

CRIME VICTIM RIGHTS AND REMEDIES

SECOND EDITION.

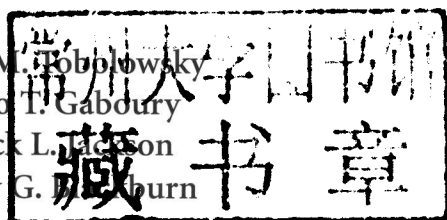


PEGGY M. TOBOLOWSKY • MARIO T. GABOURY
ARRICK L. JACKSON • ASHLEY G. BLACKBURN

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Second Edition

Peggy M. Robolowsky
Mario T. Gaboury
Arrick L. Jackson
Ashley G. McBurn



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Crime Victim Rights and Remedies

*Dedicated to our families
and to our colleagues at
the University of North Texas
and the University of New Haven.*

Preface

In 1982, President Ronald Reagan convened a Task Force on Victims of Crime. The recommendations made by this national Task Force have served as a guide for the development of crime victim rights and remedies in this country. In 2001, the initial edition of this text was published. It brought together a multifaceted set of materials reflecting the evolution of crime victim rights and remedies in the approximately twenty years since the Task Force's recommendations were published. The initial text described the applicable constitutional and statutory provisions addressing crime victim rights and remedies, as well as leading judicial opinions that interpreted them. In addition to presenting the current state of the law in this area, the text described the status of implementation of these rights and remedies, relevant empirical research, and a sampling of the pertinent policy analysis. This comprehensive portrait of the past and then current status of crime victim rights and remedies in this country was designed to inform the continued evolution of law and practice in this area.

In the years since the publishing of the initial edition of this text, the constitutional and statutory law in this area and judicial interpretation of it have continued to evolve, as well as the empirical research analyzing its development and implementation. Of particular note is the enactment of the federal Crime Victims' Rights Act of 2004, reflecting a significant expansion of federal statutory victim rights, and the federal court decisions that have begun to interpret it. Thus, this new edition of the text extends and expands the comprehensive description of crime victim rights and remedies provided in the initial edition. Now, almost thirty years since the President's Task Force issued its recommendations, progress in their implementation can once again be measured.

It is hoped that this new edition of the text will further facilitate the study of victim rights and remedies, and will serve as a general resource for those interested in victim rights and remedies in this country.

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Crime Victim Rights and Remedies

Chapter 1

The Return of Crime Victim Rights and Remedies

Introduction

Every year in the United States, millions of men, women, and children are victims of crime. In its 2008 National Crime Victimization Survey, based on a representative sample of Americans aged twelve and older, the United States Department of Justice Bureau of Justice Statistics estimated that this population experienced 21,312,400 violent and property crime victimizations in the categories of crime measured by the survey. Of these victimizations, 4,856,510 were for the measured violent offenses of sexual and non-sexual assault and robbery. The remaining 16,455,890 victimizations were in the property and non-violent offense categories of household burglary and personal, household, and motor vehicle theft.¹ In the 2008 Uniform Crime Reports, based on crimes reported to the police, the Federal Bureau of Investigation estimated that there were 11,149,927 offenses in the crime categories measured. This total included 1,382,012 murders, forcible rapes, robberies, and aggravated assaults and 9,767,915 burglaries, larceny-thefts, and motor vehicle thefts.² Even using the more conservative crime estimates contained in the Uniform Crime Reports, it is clear that crime affects substantial portions of the American population each year.

Researchers have attempted to measure the impact of crime on victims in a variety of ways.³ One estimate of the \$1,705,000,000,000 annual aggregate burden of crime on society included over \$600,000,000,000 in property-related losses, almost \$575,000,000,000 based on the value of crime-related fatalities and injuries, and over \$90,000,000,000 in lost opportunity costs due to victim crime prevention efforts and lost workdays due to crime.⁴ With regard to violent crime, treatment of victims is estimated to account for 14% of injury-related medical spending and as much as 20% of mental health care expenditures. The impact of violent crime is believed to result in wage losses equal to 1% of American earnings. The pain, suffering, and lifestyle changes resulting from

personal crime generally are estimated to reduce the quality of life of victimized families by almost 2%.⁵

Despite the significant number of individuals annually victimized by crime and the personal and financial toll such victimization can have on them and their families, crime victims have had relatively few rights and remedies in the criminal justice process for much of this country's history. Since at least the middle of the nineteenth century, the primary goal of the American criminal justice system has been to identify, prosecute, and punish offenders rather than to address the needs of crime victims. This offender-centered process is in direct contrast to the earliest criminal prosecutions in this country and elsewhere which were victim-centered in process and outcome.⁶ In the last thirty years, however, there has been a dramatic increase in the rights and remedies available to crime victims. In this chapter, the evolution of events that led to the "return" of crime victim rights and remedies is traced.

The Crime Victim in Ancient and Pre-Modern Times

In order to understand the evolution of the crime victim's role in the American criminal justice process, it is important to examine the historical antecedents to the development of the American criminal justice system. These antecedents extend back to ancient times. In primitive societies, wrongs done to a person or his property were subject to remedial action by a victim and his family against an offender and his family. Norms of permissible retaliation and recompense arose among tribal and family-based cultures for what are now regarded as criminal offenses against individual victims.⁷

The early centrality of the victim in these primitive "criminal" proceedings is evidenced by provisions of the Torah, the Code of Hammurabi, and other ancient codes, that require offenders' repayment in kind or extent to those suffering criminal victimization in addition to or instead of prescribed retributive sanctions.⁸ For example, the proportionate sanction, or *lex talionis*, provisions of the Torah that prescribe "life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe"⁹ co-exist with provisions that allow an offender whose victim recovers from injuries sustained in a quarrel to "pay for the loss of his time [during his recovery], and [to] have him thoroughly healed."¹⁰ Through a prescribed measure of physical retribution or a proportionate financial settlement, the goals of these early legal systems were to make the victim whole and to minimize private revenge.¹¹

This victim-centered system of redress continued in early Western law until approximately the eleventh century.¹² After this time, however, monarchs and their governments became increasingly involved in addressing harm inflicted by their subjects on each other. Historians attribute this shift in approach to various factors including the expansion of central authority and kingship, the growth and influence of the Church, the evolution of a structured court system, and evolving concepts of punishment.¹³

As the role of centralized authorities in these proceedings expanded, a transformation in notions of private, or civil, as opposed to public, or criminal, wrongs occurred. In early legal systems, only a few acts, including witchcraft, bestiality, and incest, were regarded as “criminal” offenses, i.e., wrongs against the community or public as a whole. Most acts against individuals, including homicide, assault, rape, and theft, were treated as private or civil wrongs for which there were recognized restitutive or retaliatory remedies for the victims. In this process of evolution, however, most individual acts committed against a person or his property became criminal offenses against the “king’s peace” or the crown rather than private matters to be resolved by the affected parties. As such, they were increasingly subject to prosecution in the professional court system created, in part, to deal with these offenses.¹⁴ Moreover, fines paid by the offender to the government and capital, corporal, and other forms of offender punishment increasingly accompanied and often replaced the previous requirements of offender restitution to the victim.¹⁵ The crime victim’s role was thus substantially reduced in the criminal proceedings that evolved over time generally to involve the government and the offender—not the victim—as parties.¹⁶ The pursuit of restitution was largely transferred to private litigation initiated by the victim against the offender in the separate “civil” justice system.¹⁷

The Initial Role of the Crime Victim in the United States

In this country, a similar evolution from a private to a public prosecution system took place. In colonial America, law enforcement and the administration of justice were primarily conducted by individual victims with the assistance of public officials who charged fees for their services.¹⁸ The victim was responsible for arresting his offender—either himself or with the aid of the local watchman, justice of the peace, or constable for whose assistance the victim paid. The victim was also responsible, at his own expense, for investigating the crime, filing the formal charges, and prosecuting the offender. In return