



TO: Laurie Robinson, Elizabeth Pyke, Obama-Biden DOJ Transition Team
FROM: Meg Garvin, Executive Director of the National Crime Victim Law Institute
RE: Key Victims' Rights Issues for Consideration by the Transition Team and Obama-Biden Administration
DATE: December 12, 2008

Thank you for seeking input regarding critical issues facing this country's victims. Your willingness to listen, and to work to match policy with need is inspiring, and is certainly what the victims' rights and services field needs. While there are a myriad of issues, what follows are three categorical issues from the victims' rights perspective of the National Crime Victim Law Institute (NCVLI). NCVLI is a nonprofit educational organization located at Lewis & Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; technical assistance to attorneys; promotion of the National Alliance of Victims' Rights Attorneys; research and analysis of developments in crime victim law; and provision of information on crime victim law to crime victims and other members of the public. In addition, NCVLI actively participates as amicus curiae in cases involving crime victims' rights nationwide.

1) Victims of Crime Act Funding

The Victims of Crime Act, Public Law 98-473, (VOCA), became law in 1984. Since then, in an attempt to overcome the historically poor treatment of crime victims by our justice systems, every state passed constitutional amendments (33 states) or statutes affording crime victims basic rights in the criminal justice process, and every jurisdiction implemented programs to provide direct services to victims of crime to help them survive the aftermath of victimization. VOCA funds have been the primary fiscal vehicle available to advance these initiatives and to support crime victims. VOCA funds have ensured direct services to victims of all types of crimes. In addition, VOCA funds have been used to ensure that victims are afforded notice of proceedings in the cases against the accused, which is the critical first step of the due process owed to victims to ensure that they can exercise their other rights. As of 2006, VOCA funds allowed for services to 3.8 million crime victims every year. Sadly, over recent years VOCA monies have been subject to a number of diversions to administrative and other purposes for which they were not intended. VOCA monies are critical to fulfilling the promise this country has made to crime victims: a promise that they are not re-victimized after they find the courage to speak of their victimization. These monies need to be diligently guarded against diversion to non-authorized administrative purposes, and guaranteed for key direct victim service areas. In addition, in 1999 Congress placed a cap on the fund to ensure that there would always be access to funds if the current fund balance was deficient. Two things should happen with the cap. First, it should be raised to an amount more in line with the needs of today's victims. Second, monies left above the cap should be carefully guarded to ensure that they are preserved only for future victim services.

2) Victims' Rights Enforcement & the Crime Victims' Rights Act, 18 U.S.C. § 3771

In 2004, the "Scott Campbell, Stephanie Roper, Wendy Preston, Lourarna Gillis, and Nila Lynn Crime Victims' Rights Act Federal Crime Victims' Rights Act of 2004," 18 U.S.C. § 3771 (CVRA) became law. The CVRA provides victims of federal offenses with eight rights and explicitly provides trial-level standing for victims to individually assert those rights, as well as the right of victims to seek rapid and mandatory appellate review of denial of rights. The law was passed to remedy the deficiencies of prior victims' rights legislation – lack of standing and enforceability and to "correct, not continue, the legacy of the poor treatment of crime victims in the criminal process." 150 CONG. REC. S10910-11 (Oct. 9, 2004) (statement of Senator Kyl). Since passage of the CVRA at least two states (CA and OR) have amended their state constitutions to be more in line



with this federal benchmark for victims' rights. The Department should support victims' rights enforcement in federal and state criminal cases, including supporting implementation of the CVRA in at least four ways:

1. The Department should support independent counsel for victims, even if this seems to present hurdles to prosecution. The rights contained in the CVRA are individual rights and, as with any individual right in our criminal justice system, trained lawyers are often needed to effectively secure these rights. Section (c)(2) of the CVRA directs government attorneys to inform victims of their right to seek independent counsel. This provision should be more readily embraced both in spirit and letter by the Department in adult, child, and multi-victim cases.
2. The CVRA and other victims' rights create a fundamental shift in the criminal justice system; a shift away from victim as piece of evidence and toward victim as a participant with a voice (not a veto). This emerging area of law requires rigorous legal advocacy in the courts to develop case law so that we can truly understand the scope of the rights and victims can receive equal justice regardless of what court they are in. The CVRA contains authorizations for appropriations that allow for funding legal services to victims as they assert and seek enforcement of their rights in federal criminal cases and in cases in jurisdictions with laws substantially equivalent to the CVRA. Ongoing and full funding of the CVRA is critical to creating sufficient case law to ensure an understanding of the rights and equal justice nationwide.
3. Victims rights attach from the moment of commission of an offense in most jurisdictions, and the CVRA has language supporting this. This pre-charging attachment is critical for a number of reasons, including that victims may be particularly vulnerable during the investigative stage and the speed with which cases turn from investigation to conclusion/sentencing is staggering. For victims' rights to have meaning there needs to be a commitment to rights attaching upon commission of the offense.
4. The CVRA was codified in Title 18 of the criminal code, which means that unlike prior victims' rights legislation it resides side-by-side with the majority of other provisions governing federal criminal processes. This placement ensures that federal criminal practitioners become familiar with the statute in their daily practice. What is missing, however, is full integration of the CVRA and victims' rights and interests into the federal rules of criminal procedure. Attorneys and courts are each obligated to know the law generally, but the realities of practice (whether it is civil or criminal) is that we each check our practices most against the rules of procedure. If victims' rights and victims' interests are integrated into our procedures the criminal justice system will more quickly shift to ensuring victims are treated with respect and dignity.

3) Role of Expertise of each Agency & Bureau within the Department

The Department of Justice has numerous agencies and bureaus, each of which has particular expertise. For instance, the Office for Victims of Crime (OVC) has expertise in general victim services and enforcement of rights. Despite this expertise, recent years have seen a shift away from allowing OVC to thrive in its area of expertise. The result is that despite strong personal leadership, the field has been left without a clear, strong federal partnership in the cause of advancing victims' rights. The organizational structure of the Department must be such that each agency or bureau be allowed to grow its own expertise and then be called upon to share that with the entire Department. The victims' rights and services field needs OVC to be a leader with the authority to move us forward so we can do better by this country's victims.

CONCLUSION

Thank you again for your willingness to listen to the field. NCVLI's final recommendation is that you continue this collaboration well into the administration. Victims' rights and services providers are an amazing group of people nationwide who care deeply about the victims they work with today, the victims of tomorrow, and ensuring that this country's justice system is fair for all persons involved. Regular invitation to meet with and have input from this community would serve the Department and this country well.