

EQUALIZING THE RIGHTS OF VICTIMS:  
A COMPARATIVE STUDY OF VICTIM SERVICES ACROSS ARIZONA

By

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## **ABSTRACT**

This paper is an exploratory comparative study of victims' rights implementation in Arizona, with a limited scope of Pima, Pinal, and Santa Cruz Counties. The study evaluated the programs, goals and objectives, processes, and outcomes of the victim services offices in the three counties and found several similarities and differences between them at all four levels. The key differences showed themes of lack of uniformity between counties and a lack of resources, especially funding. The recommendations for reform include a state-wide coordinator for victims' rights implementation and a dedicated source of appropriations for state contributions to county-level victim services.

## **INTRODUCTION**

Defendants possess a barrage of rights, beginning with arrest and ending when the sentence is completed. The Fourth, Fifth, Sixth, and Eighth Amendments protect these rights, including prohibition of unlawful searches and seizures and protecting the right against self-incrimination. Those rights are protected to ensure due process for a defendant in a system which presumes innocence until guilt is proven. Victims, however, are often left out of the process. Because the state serves as the prosecutor throughout the trial process, they have traditionally been relegated to the role of mere observer, actively participating only when they are called as witnesses – and even then, their stories are censored or discredited (see Stickels, 2001). Many states have sought to change this adjustment of victims' roles by enacting victims' rights laws, but unfortunately the vast majority of them are neither well-enforced nor well-published – meaning that many victims either do not have their rights protected or lack knowledge of them in the first place (see Erez and Roberts, 2007). This causes a disparity between what is declared publicly and what is practiced in reality.

The primary root of this disparity is found in the implementation of victims' rights legislation. Once laws are passed, it is the prerogative of the executive branch and its agencies to faithfully administer and implement those laws. The reality of the situation, however, is that the implementation of national and even state-level laws are driven by the resources at the local level; this can leave some counties severely lacking, especially in areas of exponential, unexpected growth. This paper provides a comparison of the implementation of state and national victims' rights legislation in Pima, Pinal and Santa Cruz counties, Arizona. From there, conclusions and recommendations will be made to equalize victim advocacy across the state.

## **VICTIMS' RIGHTS IN AMERICA**

### **Colonial and Early American Legal System**

The United States legal system is based on the adversarial model. This means that the trial is essentially a conflict between “two theoretically equal adversaries, the state and the defendant, played out before an impartial adjudicator – the judge” (Erez and Roberts, 2007, pg. 277).

However, the Constitution, Bill of Rights, and early criminal codes contain no mention of victims and their role in the process. This omission can be explained through historical context.

The colonial system was based on the English common law system. Under this common law system, “the victim had the obligation to initiate and prosecute a criminal case against a perpetrator” (Stickels, 2001, pg. 234). This system heavily favored the victim and left the defendants powerless; hence the reason the Founding Fathers felt compelled to be so explicit about defendants’ rights in the Constitution (Dorris and Howley, 2007, pg. 299). Stickels (2001, pg. 234) asserts that the Ninth Amendment’s protections of citizens’ un-enumerated rights, combined with private prosecutions, was believed by the Founding Fathers to adequately protect victims and required no explicit and specific protection. This system of private prosecution lasted well into the 1800s (Beloof, 2007, pg. 1138).

Later, the legal system evolved into a more public system of prosecution, where the prosecutor represented the state (Dorris and Howley, 2007, pg. 299). At the same time, “criminal offenses were recognized to have been committed primarily against society, thereby subjugating the role of the victim to the role of society” (Stickels, 2001, pg. 235). Laws were based on social norms, so it was a logical progression. However, victim participation lessened in significance to the position of witness. The interests of the state trumped the interests of victims, especially when they were at odds with one another.

## **Rehabilitation to Punishment (1970s)**

Victims' rights movements gained momentum in the 1960s and 70s. The U.S. Supreme Court's liberal interpretation of defendants' rights combined with the upsurge in violent crime (and paroles) "highlighted the public's perception that criminals were treated better by the criminal justice system than were crime victims" (Stickels, 2001, pg. 236). The view that courts were "more concerned with releasing defendants based on legal technicalities than on the administration of justice" led to the conservative move towards a harsher method of dealing with offenders (Stickels, 2001, pg. 236).

This "just deserts" theory involved a reduction in sentence disparity. The penalty is determined by the crime's seriousness and the offender's culpability, thus the victim impact statement became important as a marker of crime seriousness measured by the harm suffered by the victim (Erez, 2000, pg. 166). The movement combined "aspects of the general civil rights movement, the general victim law movement, the women's movement, and the law and order lobby" and was "one of the most successful civil liberties movements of recent times" (Beloof and Gillis, 2002, pg. 689-90).

## **President's Task Force on Victims of Crime (1982)**

President Ronald Reagan established the Presidential Task Force on Victims of Crime in 1982, which "held a series of field hearings across the country, taking testimony from crime victims and criminal justice officials about the needs and interests of victims of crime" (Dorris and Howley, 2007, pg. 300). Its report published "sixty-eight recommendations to law enforcement officials, prosecutors, judges, clergy members, mental health providers, and people from other disciplines on ways to improve their responses to victims" (Beloof and Gillis, 2002, pg. 690). According to Dorris and Howley (2007, pg. 300), the report was the catalyst of a "wave of reforms" across the nation.

The Task Force suggested that the following line be added to the Sixth Amendment's protections for the accused: "Likewise, the victim, in every criminal prosecution shall have the right

to be present and to be heard at all critical stages of judicial proceedings” (Schwartz, pg. 526).

However, this addition would never materialize, as most victims’ rights advocates felt that changes to state constitutions would be more feasible.

### **Constitutional Protection for Victims (1990s and 2000s)**

In the decades following the President’s Task Force on Victims of Crime, several laws have been passed at both the federal and state levels. The first, passed the same year as the Task Force’s report, was the Federal Victim and Witness Protection Act of 1982. It changed “the status of the victim of a criminal act from a person who merely identifies the perpetrator and testifies in court to the role of an active participant in the criminal justice system” (Stickels, 2001, pg. 236-237).

In 1984, Congress passed the Victims of Crime Act of 1984, which “created a matching grant program to encourage states to create victim compensation programs and create local programs to assist crime victims” (Stickels, 2001, pg. 237). The Victims’ Rights and Restitution Act was passed in 1990 and the Victims’ Rights Clarification Act was passed in 1997, bolstering the clarity of what Congress meant in the previous Victims of Crime Act. Most recently, Congress passed the Justice for All Act in 2004, which is discussed in greater detail later.

The Office for Victims of Crime (OVC) published *New Directions from the Field: Victims’ Rights and Services for the 21<sup>st</sup> Century*. The report included five global challenges for advocates and service providers. The first – and most important – challenge was to “enforce consistent, fundamental rights for crime victims in federal, state, juvenile, military, tribal justice systems, and administrative proceedings,” in response to the prevailing notion that victims’ rights legislation is “only as meaningful as the ability to enforce these rights in court” (Beloof and Gillis, 2002, pg. 700-701, 691-692). According to the publications, these fundamental rights include:

The right to notice of public court proceedings and to attend them; to make a statement to the court about bail, sentencing, and accepting a plea; to be told about, to attend, and to speak at parole hearings; to notice when the defendant or convict escapes, is released, or dies; to an order of restitution from the convicted offender; to a disposition free from unreasonable delay; to consideration for the safety of the

victim in determining any release from custody; to notice of these rights; and to standing to enforce them. (Office for Victims of Crime, 2007).

For this reason, numerous attempts have been made to move past legislation to provide Constitutional protections that are level with those of the accused.

Senators Jon Kyl (R-AZ) and Dianne Feinstein (D-CA) have aggressively pursued an amendment to the U.S. Constitution to protect victims' rights.<sup>1</sup> Senate Joint Resolution 52, or S.J. Res. 52, was introduced in 1996 as "the first federal constitutional amendment to protect the rights of crime victims" (Schwartz, pg. 528). They were joined by 27 other senators in sponsoring the amendment; however, it never came to a vote on the Senate floor and died when the Congressional session adjourned. The senators tried again in 1997, 1998, and 1999 to re-introduce the amendment. The 1999 amendment, known as S.J. Res. 3, was the subject of heated debate.

After several other attempts, Senator Kyl introduced S.J. Res. 1 on January 7, 2003. It received approval by the Senate Judiciary Committee in September of that year; after "a period of inactivity," a motion was filed in April of 2004 to proceed to consideration of the bill (Schwartz, pg. 529). A cloture motion was filed the same day, only to have the motion of consideration withdrawn (Schwartz, pp. 529-530).

S.J. Res. 1 was supported by Presidents George W. Bush and Bill Clinton as well as Attorneys General John Ashcroft and Janet Reno. The amendment was advocated and lobbied for by victims' rights groups such as Mothers Against Drunk Driving (United States Senate Republican Policy Committee). Section 2 of S.J. Res. 1 states:

A victim of violent crime shall have the right to reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused; the rights not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, reprieve, and pardon proceedings; and the right to adjudicative decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender. These rights shall not be restricted except when and to the degree dictated

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<sup>1</sup> A timeline of victims' rights legislation can be found in Appendix A and a timeline of victims' rights amendments can be found in Appendix B.

by a substantial interest in public safety or the administration of criminal justice, or by compelling necessity. (S.J. Res. 1, 2000)

The constitutional amendment was proposed largely because of historical factors. At the time of the ratification of the Constitution, victims acted as their own prosecutors so constitutional protection of their rights was unnecessary. However, the American legal process evolved and victims were largely shut out of the process, according to Senator Feinstein's testimony on the Senate floor in 2000 (*Proposing an amendment*). Congress then turned to statutory alternatives due to the difficulties of ratifying the amendment.

The Justice for All Act of 2004 was signed into law by President George W. Bush on October 30, 2004. The act contains four parts: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act, The Debbie Smith Act of 2004, The DNA Sexual Assault Justice Act of 2004, and The Innocence Protection Act of 2004 (The Office of Senator Patrick Leahy, Title 1). Of these four parts, the first deals with victims' rights specifically. The rights enumerated in this law include:

The right to be reasonably protected from the accused; the right to reasonable, accurate, and timely notice of certain proceedings and events; the right not to be excluded from certain proceedings; the right to be reasonably heard at certain proceedings and to confer with the attorney for the Government in the case; the right to full and timely restitution; the right to proceedings free from unreasonable delay; and the right to be treated with fairness and with respect for the victim's dignity and privacy. (The Office of Senator Patrick Leahy)

The law also increased the resources for jurisdictions to enforce these rights; however, the act does not give victims the ability to sue the federal government if their rights were not protected (United States Department of Justice Office for Victims of Crime, *OVC fact sheet*). Because it is essential that any law be "meaningful and enforceable," many supporters of the act were disappointed in its superficiality (Beloof and Gillis, 2002, pg. 691).

### **TYPES OF IMPLEMENTATION**

Victims' rights encompass a number of things such as: to have your home address, and the name and address of your employer, withheld from the defendant and his or her representative; to

be present at any court proceeding at which the defendant also has the right to be present; to receive notice of all court proceedings at which the defendant has the right to be present; and to be notified, upon request, of the escape and re-arrest of the accused. One of the most integral rights is the right to be heard at any court proceeding concerning the release of the accused person, a plea agreement, and the sentencing. This is the right that most advocates focus on in terms of implementation, as it is also the one stirring the most controversy. The primary methods for enforcing this right is a victim impact statement and restorative justice.

### **Victim Impact Statements**

The victim impact statement (VIS) is the victim's statement about the crime and sentencing. It may be submitted either orally or in writing and allows victims to tell the judge how the crime affected them, including "physical, social, psychological, and financial harms" (Erez and Roberts, 2007, pg. 282). The format of a VIS varies according to state and jurisdiction – some are mere checklists, while others provide space for paragraph answers or even a letter or essay written to the judge.

The first victim impact statement was created in 1976 in Fresno County, California by probation officer James Rowland in order to "to provide the judiciary with an objective inventory of victim injuries and losses prior to sentencing" (National Center for Victims of Crime, 2007). Erez and Roberts (2007, pg. 282) note that on a more personal level, the VIS recognizes the fact that victims deserve to be treated with dignity and acknowledges that there is a face behind the impersonal "state" entity with an "interest in the resolution of the case." It can give them an occasion to speak about the crime and make them feel as though someone will listen (or read) their side of the story.

As with all policy decisions, victim impact statements have both opponents and proponents. Those opposing the use of a VIS argue that it increases pressure on the judicial system and that it

violates the principle of equal justice. They also worry that a VIS will allow a victim to include statements prejudicial to the defendant, which would normally be disallowed in a court proceeding.

Opponents of implementing victims' rights legislation were most vocal during the debate of a constitutional amendment for victims' rights. During this debate, they argued that the efficiency of the criminal justice system would be materially impeded by allowing victim impact, especially regarding plea bargaining and timely convictions (Schwartz, 2005, pp. 534-535). In response to advocates' assertions that officials actively violate victims' rights, Mosteller (1999, pg. 449) states that it is better explained by a "lack of resources and personnel needed to accomplish this new and additional set of tasks." To truly enforce the rights of victims, the costs would be more than the system can bear.

The largest area for potential burden is when the rights of victims are violated. Advocates would have courts provide pretrial hearings to contest the prohibition of certain rights, such as not allowing a victim in proceedings or refusing to allow victims to speak at sentencing (Beloof and Gillis, 2002, pg. 693). These pretrial hearings could potentially clog the system or cause delays, infringing upon the defendant's right to a speedy trial.

The principle of 'equal justice' is that even if the system were to allow victim input then the effect would be unequal due to differences of persuasion or vindictiveness. It is also one of concern to defense advocates and attorneys. The basic argument is that victim participation "exposes the court to public pressure and substitutes the victim's subjective approach for the objective approach of the court" and that it "undermines the fairness of the system because similar cases might be decided differently, depending on the victim's availability and persuasiveness" (Schwartz, 2005, pg. 537).

The American system is one in which there is a balance between the state and the defendant. As noted by Orvis (1998, pg. 165), "the very existence of the Bill of Rights draws a dividing line between the government and those accused of crimes." Much of the judicial process is

framed in terms of the defendants, thus opponents fear that bringing in victim impact evidence will cause arbitrariness, making the case less about the defendant and more about the specific victim. The American judicial system relies on the idea that a criminal is sentenced according to the harm done to the “typical” victim – a principle directly at odds with the idea of identifying and humanizing the crime with specifics (283). During the trial, victim impact evidence is “not relevant on the issue of guilt and its only purpose is to inflame the jury” (Stickels, 2001, pg. 247).

The Supreme Court has spoken on this issue and stated in 1987 that victim impact evidence can in fact cause arbitrariness, especially in the sentencing phases of capital cases. In *Booth v. Maryland* (1987), the Court overturned Mr. Booth’s death sentence for the murder of Mr. and Mrs. Bronstein in Baltimore. The opinion for the Court argued that the introduction of VIS evidence in the sentencing phase of a capital case created the possibility of the jury applying the death penalty in a “wholly arbitrary and capricious” fashion. This language came from *Gregg v. Georgia* (1976) and was upheld in *South Carolina v. Gathers* (1989). These cases illustrate the Court’s inclinations in the 1970s and 1980s that victim impact evidence could potentially lead to an upset in the balance of equal justice.

Another facet of unequal justice is that of the defense itself during trial. Some defenses require certain information from victims; however, some states, such as Arizona, shield victims from almost every form of discovery requests. In the case of *State ex rel. Romley v. Superior Court*, the Arizona Court of Appeals stated that the state Victim Bill of Rights “should not be a sword in the hands of victims to thwart a defendant’s ability to effectively present a legitimate defense. Nor should the amendment be a fortress behind which prosecutors may isolate themselves from their constitutional duty to afford a criminal defendant a fair trial” (qtd. in Mosteller, 1999, pg. 455). This illustrates the court’s suspicions that certain rights, in the hands of victims, would give them pre-eminence over defendants, effectively tying the hands of defense attorneys.

Just as opponents are vocal about their dislike of victim participation in criminal trials, advocates of victims' rights – and the victim impact statement specifically – state that it has no demonstrable effect on sentencing outcomes. Also, in a more abstract sense, a VIS can give a victim a sense of purpose and alleviate feelings of helplessness as well as increase the perception of fairness, both of the victim and the public in general.

Advocates point to studies that have shown that there is no demonstrable effect on sentencing when victim statements are used. For example, a survey of judges – the source of many sentences – indicates that sentencing is not as affected as the legal profession first believed; in fact, most judges find both substantive and expressive reasons for including the victims in the process. While most information in the VIS should have been presented through evidence in court, judges find that the VIS gives a more encompassing view of how crime affects the victim. However, they do admit that some impact statements have sentence suggestions, indicating that victims are not fully aware of the intent of the victim impact statement. In fact, some victim impact statements work to the benefit of the defendant in cases where the statement indicates that the harm was not as severe as the charge would imply (Erez and Roberts, 2007, pg. 287).

Overall, the research indicates that the VIS has no quantitative affect on sentencing (Erez, 2000, pg. 170). One study found that the VIS increases the severity of the sentence in some cases and decreases it in others, causing an aggregate value of zero. Other studies have indicated that the court is usually more punitive and harsher in sentencing than the victims would be in their recommendations (Erez and Roberts, 2007, pg. 288). Most importantly, a study of judges and prosecutors thought that a VIS “improved the quality of justice” (Erez, 2000, pg. 171).

The one noticeable affect that VIS evidence has on sentencing is to make them more appropriate to the crime. American justice requires that the punishment be equal to the crime; it is this principle that prevents a death sentence for stealing a loaf of bread. Supreme Court Justice Antonin Scalia noted this appropriateness when he wrote his concurring opinion in *Payne v.*

*Tennessee* (1991), saying “That a crime's unanticipated consequences must be deemed ‘irrelevant’ to the sentence conflicts with a public sense of justice keen enough that it has found voice in a nationwide ‘victims’ rights’ movement” (qtd. in Beloof, 2007, pg. 1152).

Second, an opportunity to participate can quell the feelings of helplessness and powerlessness that victims often feel after the crime and a slew of court proceedings. Victims have listed a variety of reasons for submitting a VIS, including: wanting the court to understand the effect of the crime, wanting to affect the sentence, and communicating the effect of the crime to the offender (Erez and Roberts, 2007, pg. 286). Allowing victims to speak in court benefits victims by allowing them to “[remind] judges, juries, and prosecutors that behind the state’s case is a real person with a real intent in the case’s resolution” (Schwartz, 2005, pg. 538). Then-Attorney General Janet Reno also acknowledged this when she said in a 1998 United States Department of Justice publication, “Let us make sure that we give our victims the right to be heard [...] so that people can know what it’s like to be a victim” (2).

Lastly, many supporters feel that the use of the VIS can increase the perception of fairness within the criminal justice system. Because our system relies on a punishment proportional to the crime, additional information provided by victims is seen by some to enhance the fairness of the sentencing. Indeed, the Supreme Court upheld the use of victim impact statements in *Payne v. Tennessee* (1991), stating that the Eighth Amendment did not disallow them unless there is evidence that they were so prejudicial as to “make the process fundamentally unfair” (Orvis, 1998, pg. 168). *Payne* partially overruled the Court’s previous decision in *Booth v. Maryland* (1987). In fact, *Payne* argued, using different language, exactly what Justice White argued in his dissenting opinions in *Booth v. Maryland* when he wrote, “No two prosecutors have exactly the same ability to communicate the facts [...] but there is no requirement that the evidence and argument be reduced to the lower common denominator.” In other words, there are several factors that affect the

outcome of a case – such as the jurors selected or the choice of words of one attorney or the other – thus it is unfair to restrict victim access and participation as one of several factors.

It is this line of reasoning that advocates of victim input use to counter the principle of equal justice. Opponents of victims' rights who invoke the principle of equal justice argue that giving participatory rights to victims would give precedence to victims over defendants; advocates, on the other hand, would say that excluding victim input means you're only presenting one side of the story. Justice Scalia puts it another way in his dissenting opinion of *Booth v. Maryland* (1987) when he writes:

Many citizens have found one-sided, and hence unjust, the criminal trial in which a parade of witnesses comes forth to testify to the pressures beyond normal human experience that drove the defendant to commit his crime, with no one to lay before the sentencing authority the full reality of human suffering the defendant has produced -- which (and not moral guilt alone) is one of the reasons society deems his act worthy of the prescribed penalty.

In effect, proponents of victims' rights argue that equal justice would actually require victim input about harm in light of a defendant's right to unlimited mitigating factors, thereby equalizing the cases being presented (Erez, 2000, pg. 175). In this way, victim participation "renders the criminal justice system not only more democratic, but also more accurately reflective of the community's reaction to specific crimes" (Schwarz, 2005, pg. 538). This can increase not only the victim's perception of fair treatment, but the public's as well.

### **Restorative Justice Programs**

For many, adding victims' rights to the traditional retributive judicial system is inadequate and unwise; a better option is changing the practices of the criminal justice system and adding elements of restorative justice (Walgrave, 2000, pg. 258). Restorative justice "involves victims, offenders and communities in a healing process aimed at rehabilitating offenders, restoring victims and making communities whole again" (Strickland, 2004, pg. 38). This is in direct conflict with the current retributive justice programs, which is criticized by victims' rights proponents as "serving neither the best interests of the state (because it does not effectively stop or reduce crime) nor

those of its primary 'clients,' the perpetrators of crime and their victims" (Groenhuijsen, 2004, pg. 65). Typically, the processes of restorative justice are used in conjunction with currently-employed victim services. Such processes include: payment of victim restitution, community service, requiring offenders to pay into a victim service fund, and mediation between the victim and offender (Strickland, 2004, pg. 39).

The most common type of restorative justice program is family group conferencing, which is generally used with juvenile offenders. Conferencing is only used after the offender admits guilt. It includes the "offender, members of his or her family and whomever the family invites, the victim(s), their support, a representative of the police and the facilitator or manager of the process" (Maxwell & Morris, 2000, pg. 209). Like victim-offender panels, it is largely useful in that the goal is to reduce recidivism by attaching the human harm element to the crime (Strickland, 2004, pg. 43).

Conferencing has three phases: preparation, conference, and post-conference monitoring. In the preparation phase, a mediator familiarizes himself or herself with the case and contacts the offender to inquire about willingness to participate, take responsibility, and show remorse. If the offender agrees to the conditions, the victims are contacted. At the conference, each party has a chance to tell their story, with the mediator facilitating the discussion. Offenders, victims, and their families may ask questions. The conference "is designed to be tough on the problem, not the person, to condemn the behavior, not the offender" (Strickland, 2004, pg. 43). Then the offender and his or her family discuss solutions. The offender or family member outlines a proposal and everyone discusses the proposal until they reach an agreement. The options are limitless and include such things as "an apology, work in the community, reparation or involvement in some programme" (Maxwell & Morris, 2000, pg. 210). Post-conference monitoring is where the mediator periodically checks on the progress of the agreement. If progress is not made, the offender is referred back to the traditional justice system (Strickland, 2004, pg. 44).

This process is very effective, for victims and offenders alike. A study of family group conferencing in New Zealand (where it was first started) showed that when asked, only 6 percent of victims did not wish to attend the process, indicating the willingness of victims to take part in the process when the option is available (Maxwell & Morris, 2000, pg. 211). In the same study, families of offenders felt that the presence of the victim was a positive addition because of “the possibility of reconciling the victim and the young person, and because the victim’s contribution could help teach the young person to accept responsibility and to be accountable for what he or she had done” (Maxwell & Morris, 2000, pg. 214). For offenders themselves, those who apologized to victims were three times less likely to re-offend, and those whose conferences were attended by the victims were four times less likely to re-offend than those whose conferences were not attended by the victims (Maxwell & Morris, 2000, pg. 215).

Another example of a restorative justice program is the victim-offender panel. They were first established “to help drunk drivers understand the harm caused by their actions on victims and survivors (Strickland, 2004, pg. 40). The goal is that victims and survivors can ask questions of offenders and make statements to them. Hopefully, the experience brings some sort of closure and empowerment to the victims and offenders will not repeat their actions after seeing the harm caused by them (Strickland, 2004, pg. 40-41).

Often offenders are sent to victim-offender panels as a condition of their sentence. Three or four victims “are chosen to speak about the effects of drunk driving on their lives without blaming or judging the offenders on the panel” (Strickland, 2004, pg. 41). Victims do not address their particular offender. Others may attend the panels, such as probation officers, judges, police officers, and those receiving treatment for alcoholism. This use of the victim-offender panel in drunk driving has been extrapolated for use in juvenile cases to help juvenile offenders understand the effects of their crimes (property, business, assault and battery crime) on the entire community (Strickland, 2004, pg. 42).

## **VICTIMS' RIGHTS IN ARIZONA**

California was the first state to adopt an amendment to its state constitution outlining victims' rights, which passed in 1982 (Orvis, 1998, pg. 165). Currently, every state as well as the federal government has passed a comprehensive set of victims' rights, and 32 states have amended their state constitutions to include them (Dorris and Howley, 2007, pg. 300).

In 1990, the Victims' Bill of Rights (VBR) was added to the Arizona State Constitution when voters passed Proposition 104 (State of Arizona).<sup>2</sup> The VBR went into effect November 27, 1990 and "empowers victims with their *own* due process rights in criminal prosecutions--rights which, if ignored or violated, render certain stages constitutionally defective and subject to novation" (Harrison, 2002, pg. 534).

The following year, the legislature passed a series of laws for the implementation of the Victims' Bill of Rights, including "statutes in titles 8 and 13 of the Arizona Revised Statutes that were enacted as a part of the Crime Victims' Rights Implementation Act in 1991" (Harrison, 2002, pg. 534). Another is the Crime Victim's Leave Act, which allows a victim to take time off from work to exercise their rights as victims without fear of losing their jobs (State of Arizona). Also included is the use of a victim impact statement.

Some rights for victims of crime are automatically granted, but must be exercised by the victim voluntarily. These include the rights: to be advised of all victims' rights and how to assert them; to have your home address, and the name and address of your employer, withheld from the defendant and his or her representative; to refuse an interview with the defendant and anyone working on his or her behalf; to be present at any court proceeding at which the defendant also has the right to be present; and to be heard at any court proceeding concerning the release of the accused person, a plea agreement, and the sentencing (with some limitation of the defendant is facing the death penalty) (Arizona Department of Public Safety).

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<sup>2</sup> Full text from Article II, Section 2.1 can be found in Appendix C.

Other rights must be requested, thus it is important that victims' rights advocates are thorough in their explanation of victims' rights because of the voluntary nature of this set of rights. These include the right to confer with the prosecutor about various decisions such as not to proceed with a prosecution or the offer of a plea agreement; to receive notice of all court proceedings at which the defendant has the right to be present; to be given notice of any post-conviction release or appeals proceedings; and to be notified, upon request, of the escape and re-arrest of the accused (Arizona Department of Public Safety).

Overall, "the most significant gains have been made in defining the substance and scope of the due process rights of crime victims as created by the VBR" (Harrison, 2002, pg. 535). In *State v. Gonzales* (1995), the Arizona Supreme Court upheld the (state) constitutional right of the victim, Deborah Wagner, to be present during jury selection and the parts of the trial after her testimony. The Arizona Court of Appeals also upheld the victim's rights in *State ex rel. Hance v. Arizona Board of Pardons and Paroles* (1993) when it vacated the parole board hearing on the grounds that the victim had not been notified (Harrison, 2002, pg. 537-538). Both cases worked to make "the day-to-day workings of Arizona's criminal justice system inclusive for – and sensitive to the needs of – crime victims" (539). These, and cases like them, have upheld the legality of victims' rights in Arizona – but there are many others that do not, sending mixed messages about the necessity of fully and faithfully implementing these rights as outlined in the VBR.

In order to implement the VBR at the state-level for crimes prosecuted in state court, the Arizona Attorney General created the Office of Victim Services to assist victims of crimes prosecuted by the Attorney General's Office in asserting their constitutional rights. Such services include: notification of court proceedings and related victims' rights; accompaniment to court proceedings and attorney interviews; restitution assistance and advocacy; and referrals to community services (Office of Attorney General). Each county attorney is charged with the implementation of victims' rights for the cases prosecuted in their counties; this ranges from one

advocate in an office attached to the County Attorney's Office to separate Victim/Witness centers (A. Bocks, personal communication, March 10, 2008).

### **NEW DIRECTIONS**

Since victims' rights laws were implemented in the states more than twenty years ago, various studies have been conducted. Many of them have been mentioned already – questions about victim impact statements and their affect on sentencing outcomes are especially popular in academia. Other studies have looked at the trends of victimization among lesser-studied populations such as minors, college-age students, and minority groups. Still more have assessed the availability of victim advocacy among these populations.

The realm of how these laws are implemented, however, contains little research by way of assessing the effectiveness of the system. The programs, goals, and outcomes of victim services can differ from the state to the county to the city level as well as between offices at the same level. This disparity can cause gaps in victim advocacy, meaning that victims may not be getting the same assistance in all parts of a state. This paper will assess the programs, goals, processes, and outcomes of victim services in Pima, Pinal, and Santa Cruz counties in order to ascertain if the spirit of the VBR is being applied evenly and adequately.

### **ARIZONA COMPARATIVE STUDY**

#### **Methodology**

The purpose of this study was to compare the programs, goals, processes, and outcomes of victim services in three counties in Arizona in order to ascertain the similarities and differences in implementation of victims' rights. These counties were selected specifically to be urban, semi-urban and growing, and rural. Though all of the counties have contrasting populations and needs, they all operate under the same Arizona statutes.

Pima County was chosen as the urban county because it is the second-largest county in Arizona, covering 9,189 square miles with a population of 843,746 as of the 2000 census.<sup>3</sup> Pima County also has the highest trial rate in Arizona (12 percent), which means that there is more potential for victim involvement and activity. The racial and ethnic breakdown is 75.05% white, 3.03% black or African-American, and 3.22% Native American. Hispanics or Latinos of any race accounted for 29.34% of the population and 22.8% of Pima County residents speak Spanish.

Pinal County was chosen as a quickly-growing semi-urban county because it is the fastest-growing county in Arizona, with the cities of Maricopa and Casa Grande exhibiting the most accelerated growth patterns in the state. This lends itself to potential problems for implementation; for example, whether or not resource distribution is able to stay with the pace of growth. Pinal County covers 5,374 square miles and has a population of 179,727 as of the 2000 census. The racial and ethnic breakdown is 70.42% white, 2.76% black or African-American, and 7.81% Native American. Hispanics or Latinos of any race accounted for 29.86% of the population and 21.86% of Pima County residents speak Spanish at home. Though Pinal County encompasses two Indian Reservations, only 1.44% of the population speaks O'odham and 0.02% speaks Apache. However, the fact that Indian Reservations are federal land could potentially cause problems for victim service implementation.

Santa Cruz County was chosen as the rural county, covering only 1,238 square miles. It was chosen largely based on its heavily-trafficked border with Mexico as well as its high proportion of native Spanish-speakers (79.71%). This language barrier could potentially cause problems with victim service implementation, posing a unique issue. Santa Cruz County has a population of 38,381, the smallest of Arizona's counties. The ethnic breakdown is surprisingly still heavily white

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<sup>3</sup> Maricopa County was excluded because it contains the state capital of Phoenix. The likelihood of sharing resources between the state and the county was highest in Maricopa County, which would skew the results of the comparison.

(76.0%), yet has a high Hispanic population (80.78%), implying that many Hispanics identify themselves as whites.

Identical surveys were sent to the directors of victim services in each county.<sup>4</sup> Questions inquired about the programs available in the county, the goals of the programs, the processes for achieving the goals, and the outcomes of the goals. All questions were open-ended and requested examples, numbers, figures, and organizational strategy.

The surveys were distributed through email to the directors of victim services at each of the counties and were returned through email or Federal Express. The surveys were returned by: Amy Gomez, Lead Advocate of Pima County Victim Witness; Jesus Pacheco, Director of Pinal County Victim Services; and Agustin Arriola, Director of Santa Cruz County Victim Services. The survey contained an identical set of instructions. Emails were sent to Amy Gomez and Jesus Pacheco for clarification when answers were vague, requesting numbers and examples when applicable.

After all of the surveys were received, they were read and transcribed into paragraphs. A few questions required clarification in order to provide details or examples. After transcribing all of the answers, the answers in each of the sections were compared across all three counties. Some of the answers were common, such as the plea for more advocates and increased funding. Other answers were more uncommon, such as Santa Cruz County's provision of "bread and butter" services like toiletries and emergency transportation. Some were surprising, such as the lack of strategic planning in Pima and Pinal Counties but rather in-depth strategies in Santa Cruz County. After noting all of the findings, three concluding suggestions for improving the victim services across the state were determined.

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<sup>4</sup> A copy of the survey can be found in Appendix D.

## **Results**

### *Pima County*

Victim services in Pima County are handled through the Pima County Attorney's Office. The Victim Witness program was first established in 1975 as the first program in the country to offer comprehensive assistance to crime victims. All felonies and misdemeanors except those committed in the City of Tucson fall under the purview of the Pima County Attorney (A. Gomez, personal communication, April 11, 2008). The victim services organization is called Victim Witness and consists of 10 advocates with an average case load of 100 cases per advocate. Victim Witness also has a crisis unit with staff and volunteers who respond to roughly 14,000 victims a year. They provide intervention 24 hours a day, 7 days a week, upon request by law enforcement. Pima County is the only county with a crisis unit on-call 24 hours a day, 7 days a week (A. Gomez, personal communication, April 11, 2008).

The process is initiated when police give a victim the phone number of the Victim Witness office. Some victims call immediately; some do not initiate contact, in which case an advocate makes initial contact as soon as the case is assigned. Advocates often have ongoing cases from year to year because most felonies take more than a year to complete. In some cases, such as identity theft or bank robberies, one advocate will handle a case with several victims attached to it (A. Gomez, personal communication, April 11, 2008).

In terms of goals, Pima County does not have a long-term strategic plan in place (A. Gomez, personal communication, April 11, 2008).

The processes at Pima County Victim Witness include programs such as: accompanying victims to court, notifying victims of upcoming court proceedings, and the facilitation of conferences with the prosecutor regarding the case (Pima County Attorney). Advocates also educate victims and the community about victims' rights and prepare victims for what to expect throughout the criminal justice process (A. Gomez, personal communication, April 11, 2008). To

keep the program fresh and adapting to the changing needs of victims, Pima County has received a grant to “begin working with rural crime victims,” a population that has previously had “very little in the way of victim service” (A. Gomez, personal communication, April 11, 2008). Also, Pima County has enacted a specialized misdemeanor domestic violence court to target that area of crime in a specialized fashion.

Outcomes are measured qualitatively rather than quantitatively. As there are no strategic goals, the outcomes cannot be measured against a goal metric. However, there are impressions from the services provided. Advocates do not believe that services provide closure for victims, only empowerment. This is achieved through education and assistance throughout the process, as well as predicting and counseling victims on how their experience may affect them. Looking forward, the biggest area of need is bilingual advocates and more culture-specific programming for both victims and offenders (A. Gomez, personal communication, April 11, 2008).

#### *Pinal County*

Like Pima County, victim services in Pinal County are handled through the County Attorney’s Office. All felonies fall under the jurisdiction of Pinal County Victim Services, or if multiple crimes occurred and at least one was a felony. The office also works “misdemeanor Domestic Violence cases out of JP #3 [municipal court of Eloy] and JP #7 [municipal court of Apache Junction]” (J. Pacheco, personal communication, April 10, 2008). The office has six Superior Court advocates, one Superior Court Juvenile advocate, four municipal court advocates and 10 support staff; the office averages 1500 new felony cases per year as well as 400 domestic violence cases distributed across the 11 advocates. Unique to Pinal County are domestic violence courts in Eloy and Apache Junction, in which the advocates have jurisdiction. Also, Pinal County Victim Services has assisted the Pinal County Sheriff’s Office with implementing a “victim services volunteer crisis program” (J. Pacheco, personal communication, April 10, 2008).

The process is initiated when “victims are given a Victim Request Waiver Form (VRWF) when law enforcement contact is made” (J. Pacheco, personal communication, April 10, 2008). The phone number of Pinal County Victim Services is included on this form, and victims may call at any time. The advocates make initial contact once the charges are “approved by the county attorney to proceed to grand jury” (J. Pacheco, personal communication, April 10, 2008). At that time, an Initial Contact Packet is sent using the information from the VRWF. In Pinal County, all victims are considered opted-in, even if they waive their rights on the VRWF. If this happens, Pinal County Victim Services makes a courtesy call to ensure that the victim understands their rights; if at that time they still waive their rights, they are opted-out (J. Pacheco, personal communication, April 10, 2008).

There is no strategic plan in Pinal County. The qualitative goal is “to ensure that every victim and the victim’s rights are not violated through the justice system” (J. Pacheco, personal communication, April 10, 2008). This is done by being a presence for victims, the “eyes and ears of the system” to ensure that victims’ rights are being respected (J. Pacheco, personal communication, April 10, 2008).

The guiding process for Pinal County is Arizona state law, especially West’s Arizona Criminal Law and Rules, Chapter 40, sections 13-4401 to 13-4439. Implementing the law includes such activities as accompanying victims to court, tracking the case through various government databases, notifying victims of changes in court proceedings or disposition, and guiding victims throughout the process. The Pinal County Victim Services also has its own policy that provides services above and beyond those required by law. These include: extending victim rights to all victims, including entity victims; sending the victim a copy of any written plea (formal plea agreement, informal plea, email plea); and prosecutors will object to rescheduling hearings any sooner than two weeks to allow for victim notification (J. Pacheco, personal communication, April 10, 2008). One fundamental process that advocates feel is missing is “a better way to ensure victim

rights,” such as “holding everyone more accountable (judges, lawyers, court staff, etc.)” (J. Pacheco, personal communication, April 10, 2008). This is a common belief among victim advocates, who watch court officials (including judges and attorneys) ignore victims’ rights or take them very lightly. The part that frustrates advocates so much is that there is no substantive way to enforce victims’ rights if violations occur and there is little that an advocate can do other than bring it to the attention of the prosecutor.

Unfortunately, these processes “do not address all the issues victims have to deal with,” primarily because the rights of the defendant nearly always trump the rights of the victim (J. Pacheco, personal communication, April 10, 2008). The outcome of these processes is that victims do not feel like they have much input into the case (J. Pacheco, personal communication, April 10, 2008). To help victims to feel like they do have input, advocates provide options and encourage victims to make their own decisions. The services do not provide closure; in fact, “closure is a taboo thought that is not preached here. We do believe and practice empowering the victim,” usually by way of giving the victim choices in the situation and helping them through the process (J. Pacheco, personal communication, April 10, 2008). One of the major issues with the outcomes is that advocates do not have enough resources to keep pace with the growth of Pinal County, which contributes a great deal to the level of service that Victim Services is able to provide.

#### *Santa Cruz County*

Santa Cruz County Victim Services operates out of the Santa Cruz County Attorney’s Office. All felonies and misdemeanor domestic violence fall under the jurisdiction of Santa Cruz Victim Services. The office is notified that a victim is involved in a case when it receives the police report. Then, initial contact is made to a victim via telephone or a letter in the mail. A victim is defined as “a person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the person’s immediate family or other lawful representative, except if the person is

in custody for an offense or is the accused” (A. Arriola, personal communication, April 10, 2008).

On average, the office handles between 560 and 650 cases per year.

The strategic goals of Santa Cruz Victim Services are: 1) to obtain a full-time bilingual “assistant coordinator/office assistant” in order to keep the victim services office “open” to victims and the public during normal business hours; and 2) to provide victims of crime with emergency assistance relevant to their immediate physical and psychological “safety” and comfort (A. Arriola, personal communication, April 10, 2008). The objectives for the first goal are to secure funding, to provide constant and effective office coverage during normal business hours, to provide bilingual services to crime victims as necessary, and to provide the assistant coordinator/office assistance with additional relevant training so that the skills appropriate to crime victim assistance will be enhanced or acquired (A. Arriola, personal communication, April 10, 2008).

There are numerous processes in place to achieve these goals. Victim Services already provides such services as: crisis intervention; emergency temporary shelter; follow-up contact; assistance in dealing with other social service and criminal justice agencies; assistance in obtaining the return of property kept as evidence; assistance dealing with landlords or employers; referrals to other agencies; court-related services; and notification (A. Arriola, personal communication, April 10, 2008). Additionally, Santa Cruz Victim Services “engages in outreach and networking with a variety of community organizations” with an interest in victim services (A. Arriola, personal communication, April 10, 2008). Victim services representatives give presentations to schools, businesses, and organizations – especially when those organizations can assist in encouraging victims to come forward who otherwise tend not to (such as victims of domestic violence or sexual assault). These groups include: Lions Club; Rotary Club; Community Food Bank; Red Cross; Salvation Army; Mothers Against Drunk Driving; Court Watch; the Arizona Coalition Against Domestic Violence; and Homicide Survivors (A. Arriola, personal communication, April 10, 2008).

Santa Cruz Victim Services believes that “the processes in place [...] are effectively addressing [the] goals and objectives” (A. Arriola, personal communication, April 10, 2008). This outcome, however, is hindered by the fact that there is only one full-time employee in Victim Services, and that is the program director. The program director can be called away for meetings, presentations, or other purposes, and the office may need to be closed during normal business hours. For this reason, the most pressing need is the elevation of the assistant coordinator/office assistant from part-time to full-time status.

## **Discussion**

### *Similarities*

There are several similarities between victim services in Pima, Pinal, and Santa Cruz Counties. In terms of programs, all three offices have jurisdiction over felonies. Additionally, all three initially make contact based on contact with law enforcement. When law enforcement responds to the call, the victim of the crime is either given the information for the victim services office (Pima) or the advocate is given the case when the police report is processed (Santa Cruz), or a combination of the two (Pinal). This is significant because it means that law enforcement is generally the first contact that victims have with the criminal justice system, yet the culture of policing is such that they often come across as non-empathetic or uncaring. This is one of the reasons that Pima County initiated a 24-hour, 7-days a week crisis intervention program with volunteer victim advocates and also the primary reason that Pinal County trained their Sheriff's Department to perform crisis victim advocacy.

Interestingly, the only similarity in the goals was the lack of strategic goals in Pinal and Pima Counties. This issue is addressed later.

There are also similarities in the processes of all three counties. All three operate according to Arizona statute, and thus provide the minimum required by law, which are the rights in the Victims' Bill of Rights. This sets the floor of expected services, and counties are permitted to build

on that base-level of services as they see fit. Additionally, the counties all have victim service offices located in the County Attorney's Office. This is significant because their attachment to the County Attorney means the budget for Victim Services (or Victim Witness, as it is called in Pima County) comes from the County Attorney's Office budget.

Lastly, the outcomes of victim services are darkly similar. All three echoed that services and resources are not believed to provide closure, but they do provide empowerment. Whether the services are not intended to provide closure or they are simply failing to do so is not known. The counties' lead advocates also said that the number of advocates is woefully inadequate for the caseload, and the availability of bilingual (Spanish-speaking) advocates and crisis personnel (for Pima County) is critical. Furthermore, all counties are attempting to address the unique needs of their communities, but current funding levels are hindering their abilities to do so.

#### *Differences*

The analysis also provided for numerous differences in the level of services and ability to provide services between the three counties. In terms of the program, there are disparities between counties in the level of services and the amount of staff dedicated to the implementation of victims' rights. The counties also differ in the establishment of clear goals, objectives, and performance measures. The processes in place vary between the counties, and the outcomes are similarly varied.

Programming is tied to funding. For example, Pima County, arguably the county with the most resources, has 10 advocates with an average caseload of 100 cases per advocate, whereas in Santa Cruz County there is only one full-time advocate with as many as 650 cases per year. Another example is that Pinal County, which geographically falls between Pima and Maricopa Counties, struggles with dealing with the caseload of a growing, urban county using the resources of a fledgling rural county (J. Pacheco, personal communication, April 10, 2008). The primary need in

all counties is additional personnel, especially bilingual advocates and crisis staff. This is critical, yet the funding is not available; this hinders the ability of the offices to do their jobs adequately.

A clear strategic plan, accompanied by stated objectives and established performance measures are necessary in government organizations so that there can be accountability to the public as well as evaluation of the effectiveness of the state-level victims' rights policies. However, these aspects are absent from the structures of victim services in Pima County and Pinal County. Santa Cruz County has a clearly-outlined goal structure, named objectives to achieve the goals, and performance measures for establishing effectiveness in achieving those goals. Pima County has no long-term strategic goal structure, and Pinal County's goals are vague and without objectives or performance measures.

The processes – or services and resources available in each county – are surprisingly disparate. While all three counties provide the minimum level of services provided by law, the additional services offered varies from county to county. The services in Pima County have expanded to include crisis intervention 24 hours a day, 7 days a week; in Pinal County, the intervention services are provided only through local law enforcement services and Santa Cruz County doesn't have them at all. Instead, Santa Cruz County offers the “bread and butter” services of emergency transportation, shelter, and even toiletry items such as diapers and blankets. These services are especially needed by victims of “in-home’ assaults, robbery/burglary, rapes or other sexual assaults” (A. Arriola, personal communication, April 10, 2008).

Because these services are so varied, the outcomes are also varied. It is interesting to note that none of the counties strive to provide closure to victims, but all hope to encourage empowerment through providing options and allowing victims to make their own choices. All three counties also stressed that during the process, the most commonly misunderstood right was that victims thought they controlled the course of the case; in actuality, victims are witnesses and only

have the right to be informed of the disposition of the case and be notified of activities like plea agreements, sentencing hearings, etc.

### **Conclusions and Recommendations**

The comparison of Pima County, Pinal County, and Santa Cruz County highlights several similarities and differences between the counties in the implementation of the Arizona Victims' Bill of Rights and accompanying legislation. First, resources need to be more evenly distributed to ensure that counties are able to provide the basics to the degree needed by the community. Second, the state needs to implement an accountability structure that will enable all counties to have the same goals and objectives in providing their services. Third, the state needs to implement accountability at all levels of government in all sectors in order to provide victims the resources and rights they are constitutionally entitled to. Lastly, the state should implement elements of the restorative justice paradigm to more adequately accommodate victim participation, ease the strain of the criminal justice system, and give offenders an opportunity to take responsibility for their actions.

Currently, each county's victim services office is funded by the county attorney's office, plus any additional grant funding obtained from state or federal agencies (J. Pacheco, personal communication, April 17, 2008). However, these resources are inadequate for the job that victim advocates face. The state needs to provide funding, both to aid in the effective rendering of constitutionally-required victims' rights and to symbolically show support for the VBR. Also, "the number of victims in need of services always outpaces the available resources [and] the nature of the work makes staff and volunteers susceptible to burn-out" (A. Gomez, personal communication, April 11, 2008).

This state funding should have a dedicated source of state appropriations so that it is reliable and consistent. Victim services offices – whether they are in small, rural counties or the Attorney General's Office – consistently state that their greatest need is more advocates, but there

isn't enough grant funding to pay the salaries on a reliable, consistent basis. Also, grant funding eventually runs out, which means staff must then find new grants (and write them) – thereby taking them away from their advocacy duties – or convincing the County Attorney's Office to give them an increased share of the budget. Increased state monetary support would help offices hire the staff they need in order to provide the services victims need.

Clear, written goal statements, objectives to achieve the goals, and performance metrics to measure the effectiveness of achieving those goals are necessary in government organizations for two reasons. First, they provide accountability to both higher echelons and the public; second, they provide purpose for the staff and allow them to assess needed improvement or changes to better serve the community. Neither Pima County nor Pinal County had quantifiable, written goals, objectives, or performance metrics for the short-term or long-term. This must be rectified.

For the sake of accountability and uniformity, a position should be created at the state level in order to oversee all victim services offices. Though the state has an advisor to the governor about victims' issues, the position is largely advisory and does not have the scope of responsibility or jurisdiction to oversee state-wide victim services. Thus, the proposed coordinator could be an entirely new position or could be an expanding of the governor's advisor. If the governor's advisor position were expanded, it would need to include regulatory power, oversight, and hierarchical supervision.

The base-level goals should be determined by the state coordinator. Each county, however, should in turn determine its own objectives and metrics based on the community's needs and resources; these objectives and metrics would then be approved by the state coordinator to ensure that they are adequately implementing the VBR. Additional goals, objectives and metrics that address certain needs of each county can be established without the approval of the state coordinator. This allows the advocates in each county to determine the above-and-beyond services

needed in their communities. The state coordinator would then conduct annual reviews of each county's effectiveness in achieving the goals and objectives.

Having uniform goals provides accountability to higher echelons of government (namely, the state coordinator). Simply having a set of goals, objectives and metrics won't necessarily provide efficiency, effectiveness, or transparency, but there is increased incentive to perform to the expected levels. On a second level, a set of goals, objectives and metrics ensures that advocates and volunteers know what is expected, how to achieve their goals, and how to assess their effectiveness. This will hopefully provide more targeted, efficient, and effective implementation of the VBR throughout Arizona.

Additionally, the state coordinator should hold other members of the criminal justice system accountable to the effective implementation of victim rights, including judges, attorneys, court staff, etc. (J. Pacheco, personal communication, April 10, 2008). Though defendants' rights outweigh the rights of victims on nearly every count, there are instances in which they are not in conflict but victims' rights are still disregarded. Some probation officers, judges, and court staff prefer not to work with victims and this can translate to violations of victims' rights. As an example, the law states that judges must read *A.R.S. Ch. 13 Section 4448 Statement of Rights* out loud in the courtroom before the morning calendar; however, some judges choose to simply play a tape of it, or don't quiet the courtroom before reading it, and the implication is that it is not an important aspect of the judicial process (A. Bocks, personal communication, March 10, 2008).

In order for the state coordinator to keep members of the criminal justice system accountable, violations of victims' rights would need to carry punishments. Currently, a violation of a victim's rights has little effect; in rare cases, it might constitute a mistrial. Most of the time, unfortunately, it goes disregarded, especially if the violation is from the judge because the judge would have to rule against himself or herself. Without an incentive to not violate victims' rights, they will remain impotent in the face of violation.

Lastly, counties should institute elements of the restorative justice process. Arizona has aspects of the process, but little of this trickles down to the county level within the victim services branches. For victims, restorative justice programs generally mean “increased satisfaction with the way in which they are treated by the criminal justice system” (Davies, 2003, pg. 114). While giving victims a voice in traditional court proceedings is vital to the health and implementation of victims’ rights, the addition of restorative justice programs could address the issue of closure for victims – something that is not even a concern for traditional victims’ rights advocates. In some instances, such as juvenile offenses or non-violent crimes, it is beneficial for the court to send the case to restorative justice programs like family group conferencing. This allows the situation to be returned to “those most affected by it and [encourages] them to determine appropriate responses to it” (Maxwell & Morris, 2000, pg. 207). Family group conferencing can also reduce recidivism rates and would likely reduce the costs associated with court proceedings, which is a long-term benefit to the criminal justice system.

As an exploratory venture, this paper compared the victim services implementation in three counties of Arizona. Several similarities and differences were present, and from this three suggestions were proffered to encourage reform. However, additional research in this area would be beneficial, especially a comparison of all eleven Arizona counties or a study of city-level resources, in order to add to what is presented here. A more all-encompassing comparison of implementation would assist policymakers determine areas of reform and potential policies. These projects, in addition to this one, could also generate the attention needed to foster change in the victims’ rights arena and jump-start increased funding for these essential programs.

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## Appendix A: Timeline of victims' rights legislation

<b>Date</b>	<b>Legislation/Executive Action</b>	<b>Description</b>
1982	<i>Federal Victim and Witness Protection Act of 1982</i>	Federal "fair treatment standards" for victims and witnesses
	The President's Task Force on Victims of Crime publishes its <i>Final Report</i>	Recommendations include the passage of a federal constitutional amendment for victims' rights
1984	<i>Victims of Crime Act</i>	
	<i>Justice Assistance Act</i>	Establishes a financial assistance program for state and local government and funds 200 new victims service programs
1985	<i>Children's Justice Act</i>	Amends <i>Victims of Crime Act</i> to provide funds specifically for the investigation and prosecution of child abuse
1990	<i>Student Right-to-Know and Campus Security Act</i>	
	<i>Victims of Child Abuse Act</i>	
	<i>Victims' Rights and Restitution Act</i>	
1992	<i>Battered Women's Testimony Act</i>	
1994	<i>Violent Crime Control and Law Enforcement Act</i>	
	<i>Violence Against Women Act</i>	
1996	<i>Mandatory Victims' Restitution Act</i>	Enacted as Title II of the <i>Antiterrorism and Effective Death Penalty Act</i> and allows federal courts to award "public harm" restitution directly to state VOCA victims assistance programs
	<i>Community Notification Act</i>	Known as "Megan's Law"
1997	<i>Victims' Rights Clarification Act</i>	Clarifies existing federal law allowing victims to attend a trial and appear as "impact witnesses" during the sentencing phase of cases
	<i>Crime Victims Assistance Act</i>	Offers full-scale reform of federal rules and law to establish stronger rights and protections for victims of federal crime
1998	<i>Crime Victims with Disabilities Act</i>	
	<i>Identity Theft and Deterrence Act</i>	
2000	<i>Victims Rights Act</i>	
	<i>Trafficking Victims Protection Act</i>	
2003	<i>PROTECT Act</i>	Established the Amber Alert for missing children
2004	<i>Justice for All Act</i>	
2006	<i>Trafficking Victims Protection Reauthorization Act</i>	

## Appendix B: Timeline of victims' rights amendments

<b>Date</b>	<b>Resolution</b>	<b>Action</b>
April 22, 1996	S.J. Res. 52	Sens. Kyl (R-Ariz.) and Feinstein (D-Cal.) introduce amendment to Senate
April 22, 1996	H.J. Res. 174	Cong. Hyde (R-Ill.) introduces amendment to House of Representatives
September 30, 1996	S.J. Res. 65	Sens. Kyl and Feinstein re-introduce amendment after incorporating comments from Senate Judiciary Committee hearing
January 21, 1997	S.J. Res. 6	Sens. Kyl and Feinstein re-introduce amendment after S.J. Res. 65 died due to inactivity after session adjourned without a vote
April 1, 1998	S.J. Res. 44	Sens. Kyl and Feinstein re-introduce amendment after incorporating comments from Senate Judiciary Committee hearing
July 7, 1998	S.J. Res. 44	Senate Judiciary Committee approves resolution; never came to full Senate vote before session adjourned
January 19, 1999	S.J. Res. 3	Sens. Kyl and Feinstein re-introduce amendment
September 30, 1999	S.J. Res. 3	Senate Judiciary Committee approves resolution
April 27, 2000	S.J. Res. 3	Sens. Kyl and Feinstein withdraw consideration of the amendment in the face of a threatened filibuster to block full vote
January 7, 2003	S.J. Res. 1	Sen. Kyl introduces new amendment drafted by Harvard Law Professor Laurence Tribe and Steven Twist of the National Victims' Constitutional Amendment Project
January 7, 2003	H.J. Res. 10	Cong. Edward Royce (R-Cal.) introduces similar amendment in the House, but it dies due to insufficient cosponsors
April 8, 2003	S.J. Res. 1	Senate Judiciary Committee hearing held
April 10, 2003	H.J. Res. 48	Royce's amendment re-introduced by House Judiciary Committee chairman Steve Chabot (R-Ohio) with sufficient cosponsors
September 4, 2003	S.J. Res. 1	Senate Judiciary Committee approves amendment and sends it to Senate floor for a vote
April 20, 2004	S.J. Res. 1	Motion to proceed to consideration filed; cloture motion to the measure presented; motion to proceed to consideration withdrawn

## **Appendix C: Article II, Section 2.1, Victims' Bill of Rights**

### **ARIZONA CONSTITUTIONAL RIGHTS FOR CRIME VICTIMS**

A. To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings when the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea and sentencing.
5. To refuse an interview, deposition or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
7. To read pre sentence reports relating to the crime against the victim when they are available to the defendant.
8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
11. 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.
12. To be informed of victims' constitutional rights.

B. A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

C. "Victim" means 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, except if the person is in custody for an offense or is the accused.

D. The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

E. The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.

## **Appendix D: Advocate survey**

### ***Victims' Rights Survey***

*Janne Perona, University of Arizona*

Thank you for taking the time to fill out my survey regarding victims' rights implementation in Arizona. My senior thesis looks at the implementation of the mandate set forth in the Victims' Bill of Rights and other pieces of legislation. Specifically, my thesis does a comparison study of implementation in three counties: Pima County, Pinal County, and Santa Cruz County. Please answer the questions as fully and completely as possible; I need to take the answers and compile it into paragraph format for my thesis.

#### **The Program**

1. What crime fall under the purview of your office?
2. When do you first make contact with a victim? How is this done?
3. On average, about how many cases does your office handle every year?
4. Please provide any other information you think would be helpful in understanding your program. What makes it different from others in Arizona, if anything?

#### **The Goals and Objectives**

1. What are the primary strategic goals and objectives of your office?

#### **The Processes**

1. What processes does your office use in order to achieve those goals and objectives? (e.g. services, resources, etc.)
2. What processes do you feel should be added to your program?

#### **The Outcomes**

1. Do you believe that the processes in place in your office are effectively addressing the goals and objectives?
2. What concerns do you have regarding the efficacy of your office or the resources or services you are able to provide?
3. How do the services and resources from your office provide closure or empowerment for victims?
4. What is the most common misunderstanding that victims have regarding their rights? (e.g. thinking they have a right that they don't have, etc.)
5. What services or resources have you been able to implement that address unique concerns or needs of the victims in your county or region?
6. What additional services or resources do you think are needed to address unique concerns or needs of the victims in your county or region?

Again, thank you for your time, and if you have any questions regarding this survey, feel free to email me at [jperona@email.arizona.edu](mailto:jperona@email.arizona.edu) or my thesis advisor, Dr. Roger Hartley at [rhartley@eller.arizona.edu](mailto:rhartley@eller.arizona.edu).