

Emerging Issues Regarding Victim Impact Statements

**Minnesota Alliance on Crime
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Agenda

- Introduction
 - Why this presentation? Why now?
 - Goals of presentation
- Overview of statutory right
- Compare with other statutory rights
- How victim impact statements get processed
- Advocates' role regarding victim impact statements
- Issues

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Introduction

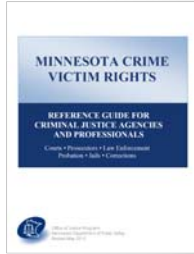
- Why this webinar?
- Goals
 - Understand the purpose and value of victim impact statements
 - Understand the role that prosecutors, prosecutor-based advocates, and community-based advocates play in victim impact statements
 - Understand the challenges and issues that come up regarding victim impact statements
 - Understand the ethical issues that arise with victim impact statements

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Victim rights

Statutory crime victim rights are located in Crime Victim Bill of Rights, Minnesota Statutes chapter 611A (and elsewhere).

Minnesota Crime Victim Rights: Reference Guide for Criminal Justice Agencies and Professionals



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Who is a “victim”?

- A person who incurs loss or harm as a result of a crime.
- A person who makes a good faith effort to prevent a crime.
- For purposes of restitution, a corporation or government entity that incurs loss or harm as a result of a crime.

The term “victim” includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person.

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Multiple victims

In a case where the number of family members makes it impracticable to accord all of the family members the rights described in sections 611A.02 to 611A.0395, the prosecutor shall establish a reasonable procedure to give effect to those rights.

The procedure may not limit the number of victim impact statements submitted to the court under section 611A.038.

Minn. Stat. § 611A.01(b).

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Victim Impact Statements

MINNESOTA STATUTES § 611A.038, RIGHT TO SUBMIT STATEMENT AT SENTENCING.

A victim has the right to submit an impact statement to the court at the time of sentencing or disposition hearing.

See also: Victim has a right to be present at the sentencing hearing. Minn. Stat. § § 611A.03.

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Victim Impact Statements

- Statement can be given orally or in writing, at victim's choice.
- Victim can request that statement be read by prosecutor.
 - *Note: The statement is often read by the prosecutor's designee—the advocate.*

Minn. Stat. § § 611A.038(a).

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Victim Impact Statements

Statements may include the following:

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

Minn. Stat. § § 611A.038(a).

Note: The victim has a separate statutory right to restitution and submits a separate request detailing the amount of loss.

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Victim Impact Statements

- Court may limit the length, form and number of victim impact statements.
- Not uncommon to have photographs or video presented as part of the victim impact statement.
- Not testimonial
 - Relevant statute and rules refer to VIS as a “statement.”
 - Victim’s providing statement are not sworn in
 - No provision in court rules providing for cross-examination of VIS.
 - Compare: Restitution hearing

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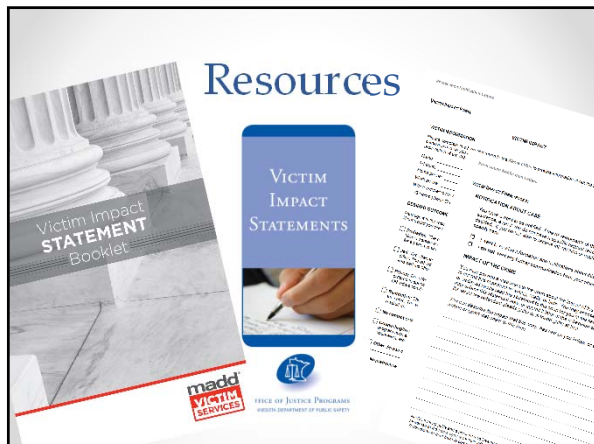
Victim Impact Statement

What makes a good victim impact statement?

- Not too long.
- Respectful. Personal.
- Describe impact of crime—how life has changed for victim and family, lost opportunities, financial hardship, etc.

Note: Restitution can be mentioned but remember it is documented elsewhere, and if contested, there is a separate hearing.

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Victim Impact Statement

Advocates are the experts. They know:

- The judge.
- Courtroom practices
- Courtroom layout
- Where the defendant's family/supporters will be.
- What is allowed and not allowed
- Who may be speaking on behalf of the defendant.

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Who else can speak?

Minn. Rule of Criminal Procedure 27.03, subd. 3.
Statements at Time of Sentencing.

Before pronouncing sentence, the court must allow statements from:

- (A) the prosecutor, victim, and defense counsel concerning any sentencing issues and a recommended sentence;
- (B) persons on behalf of the defendant;
- (C) the defendant, personally.

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Who else can speak?

Persons speaking in support of the defendant

If the court permits the defendant or anyone speaking on the defendant's behalf to present a statement to the court, the court shall limit the response to factual issues which are relevant to sentencing.

Minn. Stat. § 611A.038(c).

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Who sees the VIS?

Oral statement

- Sentencing hearing is public – statement given orally can be viewed by those in the courtroom.
- The victim is not required to submit the document they have read from.
- A person can request a copy of the transcript from sentencing hearing
 - Not automatically generated, and person requesting has to pay to get transcript.

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Who sees the VIS?

Written statement:

- Written victim impact statements submitted to the court are considered public documents.
- Defense attorney will see any written VIS submitted to the court:
 - Minn. Rule of Crim. Proc. 27.03, subd. 3. The court must not accept any off-the-record communications relating to sentencing unless the contents are disclosed to the parties.
- Remote access through MGA—written, submitted victim impact statements regarded as a confidential document accessible to certain parties.

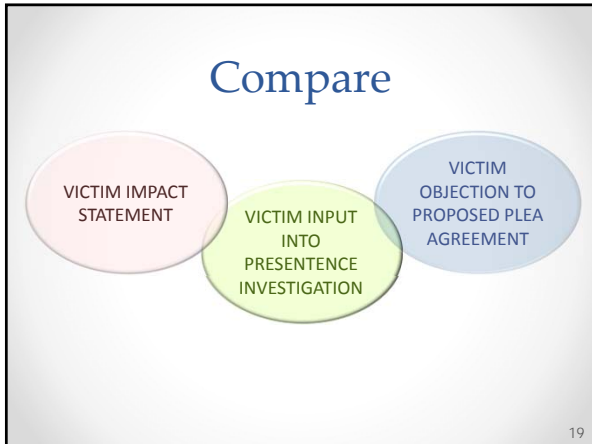
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Cameras in the courtroom

Victim impact statements may be filmed

- Cameras are allowed in post-conviction proceedings, except:
 - Problem-solving courts
 - Cases involving *qualified domestic violence-related offenses
 - Cases involving charges of criminal sexual conduct
- Victims must provide written consent to be filmed.
- An objection to cameras can be made based on good cause
- Best practices
 - Discuss with victims
 - Be prepared

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Plea agreement

MINN. STAT. § 611A.03, SUBD. 1(2), PLEA AGREEMENTS

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 option, any objection to the agreement or to the proposed disposition.

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PSI

MINN. STAT. § 611A.037, subd. 1, PRESENTENCE INVESTIGATION; VICTIM IMPACT; NOTICE

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

- (1) a summary of the damages or harm and any other problems generated by the criminal occurrence;
- (2) 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
- (3) 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.

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PSI, cont.

PSI information related to victims

- (1) Summary of the damages or harm caused by crime.
- (2) Statement of what victim feels should happen to offender and any reasons given.
- (3) Attachment: victim's written objections, if any, to the proposed disposition

Minn. Stat. § 611A.037, subd. 1

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PSI, cont.

MINN. STAT. § 609.115, PRESENTENCE INVESTIGATIONS

PSIs are not done in all cases:

Required

- o Felonies
- o Domestic abuse cases (Minn. Stat. § 609.2244)
- o Gross misdemeanors at request of prosecutor

Optional

- o Misdemeanors
- o Gross misdemeanors

Sometimes waived

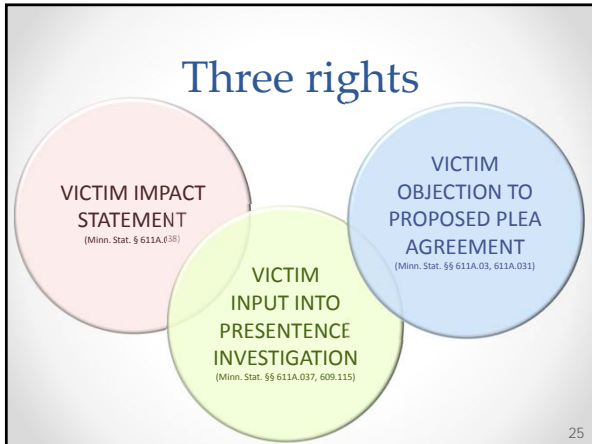
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PSI, cont.

MINN. STAT. § 609.115, subd. 4(a), Presentence investigations; confidential sources of information.

Any report made pursuant to subdivision 1 shall be, if written, provided to counsel for all parties before sentence. The written report shall not disclose confidential sources of information unless the court otherwise directs. On the request of the prosecuting attorney or the defendant's attorney a summary hearing in chambers shall be held on any matter brought in issue, but confidential sources of information shall not be disclosed unless the court otherwise directs. If the presentence report is given orally the defendant or the defendant's attorney shall be permitted to hear the report.

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Process

NOTIFYING VICTIM OF RIGHT

- The prosecutor has the obligation to notify the victim of their right to provide a victim impact statement. Minn. Stat. § 611A.02(c).
- Notice typically provided by prosecutor when they send their initial letter informing of prosecution and their rights.
 - Prosecutor may provide form, template, or general guidance for VIS
 - Advocates may provide guidance to victim on how to provide a VIS

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Process

IN WHAT FORM

- No standard form
- Does not have to be submitted in writing
- Does not have to be submitted in advance, but many offices ask the victim to submit early.

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Process

SUBMITTING IN ADVANCE

Cons

- Victim may not realize what will happen to the VIS once submitted and who gets to see it.
- May create unrealistic expectations related to the case.
- Victims may change their mind about what they want to say.

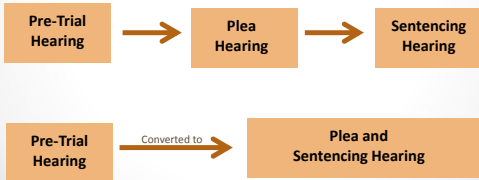
Pros

- Prosecutor may view it as useful in plea negotiations.
- May be the only way to guarantee the VIS gets to the court for sentencing.

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Reality of case processing

“Can be resolved at any time.”



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Impact on victim

Rights at risk when a pre-trial hearing turns into a plea and sentencing hearing.

- Notice of contents of Plea Agreement
- Notice of right to object to Plea Agreement
- Notice of right to be present at Plea Hearing
- Have ability to object to Plea Agreement
- Have ability to be present at Plea Hearing
- Have ability to be present at Sentencing Hearing
- Have ability to give Victim Impact Statement

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Process

WHERE DOES VICTIM SUBMIT WRITTEN VIS?

- Typically to the prosecutor (although practices vary)

WHAT DOES THE PROSECUTOR DO WITH IT?

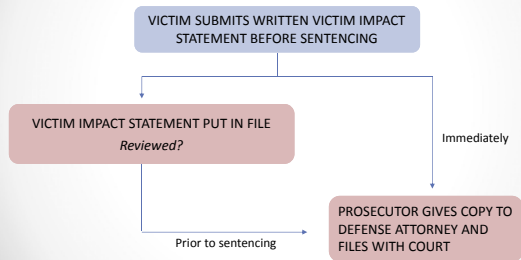
- Varies across the state

WHAT ARE THE DISCLOSURE OBLIGATIONS ON THE PROSECUTOR?

- Look to ethical obligations and court rules.

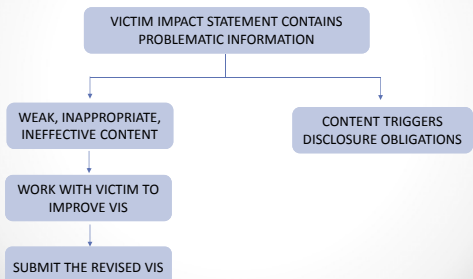
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VIS SUBMITTED EARLY



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Review by advocate/prosecutor



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Staff in prosecutors' offices

Ethical standard: Minnesota Rule of Professional Conduct 5.3, Responsibilities Regarding Non-lawyer Assistants

- Non-lawyer assistants in a prosecutor's office have to follow the same ethical standards as the prosecutor.
- A prosecutor has the responsibility to ensure that non-lawyer assistants are adhering to ethical standards.

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Staff working with victims

Victim advocates, victim witness coordinators, and other administrative staff working with victims must adhere to the prosecutor's ethical standards.

- What the advocate knows, the prosecutor is deemed to know.
- The advocate must be familiar with the obligation to disclose.

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Disclosures to defense

BRADY DISCLOSURE

- Exculpatory evidence is generally evidence that is "favorable to an accused" and "material to guilt or to punishment". Brady v. Maryland (1963) 373 U.S. 83
- "Materiality" relates to whether the evidence undermines the prosecutors' confidence in the outcome" or if it "may make a difference between conviction and acquittal". United States v. Bagley, (1985) 473 U.S. 667.

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Disclosures to defense, *cont.*

Minnesota Rule of Professional Conduct 3.8(d), Special Responsibilities of Prosecutor

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 all unprivileged mitigating information known to the prosecutor.

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Disclosures to defense, *cont.*

Minnesota Rule of Criminal Procedure 9.01, Prosecution Disclosure in Felony and Gross Misdemeanor Cases.

Prosecutor has an obligation to disclose information to defendant, including "**documents**" (Rule 9.01, subd. 1(3)) and **exculpatory evidence** (Rule 9.01, subd. 1(6)).

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Clear disclosure issues

- **Recantation:** Victim recants account of offense in written impact statement submitted in advance.
 - Prosecutor's office should have a standard process for handling recantations.
- **New facts:** Victim includes new information about the crime in the victim impact statement.

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Questions for prosecutor

Does the prosecutor have an obligation to review a victim impact statement if submitted in advance?

- o Will the prosecutor be deemed to have known the contents of the VIS, even if it was never reviewed by anyone in the office?

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Questions for prosecutor

Is a victim impact statement a "document" under Minnesota Rule of Criminal Procedure 9.01 such that it must always be disclosed in felony and gross misdemeanor cases?

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Questions for prosecutor

What constitutes "exculpatory" or "mitigating" or "tending to negate the guilt of defendant" evidence?

- o Are there grey areas, e.g., victim cooperation, victim's recommendation that offender receive light penalty, victim requests that charges be dropped, victim's self-disclosed mental illness or chemical dependency, prior victimization, etc.?

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Takeaways

Community-based advocates

- Educate yourself on how victim impact statements are dealt with in your service area to better inform victims.
- Inform your clients on
 - What happens to victim impact statements after submission so victims can make an informed choice.
 - The risk of delaying submission of a written VIS.

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Takeaways, *cont.*

Staff within prosecutors' offices

- Have a shared understanding and established process regarding disclosure obligations.
- Explain to victims:
 - What happens to victim impact statements after submission so victims can make an informed choice.
 - The risk of delaying submission of a written VIS.
- Prepare victims for the sentencing hearing.
- Establish good processes for adhering to statutory crime victim rights obligations.

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Questions?

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