

# CONSIDERING VICTIM RIGHTS, STATEMENTS, RESTITUTION & ETHICAL ISSUES

32<sup>nd</sup> Annual Robert O. Dawson Juvenile Law  
Conference  
February 24-27, 2019  
DoubleTree Hotel by Hilton | Austin, Texas

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## Crime Victims Bill of Rights

- Justice for All Act (2004)
  - Texas Constitutional Provision (1989)
- Establishes these two basic rights:
- (1) right to be treated with fairness and with respect for the victim's dignity and privacy; and*
  - (2) the right to be reasonably protected from the accused throughout the criminal justice process*

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## AND FIVE MORE RIGHTS IF VOC ASKS:

- 1) Notification of court proceedings
- 2) To be present at all public court proceedings
- 3) Confer with the prosecutor
- 4) Restitution
- 5) Information about the conviction, sentence, imprisonment and release of the accused

*\*Above are subject to three limitations*

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### Subject to 3 limitations:

- 1) The leg may provide that a public official or agency is not liable for failure to provide these rights
- 2) The accused cannot use victim's failure to request or use the right in defense of criminal proceedings
- 3) While a victim can enforce the rights, he or she cannot participate as a party to the criminal proceeding

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### Victim Rights in Juvenile Cases *TFC Sec. 57.002(a)*

- Right to receive from law enforcement agency, adequate protection from harm and threats of harm arising from cooperation with prosecution efforts
- Right to have the court, or person appointed by the court, take the safety of the victim or victim's family into consideration as an element in determining whether child should be detained before the child's conduct is adjudicated

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### Rights in Juvenile Proceedings, *Upon Request*

- Right to be informed of relevant court proceedings, including appellate proceedings, and to be informed in a timely manner if those proceedings have been cancelled or rescheduled
- Right to be informed by the court or a person appointed by the court concerning the procedures in the JJ system, including general procedures relating to preliminary investigation, deferred prosecution of a case and appeal

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### Additional VOC rights in Juvenile Court

- The right to provide pertinent victim impact to a juvenile court conducting a disposition hearing by testimony, written statement, or any other manner before the court renders its disposition
- The right to receive information regarding compensation to victims as provided by *Subchapter B, Chapter 56, Code of Criminal Procedure*

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### Rights regarding Release Under Supervision or Transfer to TDCJ parole:

- To be informed upon request about procedures
- To participate in the release or transfer parole process
- To be notified of release, escape, or transfer for parole proceedings
- To provide information to file to be considered by TJJD before the release/transfer decision
- To be notified of release to supervision or transfer to parole

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### Safe Waiting Rooms...

- Right to be provided with a waiting area, separate or secure from other witnesses, including the child alleged to have committed the conduct and relatives of the child, before testifying in any proceeding concerning the child, or, if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the child and the child's relatives and witnesses, before and during court proceedings

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- The right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose
- Right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause

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- Right of victim to be present at all public court proceedings related to the conduct of the child, as provided by *TFC Sec. 54.08 (b)*
- Any other right appropriate to the victim that a victim of criminal conduct has pursuant to *TCCP Art. 56.02 or 56.021*

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- Special Rights for Victims of Assault.**  
*(per TCCP Chapter 56)*
- For a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by *TFC Sec. 71.004*, the right to have the court consider the impact on the victim of a continuance requested by the defendant
  - If requested by the attorney representing the state or by counsel for the defendant, the court shall state on the record the reason for granting or denying the continuance

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## Special Rights in Capital Murder

(per TCCP 56.002 (a)(14))

Rights of the family of the victim to :

- Receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist
- Not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and
- To designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

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## Unique VOC Rights in Juvenile

- Broader definition of victim
- “A person who as a result of the delinquent conduct of a child suffers a pecuniary loss or personal injury or harm.” *TFC Sec. 57.001(3)*
- Three limitations on these rights:
  - Immunity from civil liability
  - Failure to provide right is not a grounds for appeal
  - Victim cannot participate in proceeding as a party

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## Limits to Enforcement of Rights

- These rights are statements of principal but are not legally enforceable
- Legislature placed responsibility for administering the rights on the Juvenile Boards and Juvenile Probation Departments
- The Juvenile Board is authorized to designate a victim assistance coordinator and is usually an employee of the probation department

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### Victim Assistance Coordinator

- The VAC is required to ensure that victims receive and are explained the rights granted in the juvenile crime victim bill of rights
- The VAC shall provide:
  - ✓ Written notice of JCVBOR
  - ✓ Application from the CV Compensation Fund
  - ✓ Victim Impact Statement form
  - ✓ and, if requested, assistance with completing application and form

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### Victim Impact Statement

- *TFC Sec. 57.0031* states that victim has right to file a statement and have it considered in “juvenile proceedings”
- Despite this confusing language, the Victim Impact Statement should be used in juvenile cases at dispositions hearings
- Purpose is to assist the judge in exercising discretion

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### Plea Agreements

- The prosecutor is required, as far as reasonably practical to give the victim notice of the existence and terms of any plea agreement that will be presented to the court *TCCP 56.08(b-1)*
- The judge, before accepting a plea agreement, is required to ask the prosecutor whether the victim has received the required notice

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## Confidentiality of Information

- Compensation Application is not subject to disclosure under the PIA
- Application includes victim's name, address, phone and SSN
- But once award is made, the amount and name of the recipient becomes public

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## Crime Victim Compensation Act

- Victims of Crimes involving juvenile offenders may have a right to public compensation from the State of Texas. *TFC 57.003 , 57.0031 , TCCP 56*
  - ✓ Compensation is administered by the Texas Attorney General
- Victim is defined as :
  - ✓ U.S. resident who suffers personal injury or death as a result of criminally injurious conduct, if the conduct occurred in Texas, or
  - ✓ Texas resident who is victimized outside the state if that state does not provide compensation

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## Juvenile Crime Victim Compensation

- In criminal court, only criminal conduct that results in death or personal injury qualifies for compensation *TCCP 56.32(a)(4) and 56.34(a)*
- Definition of victim in the TFC is broader and also includes crimes against property
- Compensation is restricted to pecuniary losses
- Reasonable and necessary expenses incurred as a result of the criminal conduct

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### Pecuniary Losses defined

- Medical care, psychiatric care & counseling, and physical therapy
- Loss of past earnings and anticipated loss of future earnings
- Care of a child or dependent
- Funeral or burial expenses or loss of support or a child or dependent\*
- R&N Costs of cleaning the crime scene
- R&N Replacement of costs of clothing or bedding
- R&N Relocation costs for victim of domestic violence

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### Reducing or Denying CVC Award

- If claimant or victim has not substantially cooperated
- If claimant or victim bears a share of responsibility
- If claimant or victim was engaging in unlawful conduct
- Claimant can file a notice of dissatisfaction with AG decision within 40 days

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### Restitution to Victims of Crime

- Purpose is to restore the victim to position before crime occurred
- Payment of restitution usually a condition of probation
- Almost all crimes give rise to civil liability
- As practical matter, most cannot pay large sums of money or monthly installments

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### Restitution by Juvenile Court Order

- Court may order the juvenile, the juvenile’s parents, or both to pay full or partial restitution
- Restitution can be made a condition of probation or as a separate order
- The period of payment cannot extend beyond the 18<sup>th</sup> birthday or the date the child or the date the child is no longer enrolled in secondary school

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### Probation Revocation for Failure to Pay

- Restitution order must promote the rehabilitation of the child, be appropriate to age and physical, emotional, and mental abilities of the child and not conflict with child’s schooling *TFC 54.041(b)*
- Revocation allowed only if the State proves that the failure to pay was intentional and not an oversight
- Respondent is permitted to show that failure pay was due to financial inability
- Inability to pay is an affirmative defense

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### Restitution Orders Against Parents

- *TFC 54.041(b)* authorizes court to order a child’s parent to pay restitution
- Requires notice to parent and a hearing
- Completely independent order from child’s
- Obligation ends also when child turns 18 or no longer enrolled in secondary school
- No longer a defense for parents to show a reasonable good faith effort to prevent their child from engaging in prohibited conduct

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### Notice of Release or Escape

- Victim or other eligible person has the right to be notified when actor is released or if actor escapes from a correctional facility *TFC 57.002(a)(7)*
- Right is predicated upon the victim or other eligible person having requested notice under *TFC 57.004*

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### HIV and Related Testing

- Similar to *TCCP Art 21.31*, juveniles *adjudicated* for certain sexual crimes must undergo testing for STD, AIDS and HIV
  - ✓ Upon motion of the court or the request of the victim
  - ✓ The results are made known to the local health authority (LHA), and the LHA will notify the victim of the results
- Juvenile Probation employees can also request testing if they believe they have been exposed to HIV. *Tx. H&S Code Sec. 81.050*

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### Victims of CST

- Victims of Human Trafficking, and especially Commercial Sex Trafficking have had numerous federal and state laws passed in the last several legislative sessions that provide new laws and protections
- See generally the federal *Victims of Trafficking and Violence Prevention Act of 2000*
- See *TFC Sec. 54.04, 54.0326 (Special Juvenile Courts)* and *TCCP Art. 42.0919 and Art. 42.12*

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Thank you!

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