



Crime Victims Alliance of Pennsylvania
Legislative and Policy Recommendations
2017/2018

Restitution Reform:

The Crime Victims Alliance of Pennsylvania (CVAP) fully supports the 47 recommendations contained with the Restitution in Pennsylvania Task Force report. This report was produced after a study convened by the Office of the Victim Advocate (OVA), working through a grant from the Pennsylvania Commission on Crime and Delinquency (PCCD). The Task Force was comprised of stakeholders and experts brought together to study restitution, and to make recommendations to the Pennsylvania Administration, Legislature, and Judiciary. That report, which was released in early February, 2013, contains 47 recommendations addressing legislative, policy and practice issues impacting the ordering, collection and disbursement of restitution within the criminal and juvenile justice systems at the state and local levels. This document and the recommendations can be found on line at OVA's website, www.ova.pa.gov/programs/restitution and on the Center for Schools and Communities website at www.center-school.org/restitution

Enabling Victims to Apply for Victims Compensation Assistance beyond the Current Statute of Limitations:

In general, a victim must submit a claim to for Victims Compensation Assistance within two years of the occurrence or discovery of the crime. Many crime victims do not apply because they are unaware of the program, or because they have no or few monetary losses during that time period following the crime. These limitations do not address the ongoing financial needs created by events which occur far into the future for these victims, including the trauma of post-conviction criminal justice events.

When a new loss occurs, directly tied to the original crime, under existing law, Victims Compensation will not cover services for those who have not previously filed. The time eligibility restriction is definitive. That law does not take into consideration

situations such as the recent overturn of hundreds of court cases in Miller v Alabama, or in Luzerne County of the thousands of juvenile court adjudications a few years ago. These processes which may provide justice under the law to the accused have significant impact upon the victims, creating new trauma and exacerbating already existing trauma. Victims who find themselves unable to sleep, eat, work, concentrate, victims who begin experiencing wild mood swings, loss of interest in life—who in essence re-experience the trauma they suffered originally at the time of the death of their loved one, may need psychological counseling and/or medical attention. These are real needs of victims which could be address through a careful reexamination of the Victims Compensation eligibility requirements regarding application deadlines.

Increasing Penalties for DUI Related Charges

Currently under Pennsylvania law, a person convicted of Homicide by Vehicle while Driving Under the Influence is subject to a mandatory minimum 3 year prison sentence. This sentence is the same whether the defendant has no prior DUIs or 10 prior DUIs. Driving Under the Influence is a crime that affects many people across the Commonwealth every day. For years, victim advocates and prosecutors have had to deliver the news that even though an offender has a significant history of DUI, showing a blatant disregard for the safety of others, the penalty is the same as an offender who has committed the crime of DUI for the first time. It is very difficult to explain this to a victim's family. Repeat offenders should be receiving a more stringent punishment as they do in other areas of the criminal justice system. CVAP supports legislation that would increase the penalty for Homicide by Vehicle while DUI, particularly for repeat offenders. Increasing the grading of this charge in repeat offender cases would provide greater exposure with regard to sentencing and would set these cases apart.

We are also in support of legislation that increases the grading of DUI for repeat offenders. The law in Pennsylvania already addresses repeat offenders as it pertains to Retail Theft and Theft from a Motor Vehicle, in that a third or subsequent offense of these offenses becomes a felony. Similarly, the offense of Stalking has a recidivist component as a second or subsequent offense increases the grading from a misdemeanor to a felony. While current DUI law does contain increased penalties for second, third and subsequent offenses, the grading does not increase as it does with the other charges mentioned. Surely a charge as dangerous as DUI should bear the same serious consequence for repeat offenders.

Tolling of PFA's while the Offender is Incarcerated:

The Commonwealth's PFA provisions do not currently address the expiration of the PFA order while the offender is incarcerated. We recommend that the act be amended when appropriate, to include a provision which would toll the time for the order while that offender is incarcerated. Currently depending upon the county or judge, victims are faced with being told that their order has expired while the offender was incarcerated, and is no longer in effect when released. The safety needs of these victims require that that provision be strengthened for uniform interpretation by all courts. In the

event where the PFA has expired while incarcerated many victims are informed by the courts that they ineligible for a PFA as a new violent act has not occurred. It should be noted that this safety concern was addressed within the newly passed Sexual Violence Protection Act. It has also been addressed in most other states.

Reducing Parole Reconsideration Timeframes from 1 to 5 Years for Certain Convictions:

Currently under the law, most state incarcerated offenders are eligible for parole reconsideration upon request every 12 months. Generally, even those offenders who have little possibility of parole release due to their behavior within prison, or other issues, must be considered by the PA Board of Probation and Parole (PBPP) every year beyond their minimum sentence date. In addition to the inefficiency and financial costs of such reconsiderations, an emotional toll is taken on victims who participate in the review process. Victims of these offenders must participate year after year in order to feel they are doing their best for themselves and their families, for a lost loved one, or for the community. It is an on-going process which reopens wounds every 12 months.

The exceptions, created by Act 204-2012, are persons who were convicted as juveniles of first or second degree homicide. For these convictions, the PBPP has the discretion to postpone parole reconsideration of those offenders for 5 years.

CVAP suggests that the five year reconsideration timeframe be enacted for application for parole review to additional convictions, particularly felony convictions as well as juvenile lifers who are now being resentenced.

Expanding Victims' Rights Notifications to Include Expungement:

CVAP supports the expansion of post-sentencing notifications to victims of personal injury crimes, upon request, in the criminal and juvenile justice systems, to include notification of the expungement of the record of the crime.

Addressing "Max-Outs" and Public Safety:

A significant concern to victim service providers is that offenders are released from prison having served their entire maximum sentence (max-outs) without additional supervision. CVAP suggests that the identification of legislative or policy changes must be continued and expanded, which will create a means to identify and address public safety issues regarding these offenders, such as the expansion of supervision tails for certain crimes and offenders. While there is an avenue within the Juvenile Justice System through Act 21 hearings to address the public safety concern for certain juvenile sex offenders, there is no comparable procedure within the Criminal Justice System.

Timely Victim Notification of Post-Conviction Appeals: (See note)

While the Crime Victim Act requires notification, upon request, to victims of post-conviction appeals, there are multiple barriers to timely notifications of these appeals. First, the District Attorney's Office needs to be informed immediately upon the filing of an appeal. According to the Crime Victims Act, the District Attorney's Office is responsible for notifying the victims in the case of appeals. Unfortunately, the media often learns that an appeal has been filed or decided before the District Attorney receives the information; the tragic result is that a victim learns about the appeal from a reporter, seeking a comment and reaction from the victim, or from a news report.

This has been ongoing concern for the District Attorneys and victim/witness staff for years. While they may be meeting the requirement to provide the notification, the timeliness of those notifications is not sufficient to meet the intent of the right as defined under the law. The extent of the problem and its impact has become much more apparent as a result of the recent Supreme Court ruling in *Miller v Alabama*. Victims are hurting because of the process, regardless of the intentions of those charged with the duty to fulfill the right and service. It is time to bring attention to this issue and collectively resolve this problem. The complexity of the communication process, the number of different agencies involved at the administrative and judicial branches of government have made this difficult. The creation of an electronic registration and notification system with identified roles and responsibilities may be the answer to this on-going problem. Just as the Pennsylvania Commission on Crime and Delinquency was able to resolve a similar issue regarding victim notification of jail release, by bringing together stakeholders and seeking and obtaining federal seed funding, such an effort is needed to address this issue.

Suggestion: This might be something that could be addressed with the PDAA and the Clerk of Courts as more of a case of best practices. We would like to explore this with stakeholders including PDAA, Clerk of Courts and Administrative Office of Pennsylvania Courts.

Body Camera Use by Law Enforcement

While body cameras can be an effective tool for law enforcement, it is important to continue discussions surrounding victim concerns. CVAP supports thorough dialogue of a range of issues including but not limited to training for law enforcement, privacy issues, and informed consent.

Victim Witnesses to the Execution in Capital Cases:

Current law in Pennsylvania allows 4 relevant victims to be chosen by the Victim Advocate from the Office of the Victim Advocate to witness the execution of the convicted offender in a capital case. While no executions have been recently conducted in the Commonwealth, a number of pending cases demonstrate a significant problem with the existing limitation on the number of victim witnesses. A number of convicted offenders have committed multiple homicides, each with victim family members wishing to participate in this process. While the executions may ultimately be postponed under current process, the notification and selection of those witnesses has fallen within the timelines of recently scheduled executions, thus engaging the families of homicide victims.

CVAP proposes increasing the number of victim witnesses to an execution to at least two witnesses per homicide victim (person murdered), enabling the Victim Advocate to choose at least two family members for each of the homicide victims for which the offender was convicted of homicide. Without this change, the potential is high for turning down requests to witness the execution, from close family members including parents and children of murdered victims, when an execution is pending of an offender with multiple homicide convictions. Whether or not that execution is stayed, the denial of the request to witness the execution may create additional trauma or emotional distress for the family, particularly when the stay is granted at the last moments while the victims are engaged and present at the institution awaiting the execution.

Victims' Right to Address the Court/Jury in the Sentencing Phase of a Capital Case:

In capital cases family members of the murdered victim must be provided the opportunity to present an impact statement prior to the sentencing of the defendant, as they do in all other personal injury crimes. Under current law regarding death penalty cases (42 Pa. C.S. 9711), "evidence" concerning the victim and the impact that the death of the victim has had on the family of the victim is admissible. As a result of the current language in the law, only those victims, who are called by the prosecutor to present that evidence, have an opportunity to address the court during this stage of sentencing. This provision does not afford all victims who wish to address the court, orally or in writing, the opportunity to do so, as they would in sentencing proceedings for other personal injury crimes. This most often becomes a problem when family members of the homicide victim oppose the death penalty.

CVAP proposes that language similar to that included in PA. Act 204-2012 regarding sentencing of juveniles to life without parole, be added to 42 Pa. C.S. 9711 to address this issue for victims in capital cases. This language requires that in determining the sentence the court consider among other things: THE IMPACT OF THE OFFENSE ON EACH VICTIM, INCLUDING ORAL AND WRITTEN VICTIM IMPACT STATEMENTS MADE OR SUBMITTED BY FAMILY MEMBERS OF THE VICTIM DETAILING THE PHYSICAL, and PSYCHOLOGICAL AND ECONOMIC EFFECTS OF THE CRIME ON THE VICTIM AND THE VICTIM'S FAMILY. A VICTIM IMPACT

STATEMENT MAY INCLUDE COMMENT ON THE SENTENCE OF THE DEFENDANT.

For more information about the Crime Victims Alliance of Pennsylvania Legislative and Policy Committee, please contact Co-Chairs, Deanna Weaver dweaver@co.lancaster.pa.us, 717-209-3161 or Julie Dugery, julied@novabucks.org, 215-343-6543

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