

# Safe, Whole, and Heard:

Overview and Discussion of the Rights of Crime Victims in Montana

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# Overview

Overview of court systems in Montana

Source of Victims' Rights

Other victim-specific services

Opportunities for issue-spotting and advocacy

# Courts in Montana

## Federal

## State

Montana Supreme Court

- State District Courts
  - Justice of the Peace Courts
  - City and Municipal Courts
- Water Courts and Workers' Compensation Courts

## Tribal



# Federal Victims' Rights and Restitution Act



42 U.S.C. § 10607

Attaches upon detection of a crime and applies to victims of crimes under investigation.

Investigating agent shall

- identify the victim or victims of a crime;
- inform the victims of their right to receive, on request, victim services, and
- inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services.

# Federal Victims' Rights and Restitution Act



## Victim Services:

- Medical services;
- Social services;
- Restitution and other relief to which the victim may be entitled, and how relief may be obtained;
- Inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and
- Assist a victim in contacting the persons who are responsible for providing these services.

# Federal Crime Victims' Rights Act



## 18 U.S.C. § 3771

- Attaches upon filing of a charging instrument and only to victims of counts charged.
- 10 enforceable rights:
  - reasonably protected from the accused;
  - reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
  - not to be excluded from any such public court proceeding...;
  - reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
  - reasonable right to confer with the attorney for the Government in the case;

# Federal Crime Victims' Rights Act

## 18 U.S.C. § 3771

- full and timely restitution as provided in law;
- proceedings free from unreasonable delay;
- to be treated with fairness and with respect for the victim's dignity and privacy;
- to be informed in a timely manner of any plea bargain or deferred prosecution agreement; and
- to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

# State Victims' Rights



State Constitution



Statutes



Other



# State Victims' Rights – State Constitution



“Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.” Mont. Const. art. II, § 28(1).

“The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” Mont. Const. art. II, § 10.

# Statutory Victims' Rights



The Montana Legislature created laws to:

- **Protect** the role of crime victims and witnesses in the criminal justice process;
- **Assure** that victims and witnesses of crime receive **fair** and **proper** treatment from law enforcement agencies and prosecutors; and
- Provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

Mont. Code Ann. §46-24-101(1)-(3).

# State Victims' Rights – Notice



Law enforcement personnel shall ensure that a **victim of a crime** receives **emergency social and medical services** as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:

1. the availability of **crime victim compensation**;
2. access by the victim and the defendant to information about the case, including the **right to receive documents** under 46-24-106 (AT NO COST);
3. the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim, and including the right to be accompanied during interviews as provided in 46-24-106; and
4. stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

Written information on **community-based victim treatment programs**, including medical, housing, counseling, and emergency services available **in the community**.

As soon as possible, law enforcement personnel shall give to the victim the following information:

1. the name, office address, and telephone number of a law enforcement officer assigned to investigate the case;
2. the prosecuting attorney's name, office address, and telephone number.

Mont. Code Ann. § 46-24-201

# State Victims' Rights – Notice



A **victim or witness** of a **felony offense** or a **misdemeanor offense** involving actual, threatened, or potential **bodily injury** to the victim, a relative of a victim or witness who is a minor, or a relative of a homicide victim, and who **provides a current address and phone number to appropriate official**, MUST receive PROMPT notification of:

1. the arrest of an accused;
2. the release of the accused pending judicial proceedings;
3. the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;
4. proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere and the setting of a trial date;
5. if the accused is convicted or pleads guilty or nolo contendere:
  - the function of a presentence report;
  - the name, office address, and telephone number of the person preparing the report; and
  - the convicted person's right of access to the report, as well as the victims right...to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement

# State Victims' Rights – Notice



6. the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed;
7. the right of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration; and
8. the right of a victim...to request a sentencing order, condition of parole, or condition of probation to require the convicted person to refrain from direct or indirect contact with the victim.

Mont. Code Ann. § 46-24-203.

# State Victims' Rights – Notice



Law enforcement officers **and** prosecuting attorneys shall provide a **victim or witness** information on the availability of services to protect the victim or witness from intimidation, including the process for obtaining a protective order from the court.  
Mont. Code Ann. § 46-24-202.

# State Victims' Rights – Participation



Victims of **felony offence** or **misdemeanor involving actual, threatened, or potential bodily injury** are entitled to consultation with the prosecuting attorney regarding:

1. Dismissal of the case;
2. Release of accused;
3. Plea negotiations; and
4. Pretrial diversion.

Mont. Code Ann. § 46-24-104(1)-(4).

Generally, victim of a criminal offense has the right to be present “during any trial or hearing conducted by a court that pertains to the offense...” Mont. Code Ann. § 46-24-106(1).

A victim of a criminal offense is entitled to a copy of all public documents filed in the case AT NO COST.

Mont. Code Ann. § 46-24-106(6)(a).

A victim of a criminal offense has the right...to have a victim advocate present when the victim is interviewed about the offense. Mont. Code Ann. § 46-24-106(7).

# State Victims' Rights – Participation... or lack thereof



A defendant may not interview a child under the age of 16 who alleges to be the victim of sexual abuse...or an immediate family member of the child who is also under the age of 16, except by an order of the court.  
Mont. Code Ann. § 46-15-320(1).

No statutory or constitutional right for defendants to routinely depose State's witnesses, even if they have refused defense interview.

*Daenzer v. Mun. Court*, 2020 MT 140, ¶ 8, 400 Mont. 179, 184, 464 P.3d 996, 999.



# State Victims' Rights – Safe

## Eligibility for Order of Protection:

Reasonable apprehension of bodily harm AND the respondent is a partner member of the petitioner's family.

### **Family Member:**

- mothers and fathers

- children

- brothers and sisters

- other past or present family members of a household: relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children

# State Victims' Rights – Safe



## Eligibility for Order of Protection:

Reasonable apprehension of bodily harm AND the respondent is a partner member of the petitioner's family.

### Partner:

- spouses
- former spouses
- persons who have a child in common
- persons who have been or are currently in a dating or ongoing intimate relationship

Mont. Code Ann. §45-5-206

# State Victims' Rights – Safe

## Eligibility for Order of Protection:

Partner or family member AND victim of the following:

Assault, aggravated assault, intimidation, partner or family member assault, criminal endangerment; negligent endangerment, assault on a minor, assault with a weapon, strangulation of a partner or family member, unlawful restraint, kidnapping, aggravated kidnapping or arson.

# State Victims' Rights – Safe

## Eligibility for Order of Protection:

Or victim of the enumerated crimes in § 40-15-102,  
regardless of relationship.

a victim of assault, aggravated assault, assault on a minor, stalking, sexual assault, sexual intercourse without consent, sexual abuse of children, or human trafficking, OR

a partner or family member of a victim of deliberate homicide or mitigated deliberate homicide.

# Advocate Privilege



Unless a report is otherwise required by law, an advocate **may not, without consent** of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

**This privilege belongs to the victim** and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

“Advocate” means an employee or volunteer of a domestic violence shelter, crisis line, or victim’s services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

“Victim” means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

Mont. Code Ann. § 26-1-812(1)-(3).

# State Victims' Rights – Safe



Initials or pseudonyms in reports, charging documents, court documents

If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the address, telephone number, or place of employment of the victim or a member of the victim's family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

Mont. Code Ann. §44-5-311

# State Victims' Rights – Safe



A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-702, 45-5-703, 45-5-704, or 45-5-705 unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

Mont. Code Ann. §44-5-311(3)



# Address Confidentiality Program

The Address Confidentiality Program (ACP) is administered by the Montana Attorney General's Office and provides an important service to residents of Montana who are victims of domestic violence, sexual assault or stalking.

The program has two basic parts. First, ACP provides a designated address for victims who have moved to a new Montana location unknown to their abuser. Second, ACP provides participants with a free first-class confidential mail forwarding service.





# Crime Victim Compensation Program

## Who?

Provides financial compensation to primary and secondary victims of crime.

“**Victim**” means a person who suffers bodily injury or death as a result of:  
criminally injurious conduct;  
the person’s good faith effort to prevent criminally injurious conduct; or  
the person’s good faith effort to apprehend a person reasonably suspected  
of engaging in criminally injurious conduct.”

Mont. Code Ann. 53-9-103(6)(a)(i)-(iii).

**Primary**—an individual who has been sexually or physically assaulted.

**Secondary**—an immediate family member of a child victim of SA;  
immediate family member of homicide victim; or minor children of an  
IPV victim who witness the crime at home.



# Crime Victim Compensation Program

## When?

### Eligibility Requirements

Must be reported to law enforcement within 72 hours of the criminally injurious conduct. Mont. Code Ann. § 53-9-125(3).

Good-cause exceptions to this reporting period may exist. ARM 23.15.103

CVCP claim must be filed within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. Mont. Code Ann. § 53-9-125(1).

One year or one year after a child victim turns 18 in the event of child sexual abuse, whichever occurs last. *Ibid.*

Can be extended for good cause shown;

There is no good cause to extend the time limit if the claim is filed more than two years after the latest date the claim could have been filed.



# Crime Victim Compensation Program

## How can allied professionals help?

- Provide verification of report made (law enforcement verification form and incident report)
- Verify victim cooperation
- Willing to provide statement for good-faith cause extension
- Evidence of condition (usually related to medical conditions of need for mental healthcare)
- Copies of medical bills
- If you learn a victim's claim has been denied, refer! Quickly.

**Let victims know about the program and provide an application.**

# State Victims' Rights – Restitution



The purpose of Montana's restitution statutes are to make victims whole. *State v. Johnson*, 2018 MT 277, ¶ 28, 393 Mont. 321, 328, 30 P.3d 494, 500.

Mont. Code Ann. § 46-18-201(5) (requiring “payment of full restitution to the victim”)

Mont. Code Ann. § 46-18-241(1) (mandating that “a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss”)

# State Victims' Rights – Whole



The law enforcement agency or prosecuting attorney in a criminal case shall assist a **victim or witness** who **requests assistance** in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from the place of employment.

...shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. The agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for the serious financial strain.

An employer may not discharge or discipline a victim or a member of the victim's family for participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice proceeding

# State Victims' Rights – Whole



A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining the property.

Mont. Code Ann. §46-24-206(1)

# State Victims' Rights – Heard



Notice of post-conviction petitions and date, time, place of any hearing, and the decision.

Mont. Code Ann. § 46-24-211

Custody

Discharge or parole eligibility

Actual date of discharge

Notice of parole hearing

Community in which offender lives after parole

Mont. Code Ann. § 46-24-212

# State Victims' Rights – Heard



Many of these notification rights are premised on the victim giving the appropriate agency current contact information.

Help them. They don't know what they don't know.  
Have easy forms available.



# Laws of the Fort Belknap Tribal Community

## Notice of Rights to Victims of Possible Elder or Family Member Abuse

Whenever a law enforcement officer is called to the scene of a reported incident of elder or family abuse, the officer shall advise the injured party, if present, of the availability of services in the community and give the injured party immediate notice of any legal rights and remedies available.

1. Availability or an order of protection;
2. Order directing abuser to leave household;
3. Order preventing abuser from transferring property;
4. Order regarding custody and/or support of minor children.

Title XI, Sec. 2 C



# Laws of the Fort Belknap Tribal Community

## Safeguarding Victims

During court proceedings a court shall provide safeguards necessary to minimize the contact of the victim of an offense or delinquent act.

The safeguards required...may include courthouse waiting areas for victims that are separated from those waiting areas specified for defendants, juveniles alleged to be delinquent children, and the relatives and friends of accused persons.

Title III, Part IX, Sec. 1.7 (A)-(B)



# Laws of the Fort Belknap Tribal Community

## Conviction and Sentence

...the Court may not pronounce sentence at a time without...informing the victim, if present, of a victim's right to make a statement concerning the crime and the sentence.

Title III, Part XI, Sec. 1.2 B.(2)

## Factors considered in sentencing

In determining what sentence to impose for a crime, the Court shall consider...any oral or written statement made by a victim of the crime.

Title III, Part XI, Sec. 1.4(6)

## Conditions of Probation

The Court may require a person to make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim.

Title III, Part XII, Sec. 1.3(5)



# Opportunities for Advocacy– Safe, Whole, Heard



## Safety

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- Civil orders of protection
- Advocacy around release conditions
- Privacy – use of pseudonym, subpoenas and other discovery requests
- Post-conviction advocacy

## Restoration

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- Financial loss affidavits
- Disputed restitution amounts
- Advocacy related to meaningful forms of reparations
- Denied CVCP claims
- Return victim property

## Participation and right to be heard

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- Consult with prosecuting attorney
- Reasonably informed about defendant's release and court dates
- Victim-witness present at trial
- Plea agreement offer and terms
- Victim impact statement



THANK  
YOU