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ANALYSIS OF STATE ACTIONS ON IMPORTANT ISSUES

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Victims' Rights Legislation in the 21st Century

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Introduction

Protecting and strengthening the rights of victims are perennial issues in state legislatures. In recent years, laws have addressed organization of victims' services; notification; participation in the criminal justice process; protection of victims' privacy and vulnerable populations of victims, such as the elderly or children; ensuring rights of victims in the workplace and compensation. This report highlights selected state laws enacted from 1999 through 2002. The appendix contains citations to and summaries of referenced legislation.

Organization of Victims' Services

In some states, legislatures have addressed administration of victims' services at the state level. A 2001 **Montana** measure created an Office of Victim Services within the Department of Justice to ensure that victims and witnesses of crime receive fair and proper treatment and services as required under state law. In **Pennsylvania**, a 2002 law provided further rights for victims by establishing the Bureau of Victims' Services, the Victim Services Advisory Committee, and the State Offender Supervision Fund and the Office of Victim Advocate. Also in 2002, **Tennessee** law created the Victims of Crime State Coordinating Council to address and promote awareness of victims' and their families' needs.

Other laws also provide for evaluation of victims' services in the state. **California** legislation in 2002 required the secretary of state and the consumer services agency to review and report to the Legislature on crime victims' services in the state. That same year, a **Washington** measure created a task force to measure and evaluate the state-funded community-based organizations that provide services to the undeserved victim population.

Notification and Access to Information

The right of victims to reasonable notice of proceedings is found in most state statutory law or in constitutional amendments.

The right of victims to reasonable notice of proceedings is found in most state statutory law or in constitutional amendments. Legislatures continue to expand these rights, and measures in several states employ new technologies to ensure victim notification. **Illinois** (in 1999) and **West Virginia** (in 2000) joined several other states by passing measures that provide for an automated victim notification system. Crime victims are able to call a toll-free number and receive basic information about offenders, and the system will automatically attempt to contact the victim if the offender is released or escapes. A similar 1999 enactment in **New York** authorized the state board of parole to provide toll-free telephone access for crime victims to obtain information.

Other laws broadly inform victims of their rights in the proceedings as part of court proceedings. **California** legislation passed in 2000 directs the development and distribution of “notification of eligibility” cards to crime victims to help them become aware of their rights. A 2001 **Connecticut** law requires the superior court judge to issue an advisement regarding the rights of victims under state law at the opening of every court session. A similar 2002 **Florida** measure requires the court to notify victims of their constitutional and statutory rights through verbal advisement by the judge or by displaying a poster on the courtroom doors.

Notifying victims of inmates’ upcoming parole consideration was addressed in legislation as well. Between 1999 and 2002, six states added or expanded law regarding parole notification. In 2002, a **Kansas** act requires notice to victims of an inmate’s request to the Parole Board for early release based on medical necessity. **Kentucky** legislators the same year passed a measure requiring that even very initial and preliminary consideration of an inmate’s parole must be relayed to the victim or next of kin. This same legislation also allows a victim or next of kin to choose not to receive notice of any further consideration for parole. A recent **Pennsylvania** law requires the pre-parole notification to go to victims who have had an opportunity to petition to deny parole. In 1999, a **Rhode Island** law required the parole board to provide notice to victims of upcoming parole hearings; a similar measure in **Tennessee** includes the proposed residence of the offender in that notice.

Recent state laws increase victims’ ability to have access to offender records. In 2000, **Delaware** lawmakers passed a measure enabling the victims of crimes to have access to

information concerning the offender's compliance with terms of any sentence imposed. New legislation in **Hawaii** (2002) requires the Department of Public Safety, probation authorities and the attorney general to make a good faith effort to notify victims and family members of any income received by the imprisoned offender from a civil judgment. A **Maine** enactment passed in 2001 allows victims increased access to inmate records.

Participation and the Right to Be Heard

State legislatures continue to take steps to ensure that victims are given the right to participate in the criminal justice process. Victim impact statements, which allow victims and the members of a victim's family to provide written or oral information about the effect of the crime on them, are among areas being expanded under state laws. Laws enacted in **Connecticut** in 2000, **Nevada** in 2001 and **Iowa** in 2002 provide for victim input at the sentencing hearings. The **Connecticut** measure is specific to death penalty cases.

State lawmakers also have provided for victim input at the offender's parole hearing. Lawmakers in **Maine** passed a measure in 2001 that allows guardians of minor victims of sex offenders to testify at parole hearings. Also in 2001, a **New Mexico** enactment permits the victim or victim's family to be present and have an opportunity to speak at the defendant's parole hearing. A 2002 **Pennsylvania** law provides victims the opportunity to petition the parole board in writing to deny an offender's parole. The victim then may appear in person before the board to testify, or the victim's testimony may be presented by conference call. Regarding the right for victims and their families to be present, a few states have expanded the list of people who may be present at various proceedings. A 2000 **Connecticut** enactment permits victims or members of a victim's family to attend all court proceedings that are part of the court record. Legislation passed in 2000 in **Tennessee** allows the victim to have a victim advocate present at any prosecutorial or defense interview.

Another **Connecticut** law allows the prosecutor to display a picture of the victim during opening and closing arguments in homicide cases. A 2001 **Virginia** measure requires attorneys in felony cases to consult with the victim regarding plea negotiations when the victim so requests.

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Protection and Confidentiality

Keeping victims' addresses confidential has been a priority in recent years.

Legislators continue to be concerned about protecting the confidentiality of victims and protecting them physically from the offender. Keeping victims' addresses confidential has been a priority in recent years. At least 11 states during the past three years have enacted into law measures to keep victims' addresses confidential. These states include **California, Louisiana, Maine, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Vermont, Virginia and Washington**. The laws generally apply to victims of domestic violence or sexual-related or stalking-related abuse through address confidentiality programs.

A **Nevada** measure passed in 1999 seeks to protect victims by directing the sheriff to provide notice to a victim of violent crime that the offender has applied for (and subsequently has been denied) a permit to obtain a gun.

Many state laws in recent years address specific victim populations—such as senior citizens or children—who may be particularly vulnerable and may need further protections. In **Illinois** in 2001, lawmakers passed a measure requiring the state police to create a senior citizen database to be used to gather information about: 1) modus operandi used to victimize senior citizens, 2) groups that tend to target seniors, 3) areas of the state the groups tend to frequent, and 4) the type of person senior citizen victimizers routinely target. The database is also to be used to improve techniques used by law enforcement personnel to investigate and apprehend people who victimize senior citizens.

Other laws increase penalties for the offenders who commit crimes against senior citizens and also are adding additional safeguards to protect elders. A 2001 **Louisiana** measure directs judges to sentence individuals convicted of crimes against people age 65 or older to an additional three years. In similar legislation in the same year, **Mississippi** created an enhanced penalty when the defendant of burglary or breaking and entering intended to commit an offense against an elder. In the 2002 legislative session in **Florida**, an enactment enhances penalties for theft from people age 65 or older and requires restitution and community service for such theft.

Child victim laws in recent years include those that address the failure of adults to report violence and abuse against children. **Alaska, Nevada and Texas** each passed laws in 1999

creating new crimes for the failure to stop or report an assault or sexual assault that is being—or may be about to be—committed against a child.

Employment Rights

During the past few years, lawmakers have paid special attention to the rights of crime victims in the workplace. Most significantly, legislatures have acted to ensure employment rights for victims who must miss work. Since 1999, at least six states have expanded victims' rights by prohibiting employers from firing, threatening, coercing or penalizing victims of sexual assault who take time off from work to attend issues arising from the assault. These states include **California, Colorado, Connecticut, Maine, Maryland and Pennsylvania**. The Pennsylvania measure also includes such employment protections for the victim's family members and witnesses.

Restitution

Restitution is the money a judge orders the offender to pay to the victim(s) to compensate for damages related to the crime. More states are making restitution a mandatory part of a criminal sentence. More than half the states require courts to order restitution to the victim or to state on the record the reasons for failing to order restitution. Since 1999, **Arkansas, Oklahoma, South Carolina and Wyoming** put such requirements into law.

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State laws also are improving enforceability of restitution payments to the victim. Two states—**Maine** in 1999 and **Vermont** in 2002—recently have joined other states that allow the court to order the collection of restitution through garnishment of the defendant's wages. The 2002 restitution legislation in Vermont also prohibits the offender from being discharged from probation or parole until restitution is paid to the victim.

Another growing area of victim law is provision of restitution as a civil judgment. Many states in recent years have passed laws making a restitution order fully enforceable by victims in the same manner as any other money judgment in a civil matter. Recent laws in **California, Louisiana, Montana, Tennessee Utah, and Washington** did so.

Compensation

Victim compensation is financial assistance paid through a public fund established and administered by the state. The fund enables victims of crime to receive money for expenses that directly result from violent crime against them. All 50 states have statutorily established compensation programs that generally cover such things such as medical treatment, physical therapy, mental health counseling, lost wages and loss of support to dependents, and funeral expenses.

Several states have recently expanded their victim compensation services laws to include additional family members who have suffered along with the actual victim.

Several states in recent years have expanded their victim compensation services laws to include additional family members who have suffered along with the actual victim. In 1999, for example, a **New York** law expanded the state victim compensation services law to include among those eligible to receive compensation spouses, children or stepchildren of a victim of crime who have sustained personal physical injury as a result of the crime. In 2002, a **Virginia** law was passed to allow the parent of a child victim, under the Criminal Injuries Compensation Fund, to apply for compensation for lost wages due to medical and legal appointments.

Laws also are expanding the actual category of harm to a victim for which compensation may be provided. A 1999 **Maine** enactment added psychological injury incurred by a victim who has sustained bodily injury or threat of bodily injury. **Illinois** lawmakers in 2001 added compensation for transportation and travel services of victims of homicide to secure the victim's body; replacement of clothing and bedding used as evidence; temporary lodging or relocation necessary as a result of the crime; locks or windows necessary or those damaged as a result of the crime. In 2002, **Virginia** passed a measure allowing for funeral reimbursement under the Criminal Injuries Compensation Fund.

State lawmakers also are increasing the monetary amount payable to victims from state compensation funds. A 2000 **Virginia** law increased victim compensation limits from \$1,000 to \$25,000 for mental health counseling. Also in 2000, Tennessee raised the maximum award to the victim of a crime from \$12,000 to \$18,000 and the maximum supplemental award from \$8,000 to \$12,000. Texas legislation in 2001 increased the permissible amount of crime victim compensation to \$75,000. In 2002, **New Hampshire** removed the 25 percent cap on grants from the victims' assistance fund.

Notoriety for Profit

Notoriety for profit laws prohibit offenders from receiving profits gained from books, movies and interviews about the crime. Most state laws have been revised in recent years as a result of a Supreme Court decision on New York's "Son of Sam" provision, which was the first of its kind. The Court ruled that the New York law was overbroad because it applied not only to convicted offenders, but also to those accused of a crime. In response, several states have attempted to revise their laws to make them constitutional.

More recently, states are expanding notoriety for profit laws. Lawmakers in **California** expanded notoriety for profit law to also impose an involuntary trust upon the profits from any felony crime-related memorabilia. In **Rhode Island**, recent law allows victims to seek recovery from a criminally responsible person's assets, even those arrests that are not royalties from selling items/information concerning the crime. A similar **Arizona** law, passed in 2001, voids any contract with an accused person for reenactment of a crime using the Internet or on-line presentation, unless the proceeds are deposited into the crime victim's account. Also in 2001, **Texas** added the sale of tangible property, the value of which is increased by a convicted person's notoriety, to that property from which forfeiture of profits is required, and victims are entitled to bring action to claim.

States are expanding notoriety for profit laws.

A 2000 **Colorado** measure modifies the process concerning the disposition of money payable from the profits of a crime pursuant to a contract between a person and a person convicted of a crime. It also imposes a civil penalty for the failure to comply with the restrictions and makes the application for victim's compensation confidential.

Witness Rights and Protection

Witness rights and protections have been improved under state laws in recent years. A 1999 **Delaware** enactment extends to witnesses of crimes the confidentiality provisions that apply to victims. **Connecticut** passed a law in 1999 that created the felony crime of intimidating a witness. The measure also authorized the court to issue a temporary restraining order to prohibit harassment of a witness in a criminal case. A similar 1999 **California** law added the crime of intimidating a witness to those for which a court must hold a hearing in considering bail.

Legislators are especially sensitive to the needs and vulnerabilities of child witnesses. For example, a 2001 **California** law requires that the court take special precautions when dealing with a witness who is a minor or is mentally disabled and who has been a victim of a sexual offense. It requires the judge to allow for breaks in testimony and opportunities for the witness to collect himself or herself.

Victims of Terrorism

Since September 11, 2001, several state legislatures have addressed victims of terrorism.

Since September 11, 2001, several state legislatures have addressed victims of terrorism. **California, Delaware, New York and Wyoming** have passed laws to include victims of terrorism under crime victim compensation law. New York's law was part of a broader Victims and Families Relief Act. Shortly after September 11, **California** legislators approved a one-time urgency measure giving \$1 million to the victim compensation program in New York state to aid the victims of the terrorist attacks.

Appendix: Bill Citations to Referenced 1999-2002 Legislation

Organization of Victims' Services: California A 2435; Montana S 254; Pennsylvania S 380; Tennessee S 1072; Washington S 6763.

Victim Notification and Access: California A 2685; Connecticut H 6947; Delaware H 17; Florida S 1974; Hawaii H 2427; Illinois S 753; Kansas S 339; Kentucky H 142 and S 116; Maine S 303; Nevada S 449; New York A 6280; Pennsylvania H 219; Rhode Island H 5107; Tennessee H 619; West Virginia S 178.

Victim Protection and Confidentiality: Alaska H 34; California A 1349; Florida H 835; Illinois S 500; Louisiana H 2 and H 1885; Maine H 1515; Nevada A 586 and A 267; New Hampshire S 413; New York S 1126; ; North Carolina H 1402; Oklahoma H 2921; Texas H 628; Vermont H 807; Virginia S 485; Washington H 1546.

Employment Rights: California A 2195; Colorado H 1051; Connecticut S 456; Maine H 1463; Maryland H 303; Pennsylvania S 820.

Victim Participation and the Right to Be Heard: Connecticut H 5785; Indiana S 574; Iowa H 2153; Maine S 1844; Nevada S 234; New Mexico H 500; Pennsylvania H 219; Tennessee H 2919; Virginia S 1356.

Restitution: Arkansas S 9; California S 1250; Louisiana H 798; Maine S 268; Montana S 204; Oklahoma S 753; South Carolina H 3035; Tennessee H 1443; Utah H 26; Vermont S 222; Wyoming S 46; Washington H 1117.

Compensation: California A 1017; Illinois H 2865; Maine H 1229; New Hampshire H 557; New York S 3776; Texas S 1202; Virginia S 137.

Notoriety for Profit: Arizona H 2148; California S 1565; Colorado H 1377; Rhode Island S 628; Texas S 795.

Witness Rights and Protection: California A 77 and A1284; Connecticut S 916; Delaware S 191.

Victims of Terrorism: California S 551; Delaware H 343; New York S 7356; Wyoming S 61.

The bills covered in this report represent examples of victims' enactments, and are not intended to be a comprehensive list.

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