



# **Victim Impact Statements: A Brief for Minnesota Victim Service Professionals**

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Victims have a statutory right to give a victim impact statement at the sentencing or disposition hearing.<sup>1</sup> How that is accomplished varies across jurisdictions, and the submission process can have important implications for the victim. In addition, special ethical considerations related to victim impact statements affect the work of advocates in prosecutors' offices.

This brief reviews the purpose of the victim impact statement (VIS), the process for how a VIS can be submitted and presented to the court, and ethical considerations surrounding the VIS. It is aimed at community-based and prosecutor-based advocates who work with victims in preparing and submitting these statements to the court.

### Purpose of the victim impact statement

The VIS provides the opportunity for victims to describe to the court the impact the crime has had on their life – financially, physically, and emotionally. It may be the one opportunity for the victim to have a role in a court process that provides few hearings where victims' voices can be heard and become a part of the official record. For many, presenting a VIS is something they both anticipate and dread. Facing the judge and offender can be frightening and intimidating, particularly if the crime has been unusually violent or has resulted in the death of a loved one, but victims often see "having their day in court" as a critical step in their healing process. For many, it is the culmination of a long and difficult experience in the criminal justice system, offering a way to gain some much-needed closure or at least to move forward in the process of healing and restoration.

### Who notifies the victim of their right to give a victim impact statement?

The prosecutor has a statutory obligation to notify the victim of their crime victim rights under the Crime Victim Bill of Rights, including the right to provide a victim impact statement.<sup>2</sup>

### Who can make a victim impact statement?

Under Minnesota Statutes section 611A.01, a victim is defined as a person who incurs loss or harm as a result of a crime or as a result of making a good faith effort to prevent a crime. The term "victim" includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person. These individuals all have a statutory right to provide a victim impact statement.<sup>3</sup> At the discretion of the judge, individuals connected with the victim who do not come under the statute may also be permitted to provide a VIS.

In addition, a representative of the community affected by the crime may submit an impact statement that describes the adverse social or economic effects the offense has had on persons residing and businesses operating in the community where the offense occurred.<sup>4</sup>

Victims of juvenile offenders have the same rights as victims of adult offenders and so these victims can provide a victim impact statement in the dispositional hearing.<sup>5</sup>

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<sup>1</sup> Minn. Stat. § 611A.038(a).

<sup>2</sup> Minn. Stat. § 611A.02(c).

<sup>3</sup> Minn. Stat. § 611A.01(b).

<sup>4</sup> Minn. Stat. § 611A.038(b).

<sup>5</sup> Minn. Stat. §§ 611A.015; 611A.38(a); 260B.005.

## Form of the victim impact statement

The VIS can be submitted orally or in writing, at the victim's choice. The victim can also request that the VIS be read by the prosecutor and, in those situations, it is most commonly read by the prosecutor's designee – the victim advocate.

It is not uncommon to have photographs or video presented as part of the victim impact statement. If a victim wishes to present something other than an oral or written statement, it is important to confer with the prosecutor in advance to ensure that the judge will allow the form and content of the presentation and to make sure that the courtroom is equipped to handle it.

For those victims with limited English proficiency who wish to give an oral VIS, a request should be made to the court administrator for an interpreter to attend the sentencing hearing. In cases where victims wish to submit a written VIS and write the statement in a language other than English, prosecutors should seek to have the document translated in advance of the hearing, or at minimum, sight translated at the hearing.<sup>6</sup>

The victim impact statement is not testimonial. The relevant statute and court rules refer to the VIS as a "statement." Victims providing statements are not sworn in, and no provision in court rules provides for cross-examination of a VIS. In comparison, in a restitution hearing, the victim may be asked to testify as to the out-of-pocket losses.

Under its inherent authority, the court may limit the length, form, and number of victim impact statements that can be presented at the sentencing hearing. In addition, Minnesota Statutes section 611A.038 acknowledges that the VIS is subject to reasonable limitations as to time and length.

## Preparing a victim impact statement

There is no standard VIS court form. Many county attorneys' offices distribute guidelines, templates, and simple forms to help victims prepare their VIS.

Minnesota Statutes section 611A.038(a) specifies what a VIS may include:

- A summary of the harm or trauma suffered by the victim as a result of the crime;
- A summary of the economic loss or damage suffered by the victim as a result of the crime; and
- A victim's reaction to the proposed sentence or disposition.

Keep in mind that the victim has a separate statutory right to restitution and will submit a separate request detailing the amount of loss.<sup>7</sup>

Mothers Against Drunk Driving (MADD) identifies the following elements of an effective VIS:

1. Can be read aloud in 5 to 10 minutes;
2. Does not repeat "evidence" already presented at trial;
3. Focuses on what the crime means to the victim emotionally, physically, spiritually and/or financially;

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<sup>6</sup> Considerations for Providing Language Access in a Prosecutorial Agency, Federal Coordination and Compliance Section, Civil Rights Division, U.S. Department of Justice (September 2011), p. 6.

<sup>7</sup> Minn. Stat. § 611A.04.

4. Is simple and descriptive; and
5. Communicates how the victim's life has changed due to the crime.

Advocates can assist victims with the VIS preparation by reviewing their drafts, ensuring that the statement is clear and concise, and that it does not use unsuitable language or contain inappropriate content. They can also assist with polishing the writing and suggest how to put the statement in a form that will be easy to read during the sentencing. Further, they can make recommendations on what to avoid, such as attacks on the offender or the court, or excessive focus on the sentence being imposed. For guidance on preparing a VIS, see the comprehensive [Victim Impact Statement Booklet](#) available from Mothers Against Drunk Driving (MADD), and the Minnesota Office of Justice Program (OJP) brochure on victim impact statements, available in Spanish and English for order from OJP, and electronically in Somali and Hmong. (See [website](#) for order form and links.)

### Who gets to see and hear the victim impact statement?

Oral statement: The sentencing hearing is public – any statement given orally can be heard by those in the courtroom. If a victim reads from a written, prepared statement at the hearing, their VIS is still an “oral” statement and they are not required to submit the document they have read from, although they can do so at their choice. Any person can request, for a fee, a copy of the transcript from the sentencing hearing.

Written statement: Written victim impact statements submitted to the court are considered public documents. That means, once a written statement is submitted to the court, it is part of the court file and accessible by members of the public. In addition, if a VIS is filed with the court, a copy will be provided to the defense attorney. Under court rules, the court must not accept any off-the-record communications relating to sentencing unless the contents are disclosed to all parties.<sup>8</sup> If the victim is a minor and wishes to submit a written VIS, make a request to court administration to identify the document as confidential so that the minor victim's name is not accessible to the public.

### Distinguishing the victim impact statement from other rights

The right to give a victim impact statement is often confused with two other rights that occur at different stages in the process: (1) victim input into the presentence investigation, and (2) the right to object to the proposed plea agreement. While there is some overlap, it is important to distinguish these victim rights and ensure that the process in your county has not resulted in them being “blended” together.

#### 1. Give a victim impact statement.<sup>9</sup>

A victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing. The impact statement may be presented to the court orally or in writing, at the victim's discretion.

#### 2. Provide input into the presentence investigation.<sup>10</sup>

A presentence investigation report prepared under section 609.115 shall include the following information relating to victims:

<sup>8</sup> Minn. Rule of Crim. Proc. 27.03, subd. 3.

<sup>9</sup> Minn. Stat. § 611A.038.

<sup>10</sup> Minn. Stat. §§ 611A.037, 609.115.

- a. A summary of the damages or harm and any other problems generated by the criminal occurrence;
- b. A concise statement of what disposition the victim deems appropriate for the defendant or juvenile court respondent, including reasons given, if any, by the victim in support of the victim's opinion; and
- c. An attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

### 3. Object to proposed plea agreement.<sup>11</sup>

The victim has the right to be present at the sentencing hearing and at the hearing during which the plea is presented to the court and to express orally or in writing, at the victim's discretion, any objection to the agreement or to the proposed disposition.

## Submitting a victim impact statement in advance of the hearing

It is a common practice for prosecutors' offices to include a VIS form or template with their initial packet of information sent out to the victim. While not required, many prosecutors' offices ask victims to submit their written statement early. Other offices suggest waiting until the case has progressed further or sentencing is imminent before submitting the VIS.

Practices vary across the state as to what is done with the written VIS submitted by the victim prior to sentencing. In some offices, it is put in a folder, unread, until sentencing. In other offices, the prosecutor will automatically provide a copy of the VIS to the defense attorney and submit the VIS to the court. And in other offices, victim service professionals review the VIS and work with the victim to revise it if it is weak or inappropriate. Thereafter, it may be submitted to the court or remain in the file. There is no statute that requires a prosecutor's office to immediately submit a written VIS to the court once received.

There are pros and cons to submitting the written statement prior to the date of the sentencing. Some prosecutors regard the VIS to be useful in plea negotiations. In addition, given that cases can be resolved at any time, it is a way to guarantee that the VIS gets to the judge for review at sentencing, even if the victim is not able to attend. Further, it allows victim/witness staff to review the VIS and work with the victim to strengthen it.

The most critical consideration is to make sure that victims know what will happen to the VIS once submitted. Victims may not realize that once the VIS is given to the prosecutor, it will, at some point, be distributed to the defense attorney and placed in a court file which is viewable to the public. Victims may not be aware that the prosecutor intends to use it as leverage in a plea negotiation. Many victims fear retaliation, harassment, or embarrassment should others be able to see their written statement. In addition, victims may change their minds about what they want to say, or they might have unrealistic expectations based on limited information because their VIS is prepared in the early stages of the case.

Regardless of the practice in your jurisdiction, it is important to let victims know, prior to submission, what path the VIS will take so they can make an informed choice about whether to submit it early or at all.

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<sup>11</sup> Minn. Stat. §§ 611A.03, 611A.031.

## Ethical considerations

Victim service professionals working in prosecutors' offices must adhere to the same ethical obligations as the prosecutors they work for.<sup>12</sup>

The communications between victim service professionals and victims may be shared with the prosecutor, something victims should be told at the outset of the case, and victim service professionals have an obligation to disclose certain information that comes to their attention from the victim. These ethical considerations come into play with victim impact statements if the victim has recanted or included exculpatory information in their VIS.

Prosecutors must comply with the following requirements related to disclosure of information to the defense:

- Brady Rule: Prosecutors have an obligation to disclose exculpatory evidence in the government's possession to the defense. Exculpatory evidence is generally evidence that is "favorable to an accused" and "material to guilt or to punishment."<sup>13</sup> "Materiality relates to whether the evidence undermines the prosecutors' confidence in the outcome" or if it "may make a difference between conviction and acquittal."<sup>14</sup>
- Minnesota Rules of Professional Conduct: Prosecutors must make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with the sentencing, disclose to the defense and the tribunal [the court] all unprivileged mitigating information known to the prosecutor.<sup>15</sup>
- Minnesota Rules of Criminal Procedure: Prosecutors have an obligation to disclose information to the defendant, including "documents" (Rule 9.01, subd. 1(3)) and exculpatory evidence (Rule 9.01, subd. 1(6)).<sup>16</sup>

Prosecutors are responsible for setting up the policies and procedures in their offices and ensuring that their staff understand and adhere to their ethical obligations.<sup>17</sup> The policies regarding the solicitation, review, retention, and distribution of victim impact statements submitted to their office should be developed in light of these ethical obligations.

As a best practice, it is recommended that written statements submitted to the prosecutor be reviewed for purposes of refinement prior to submission to the court, if necessary, and so that the prosecutor is alerted to any exculpatory or mitigating evidence contained therein. In the latter situation, the prosecutor would then have disclosure obligations under the ethical rules described above.

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<sup>12</sup> Minnesota Rule of Professional Conduct 5.3, Responsibilities Regarding Nonlawyer Assistants.

<sup>13</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>14</sup> *United States v. Bagley*, 473 U.S. 667 (1985).

<sup>15</sup> Minnesota Rule of Professional Conduct 3.8(d), Special Responsibilities of Prosecutor.

<sup>16</sup> Minnesota Rule of Criminal Procedure 9.01, Prosecution Disclosure in Felony and Gross Misdemeanor Cases.

<sup>17</sup> Minnesota Rule of Professional Conduct 5.3, Responsibilities Regarding Nonlawyer Assistants.

## Preparing the victim for the hearing

For most victims, presenting a VIS is an emotional experience in unfamiliar territory. Often, victims are surprised by courtroom protocols, the ability of others to speak on the defendant's behalf, and the presence of the media and cameras. Therefore, it is important to prepare the victim for the sentencing or disposition hearing by reviewing the check-in procedures for the sentencing hearing; where the victim can wait; the layout of the courtroom; who will be present and where they will sit; what the defense attorney, defendant, and any allies are likely to say; who will be presiding; and what is typically allowed and not allowed for a VIS. Victims should be informed that the court must allow statements from the defendant and persons on behalf of the defendant.<sup>18</sup> However, they should also be told that if the court permits the defendant or his/her allies to present a statement to the court, the court is supposed to limit the statement to factual issues relevant to sentencing.<sup>19</sup>

Advocates should contact court administration about the need for an interpreter in situations where the victim wishing to provide a VIS has limited English proficiency or who is deaf or hard of hearing.

Victims should also be prepared for the media and cameras being present in courtroom during the sentencing hearing in high-profile cases. Cameras are permitted in post-conviction proceedings, and a victim impact statement can be videotaped if the victim gives consent. However, victims who choose not to give this consent should be informed that they might still appear in a video recording of the proceeding depending on the location of the camera.

The key in preparation is letting the victim know what to expect so that at the sentencing hearing, they are not distracted from the role they play, which is giving the victim impact statement.

## Advocates in prosecutors' offices

A routine task for prosecutor-based advocates is assisting victims in the preparation of the VIS and preparing them for the sentencing hearing. These victim service professionals can give guidance on what makes a good VIS and direct the victim away from inflammatory or inappropriate content to ensure that the VIS is as effective as it can be. In addition, they can explain to victims about what happens to the VIS after submission to the prosecutor's office so victims can make an informed choice. These advocates typically screen the VIS to ensure that it is appropriate and to act as a conduit between the victim and the prosecutor as sentencing approaches. Finally, they provide critical support and assistance during the sentencing hearing, ensuring that the victim is able to participate in a safe manner; facilitating, either directly or indirectly, with the presentation of the VIS; and explaining to the victim the outcome and any next steps in the process.

To ensure that the advocates understand and adhere to their ethical obligations, it is important that they have a shared understanding with the prosecutor they work for about their ethical obligations and the expectations for communication with the prosecutor. As a best practice, offices should have an established process regarding disclosure obligations.

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<sup>18</sup> Minn. Rule of Criminal Procedure 27.03, subd. 3.

<sup>19</sup> Minn. Stat. § 611A.038(c).

## Advocates in community-based organizations

It is very common for advocates in community-based organizations to provide guidance and assistance to victims in preparing the VIS, as well as provide court accompaniment to sentencing hearings. To best assist victims going through the criminal prosecution process, it is recommended that advocates educate themselves on how victim impact statements are dealt with in their service area and learn about the sentencing hearing process. Advocates should be prepared to explain to victims what happens to written statements submitted in advance, the risk of delaying submission of a written VIS, and the logistics and process of the sentencing hearing. Like advocates in prosecutors' offices, community-based advocates often provide critical support and assistance during the sentencing hearing, ensuring that the victim is able to participate in a safe manner; and facilitating, either directly or indirectly, with the presentation of the VIS.

## Conclusion

Advocates in both community-based organizations and government-based organizations play a key role in ensuring that victims understand and are afforded their right to provide a victim impact statement. The importance of upholding this right cannot be emphasized enough; victims whose right to provide a VIS has been overlooked often express feeling re-victimized, particularly when they learn that there is no recourse for redress. By providing good information to victims and supporting them throughout the process, victims will be more likely to feel that their voices have been heard and their needs met at a critical juncture in the case. It is important for the judge, the defendant, criminal justice personnel, and others in the courtroom to be reminded that there is a victim in the case and of how the crime has impacted that victim's life.

*Please contact us if you have any follow-up questions regarding victim impact statements.*

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