in prison, and ordered to pay \$273,882.65 restitution to the victim, her employer, for losses sustained as a result of her theft while working as an office manager for an outdoor recreation store. After an evidentiary hearing, the district court decreased the restitution to \$100,296.84, even though evidence asserted that the value of the equipment taken, less the items returned, plus the actual lost wages and out-of-pocket losses equaled \$118,396.14. On appeal, the defendant argued that: 1) the court incorrectly calculated the restitution owed; 2) the court abused its discretion by not reducing the restitution award to reflect payments she allegedly made to the victim; 3) the state failed to demonstrate that one vehicle invoiced on her</p>	<p>Clarifies the type of showing necessary before a court can order restitution.</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>account ever existed; and 4) the court erred in ordering restitution for items the victim failed to prove were taken from the store and in not crediting the defendant with items that were allegedly returned. The court of appeals held: 1) that the district court did not err in calculating the amount owed for the stolen property by using the retail value of that property; 2) the defendant failed to prove by a preponderance of the evidence that she wrote checks to the victim in return for stolen goods; 3) the court did not abuse its discretion by including the value of the missing vehicle in the restitution award because the state demonstrated that it was part of the victim's economic loss; 4) the State failed to demonstrate that non-invoiced items were part of the economic loss suffered by the victim as a result of the defendant's criminal activity. The order of restitution was reversed and remanded to the district court for recalculation of the financial loss.</p>		
2005	<p>State v. Korsen, 111 P.3d 130 (Idaho 2005)</p>	<p>The defendant was convicted of two counts of kidnapping in the second degree and of withholding his children from their mother for approximately two months in violation of a custody order. He was sentenced to prison time and was ordered to pay court costs and fees, including \$13,685.03 in restitution. After the defendant died during the appeal, the court of appeals approved a motion by the State Appellate Public Defender's (SAPD's) office and held that all criminal proceedings against him abated <i>ab initio</i> upon his death. The State appealed, arguing that the defendant's death terminated the SAPD's authority to act on his behalf and divested the appellate court of jurisdiction to do anything other than dismiss the appeal. The supreme court held that, because of the strong public policy ground under section 19-5304(2) for not abating a criminal conviction, the defendant's conviction "and any attendant order requiring payment of court costs and fees, restitution or other sums to the victim, or similar charges, are not abated, but remain intact, in the event of the defendant's death following conviction and pending appeal." The appeal was dismissed.</p>	<p>The question of the validity of restitution orders when the defendant dies on appeal is not settled nationally. This is a good decision for Idaho victims, preserving their right to restitution.</p>	<p>No clinic involvement indicated.</p>
2004	<p>In the interest of: John Doe,</p>	<p>The juvenile defendant was placed on probation for three years and was ordered to pay restitution to the victim's parents for missed work wages</p>	<p>Ruling contemplates</p>	<p>No clinic involvement</p>

Year	Case	Summary	Implications for victims	Clinic involvement
	103 P.3d 967 (Idaho Ct. App. 2004)	after he was charged with lewd conduct with a minor under sixteen years of age. On appeal, the defendant argued that the magistrate erred in ordering restitution to the parents because they are not victims under the restitution statutes; he also argued that the award was excessive. The court of appeals held that the victim's parents were clearly within the statutory definition of "victim" and, furthermore, that the amount of restitution ordered was not excessive based on a review of the evidence. The district court's order was affirmed.	that those who sustain harm are "victims."	indicated.

MARYLAND

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Be Informed			
2004	Md. Code Ann. Corr. Servs. § 8-103	Amendment authorized the Secretary of Public Safety and Correctional Services to adopt regulations that establish minimum mandatory standards applicable to victim notification and restitution.	No clinic involvement indicated.
2008	Md. Code Ann. Corr. Servs. § 7-309	New law re. medical parole of offenders, provided that victim rights to be notified and heard applied to medical parole proceedings, although in cases of imminent death of offender the parole commission may waive those victims' rights.	No clinic involvement indicated.
2006	Md. Code Ann. Crim. Proc. § 3-123	Re. victims of offenders with mental illness: victim to be notified of dismissal of charges under § 3-107 or § 3-108. If a victim or victim's representative has requested notification, Health Department shall promptly notify the victim or representative in writing of the escape, recapture, transfer, release, or death of defendant.	No clinic involvement indicated.
Right to Attend			
2005	Md. Rule 15-1206	New rule allows a victim or representative who has requested notice to attend a hearing on a petition for a writ of error coram nobis (writs of error directed at another branch of the same court).	No clinic involvement indicated.
2007	Md. Rule 5-615	Amendment extended the exemption on exclusion of witnesses to victims of juvenile offenders. Previously, the exemption was limited to victims of adult offenders.	No clinic involvement indicated.
Right to Be Heard			
2008	Md. Code Ann. Corr. Servs. § 7-309	New law re. medical parole of offenders, provided that victim rights to be notified and heard applied to medical parole proceedings, although in cases of imminent death of offender the parole commission may waive those victims' rights.	No clinic involvement indicated.
Right to Protection			
2005	Md. Code Ann.	Amendment expanded the crime of inducing false testimony or avoidance of	Clinic's parent

Year	Citation	Substance of change	Link to Clinic
	Crim. Law § 9-302	subpoena to prohibit a person from harming another person, threatening to harm another person, or damage or destroy property to induce a victim or witness not to report facts relating to a crime or delinquent act. It also made it illegal to solicit another person to do the same. The amendment also added a fine of up to \$5,000 to the penalty imposed and enhanced penalty when the underlying offense relates to a controlled substance felony or a crime of violence.	organization supported this legislation.
2005	Md. Code Ann. Crim. Law § 9-303	Same amendments re. crime of retaliation against victims or witnesses	Clinic's parent organization supported this legislation.
Right to Privacy			
2006	Md. Rule 16-1008	Amendment provided basic protection from remote, electronic access to crime victim information contained in court records	Clinic's parent organization had advocated for a statute creating this privacy in 2006. The statute was not adopted, but the court implemented this rule change following the legislative session.
2006	Md. Rule 16-1009	Amendment provides that a request to shield information in a case record filed by or on behalf of a person entitled to request the shielding because a peace order is in effect or because of domestic violence, and the request is granted, or if a request to shield the address or telephone number of a victim, victim's representative, or witness is filed in a criminal action, and the request is granted, a custodian shall deny inspection of the shielded information. The shield remains in effect until terminated or modified by order of court. If the request is denied, the person seeking to shield information may file a motion under section (a) of this Rule.	No clinic involvement indicated.
2006	Md. Code Ann. Family Law §§ 4-519—530	New address confidentiality program for domestic violence victims	No clinic involvement indicated.
Right to Compensation			

Year	Citation	Substance of change	Link to Clinic
2005	Md. Code Ann. Crim. Proc. § 11-808	Amendment extended eligibility for compensation to a parent, child, or spouse of an individual incarcerated for domestic violence, child abuse, or abuse of a vulnerable adult if, prior to the incarceration, the offender resided with and provided financial support to the parent, child or spouse.	No clinic involvement indicated.
2004 2006	Md. Code Ann. Crim. Proc. § 11-809	2004 amendment extended the time for filing a compensation claim for good cause from 2 to 3 years from the occurrence of the crime, delinquent act, or death of the victim and for victims of child abuse from 2 to 3 years from the time the claimant knew or should have known of the child abuse. (In all other cases, the claim must be filed within 180 days of the occurrence of the crime, delinquent act, or death of the victim.) 2006 amendment made the “good cause” extension for filing a compensation claim applicable in all cases (except for child abuse which stayed the same as above) to 3 years from the occurrence of the crime, delinquent act, or death of the victim. The amendment also added a new section staying debt collection activities against the claimant until a final decision regarding the award has been made.	No clinic involvement indicated.
2004	Md. Code Ann. Crim. Proc. § 11-813	Amendment increased the amount of an emergency award from \$1,000 to \$2,000 and authorized the board to waive the requirement that a claimant repay the excess of an emergency award over the final award or the entire amount if no final award is made for a compelling reason upon the claimant’s written request.	Clinic’s parent organization supported this legislation.
Right to Restitution			
2005	Md. Code Ann. Crim. Proc. § 11-601	Added “person who suffers death” as a result of a crime or delinquent act to the definition of “victim” for purposes of restitution chapter.	These 2005 changes to Maryland’s restitution law were a legislative priority of the clinic’s parent organization.
2005	Md. Code Ann. Crim. Proc. § 11-603	Amendment expanded the circumstances under which a judge may order a defendant or juvenile to make restitution to include situations in which the victim suffered certain losses or suffered expenses incurred with rehabilitation.	See above.
2005	Md. Code Ann.	2005 amendment added a person who has paid an expense on behalf of a victim	See above.

Year	Citation	Substance of change	Link to Clinic
2006	Crim. Proc. § 11-606	<p>to the list of third-party payors to whom the court may order restitution be paid and provides that payment of restitution to the victim has priority over payments owed to the State for reimbursement of payments made on behalf of a child.</p> <p>2006 amendment expanded the list of persons to whom a court is authorized to order restitution and established the priority of payment of restitution to a victim over any other person or governmental unit.</p>	
2005	Md. Code Ann. Crim. Proc. § 11-608	Amendment repealed the requirement that a judgment of restitution must be recorded and indexed in the civil judgment index before the entity owed the restitution can take action to enforce the judgment in the same manner as a money judgment in a civil action and exercise the rights and obligations of a money judgment creditor under the Maryland Rules.	See above.
2005	Md. Code Ann. Crim. Proc. § 11-610	Amendment provided that in Baltimore City, a judgment of restitution shall be entered, indexed, and recorded under Maryland Rule 3-601 and constitute a lien as provided under Maryland Rule 3-621(B); otherwise the provisions of this section do not apply in Baltimore City.	See above.
2005	Md. Code Ann. Crim. Proc. § 11-613	Amendment prohibits execution on a judgment of restitution if the defendant has filed a motion to stay execution of sentence or the judgment of restitution, and the court has not yet ruled on the motion.	See above.
2006	Md. Code Ann. Crim. Proc. § 11-619	New section establishes that any order of restitution by a court is governed by the statutory provisions of this subtitle which may not be construed to limit the authority of the court to order an adult or child offender to make restitution or perform services as an alternate means of restitution.	See above.
Enforcement of Rights			
2006	Md. Code Ann. Crim. Proc. § 11-103	Amendment extended the definition of “violent crime” to include a delinquent act that would be a violent crime if committed by an adult and granted victims of such crimes committed by juvenile offenders the right file an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider a right secured to the victim.	Clinic pro bono attorney handled a case involving a juvenile defendant. The victim did not win that case. The attorney later became a state legislator, and introduced legislation

Year	Citation	Substance of change	Link to Clinic
			to create this statute.
2007	Md. Code Ann., Crim. Proc. § 11-919 Md. Code Ann., Commercial Law § 17-317	Restitution collected for a victim who cannot be located will be deposited into a fund to provide grants for victim legal representation.	The Executive Director of the umbrella organization originated this idea and advocated for it.
2005 2007	Md. Rule 1-326	New rule authorizing an attorney to enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4 (Criminal Causes), or Title 11 (Juvenile Causes) of these Rules for the purpose of representing the rights of the victim or victim's representative. 2007 amendment extended the entry of an appearance by an attorney on behalf a victim or victim's representative in cases appealed to the Court of Appeals or Court of Special Appeals.	A clinic trial court case caused a judge to recognize the need for this rule. The judge then suggested this rule change. Clinic staff provided assistance to the drafter.
2007	Md. Rule 8-111	Amendment provided that, although NOT a party to a criminal or juvenile case, victim's have the right (1) file an application for leave to appeal to the Court of Special Appeals from an interlocutory or a final order under Code, Criminal Procedure Article, § 11-103 and Rule 8-204; or (2) participate in the same manner as a party regarding the rights of the victim or victim's representative.	Unclear whether this was linked to the Clinic's work. It did follow on a disappointing case that denied a victim the right to assert his rights on appeal in a case that did involve the clinic, <i>Surland v. State</i> .
2005 2007	Md. Rule 8-204	2005 amendment added language giving victims the right to file an interlocutory appeal pursuant to Md. Code Ann. Crim. Proc. § 11-103 alleging that a criminal or juvenile court denied or failed to consider a victim's right. 2007 amendment extended the right to appeal a violation of their rights to victims of juvenile offenders.	The 2007 Rule change followed the successful statutory change (see above, Md. Code Ann. Crim. Proc. § 11-103)

Maryland Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to Protection				
2008	Lancaster v. State, 948 A.2d 102 (Md. Ct. Spec. App. 2008)	<p>The issue in this case is the conflict between a criminal defendant's constitutional right to a zealous defense and the State's legitimate concern for the safety of its witnesses. The defendant and his brother were convicted of two counts of robbery with a dangerous weapon, two counts of second degree assault, one count of first degree robbery, and one count of conspiracy to commit robbery with a dangerous weapon. At trial, the State presented evidence that the defendants were involved in a series of drug-related incidents that ended in a home robbery during which several victims and witnesses were detained against their will. The State moved for a protective order, seeking to withhold from the defendants and their counsel, the current location of victim witnesses, and to prevent defense counsel from sharing with their clients before trial the names, criminal records, prior statements and grand jury testimony of certain non-victim civilian witnesses. The defense opposed the motion. A detective who interviewed ten of the witnesses testified that some of them feared retaliation by the defendants, and that some of them indicated that they had been threatened by the defendants. On cross-examination, defense counsel attempted to ascertain the substance of these threats, but the court sustained the State's objections on the basis that a response to such an inquiry would further enable the defendants to identify particular witnesses. Defense counsel argued that the prosecution had not provided enough specific information about the threats to justify the protective orders. The motion court ruled that a significant issue existed with respect to the safety and welfare of the witnesses given the nature of the testimony and the allegations made, and the reasonable fear expressed concerning</p>	Recognizes that it might be necessary to balance a defendant's discovery rights against the State's interest in safeguarding witnesses and preserving the integrity of the judicial process.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>their personal safety. The court granted the motion, distinguishing between victim witnesses and non-victim eyewitnesses and reiterating that full discovery was being given to defense counsel with the understanding that it would not be disclosed to the defendants. One of the defendants appealed, contending that the motion court abused its discretion. The Maryland Court of Special Appeals found that there was sufficient evidence for the motion court to conclude that there was enough risk to the protected witnesses that nondisclosure of their identities, whereabouts, and statements to the defendant was warranted. In addition, the defendant did not identify any specific matter for which pre-trial disclosure of the protected information to him instead of his defense attorney might have affected his plea negotiations, trial preparation, or trial strategy. The convictions are affirmed.</p>		
Right to Compensation				
2008	Opert v. Crim. Injuries Comp. Bd., 943 A.2d 1229 (Md. 2008).	<p>A motorcyclist, Opert, had been injured in a crash on the Baltimore beltway when a pedestrian walked out onto the highway with or on a bicycle in violation of the law. The issue was whether Opert was a “crime victim” for purposes of victim compensation. Lower courts and the compensation board had ruled he was not. The Court of Appeals found he was. Though the language of the statute was ambiguous, after examining the legislative history the Court agreed that finding Opert a “victim” was more likely reflective of the legislative intent.</p>	<p>Definition of “victim” now somewhat broader for purposes of eligibility for compensation.</p>	<p>Clinic assisted the victim’s attorney to write his reply brief. Clinic also attempted to file an amicus brief. Although their amicus brief was declined, the clinic notes that many of its arguments made in that</p>

Year	Case	Summary	Implications for victims	Clinic involvement
				brief were in fact asserted in the court's opinion.
Right to Restitution				
2007	Chaney v. State, 918 A.2d 506 (Md. 2007).	The defendant argued on appeal that the restitution order imposed was illegal because the victim had not requested restitution. The Court of Appeals found that the victim had been informed of his rights, including the right to request restitution, because he had signed and returned the notification form issued by the State's Attorney pursuant to Md. Code Ann. Crim. Proc. § 11-104, and thereby demanded all of his rights as a victim of crime. The Supreme Court held that because the victim had failed to request restitution and no evidence was presented at trial to support the order, the imposition of the order constituted plain error and should be vacated.	Requires victims to affirmatively request restitution.	No clinic involvement indicated.
2007	State v. Garnett, 863 A.2d 1007 (Md. 2004). State v. Garnett, 916 A.2d 393 (Md. Ct. Spec. App. 2007), cert. denied, 925 A.2d 633 (Md. 2007).	The defendant pled guilty to six counts of malicious destruction of property; the jury found her not criminally responsible for her actions because of a mental disorder and ordered her conditional release. The trial court ordered \$25,549.74 in restitution to the individual victim and \$17,170.72 in restitution to the Maryland State Police. The defendant eventually filed for Chapter 7 bankruptcy and was granted a discharge of her debts. The State filed a motion to garnish her wages, seeking to enforce the restitution order. The defendant argued that the restitution debt was discharged in bankruptcy. At a hearing of the circuit court, both parties agreed to have the State's garnishment motion dismissed. The State then filed a Motion to allow Garnishment, which was denied by a circuit court that held that the restitution was a civil judgment that could be discharged in bankruptcy because: (1) the defendant was found "not criminally responsible,"	Clarified that restitution is non-dischargeable in bankruptcy, and gave indication that those found not criminally responsible cannot be ordered to pay restitution.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>and, therefore, she could not be punished; (2) the restitution could be enforced as a money judgment in a civil action, and so was a civil action; and (3) the restitution was not ordered as a condition of probation. The State appealed to the intermediate court, but the Court of Appeals issued a writ of certiorari prior to any proceedings in the intermediate court. The Court of Appeals held that the restitution ordered was a criminal penalty, and not compensation for actual pecuniary loss; therefore it was excepted from the discharge under the Bankruptcy Code. The judgment of the circuit court was reversed and the case was remanded for further proceedings.</p>		
2007	Robey v. State, 918 A.2d 499 (Md. 2007).	<p>The defendant was convicted of second degree assault and reckless endangerment and was sentenced to three years in prison, suspended, and ordered to pay more than \$10,000 in restitution. The statute states that \$10,000 “is the absolute limit for all acts arising out of a single incident and is the absolute limit against one child, the child’s parent, or both.” On appeal, the defendant argued that the \$10,000 statutory limit on restitution orders applies to adult defendants as well as to child defendants and their parents. The court of appeals examined the plain language of Criminal Procedure section 11-604b and found it to be unambiguous and clearly “contemplates application to a ‘child, the child’s parent, or both’ and no other classes of individuals subject to restitution.” The judgment was affirmed.</p>	Affirmed that parents are liable for restitution for their child’s criminal acts.	No clinic involvement indicated.
2006	Juliano v. State, 890 A.2d 847 (Md. Ct. Spec. App. 2006).	<p>The defendant was convicted of one count of theft of property with a value of \$500 or more after using a stolen credit card to purchase automotive parts from an auto parts store. He was sentenced to fifteen years in prison, with all but eleven years suspended, and four years of probation on the condition that he pay \$6,881.42 in restitution to the store. On appeal, the defendant argued that: 1) the restitution statute was unconstitutional because</p>	Clarified the need to prove loss before restitution can be ordered.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>it violates due process by not requiring “the State to prove the facts supporting an award of restitution by a preponderance of the evidence;” and 2) that the order was not supported by competent evidence. The intermediate court held that: 1) the restitution statute does not relieve the State of its obligation at sentencing to prove a victim’s entitlement to restitution, and therefore, does not offend due process; and 2) “the prosecutor’s representations during the sentencing phase of [the defendant’s] trial do not constitute ‘competent evidence’ of Brandywine’s loss” because the prosecutor did not rely on any bills and credit card receipts entered into evidence. The restitution order was vacated and remanded for a new restitution hearing.</p>		
2005	Goff v. State, 875 A.2d 132 (Md. 2005)	<p>The defendant pled not guilty to second-degree assault and trespass and was sentenced to eighteen months in prison, which was suspended, and placed on two years of supervised probation. During the assault, the shower insert in the bathroom had been broken. Testimony showed that to fix the shower, the entire insert had to be replaced. The defendant was ordered to pay \$2,156 restitution for the replacement cost of the shower as a condition of probation. On appeal, the defendant argued that: 1) the damage to the shower was not the result of the crime; 2) the shower was not the victim’s property because the victim lived in an apartment building; and 3) the order to replace the shower rather than to repair it was not fair and reasonable. The court of appeals held that: 1) damage done to the shower was a direct result of the crime, as indicated by the fact that no intervening agent caused the damage and that no time lapsed between the criminal act and the resulting damage; 2) even though the victim did not own the apartment, he had a property interest in the form of a possessory property right and while the landlord also suffered a loss, that fact did not change the fact of the victim’s loss; and 3) ordering</p>	Affirms the victim’s right to restitution for all direct damages.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		replacement of the shower instead of repair was fair and reasonable under the circumstances. The judgment was affirmed.		
2005	Williams v. State, 867 A.2d 305 (Md. 2005)	The defendant pled guilty to one count of theft over \$500 after stealing four motorcycles from the victim's garage. He was sentenced to five years in prison, with all but thirty months suspended, and five years of probation. The court also ordered the defendant to pay the victim \$1,500 in restitution representing the value of three motorcycles not returned to the victim. All four motorcycles had been recovered, but the impound lot refused to release three of the motorcycles to the victim because he could not provide titles or other proof of ownership for them. The defendant appealed the restitution order, but before the Court of Special Appeals could rule, the Court of Appeals granted certiorari. The defendant argued that the victim's failure to title his motorcycles was the only reason they were not returned to him, and that this set of circumstances was not a direct result of the defendant's criminal act. The Court of Appeals agreed, holding that the victim's inability to reclaim the undamaged motorcycles was not the direct result of their theft by the defendant. The order and judgment of restitution was vacated.	Prohibits the ordering of restitution for losses that are not a direct result of the criminal act.	No indication clinic was involved
Enforcement of Rights				
2008	Hoile v. State, 948 A.2d 30 (Md. 2008).	Victim was not notified of hearings reconsidering the sentence of her assailant, and, thus, was denied an opportunity to be heard at those hearings. Victim's attorney sought to vacate the altered sentence on the grounds that she had been denied her rights. The trial court granted her request, and the defendant appealed. The court found, significantly, that under the newly expanded court rule, Maryland Rule 8-111, the victim had the right to participate in a criminal appeal in the same manner as a party regarding issues that directly and substantially affect the victim's rights. Her attorney, therefore, was authorized to represent the victim in this	Grants victims and their attorneys standing as a party in the appellate process in cases where the defense appeals a trial court	The clinic represented the victim.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>case, including by participating in oral argument and filing a brief in the case. However, the court went on to find the victim was not entitled to relief in the case. The legislature had not permitted a victim to seek invalidation of an otherwise legal sentence merely because the victim’s rights in regard to imposition of that sentence had been violated. The court noted “Although a victim now has more opportunity to participate in an appeal, there remains no effective tangible remedy for a victim to seek to ‘un-do’ what already has been done in a criminal case.”</p>	<p>ruling.</p>	
2006	<p>Surland v. State, 895 A.2d 1034 (Md. 2006).</p>	<p>The defendant was convicted of first degree murder and conspiracy to commit first degree murder. Although the murder victim's parents apparently followed the case closely, no order of restitution was entered. The defendant filed a timely appeal to the Court of Special Appeals, but, before the appeal was resolved, he died. The defendant’s attorney moved to dismiss the appeal and the indictment. The appellate court denied the motion, without prejudice to renewing it based upon a showing that no victims’ rights would be prejudiced if he motion was granted and that any victim whose rights would be affected was served with a copy of the renewed motion. Defendant’s counsel filed a renewed motion, stating that he was not aware of any victim’s right that would be relevant and that there was no applicable requirement to notify any victims or their representatives. A response was filed by the State, observing that the murder victim’s parents had been closely involved in the trial proceedings and had been informed of the motion to dismiss. The State urged the court to allow the convictions to stand and to not order dismissal of the indictment. The victim’s parents also opposed the motion through the Maryland Crime Victims' Resource Center on the basis that such a policy would be unfair to crime victims. The Court of Special Appeals granted the motion to dismiss the appeal, but remanded</p>	<p>Denies victims standing in the appeal process.</p>	<p>Court decision states that homicide victim’s parents filed responses to motions through the clinic.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>the case to the Circuit Court, instructing it to hold a hearing at with all the parties, including the victim’s parents, to determine whether the indictment should be dismissed. The defendant’s counsel filed a petition for certiorari with the Court of Appeals. The victim’s parents file an answer to the petition and a cross-petition of their own. The Court of Appeals granted the defendant’s petition, but denied the parent’s cross petition on the basis that they lacked standing to file an answer to the petition, a cross-petition, or a brief, or to present argument.</p>		
2006	<p>Lamb v. Kontgias, 901 A.2d 860 (Md. Ct. Spec. App. 2006), cert. denied, 909 A.2d 259, (2006); cert. denied, 909 A.2d 260, (2006); cert. denied, 127 S. Ct. 1875, (U.S. 2007).</p>	<p>A registered victim of child sexual abuse was not notified of a hearing to reconsider her assailant’s sentence. The question was whether the victim had standing to challenge a judgment vacating the original conviction and sentence. The Court of Special Appeals (Maryland’s intermediate court of appeal) held that the circuit court had jurisdiction to decide whether the victim had standing to challenge the revised judgment. However, the court also determined that the victim could not challenge the sentence. The court held that any available remedy depended on legislative expansion of the victim’s right to appeal.</p>	<p>Finds that, although the victim’s right was violated, no remedy exists that victims had standing to pursue.</p>	<p>The clinic represented the victim.</p>
2005	<p>Lopez-Sanchez v. State, 843 A.2d 915 (2004), aff’d, 879 A.2d 695 (Md. 2005).</p>	<p>The juvenile defendant shot the victim in the back, fracturing his spine and rib and leaving bone fragments in his spinal cord. The defendant was found to be involved in attempted murder, first degree assault, second degree assault, and reckless endangerment. The victim then filed a completed Crime Victim Notification Request Form. At the dispositional review hearing, the victim submitted a written victim impact statement to the court and asked for restitution. The court failed to address this request beyond asking the prosecutor whether an order of restitution was possible. The prosecutor indicated that such an order was not possible. The defendant was then committed to the custody of the Department of Juvenile Justice until the age of twenty-one. The victim submitted</p>	<p>Although the victim lost this case, the decision directly led to a successful legislative effort to extend the rights of victims of juvenile defendants.</p>	<p>This was a clinic case.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>a written request for a restitution hearing, accompanied by documentation of his economic losses. The court scheduled a hearing, but postponed it pending negotiation between the State and the defendant on a restitution amount. A proposed Consent Order for Restitution was submitted ordering the defendant to pay the victim \$4,427.50 in restitution for medical expenses and excluding the petitioner's lost wages. The victim was not notified of this submission or the order, but the court agreed to it. A few days later, the victim filed a Motion to Reconsider Order or, alternatively, to Alter or Amend Judgment on the grounds that he had been denied his right to receive notice of court proceedings and his presumptive right to restitution. He also filed a motion to increase the amount to the \$10,000 statutory limit. The defendant and the State both opposed the motion on the grounds that the victim was not a party to the delinquency proceeding and did not have standing to seek reconsideration of the restitution order. The circuit court agreed and denied the motion. The victim appealed. The Court of Special Appeals held that the victim was not a party to the proceeding, and "did not have a sufficiently direct interest in the outcome to fall within the narrow range of case law permitting technical non-parties to bring appeals." The victim appealed again. The court of appeals also held that the victim had no right to appeal. The judgment of the court of special appeals was affirmed.</p>		

NEW JERSEY

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Be Informed			
2005	N.J. Stat. Ann. § 52:4B-44	Attorney General must coordinate the establishment of standard protocols for the provision of information and services to trafficking victims.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 52:4B-25	Victims of Crime Compensation Agency to identify sources of victim counseling and make information available to victims.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 52:4B-42	Victims of crime and witnesses are to be given a detailed description of constitutional rights as well as rights under the bill of rights. Also required victim-witness rights info program to: 1) Provide assistance to victims without charge, which assistance shall include information and advice relative to filing a claim with the board, emergency food and clothing, employment opportunities, referral to other social service agencies, and in obtaining legal advice or representation; and 2) Conduct training programs for attorneys and victim service providers.	Likely, since victims must now be informed about how to request legal advice or representation, and to train attorneys as well as service providers.
2007	N.J.A.C. §10A:22-2.11	Administrative code provision amendment authorized the release of information as to the identity of a juvenile charged with an offense, the offense charged, the adjudication and disposition, upon request, to the victim or any family member of the victim. Previously, disclosure of this information was limited to a member of the victim's immediate family.	No clinic involvement indicated.
Right to Be Heard			
2007	N.J.A.C. § 10A:9-	New administrative code provision sets out the responsibilities of the Residential Community Program Notification Committee which include reviewing comments from victims or the	No clinic involvement

Year	Citation	Substance of change	Link to Clinic
	10.1	nearest relatives of victims if the offense resulted in death concerning the participation of an inmate in a community-based program.	indicated.
2007	N.J.A.C. § 10A:9-10.3	New administrative code provision specifies the Residential Community Program Notification Committee's decision-making criteria for a defendant's placement in a Residential Community Program. The criteria include comments, information, arguments or views provided to the Department of Corrections from the victim, or the relatives of the victim, as well as the county prosecutor, and the Office of the Attorney General.	No clinic involvement indicated.
Right to Protection			
2007	N.J. Stat. Ann. § 2C:44-8	New law authorizes a court at the time of sentencing to order the continuation of a prior order or condition of bail that restricts the defendant's contact with the victim if the defendant is found guilty of the sex offense. In addition, the court may: prohibit the defendant from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim; require the defendant to stay away from any specified place that is named in the order that is regularly frequented by the victim or other family or household members; forbid the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim; and prohibit the defendant from stalking or following, or threatening to harm, to stalk or to follow, the victim or any other person named in the order. The law also contains a general provision empowering the court to grant any other appropriate restraints necessary to protect the victim.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 2C:45-1	Amendment authorizes the court, as a condition of probation, to prohibit a defendant who is convicted of a sex offense from having any contact with the victim, including, entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or victim's relatives in any way, and may order other protective relief pursuant to N.J. Stat. Ann. § 2C:14-12.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 2C:45-2	Ensures that court orders prohibiting a sex offender from contacting the victim will continue in effect after termination of probation supervision until further order of the court.	No clinic involvement indicated.
2007	N.J. Stat. Ann.	New law authorized the court to place conditions on the pretrial release of sex offenders, including the issuance of a no-contact order prohibiting the defendant from having any contact	No clinic involvement

Year	Citation	Substance of change	Link to Clinic
	§ 2C:14-12	<p>with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or the victim's relatives in any way.</p> <p>The court order shall contain the court's directives specifically restricting the defendant's ability to have contact with the victim or the victim's friends, co-workers or relatives. The victim shall be provided a copy of this order immediately. The victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access.</p>	indicated.
2005	N.J.A.C. § 10A:71-6.12	New administrative code provision sets out the conditions of parole supervision for life for certain sex offenders, including refraining from any contact (verbal, written or through a third party) with the victim of the offense unless contact is authorized by the assigned parole officer. If the victim is a minor, an offender serving a special sentence of parole supervision for life shall: refrain from initiating, establishing or maintaining contact with any minor; refrain from attempting to initiate, establish or maintain contact with any minor; and refrain from residing with any minor without the prior approval of the assigned parole officer.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 2A:53A-21	Made crimes committed for the purpose of intimidating individuals because of gender identity or expression or national origin bias crimes and created a civil cause of action for such crimes.	No clinic involvement indicated.
Right to Privacy			
2007	N.J.A.C. § 10A:9-10.1	New administrative code provision sets out the responsibilities of the Residential Community Program Notification Committee which include ensuring that comments submitted by victims or the nearest relatives of victims, if the offense resulted in death, concerning the participation of an inmate in a community-based program are kept confidential and not disclosed to anyone who is not authorized to receive or review them.	No clinic involvement indicated.
2006	N.J.A.C. § 10A:31-6.5	A person convicted of any indictable offense shall be denied access to a government record if the record contains personal information pertaining to the victim of an inmate or to the victim's family members. An exception may be made only if a court, upon motion by the requester or his or her representative, has determined that the information is necessary to assist in the requester's defense of the requester.	No clinic involvement indicated.
2008	N.J.A.C.	Relates to public access to government records. The amendment added language prohibiting	No clinic

Year	Citation	Substance of change	Link to Clinic
	§ 13:18-11.3	an offender from having access to government records containing personal information pertaining to the victim or the victim's family including, home address, home telephone number, work or school address, work phone number, social security number, medical history, or any other identifying information. In addition, motor vehicle records shall be released in accordance with the provisions of the New Jersey Driver Privacy Protection Act. Pursuant to this Act, the Chief Administrator may redact personal information from the registration and title records made available through the Standard Data Files program. In all cases, the social security number shall be redacted.	involvement indicated.
Right to Compensation			
2007	N.J. Stat. Ann. §§ 52:4B-3.2 et seq	<p>Established the Victims of Crime Compensation Agency within the Department of the Treasury. The Agency is run by an executive director appointed by the Governor. Established in the Victims of Crime Compensation Agency is the Victims of Crime Compensation Review Board which shall be composed of five citizens, also to be appointed by the Governor. The purpose of the Victims of Crime Compensation Review Board shall be:</p> <p>(1) to hear appeals of decisions of the Victims of Crime Compensation Agency involving issues of victim compensation;</p> <p>(2) to consult with the executive director in developing, establishing and supervising all practices and procedures of the agency;</p> <p>(3) to review individual and supplemental awards to a victim or a victim's family in excess of \$ 10,000 in the aggregate, and awards of attorney fees for legal representation to victims;</p> <p>(4) to review, on at least a bi-monthly basis, information detailing the aggregate claims received and paid by the agency, and the operations of the agency; and</p> <p>(5) to review and, if appropriate, approve any rules and regulations, standards, and maximum rates and service limitations for reimbursement proposed by the agency.</p> <p>All the functions of the previous Violent Crimes Compensation Board and the Victims of Crime Compensation Board are continued in the Victims of Crime Compensation Agency and the Victims of Crime Compensation Review Board.</p> <p>It also added advocates to those who can file an application for compensation on behalf of a child or mentally incompetent person.</p> <p>Increased the maximum amount of any one emergency award from \$500 to \$ 2,500 with the</p>	The clinic director was a previous head of the compensation program, and he recommended the revisions to the program

Year	Citation	Substance of change	Link to Clinic
		<p>total maximum amount of each such award made to an individual applicant increased from \$1,500 to \$ 5,000. The amendment also deleted a provision prohibiting a person from receiving an emergency award on more than two occasions, or receiving more than one such award within a period of 36 consecutive months.</p> <p>Added the crime of bias intimidation to the list of offenses for which crime victims may be eligible to receive compensation.</p> <p>In addition, the Agency is to establish a victim counseling service which shall identify and develop sources to provide counseling to victims in place of having the service provide the counseling itself. The personnel appointed to staff the victim counseling service must be paid for by funds appropriated or otherwise made available. The amendment also authorized the agency to identify and develop sources to provide mental health counseling to victims, and provide victims with such information as may be appropriate through its victim counseling service.</p> <p>New law basically revised the entire compensation administrative structure.</p>	
2007	N.J. Stat. Ann. § 52:4B-8	<p>Amendment rewrote the section this section which provides for attorneys’ fees and costs in the amount of 15% of the award (in addition to the award) and set a minimum award for attorneys’ fees of \$300, unless it is determined that the attorney has not acted diligently or in good faith representing the claimant. Even if the Agency denies the application for compensation, it can award \$300 in attorneys’ fees. It is unlawful for an attorney to receive an amount larger than provided for in this section. The amendment also added provisions for payment up to a maximum of \$1,000, at an hourly rate to be fixed by the agency, to an attorney who provides legal assistance to a victim in any legal matter, other than a decision of the Victims of Crime Compensation Agency involving victim compensation or any related appeal, arising from or related to having been the victim of an offense specified in N. J. Stat. Ann. § 52:4B-11 (aggravated assault; threats to do bodily harm; lewd, indecent, or obscene acts; indecent acts with children; kidnapping; murder; manslaughter; aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact; any other crime involving violence including domestic violence; burglary; tampering with a cosmetic, drug or food product; human trafficking; driving while intoxicated; operating a vessel while under the influence; theft of an automobile, eluding a law enforcement officer, or unlawful taking of a</p>	The clinic director was a previous head of the compensation program, and he recommended the revisions to the program

Year	Citation	Substance of change	Link to Clinic
		motor vehicle where injuries to the victim occur in the course of operating an automobile in furtherance of the offense; and bias intimidation) as long as the victim is eligible to apply for compensation. Payment may be made only to the extent that the amount of such payment does not, when combined with the amounts paid or payable to the victim under an order for compensation, exceed the \$ 25,000 limitation on compensation.	
2005	N.J. Stat. Ann. § 52:4B-11	Amendment added the crime of human trafficking to the list of offenses for which crime victims may be eligible to receive compensation.	No clinic involvement indicated.
Right to Restitution			
2005	N.J. Stat. Ann. § 2C:17-3	Authorizes the court to require payment of restitution to the owner of the property damaged by a tenant in retaliation for eviction notice.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 5:9-13.17	Creates additional funding for the Victims of Crime Compensation Agency. Whenever any winner of a lottery prize greater than \$ 600 is indebted to any agency or institution of State Government, including the Victims of Crime Compensation Agency restitution ordered to be paid to the agency, the Department of the Treasury shall apply as much of the lottery prize as is necessary to satisfy the indebtedness.	No clinic involvement indicated.
Right to Civil Action			
2005	N.J. Stat. Ann. § 2C:21-17.4	Amendment extends the law granting a civil cause of action to victims of the crimes of using a false driver's license or false birth certificate to obtain another government document, pursuant to N.J. Stat. Ann. §.2C:21-17.2, and the crime of distributing, manufacturing or possessing any item containing personal identifying information of another to facilitate a fraud, pursuant to N.J. Stat. Ann. §.2C:21-17.3. The court shall award damages in an amount three times the value of all costs incurred by the victim as a result of the person's criminal activity, including costs incurred by the victim in clearing his or her credit history or credit rating, or those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant. The victim may also recover those costs incurred for attorneys' fees, court costs and any out-of-pocket losses.	No clinic involvement indicated.
2007	N.J. Stat. Ann. § 2A:53A-	Made crimes committed for the purpose of intimidating individuals because of gender identity or expression or national origin bias crimes and creating a civil cause of action for such crimes.	No clinic involvement indicated.

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Year	Citation	Substance of change	Link to Clinic
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New Jersey Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to be Informed and Heard				
2007	State v. Means, 926 A.2d 328 (N.J. 2006)	The defendant pled guilty to a number of charges after a sexual encounter with a minor. After allocution, the trial court considered the plea, which included a ten-year sentence. At the sentencing hearing, the State moved to vacate the plea because it had failed to speak with the juvenile victim's father, who had previously expressed a desire to be present at the sentencing hearing. The court granted the motion and vacated the plea. Six months later, the defendant entered into a second plea agreement with the State, which recommended a fifteen-year sentence. On appeal, the defendant argued that neither the Victim's Rights Amendment nor any statutory enactments require or authorize the State to withdraw a guilty plea that the defendant has already agreed to as part of a plea agreement. The supreme court found that the trial court should have postponed sentencing to allow the prosecutor to notify the victims of the terms of the plea agreement, receive and evaluate the victims' comments, and inform them of their right to speak at sentencing, but the trial court "was not in a position to fairly evaluate [the constitutional considerations of both the defendant and the victims] without knowing if the victims had an objection to the plea agreement and, if so, what that was." The original plea agreement was reinstated, and the case remanded for further proceedings.	Somewhat negative: no remedy for violation of victim's right. However, solution suggested.	This was a clinic case. A girl who had been abducted and molested found that the trial court had taken a plea without notifying her parent as required under the state's victims' rights laws. The Law Center filed a motion to vacate the plea, the motion was granted, defense appealed, and the case reached the state supreme court, which held that the plea could not be vacated. The clinic had filed an amicus brief with the supreme court.
Right to Attend				
2008	State v. Williams, 960 A.2d 805 (N.J. Super. Ct. App. Div.	The defendant was convicted of first-degree robbery and second-degree aggravated assault and sentenced to an extended term subject to the No Early Release Act. The victim was called to testify at the defendant's trial. During his testimony, the victim stated that although he could not visually identify the defendant, he	Determines that a defendant has no federal constitutional	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
	2008)	<p>would recognize the defendant’s voice if he heard it again. After testifying, the victim asked the judge if he could remain in the courtroom. No objection was made by the defense. The trial judge granted the victim’s request and told him to sit in the back of the courtroom. Subsequently, the prosecutor made an application outside the jury’s presence to recall the victim for the purpose of voice-identifying the defendant as the person who attacked him. Defense counsel then objected on the basis that the witness had been sequestered but was then allowed to remain in the courtroom and listen to other testimony since it was not anticipated that he was going to be recalled to testify. The trial judge granted the State’s application, stating that no objection had been made at the time he allowed the victim to stay in the courtroom and that the purpose of his being recalled had nothing to do with testimony that he might have heard. Upon conviction, the defendant appealed on a number of grounds, including that the trial court erred in permitting the victim to remain in the courtroom after testifying because witnesses had been sequestered. The Superior Court noted that no objection was made to the victim’s request to remain in the courtroom. Pursuant to N.J. R. Evid. 615, sequestration is discretionary with the trial judge. The trial judge, without objection, allowed the victim to sit in the back of the courtroom, and in effect, released him from any sequestration order. The defendant also argued that allowing the victim to remain in the courtroom was a violation of the defendant’s constitutional rights. The Superior Court determined that while the defendant had no federal constitutional right to exclude witnesses, the victim had a constitutional right to remain in the courtroom under the Victims’ Rights Amendment to the New Jersey Constitution.</p>	<p>right to exclude witnesses, but victims have a state constitutional right to remain in the courtroom.</p>	
Right to Be Heard				
2007	State v.	The defendant pled guilty to two counts of capital murder and	Supports the	No clinic involvement

Year	Case	Summary	Implications for victims	Clinic involvement
	Wakefield, 921 A.2d 954 (N.J. 2007)	eleven other offenses arising out of a home-invasion robbery, assault, and murder of an elderly couple; he was sentenced to death. On this automatic appeal to the supreme court, the defendant raised many issues, including that the victim impact evidence offered by the State exceeded the bounds set by the Court for such evidence in terms of length, content, and emotional and inflammatory nature; and that such evidence was “bolstered by a deliberate and improper demonstration by members of the victims’ family group.” The court held that the trial court’s admission of the victim impact evidence and the State’s use of that evidence was proper. Furthermore, the supreme court held that the defendant’s claim that a “deliberate and improper demonstration” by the family was intended to bolster the State’s victim impact evidence was simply not supported by the record. The judgment of conviction and the sentence were affirmed.	admission of victim impact evidence.	indicated.
Right to Privacy and Protection				
2005	State v. Gilchrist, 885 A.2d 29 (N.J. Super. Ct. 2005)	In this case, the defendant broke into the victim’s home and raped her. As he left, he warned the victim he would return and kill her if she reported the crime. During his prosecution for aggravated sexual assault, kidnapping, burglary, and criminal restraint, the defendant filed a discovery motion requesting that a photograph of the victim be taken and provided to him. The trial court granted the request over the objections of the prosecutor. The appellate court reversed, stating that any possible benefits to the defendant from a court-ordered photograph were speculative, and were outweighed by the victim’s “right to privacy; her right to be treated with fairness, compassion, and respect; her right to be free from intimidation; and the need to encourage crime victims to cooperate and participate in the criminal justice system.”	Ruling in favor of the victim, significant because it pitted the right to privacy vs. the right to discovery.	The clinic became involved when the defense appealed.
Right to Restitution				
2008	Felicioni v.	The appellant was a victim of a fraudulent scheme committed by	Upholds the	No clinic involvement

Year	Case	Summary	Implications for victims	Clinic involvement
	Administrative Office of the Courts, 961 A.2d 1207 (N.M. Super. Ct. App. Div. 2008)	<p>the defendant, a used car salesman, who accepted cars from the victim on consignment and sold them to others without conveying good title or payment to the victim. The defendant pled guilty to third-degree theft by deception and was ordered to pay restitution in the amount of \$95,317.32 to twenty victims, including the appellant. Each case was prosecuted separately; therefore, each judgment of conviction included a separate restitution order specifically addressing the loss incurred by the particular victim involved. The appellant's case was the ninth to be prosecuted out of the twenty. The appellant challenged the manner in which restitution payments are processed and distributed to crime victims by the State. Under the State's current system restitution is paid on a first-in-time rather than pro-rata basis. The procedure for collecting restitution is regulated by the Model Collection Process which provides that, where there are multiple convictions, judgments are to be paid off chronologically, by the date of the restitution order. Only when a court specifically orders, or there are multiple victims listed on the same restitution order, will restitution payments be distributed on a pro-rated basis. The appellant filed this class action complaint seeking to invalidate the State's restitution payment system on the basis that it violates the mandate of both the federal and State constitutions, and the New Jersey Civil Rights Act, arguing that the delay in payment caused by the State's first-in-time policy arbitrarily interferes with his "property right" as a crime victim to the court-ordered restitution and that the policy is impermissibly discriminatory. The Law Division judge dismissed the appellant's complaint with prejudice, finding no violation of substantive due process, equal protection, the Victims' Rights Amendment (VRA), or the Civil Rights Act. The Superior Court agreed. The court discerned no fully vested property right to the immediate payment of restitution. Under N.J. Stat. Ann. §</p>	<p>state's current restitution payment system whereby multiple restitution claims are paid on a first-in-time rather than pro-rata basis.</p>	<p>indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>2C:44-2, the courts are tasked with ordering the “fullest compensation for loss that is consistent with the defendant’s ability to pay,” and have discretion to determine what restitution is appropriate in each case. A crime victim does not have a fundamental right to receive restitution, much less to receive it in a particular manner. The policy is also not impermissibly discriminatory. All victims with restitution claims are subject to the same payment priorities and have the same remedies available to them should the defendant default in making payments. Finally, New Jersey’s VRA does not specifically address restitution, and its statutory Crime Victim’s Bill of Rights entitles victims to compensation for their loss, “whenever possible” but provides no guarantee of the right to full or immediate payment of restitution. The lower court’s findings are affirmed.</p>		

NEW MEXICO

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Be Informed			
2005	N.M. Stat. Ann. § 31-26-9	The amendment required the district attorney's office to provide the victim with oral or written notice, in a timely fashion, of a scheduled court proceeding relating to the criminal offense. Previously, the district attorney was only required to do so upon request.	No clinic involvement indicated.
Right to Be Heard			
2005	N.M. Stat. Ann. § 31-26-10.1	New law requires the court to inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights at any scheduled court proceeding. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall reschedule the hearing, or continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and order the district attorney to notify the victim of the rescheduled hearing.	No clinic involvement indicated.
Right to Protection			
2008	N.M. Stat. Ann. § 30-1-15	Amendment prohibited charging the victim with the costs of the prosecution of a misdemeanor or felony domestic violence offense, including filing fees for criminal charges, warrants, and witness subpoenas, and filing and registration fees for protection orders. This applies to any protection order issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.	No clinic involvement indicated.
2008	N.M. Stat. Ann. § 30-9-21	New law prohibits a law enforcement officer, prosecuting attorney or other government official from asking or requiring an adult, youth or child victim of a sexual offense to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation, charging or prosecution of the offense. The victim's refusal shall not prevent the investigation, charging or prosecution of the offense.	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
2007 2008	N.M. Stat. Ann. § 40-13-6	2007 amendment added a provision requiring a local law enforcement agency receiving an order of protection from the clerk of the court issued under the Family Violence Protection Act to have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt. This does not include temporary orders of protection. 2008 amendment provided that simplified order for protection petition forms with instructions for completion are available to all parties and not just petitioners not represented by counsel.	No clinic involvement indicated.
2007	N.M. Magistrate Ct. R.Cr.P. 6-401 N.M. Munic. Ct. Rule 8-401	Amendment to the Magistrate Court and Municipal Court rules relating to a defendant's right to bail added a provision authorizing the court to refuse to allow the complaining witness or an alleged victim to post bond for the defendant, if the court finds that the defendant poses a danger to the witness or victim.	No clinic involvement indicated.
Right to Privacy			
2008	N.M. Stat. Ann. § 40-13-3.3	New law provided that "a state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes."	No clinic involvement indicated.
2007	N.M. Stat. Ann. § 40-13-11	New law creates address confidentiality program for victims of domestic violence, allowing them to receive a substitute official address, from which mail is forwarded to a confidential current address.	No clinic involvement indicated.
Right to Restitution			
2005	N.M. Stat. Ann. § 28-11-5	Amendment clarified that restitution may include costs of veterinary bills and replacement and training costs of a qualified assistance animal, but only if those costs were actually incurred.	No clinic involvement indicated.
2005	N.M. Stat. Ann. § 30-16-24.1	A person found guilty of obtaining identity by electronic fraud shall be ordered to make restitution for any financial loss sustained by a person injured as the direct result of the offense. In addition to out-of-pocket costs, restitution may include payment for costs,	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
		including attorney fees, incurred by that person in clearing the person's credit history or credit rating or costs incurred in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment or other obligation of that person arising as a result of the offense. The sentencing court shall issue written findings of fact and may issue orders as are necessary to correct a public record that contains false information as a result of the theft of identity or of obtaining identity by electronic fraud.	
2005	N.M. Stat. Ann. § 31-17-1	Amendment provided that a validly entered restitution order constitutes a judgment and lien against all property of a defendant for the amount the defendant owes under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A restitution order may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable pursuant to this section, the Victims of Crime Act, or the victims' rights constitutional amendment. Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.	No clinic involvement indicated.
Enforcement of Rights			
2005	N.M. Stat. Ann. § 31-26-10.1	New law requires the court to inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights at any scheduled court proceeding. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall reschedule the hearing, or continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and order the district attorney to notify the victim of the rescheduled hearing. This section does not limit the district attorney's ability to exercise prosecutorial discretion.	No clinic involvement indicated.

New Mexico Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to Attend				
2006	Nasci v. Hon. John W. Pope, Cody East, and Office of the District Attorney for the 13 th Judicial District, No. 29,878 (N.M. Nov. 8, 2006)	Order of remand issued in response to a petition for writ of superintending control granted the victim standing to file a motion with the district court seeking to attend all public district court proceedings that the offender has the right to attend. The court also ordered the district court to try to maximize the constitutional protections available to the victim under the state's statutes and constitution and the rules of procedure and evidence. The initial order of remand was replaced by an amended order of remand issued November 13, 2006 which specifically ordered the district court to maximize the protection available to the victim under N.M. R. Evid. 11-611 (requiring the court to exercise control over the mode and order of interrogation of witnesses to protect them from harassment or undue embarrassment) and N.M. R. Evid. 11-615 (exclusion of witnesses) as well as the federal Constitution. This ruling does not set a precedent, but is only applicable in this specific case.	Though expressly unreported and, therefore, of limited value as legal precedence, represents the first acknowledgement by the state Supreme Court that victims have standing to assert their rights.	The clinic represented the victims.
Right to Be Heard				
2005	State v. Aker, 113 P.3d 384 (N.M. Ct. App. 2005)	The defendant pled guilty to second degree murder, kidnapping, burglary, conspiracy to commit kidnapping, and conspiracy to commit first degree murder. He was sentenced to sixty years in prison. After sentencing the defendant filed a motion to vacate the sentence, arguing that the trial court wrongfully considered 192 letters addressing the victim's attributes, the impact of her murder on her family, friends, and the community at large, and urging the court to sentence the defendant to the maximum sentence allowed. The trial court denied the motion and the defendant appealed. The defendant argued that the letters were inadmissible because they were not from victims or victim representatives as defined by the Victims of Crime Act. The court of appeals disagreed, holding that reviewing the letters was not error even though the letters were not from victims of the crime or their families and noted that the court was "unaware of any	Limited implication for victims, since the impact letters at issue were from persons other than the victim or victim's family.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		statutory or common law authority precluding a court from considering letters or statements from non-victims when sentencing a defendant in a non-capital case.” The judgment and sentence were affirmed.		
Right to Protection				
2008	State v. Martinez, 176 P.3d 1160 (N.M. Ct. App. 2008)	The defendant was convicted of conspiracy to intimidate a witness. He appealed, asserting that the evidence was insufficient to support his conviction. A defendant who was facing murder charges in another case had two telephone conversations with the defendant, during which they agreed that the defendant would attend the other’s retrial because his presence might intimidate one of the witnesses into not testifying. These conversations were recorded by the detention center and heard by the jury at the defendant’s trial. A person violates the intimidation statute if he intimidates a person who is to be a witness in a judicial proceeding with the intention of preventing the person from testifying or to obtain his or her false testimony. The conversations in this case were sufficiently clear and understandable for the jury to determine that the two had agreed on a plan to intimidate a witness. The conviction was affirmed.	Will help protect future victims.	No clinic involvement indicated.
2005	State v. Garcia, 113 P.3d 406 (N.M. Ct. App. 2005)	The defendant plead guilty to eight counts of criminal sexual contact with a minor. The victim in the case was the defendant’s adopted daughter. The defendant appealed a special condition of his probation prohibiting him from having direct or indirect contact with all children under the age of eighteen, including the victim and his other children, without a court order. The defendant contends that the district court did not have jurisdiction to impose this special condition because that condition was a de facto termination of his parental rights to his four daughters. The New Mexico Court of Appeals disagreed and affirmed the district court’s imposition of the special condition. When sentencing, a district court has the authority to place a defendant on probation and require the defendant to satisfy conditions reasonably related to his rehabilitation.	Affirms the ability of the court to set protective order conditions on probation.	No clinic involvement indicated.
Right to Privacy				
2005	State ex rel.	The District Attorney for the Second Judicial District petitioned the	Potentially	No clinic

Year	Case	Summary	Implications for victims	Clinic involvement
	Brandenburg v. Blackmer, 110 P.3d 66 (N.M. 2005)	Supreme Court of New Mexico for a writ of superintending control. The petition addressed a district court order compelling discovery of statements made by the victim to a victim advocate employed by the prosecutor's office. The petitioner contends that a victim's advocate is part of the prosecution team and that the court order compels discovery of material the doctrine protects. The defendant argued that N.M. Dist. Ct. R.Cr.P. 5-501 requires a prosecutor to disclose "the names and addresses of all witnesses which the prosecutor intends to call at the trial, together with any statement made by the witness." While the Supreme Court determined that the work product doctrine applies in criminal actions and that a victim advocate employed by a district attorney's office is part of the prosecution team, it also upheld the district court's order compelling disclosure as being consistent with the disclosure required by Rule 5-501. The district court emphasized that the defendant was due only the victim's statements, and that the victim advocate was not required to divulge information she provided to the victim, advice she gave to the prosecution team, or the victim's questions about the criminal case. The district court's order authorizes an interview of the victim advocate concerning "statements or assertions" by the victim. Rule 5-501 requires disclosure of statements and defines the term. The district court may have considered "assertions" to be a synonym of "statements," but the Supreme Court determined that the inclusion of undocumented verbal assertions goes beyond the rule. The district court's order was upheld, except that the portion of the order authorizing an interview of the victim advocate should be modified to delete the phrase "or assertions."	harmful to victims, severely limiting their ability to communicate freely with the system-based victim advocate.	involvement indicated.
2005	Albuquerque Rape Crisis Ctr. v. Blackmer, 120 P.3d 820 (N.M. 2005)	The defendant in a rape case filed a motion to compel rape crisis counselors to participate in pretrial interviews with defense counsel and to provide statements concerning their contact with the victim. The counselors entered a special appearance in order to respond to the motion to compel, and asserted that the communications they had with the victim were confidential and protected by the Victim Counselor Confidentiality	Upholds victim privacy in communications with rape crisis counselors.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>Act. The district court entered an order granting the defendant’s motion, on the basis that, since a victim-counselor privilege is not recognized in the Supreme Court Rules of Evidence, the statements were not protected. The counselors filed a motion for reconsideration with the district court. The district court reaffirmed its previous order, but acknowledged its strong agreement regarding the victim’s right to privacy and urged the Supreme Court of New Mexico to adopt a victim-counselor privilege. The Supreme Court found that the non-disclosure provisions of the Victim Counselor Confidentiality Act were consistent with the psychotherapist-patient privilege of N.M. R.E. 11-504. The district court’s order was reversed, and the case was remanded to determine whether the communications were made in the course of a counselor’s treatment of the victim for any emotional or psychological condition resulting from a sexual assault.</p>		
Right to Privacy and Protection				
2004	<p>State v. Herrera, 84 P.3d 696 (N.M. Ct. App. 2004)</p>	<p>The defendant was convicted on two counts of criminal sexual contact of a minor involving his granddaughter. The State filed a motion prior to trial to take a videotaped deposition of the child and her brother, the other alleged victim in the case, stating that neither child could testify in open court “without suffering unreasonable or unnecessary mental or emotional anguish and/or harm.” The State later moved for admission of the deposition tape at trial. The district court did not make a determination of the justification for substituting the deposition tape in place of a face-to-face encounter in court, and the defendant did not request such a determination. The defendant challenged the district court’s admission of the deposition tape without weighing his constitutional right to confrontation against the potential harm to the victim from a face-to-face encounter for the first time on appeal. The New Mexico Court of Appeals determined that since the defendant did not object to admission of the deposition tape at trial, he failed to raise the constitutional argument he made on appeal. By statute and court rule, a child under the age of sixteen</p>	<p>None; the court based its ruling on the defendant’s failure to assert his rights at the trial court level.</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>who is the alleged victim of criminal sexual contact of a minor may be allowed to testify via a videotaped deposition if certain procedural safeguards are followed by the court. The defendant waived his right to a face-to-face confrontation by failing to oppose the motion for admission of the deposition tape and by taking part in both the deposition and the trial without objecting to the admission of the deposition tape. The court of appeals affirmed the defendant's conviction.</p>		
Right to Restitution				
2007	<p>State v. Collins, 166 P.3d 480 (N.M. Ct. App. 2007)</p>	<p>The defendant opened an osteopathic clinic financed by some of his patients; thirty-nine of these patients challenged a subsequent bankruptcy action filed by the defendant. The defendant's debts were discharged once the bankruptcy court held that the defendant had not misrepresented his financial condition to the patients. Meanwhile, criminal charges were filed and the defendant was convicted of multiple counts of securities fraud and the sale of unregistered securities; the defendant was ordered to pay restitution as a condition of probation. On appeal, the defendant argued that the court's restitution order was improper because the debts in question had been discharged by the bankruptcy court. The court of appeals disagreed, holding that the filing of bankruptcy did not void a restitution order imposed as a condition of probation under a state criminal judgment. The sentence and convictions were affirmed.</p>	<p>Confirms that restitution orders cannot be discharged by bankruptcy.</p>	<p>No clinic involvement indicated.</p>

SOUTH CAROLINA Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Be Informed			
2005 2006	S.C. Code Ann. § 16-3-1525	<p>2005 amendment added mental health facilities to the custodial institutions that must be provided the name, address, and telephone number of each victim.</p> <p>2005 amendment required most diversion programs, and any facility responsible for a mandatory or court-ordered mental evaluation of a defendant, to notify the victim prior to the defendant's release.</p> <p>2005 amendment required that after three unsuccessful attempts via electronic or automated means to notify a victim of an offender's release or escape, the notifying agency must attempt to make personal contact with the victim. In 2006 this amendment was limited to victims in cases involving criminal domestic violence, criminal sexual conduct, and stalking and harassment, and certain similar cases.</p>	The clinic attorneys had met with the sister of a stalking victim and her attorneys after her sister was murdered by the stalker upon his release from prison. The victim had not received notice of his release. The clinic's parent organization then worked with the victim's sister to advocate for legislative changes.
2005	S.C. Code Ann. § 16-3-1530	Amendment expanded the law to require that a victim be informed before any release of a person from custody, and before any non-intra-departmental transfer of an offender to a diversionary program, in addition to any other less secure facility. The provision does not apply if the person remains under security supervision. All victims, upon request, must be notified of intra-departmental transfers after the transfer occurs. Notification of a victim may not be only by electronic or other automated communication or recording except in the case of an intra-departmental transfer.	See above.
2005	S.C. Code Ann. § 16-3-1535	Amendment required the summary court judge to forward, in cases in which the sentence is more than ninety days, a copy of each victim's impact statement or the name, mailing address, and telephone number of each victim, or both, within fifteen days to the Department of	Clinic's parent organization sought this change.

Year	Citation	Substance of change	Link to Clinic
		Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program.	
2005	S.C. Code Ann. § 16-2-1555	Amendment changed the amount of time the prosecuting attorney has to forward the victim's impact statement or contact information to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, and the Department of Juvenile Justice, and added a diversion program to the list of entities to receive the victim's statement or contact information.	Clinic's parent organization sought this change.
2005	S.C. Code Ann. § 16-3-1740	Amendment provided that if a mental evaluation of a person convicted of stalking or harassment is ordered to undergo a mental health evaluation, and the evaluation results in the unsupervised release of the defendant, the victim must be notified prior to the release. All reasonable efforts must be made to notify the victim personally to assure the notification is received.	Clinic's parent organization sought this change.
2008	S.C. Code Ann. § 17-28-50	New law requires the victim to be notified if the defendant files an application for post-conviction DNA testing. If the defendant's application is dismissed, the victim shall be informed.	The clinic's parent organization was involved in this change; its former policy director was the chief advocate for this law.
2008	S.C. Code Ann. § 17-28-90	New law requires that when a post-conviction DNA test sample of a defendant is run against a DNA database, the victim must be notified of the results.	See above.
2008	S.C. Code Ann. § 17-28-100	New law requires that if a defendant receives post-conviction DNA testing, the victim shall be notified of the results of the test.	See above.
2008	S.C. Code Ann. § 17-28-340	New law requires that the victim be notified if the custodian of evidence involved in a case resulting in a conviction of certain listed crimes petitions for an order allowing for the disposition of the physical evidence or biological material within a shorter period of time than the evidence would normally be preserved.	See above.
2004	S.C. Code	New law requires the Department of Probation, Parole and Pardon	Clinic's parent organization supported

Year	Citation	Substance of change	Link to Clinic
	Ann. § 24-21-35	Services Board to make its administrative recommendations available to a victim of a crime before it conducts a parole hearing for the perpetrator of the crime.	this legislation.
2005	S.C. Code Ann. § 44-24-150	Amendment requires that a victim of a child charged with a crime and held in detention who is ordered to a mental health facility for a psychiatric evaluation must be notified of the juvenile's transfer to or discharge from a mental health facility.	The clinic attorneys had met with the sister of a stalking victim and her attorneys after her sister was murdered by the stalker upon his release from prison. The victim had not received notice of his release. The clinic's parent organization then worked with the victim's sister to advocate for legislative changes.
Right to Attend			
2004	S.C. Code Ann. § 24-21-30	Amendment required the parole board to conduct all parole hearings in cases that relate to a single victim on the same day and authorized the board to allow the victim and offender to appear simultaneously before the board for the purpose of providing testimony, upon the victim's request.	Clinic's parent organization supported this legislation.
Right to Be Heard			
2005	S.C. Code Ann. § 16-1-130	New law enacted in 2005 specifies persons who are ineligible for diversion programs, such as drug court programs and mental health courts; includes cases where the victim's consent to the offender's participation has not been obtained.	The clinic attorneys had met with the sister of a stalking victim and her attorneys after her sister was murdered by the stalker upon his release from prison. The victim had not received notice of his release. The clinic's parent organization then worked with the victim's sister to advocate for legislative changes.
2005	S.C. Code Ann. § 16-3-1535	Amendment required the summary court judge to forward, in cases in which the sentence is more than ninety days, a copy of each victim's impact statement or the name, mailing address, and telephone number of each victim, or both, within fifteen days to the Department of	See above.

Year	Citation	Substance of change	Link to Clinic
		Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program.	
2005	S.C. Code Ann. § 16-3-1555	Amendment changed the amount of time the prosecuting attorney has to forward the victim's impact statement or contact information to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, and the Department of Juvenile Justice, and added a diversion program to the list of entities to receive the victim's statement or contact information. The amendment also required the prosecuting agency to maintain the victim's original impact statement. The victim's impact statement must not be provided to the defendant until the defendant has been adjudicated, found guilty, or has pled guilt, and its contents are not admissible as evidence in any trial.	See above.
2008	S.C. Code Ann. § 17-28-50	New law provides that the victim has the right to respond to the defendant's application for post-conviction DNA testing.	The clinic's parent organization was involved in this change; its former policy director was the chief advocate for this law.
2004	S.C. Code Ann. § 24-21-710	Amendment required the Board of Probation, Parole and Pardon Services to install, maintain, and operate closed circuit television systems at locations determined by the board and conduct parole hearings by means of a two-way closed circuit television system provided in this section. The amendment also required a victim of a crime to have access to this system to appear before the board during a parole hearing.	Clinic was active in this case. Clinic's parent organization initiated this legislation.
Right to Protection			
2005	S.C. Code Ann. § 16-3-1735	New law provided that a law enforcement officer or other person with knowledge of the circumstances may sign a warrant in place of the victim for a person alleged to have committed harassment or stalking.	Clinic's parent organization supported this legislation.
2007	S.C. Code Ann. §	New law prohibits gang members from, by threat or force, preventing or attempting to prevent a witness or victim from attending or giving	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
	16-8-250	testimony. A person who has been coerced, intimidated, threatened, or injured in violation of this section has a civil cause of action for treble the amount of actual damages, punitive damages, an injunction, and any other appropriate relief.	
Right to Privacy			
2005	S.C. Code Ann. § 16-3-1525	Amendment added mental health facilities to the custodial institutions that must be provided the name, address, and telephone number of each victim. The contact information is confidential and must not be disclosed directly or indirectly, except as necessary to provide notification.	The clinic attorneys had met with the sister of a stalking victim and her attorneys after her sister was murdered by the stalker upon his release from prison. The victim had not received notice of his release. The clinic's parent organization then worked with the victim's sister to advocate for legislative changes.
2005	S.C. Code Ann. § 16-3-1535	Names, addresses, and phone numbers of victims and witnesses forwarded to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, or a diversion program are confidential and must not be disclosed except by court order or as necessary to provide notifications or services between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General.	See above.
2005	S.C. Code Ann. § 16-3-1555	Amendment provided that the victim's impact statement must not be provided to the defendant until the defendant has been adjudicated, found guilty, or has pled guilty, and its contents are not admissible as evidence in any trial.	See above.
2005	S.C. Code Ann. § 16-3-1770	Amendment provided that a temporary restraining order for stalking or harassment may not contain the social security of a party to the order and must contain as little identifying information as is necessary of the party it seeks to protect.	See above.
2006	S.C. Code Ann. §	Amendment rewrote this section, which now prohibits disclosure of personal or confidential information in proceedings relating to a	Clinic's parent organization initiated this legislation.

Year	Citation	Substance of change	Link to Clinic
	40-47-190	patient's complaint. The identity of a minor or sexual battery victim must remain confidential.	
Right to Compensation			
2006	S.C. Code Ann. § 16-3-1230	Amendment added the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor as an event which triggers the running of the time period for filing a claim for compensation.	Clinic's parent organization initiated this legislation.
2008	S.C. Code Ann. § 16-3-1180	Amendment permits board to authorize additional counseling sessions for a victim who has already received the maximum 20 sessions ordinarily allowable. The board may authorize up to an additional 20 sessions.	No clinic involvement.
Right to Restitution			
2007	S.C. Code Ann. § 24-1-295	New law authorizes the use of inmate labor for certain work; if restitution to a particular victim or victims has been ordered, then twenty percent of inmate wages must be used to fulfill the restitution obligation.	Clinic's parent organization initiated this legislation. The SC Crime Victim Council shepherded it through legislature.
Right to Civil Action			
2007	S.C. Code Ann. § 16-8-250	New law prohibits gang members from, by threat or force, preventing or attempting to prevent a witness or victim from attending or giving testimony. A person who has been coerced, intimidated, threatened, or injured in violation of this section has a civil cause of action for treble the amount of actual damages, punitive damages, an injunction, and any other appropriate relief.	No clinic involvement indicated.

South Carolina Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to Be Informed				
2007	SC Attorney General Opinion No. 07-034	<p>Attorney General reviewed the statutory requirements regarding victim notification and the legislature's intent that victims' rights be protected to the same degree as the rights of defendants, and noted that the state constitution protected victims' right to be informed. The Attorney General ruled that where a formal notice of appearance has been filed by a victim's attorney, the attorney should be provided written notice contemporaneously with the prosecution and defense of all court hearings, and that if an attorney files notice with law enforcement and prosecuting agencies that also have a responsibility to notify victims, those agencies should also attempt to send notice to the attorney as well as to the victims.</p>	Strengthened the ability of attorneys to represent crime victims.	<p>In 2007, the clinic was involved in a criminal domestic violence case, and the victim's attorney (the clinic director at the time) was not notified of a bond hearing for the offender. After arguing with the prosecutor about the failure to give notice, the clinic director mentioned the case to SCVAN's legislative coordinator. She in turn contacted a state senator, and he requested an opinion from the Attorney General.</p>
Right to Be Heard				
2007	State v. Barlow, 643 S.E.2d 682 (S.C. 2007)	<p>The defendant was convicted of strong arm robbery. He was incarcerated and later released from custody and placed on probation. Thereafter, he was permitted, pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, to move to the State of Washington. The defendant was arrested in Washington for violating probation and extradited to South Carolina. At the probation revocation hearing, a victim's advocate presented the victim of the strong arm robbery to the court. The victim made statements regarding the defendant's crime against her. The victim's advocate</p>	Gives victims the option to have an advocate present their views.	No clinic involvement indicated.

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>also directly addressed the trial court about the facts of the case. The trial court found that the defendant willfully violated probation and revoked three years on his sentence. The defendant appealed, arguing that the trial court erred because it allowed the State to present the probation revocation case through a non-lawyer, the victim’s advocate. The South Carolina Supreme Court found no error in allowing the victim’s advocate to address the trial court and affirmed the defendant’s probation revocation. S.C. Code Ann. § 16-3-1560 gives victims the right to attend and comment at post-conviction proceedings affecting probation.</p>		
Right to Protection				
2007	<p>State v. Houey, 651 S.E.2d 314 (S.C. 2007)</p>	<p>The defendant was charged with second-degree criminal sexual conduct with a minor. The State moved for an order requiring the defendant to submit to testing for HIV and other diseases, but the defendant opposed the motion. The trial court issued the order; the defendant appealed. On appeal, the defendant argued that section 16-3-740(B) permits a search of an individual’s body without a probable cause determination that the defendant is actually infected and, therefore, violates the Fourth Amendment of the Federal constitution and article I, section 10 of the South Carolina Constitution. The supreme court held “that probable cause based on individualized suspicion that an offender carries HIV or Hepatitis B is not required by the Fourth Amendment . . . or by Article I, section 10, of the South Carolina Constitution.” The defendant also argued that “since there is no requirement of immediate testing of a subject, any test results may not necessarily be</p>	<p>Highlights the State’s interest in protecting victims’ health.</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>indicative of the [defendant’s] condition at the time of the alleged assault” and, therefore, the statute is unconstitutionally vague. The supreme court disagreed, holding that the defendant’s concerns were not relevant in light of the State’s interest in preventing the spread of these diseases and in protecting the health of alleged victims. The court’s order was affirmed.</p>		
Right to Restitution				
2007	<p>Torrence v. S.C. Dept. of Corrections, 646 S.E.2d 866 (S.C. 2007).</p>	<p>A private company paid the Department of Corrections (DOC) \$7.17 per hour for each prisoner’s labor, and the prisoners were paid \$5.25 of that amount per hour. Recipients of victim compensation funds and victims receiving restitution paid by prisoners participating in the Prison Industries Program had no private right of action under § 24-3-40 to bring a class action challenging that the DOC improperly diverted money from the hourly wage received and deposited it into a DOC surplus fund.</p>	<p>Negatively impacts crime victims by giving them no recourse to challenge the diversion of prisoners’ earnings that could be applied to pay restitution or compensation awards.</p>	<p>No clinic involvement indicated.</p>
2006	<p>In the Interest of Terrence M., 628 S.E.2d 295 (S.C. Ct. App. 2006).</p>	<p>Family court order rescinding its previous order of restitution by a juvenile was reversed, and the case was remanded for a de novo restitution hearing because the family court had jurisdiction to order restitution as the juvenile’s probation was never revoked and the juvenile had not yet attained the age of 18. Therefore, pursuant to S.C. Code Ann. § 20-7-7805(A)(3), the juvenile’s sentence of indefinite probation continued even after he was committed for another offense.</p>	<p>Supports a victim of a juvenile offender’s right to restitution.</p>	<p>No clinic involvement indicated.</p>

UTAH

Changes in Statutes, Administrative Codes, and Court Rules For Victims' Rights

Year	Citation	Substance of change	Link to Clinic
Right to Be Informed			
2007	Utah Code Ann. § 76-3-402	Amendment rewrote this statute pertaining to the procedure and limitations for reducing a conviction to a lower degree of the offense. It added a provision to ensure that before exercising its authority to reduce the level of offense for which a person is convicted, the court must give any victims present and the prosecutor an opportunity to be heard. It also added a provision stating that if the court suspends the execution of the sentence and places the offender on probation, the court may enter a conviction for the next lower degree of the offense only if certain conditions are met, including after the prosecutor has made a reasonable effort to notify any victims of the reduction. The victim has a right to request a hearing on the issue.	No clinic involvement indicated.
2007	U.A.C. R671-203-2	New administrative code provision sets out in detail the notices that must be sent to a victim by the parole board. The notice of the original hearing (and the victim's rights at parole) is sent automatically; victims must request notice of subsequent hearings.	No clinic involvement indicated.
Right to Attend			
2007	U.A.C. R671-203-1 U.A.C. R671-203-3	Newly expanded provisions of the Administrative Code detail the victim's right to attend parole hearings. The victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict would prevent their attendance at the hearing.	No clinic involvement indicated.
Right to be Heard			
2007	Utah Code Ann. § 76-3-402	Amendment rewrote this statute pertaining to the procedure and limitations for reducing a conviction to a lower degree of the offense. It added a provision to ensure that before exercising its authority to reduce the level of offense for which a person is convicted, the court must give any victims present and the prosecutor an opportunity to be heard. If the court suspends the execution of the sentence and places the offender on probation, the court may enter a	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
		conviction for the next lower degree of the offense only if certain conditions are met, including after the prosecutor has made a reasonable effort to notify any victims of the reduction. The victim has a right to request a hearing on the issue.	
2008	Utah Code Ann. § 77-38-4	Amendment gave a victim the right to submit a written statement in any action on appeal related to that crime and made related and stylistic changes.	The legislation was proposed by the Attorney General's office with the support of the Utah Council on Victims of Crime. Two of the clinic's clients testified about the need for that legislation, and asked the clinic attorney to attend with them. However, the clinic did not directly advocate for the legislation.
2007	U.A.C. R671-203-1, 203-3, 203-4, 203-5	Newly expanded provisions of the Administrative Code detail the victim's right to be heard at parole. Among the most noteworthy changes: the rules give the victim the right to request a hearing on victim impact, to be held sooner than the first normally scheduled parole hearing (if that hearing will take place more than 3 years after commitment) in order to preserve victim impact testimony and information for future consideration.	No clinic involvement indicated.
Right to Protection			
2008	Utah Code Ann. § 78B-3-110	Amendment added personal representatives of a disabled or killed victim to the list of those protected from a civil action by an offender for damages resulting from commission of crime	No clinic involvement indicated.
2008	Utah R. Crim. P. Rule 15.5	Court rule amendment relating to admissibility of out of court statement and testimony of child victims or child witnesses of sexual or physical abuse rewrote this rule. The amendments are intended to help bring the rule into compliance with the confrontation clause requirements of Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).	No clinic involvement indicated.
Right to Privacy			
2008	Utah Code	Amendment deleted the exclusion of the general public from the courtroom	No clinic involvement

Year	Citation	Substance of change	Link to Clinic
	Ann. § 78A-6-114	during abuse, neglect, and dependency proceedings. The court shall admit any person to a hearing, unless the court makes a finding upon the record that the person's presence at the hearing would be detrimental to the best interest of a child who is a party to the proceeding; impair the fact-finding process; or be otherwise contrary to the interests of justice.	indicated.
2005	Utah R. Judicial Admin Rule 4-202	New rule lists examples of the interests served by public court records to illustrate the important objectives of open government. The rule also lists examples of the interests served by non-public court records to illustrate the important objectives protected by selectively closing court records, including to protect personal privacy; to protect personal and public safety; and to protect non-parties participating in the court process, such as victims, witnesses, and jurors.	No clinic involvement indicated.
2007	Utah R. Crim. P. Rule 14	Court rule amendment added provisions relating to subpoenas for the production of records of a victim. No subpoena or court order compelling the production of a victim's medical, mental health, school, or other non-public records shall be issued at the request of the defendant unless the court determines that the defendant is entitled to the records sought under applicable state and federal law. The defendant's request for the subpoena must be filed with the court as soon as practicable, but no later than 30 days before trial, and must identify the records requested and be reasonably limited. The request and notice of hearing shall be served on the prosecutor and the victim's attorney, if the victim is represented by counsel. If the defendant establishes that he or she is entitled to the records requested, the court shall conduct an in camera review and disclose only those portions of the records that the defendant has demonstrated a right to inspect. The court has the discretion to issue any reasonable order to protect the privacy of the victim or to limit dissemination of disclosed records. An Advisory Committee note to the rule amendment states that the addition of this new subsection is "intended...to adopt a procedure consistent with current applicable law that balances a victim's state constitutional right '[t]o be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process,' with a defendant's constitutional right to due process.	The clinic staff were asked their opinions regarding the need for the rule, but were not the advocates for this rule change.

Year	Citation	Substance of change	Link to Clinic
		Requiring a defendant to apply to the court for the production of a victim's records ensures that a victim or his or her representative will have an opportunity to assert any privileges or reasons why the records should not be subject to either release or in camera review.”	
Right to Compensation			
2008	Utah Code Ann. § 63M-7-501—525.	Renumbered the comp provisions and made a number of fairly minor amendments. The more important changes included: making Utah residents, who suffer injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country which does not provide a crime victims’ compensation program; clarified that prisoner victims are not eligible for comp, even if the crime happened in the jail or correctional institute; raised the cap on awards for homicides, attempted homicide, DUI and aggravated assault to \$50,000 per claim; provided that a medical service provider who accepts payment from the compensation office shall agree to accept such payments as payment in full on behalf of the victim or claimant. The medical service provider may not attempt to collect further payment from the victim or the claimant UNLESS the office is unable to make full payment in accordance with it’s rules. Then, the medical provider may collect from the victim, but no more than the amount the provider would have received from the office.	No clinic involvement indicated.
Right to Restitution			
2005	Utah Code Ann. § 77-38a-302	Amendment extended the definition of the term “Court-ordered restitution” to include restitution ordered by the court within one year after sentencing; deleted the requirement that any full hearing on restitution requested by the defendant be conducted at the time of sentencing; and similar amendments to allow flexibility in the ordering of restitution.	No clinic involvement indicated.
2007	Utah Code Ann. § 77-38a-404	Restitution payments made pursuant to a court order shall be disbursed by the court to victims within 60 days of receipt from the defendant. Restitution owed to more than one victim shall be disbursed to each victim on a pro rata basis.	No. Change was prompted by an individual victim/legislator.
2007	Utah Code Ann. § 78A-6-121	New law required that before jurisdiction over a juvenile is terminated, info and responsibility for collection of outstanding finds and restitution shall be transferred to the Office of State Debt Collection. Prior to such transfer, the	No clinic involvement indicated.

Year	Citation	Substance of change	Link to Clinic
		court shall reduce the restitution order to a civil judgment listing the victim, or the estate of the victim, as the judgment creditor.	
2007	Utah Code Ann. § 78A-6-1105	Amendment added a requirement that a judgment for restitution must be satisfied before a juvenile conviction record can be expunged.	No clinic involvement indicated.
2007	U.A.C. R671-315-1	Administrative code amendment specified documentation to be provided by an offender requesting to be pardoned and includes proof that restitution has been paid in full.	No clinic involvement indicated.
2007	U.A.C. R671-403-1	Administrative code amendment clarifies the instances when the Parole Board will consider restitution. The Board must now affirm all court-ordered restitution in accordance with Utah Code Ann. § 77-38a-302. Previously, the Board had discretion to consider whether affirming court-ordered restitution is appropriate and whether the offender has or is prepared to make restitution. The Board continues to have authority to order restitution in certain specified instances. While the Board was required to notify the victim of the hearing in writing, it now must make a reasonable effort to inform him or her.	No clinic involvement indicated.
Enforcement of Rights			
2007	Utah Code Ann. § 77-37-4	Amendment added that if a victims' rights committee is unable to resolve a complaint, it may refer the complaint to the Utah Council on Victims of Crime, established in Utah Code Ann. § 63M-7-601, for further consideration.	No clinic involvement indicated.
2008	Utah Code Ann. 77-38-4	Amendment gave victim the right to submit a written statement in any action on appeal related to the crime.	The legislation was proposed by the Attorney General's office with the support of the Utah Council on Victims of Crime. Two of the clinic's clients testified about the need for that legislation, and asked the clinic attorney to attend with them. However, the clinic did not directly advocate for the legislation.

Utah Victims' Rights Case Law

Year	Case	Summary	Implications for victims	Clinic involvement
Right to Attend				
2006	State v. Billsie, 131 P.3d 239 (Utah 2006)	<p>The defendant was convicted of three counts of aggravated sexual abuse of a child. At the trial, the defendant moved to exclude witnesses from the courtroom pursuant to Ut. R. Evid. 615. The prosecutor requested an exemption from the exclusion for the eight-year-old victim's mother even though she was expected to be called as a witness in the case. The trial court granted the exemption and permitted the mother to remain in the courtroom and sit behind the victim during the victim's testimony. The defendant appealed. The court of appeals affirmed the convictions, including the trial court's decision to allow the mother to remain in the courtroom. The Utah Supreme Court granted the defendant's petition for certiorari. The defendant argued that Rule 615 required the victim's mother to be excluded, and that even if it were permissible to allow her to remain in the courtroom, it was error to allow her to sit directly behind the victim during her testimony. The rule grants the trial court discretion to exempt some categories of witnesses from the mandatory exclusion. The trial court felt that the victim's mother should be allowed to remain with her due to her young age and the sensitive nature of her testimony, and the decision to allow her to do so was well within the trial court's discretion. Having exercised its discretion in this case, the trial court was responsible for assuring that the victim's mother did not improperly influence the child's testimony and required her to sit behind the victim during her testimony so that she was not able to make eye contact or gesture to the child as she testified. The Supreme Court determined that the trial court did not abuse its discretion in allowing the mother to sit behind the child-victim during her testimony. The court of appeals was correct to affirm the convictions. .</p>	<p>Very important: providing support for a young child victim is crucial to enabling them to testify.</p>	<p>No clinic involvement indicated.</p>
Right to Privacy				
2008	State v. Worthen,	<p>The defendant was charged with ten counts of aggravated sexual abuse of a child for molesting his adopted daughter. Some time prior to accusing the</p>	<p>Illustrates that there are times</p>	<p>This case has been appealed</p>

Year	Case	Summary	Implications for victims	Clinic involvement
	177 P.3d 664 (Utah Ct. App. 2008)	<p>defendant of sexually abusing her, the victim attempted suicide and was admitted to a mental health facility. During a mental health evaluation, the victim stated that she had been having some problems with her family, particularly her mother, and that she had been previously abused by her biological grandparents but no one else. The victim participated in various types of inpatient and outpatient counseling during which she kept a journal about her family and her feelings toward them. In one of the entries, she expressed extreme anger towards her mother and threatened to kill her. Shortly thereafter, the victim told her therapist that the defendant had sexually abused her. At the defendant's preliminary hearing the victim testified about multiple incidents of abuse that had occurred over several years. Defense counsel identified inconsistencies in the victim's testimony and what she had reported to law enforcement and mental health workers. After the defendant was bound over for trial, he filed a motion to subpoena the victim's medical records which the trial court granted solely for the purpose of determining whether they contained any evidence that might shed light on the victim's feelings toward her parents. To protect the victim's privacy, the judge ordered his law clerk to review the records, highlight the pertinent portions, and then submit the records to him for an in camera review. The State appealed, contending that the trial court's order neglected to first determine whether the records were subject to the privileged communications exception of Utah R. Evid. 506. Rule 506 protects communications between a health care provider and a patient, if the communications were made in confidence in the course of treating or diagnosing the patient, but is not an absolute privilege. In addition, the State argued that the defendant was not entitled to an in camera review of the victim's medical records because he did not establish that the records fall into an exception of Rule 506, the evidence sought was for impeachment purposes and not evidence of a claim or defense, and that the records were not reasonably certain to contain exculpatory information. The Utah Court of Appeals disagreed with the State, concluding that the trial court had properly considered whether the defendant's request</p>	<p>when the defendant's right to discover material, exculpatory evidence outweighs the need to protect a victim's confidential records.</p>	<p>to the Supreme Court, and the Clinic has filed an amicus brief.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		<p>for records came within an exception to the Rule 506 privilege. The Court also held that defendant's argument in favor of in camera review of the records was based on an element of a defense, and that the trial court was not required to rule on materiality before granting the defendant's request. The Court of Appeals noted that both parties relied on several of the same cases. In those cases, after balancing the interests of the victim and the defendant, the court determined that an in camera review of the records satisfies the defendant's need to present a defense while limiting intrusion into the victim's confidential information. The Court was also influenced by the fact that the privilege at issue was qualified, not absolute, as it is in the present case. These cases support the idea that the legislature contemplated situations in which the defendant's right to discover material, exculpatory evidence would outweigh the State's need to protect confidential records. Finally, the Court of Appeals did, however, agree that the trial judge, and not his law clerk, should have reviewed the victim's medical records due to their sensitive nature and the need to limit the number of people allowed to view the confidential information contained in them.</p>		
Right to Restitution				
2008	<p>State v. Hight, 182 P.3d 922 (Utah Ct. App. 2008)</p>	<p>The defendant pled guilty to burglary, possession of a controlled substance with intent to distribute, and criminal mischief. He filed an appeal challenging the amount of restitution ordered by the trial court. The defendant argued that the court erred by ordering restitution for items which were reported as missing by the victim from the premises he admitted to burglarizing, but which he contends he did not take. He asserted that he was not convicted for taking these items, specifically a watch, a set of keys, and a silver dollar collection, and that he did not agree to pay restitution for them as part of his plea agreement. Further, the defendant argued that after pleading guilty to a broad offense such as burglary, his responsibility for particular items must be clearly established before restitution can be ordered for them. The Court of Appeals disagreed, determining that it is only the initial crime for which legal liability must be found. Trial courts are given wide latitude in</p>	<p>Affirms that trial courts are given broad discretion when ordering restitution.</p>	<p>No clinic involvement indicated.</p>

Year	Case	Summary	Implications for victims	Clinic involvement
		sentencing. Once the defendant pleaded guilty to burglary, the trial court had the discretion to order ordering restitution for any pecuniary damages it found clearly resulting from the burglary, after reviewing the evidence presented at the restitution hearing. An appellate court will not disturb a trial court's restitution order unless it finds an abuse of discretion on the basis that no reasonable person would take the view adopted by the trial court.		
2007	State v. Cabrera, 163 P.3d 707 (Utah Ct. App. 2007)	The defendant pled guilty to two counts of class A misdemeanor Driving Under the Influence with injuries after striking the victims' vehicle, injuring a mother and her daughter. He was sentenced to sixty days in jail and probation for thirty-six months. The conditions of probation included a requirement that the defendant pay restitution to the victim, the amount of which was to be determined at a later hearing. However, after serving his jail sentence, the defendant argued that the restitution order was discharged through federal bankruptcy proceedings, which had occurred sometime between the accident and the filing of charges and order of restitution. The trial court dismissed the order. The State appealed and the court reversed itself and ruled that the restitution order had not been discharged in bankruptcy. On appeal, the defendant argued that the restitution order violated federal bankruptcy law. The court of appeals held that because the Supreme Court has held that the conditions imposed by a state court are exempted from discharge, the trial court's decision to order restitution was well within the court's discretion and did not contravene federal bankruptcy law. The judgment was affirmed in part and reversed in part on other grounds.	Strengthened victim's right to restitution even when the defendant declares bankruptcy.	No clinic involvement indicated.

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APPENDIX C: INTERVIEW TOPICS

Questions for Clinic Staff

History of the Clinic

- Can you tell me how the clinic got started? Who was involved? Was the clinic an add-on to an existing program?

Criminal Justice Context

- To what extent does the clinic concentrate on the local jurisdiction vs. a state-wide focus?
- Number of courts in which clinic staff have represented clients, filed motions or briefs, or trained criminal justice staff
- To what extent do the state statutes on victim rights facilitate or hinder the work of the clinic?
- What is the jurisdiction in which the clinic has done the most work (target jurisdiction)?
- How receptive are judges and prosecutors to victim rights and the work of the clinic?
- What kind of reactions do you get from defense attorneys to the presence of the clinic's attorneys in court? Do defense attorneys use any tactics to try to silence victims' attorneys?
- How do victim advocates react to your work? Are there differences between the response of prosecutor-based victim advocates and that of community-based advocates?
- What are the principal victim service organizations in the target jurisdiction, and what is the nature and extent of their cooperation with the clinic?
- Does clinic staff train judges, prosecutors, advocates, or other criminal justice professionals? How often? What formats does the training take? Stand-alone trainings, workshops at conferences, train-the-trainer, recommending trainers of the same profession as the trainees?
- To what extent does clinic staff make calls/inquiries on behalf of victims with prosecutors, judges, probation/parole officials? How successful are these efforts generally?

Pro Bono Staff

- How many practicing attorneys has the clinic trained in each year of its operation? How many law students?
- How many of the attorneys and law students continue to represent victims after their training, or in the case of law students, after they have graduated?
- To how many practicing attorneys have you provided other types of assistance, such as model forms or pleadings?
- Can pro bono attorneys be used to take responsibility for a case, given scheduling issues and wait time in court? Are they best used for smaller tasks (e.g., help prepare briefs, assist in collecting restitution) that don't require court appearances?
- Are law students in your jurisdiction allowed to represent clients? If so, does the clinic use students in that capacity?

Recruiting and Screening Mechanism for Selecting Clients

- How is outreach conducted?

- What kinds of public information is available? Is there information geared toward professionals (victim service providers)?
- Does the clinic make any special efforts to reach underserved populations in culturally appropriate ways?
- What kind of media coverage has the clinic received or generated? Has that helped outreach efforts?
- What are the eligibility criteria for representing victims (e.g., types of cases, types of issues, location)?
- Through what sources are most of your clients referred? Have there been any changes in your referral sources over time?
- How do you determine when to formally open a “case”? What proportion of calls/inquiries result in opening a case?
- What kinds of inquiries from victims or their advocates are most frequent? How are they handled?
- In the past year, how many referrals have been determined to be eligible for clinic services; of these, how many were accepted?
- How many cases were determined to be eligible but were not accepted for assistance? What were the reasons for not taking these cases; were there differences in characteristics of the cases accepted vs. those not accepted?

Legislative Changes

- Have there been any favorable changes to state victim right statutes since the clinic opened?
- Were clinic staff involved in bringing about those changes? How?
- Can you separate the impact of the clinic’s legal work from advocacy that clinic staff would normally be doing anyway? For instance, did specific cases help demonstrate the need for statutory changes?
- Who do you work with in legislative advocacy?
- Has the presence of clinic staff or clinic-trained attorneys in the court—or the clinic’s reputation for legal work—affected your relationship with judges, prosecutors, or others who might be partners or adversaries on proposed victim legislation?
- Have there been any attempts at changing legislation that didn’t work out? Did those attempts produce any useful information?
- Have there been any unfavorable changes to victims rights legislation or unfavorable court decisions?
- Are you working on any legislation now (separate from your federal funding, of course)?
- Have you proposed any changes to court rules? Were they enacted? Was there a direct link between the rule changes and any specific cases the clinic worked on?

Representation in Court Cases

- How do you view your role as a victims’ attorney? What types of work does that role entail?
- In how many court cases have you represented victims and/or filed papers during the past year at the trial court level and at the appellate level?

- In how many cases did you accompany victims without a formal representation agreement?
- What were the most common victim rights issues involved in those cases?
- Can you summarize the results of these efforts?
- Have you noticed any difference between cases when you formally represent victims versus appear informally (accompaniment)?
- In addition to your work directly representing victims, have you filed any amicus briefs in cases affecting the interests of crime victims?
- Can we get copies of any of your briefs? Appellate level briefs are especially helpful. [This will help us determine the extent to which specific arguments were persuasive to the court.]

Relationship with NCVLI and the Other Clinics

- How has participation in the NCVLI demonstration project influenced the clinic's goals, activities, and functioning?
- Now that the demonstration project is ending, will the clinic make changes to its goals, objectives, or operations, or will it keep functioning essentially as it has for the past few years?
- Is there any tension between clinic leadership's goals for the clinic and the constraints imposed by funding sources (OVC, NCVLI, others)?
- Describe this clinic's relationship with the other victims' rights clinics. How has that relationship impacted the work of your clinic?

Information for Impact Study

- What does clinic staff believe are the best ways to assess the impact of their clinic? What data do they have to evaluate these program effects? What has been their "success" rate in filing motions? How do they define success (winning rights for individual victims, changing the way the criminal justice system responds to victim rights)?
- In what ways has the clinic changed the climate for victim rights in the state and in the targeted jurisdiction?
- Have there been any unintended consequences (positive or negative) of the clinic?
- Is the program logic model accurate? Would clinic staff suggest any changes to the model based on changes in clinic goals or objectives?
- Would clinic staff be willing to participate in an impact study? Would program and court records be made available to the research project?

Suggestions to Improve Clinic Operations

- What obstacles has the clinic faced in meeting its goals and objectives? What steps were taken to overcome those obstacles?
- How has the approach or strategy of the clinic changed over time?
- Does the clinic staff have suggestions to improve the effectiveness of the local clinic or the effectiveness of the NCLVI program generally?
- What are the prospects for long-term survivability of the clinic? What sources might provide funding? Has the clinic taken any steps toward sustainability?

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- Is there anything else you'd like to say?

Questions for Judges, Prosecutors, and Victim Advocates

Are you familiar with the work of the victim rights clinic? Could you describe what they do?

Have you or your staff received training from clinic staff on victim rights?

- Please describe the training.
- Did you or your staff learn new information in the training?
- Did it change the way you think about victims' rights in any way?
- Did the training affect how you handle victims?

Have there been any changes to state victim rights statutes or court rules since the clinic opened? Were clinic staff involved in bringing about those changes? How?

Do you think victims should have lawyers to represent them in court? How should it be paid for?

What problems does victim representation raise for you and your staff?

Has clinic staff changed how you approach victim rights? How?

What impact do you think the clinic has had on the extent to which victims are able to exercise their rights in this jurisdiction? Why do you say that?

Questions for Victim Focus Groups

Were you informed of your rights as a crime victim? By whom?

How did you learn about the clinic?

What did the clinic do for you?

What types of services were provided by clinic staff?

- Representation in court
- Assist victim in securing compensation, social services
- Brief filed on behalf of victim

How did the assistance received through the clinic help you? Do you think you would have been as successful in obtaining your rights without the help of clinic staff?

Were you satisfied with the people who provided the services?

- Were they professional and knowledgeable?
- If so, in what ways? If not, why not?

What suggestions do you have for service providers to improve how they work with victims to obtain their rights?

What suggestions do you have for the courts and the criminal justice system to ensure that victims' rights are enforced?

Is there anything else you'd like to say?