Report and Recommendations

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CCVAA
CALIFORNIA CRIME VICTIMS ASSISTANCE ASSOCIATION

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Real Justice: Victims' Rights Delivered

Executive Summary

The California Crime Victims Assistance Association (CCVAA) in partnership with the California District Attorneys Association (CDAA) coordinated and hosted *Real Justice: Victims' Rights Delivered*, a summit held in Sacramento on May 14–15, 2012. The purpose of this unprecedented summit was to bring together leaders, experts, and service providers from around the state in order to identify and confront challenges in the field of victims' rights and services. Through keynote presentations and interactive breakout sessions, the summit aimed to build the capacity of California in becoming a national role model for the delivery of criminal justice system-based victims' rights and services.

Over the course of two days, the summit agenda provided the more than 250 participants an opportunity for sharing best practices and ideas. With California already being a leader in statutory and constitutional rights for victims of crime, the discussion centered on the obstacles left for California in enforcing these rights in the wake of unfunded mandates. The summit was designed to challenge all participants to develop real implementation-ready solutions that will enhance the delivery of victims' services and enforce these rights moving forward.

Event Recap

The summit paid tribute to the many strides made toward enhancing this field, and to the leadership of California in providing what is widely considered to be the most robust set of victims' rights and services in the nation. However, notwithstanding these considerable victories in delineating the rights of crime victims, the reality is there is still much work to be done.

Both days were an opportunity to evaluate where California is 30 years following the enactment of the federal Victims of Crime Act. Day One began with opening ceremonies and remarks by the presidents of both host organizations. The Honorable Gregory D. Totten, CDAA President, described this as a time to reflect on the state's accomplishments and share our vision for the future in California.

Catherine M. Duggan, CCVAA President, spoke on the meaning of *Real Justice: Victims' Rights Delivered* and the need for equitable investment in the future of victims. She noted that while advocacy created the emotional impetus fueling changes to public policy, the actual implementation of solutions for victims has, to date, remained patchy and incomplete.

Susan Herman, author of *Parallel Justice for Victims of Crime*, and former Executive Director of the National Center for Victims of Crime in Washington D.C., gave the first keynote address, *Redefining Justice for Victims of Crime*. This presentation began with the assertion that real justice is a much broader concept than simply securing rights within the criminal justice system; it also includes improving and rebuilding the lives of victims in the aftermath of crime.

Secondly she asserted that, like other historical movements that have only succeeded through shifting the larger societal context in which we place rights, legal protections sought and won in the victims' movement will not be fulfilled in the absence of a national commitment to securing real justice.

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Ms. Herman went on to describe tackling the five challenges she sees as necessary for achieving real justice:

1. Creating a culture of empathy for crime victims;
2. Building a path to reintegration for victims, including restoration of their trust in the social contract;
3. Discarding hierarchies of victimization and recognizing all victims of crime, including victims of financial crime (whose experiences have more in common with victims of violent crime than not, and who constitute almost three-quarters of crime victims), and young men of color, particularly vulnerable to violent crime;
4. Promoting truth-telling in the criminal justice process in order to enhance the legitimacy of the system and its agencies in the eyes of victims; and
5. Redefining "justice" in order to create a more unified vision that embraces justice and reintergration for both victims and offenders—claiming the common ground between the two.

Parallel Justice for Victims of Crime

Susan Herman's concept of Parallel Justice is based on principles that create a new framework for responding to crime—two separate, parallel paths to justice—one for victims and one for offenders.

> For every reported crime, our society responds by trying to apprehend, prosecute, sanction and eventually reintegrate offenders back into productive communal life. Following the Parallel Justice framework, there would always be a separate set of responses for victims of the crime. Parallel Justice responses seek to restore victims' safety, help them recover from the trauma of the crime, and regain a sense of control over their lives.
>
> These responses would not depend on whether the offender is ever identified or convicted. In all cases, the harm experienced by victims of crime would be acknowledged and addressed separately and apart from the criminal justice process. While victims' legal rights within the criminal justice process should be enforced, society's obligation to provide justice to victims extends beyond the criminal justice process.
>
> This new vision of justice challenges criminal justice agencies—police, prosecutors, courts, and corrections—to respond more effectively to victims, and make victims' safety and the prevention of repeat victimization, a higher priority. Every social service and healthcare agency can also reorient its core business practices to play a greater role in helping victims rebuild their lives. In fact, every sector of our civil society—businesses, employers, schools, faith-based institutions, and neighbors–can make important contributions to Parallel Justice.

Parallel Justice for Victims of Crime, Susan Herman, 2010. Washington, DC: National Center for Victims of Crime.

The second keynote speaker, Meg Garvin, Executive Director of the National Crime Victim Law Institute (NCVLI) in Portland, Oregon, presented on *Integrating Enforceable Victims' Rights Into the Criminal Justice System: How it Can Work and Why We Have to Do It.* The presentation explained the need for enforceable rights, including a means of creating the necessary culture shift within the criminal justice system. She added a historical perspective to the summit, while integrating examples of successful enforcement of victims' rights nationally resulting in key appellate decisions.

Jean Jordan, CDAA Violence Against Women Act (VAWA) Project Director, in her talk entitled *Victims' Rights—A California Perspective*, described many unanswered questions surrounding Marsy's Law, the path to enforcement, and the mission to shape the future of California's approach to victims in the criminal justice system away from the perils of indifference.

David Maggard, Jr., Irvine Chief of Police, added the law enforcement perspective in his talk entitled *Victim Centered Policing—Changing the Culture of Crime Response*. He noted the importance of trust and collaboration with law enforcement, often a victim's first point of contact with the criminal justice system.

Day one concluded with an address by California Attorney General Kamala Harris, who expressed her commitment to using available resources to help the most vulnerable.

"We're all in it together."

—Attorney General Kamala Harris

Day Two opened with remarks by California Governor, the Honorable Edmund G. Brown, Jr., discussing the need to support victims' services notwithstanding difficult economic times. Governor Brown was followed by a presentation by retired superior court judge the Honorable J. Richard Couzens on *Realignment and the Use of Evidence-Based Sentencing: Enhancing Public Safety.* Judge Couzens described the national emergence of evidence-based practices and the need for implementing programs through Realignment that will reduce recidivism, promote successful reentry of offenders, and keep communities safe.

The remainder of the summit was devoted to the following five breakout session topics:

1. *Enforceable Rights in Practice and Their Impact on the Criminal Justice System* (led by Meg Garvin, Esq., National Crime Victim Law Institute)
2. *Realignment: Does it Help Victims?* (led by Judge J. Richard Couzens)
3. *Comprehensive Victim Services—Strategies to Collaborate with Law Enforcement* (led by David Maggard, Jr., Irvine Chief of Police)
4. *Victims' Rights and Prosecution* (led by Jean Jordan, Esq., LL.M, CDAA VAWA Project Director)
5. *Marsy's Law* (led by Bradley Weinreb, Deputy Attorney General, Office of the Attorney General)

Each session ran twice, allowing participants maximum opportunity to share ideas and immerse themselves in the most important issues of the day. These breakout sessions were smaller, discussion-oriented settings (approximately 30 people depending on the session) structured around information-gathering and problem-solving on the ground.

For example, in *Comprehensive Victim Services—Strategies to Collaborate with Law Enforcement*, Chief Maggard and key staff facilitated a discussion using case studies in small groups. Participants were presented with hypothetical situations and were asked to collaborate on answering specifically: (1) what are the key victims' issues? (2) who are the stakeholders? (3) which of the four "Cs" (Collaboration, Continuity of Care, Codification, and Competence) require further development and why? (4) what are the short- and long-term approaches to addressing the issues identified that you or your agency would undertake? and (5) which critical victim need(s) have not been met and how does your planned approach address the need(s)?

Participants noted how helpful the case-study exercises were in emphasizing the key components of successful provision of victims' services. Problem-solving in groups comprised of various criminal justice system stakeholders allowed participants to support one another, share frustrations they had encountered, and bring their skills and ideas to others. The messages of the facilitators were echoed by the on-the-ground experiences of the participants, such as the critical nature of trust between law enforcement and victim advocates.

From Adversity to Advocacy: The Little Moments Matter

Day Two of the summit featured an address by Yvette Rodier, a staff attorney and pro bono coordinator for the Utah Crime Victims Legal Clinic, and member of the Utah Council on Victims of Crime.

Ms. Rodier has committed her professional life to supporting victims and their rights. In her passionate and poignant address tracing her path to advocacy, she shared her own story of victimization 16 years prior.

She recounted the vivid details of the summer night in 1996 when a man killed her dear friend Zach Snarr, and emptied his gun in an attempt to also take Ms. Rodier's life. She illustrated that from the night of her attack through the subsequent years of the criminal justice process, it was the little moments that mattered and that made her feel human as she faced this tragedy.

Sharing these moments, laughter, and tears with the audience, Ms. Rodier reminded summit participants of why they do this work. She demonstrated what day-to-day interactions with criminal-justice-system personnel can mean to victims facing the gravest tragedies of their lives, and the honorable nature of this profession.

Challenges in the Field: The Unmet Needs of Victims

Of the many challenges in the field and unmet needs of victims identified throughout the summit, three themes emerged. Perhaps the most prevalent topic throughout were the barriers to making victims' constitutional rights a reality through enforcement of Marsy's Law. Participants noted the following significant challenges: inadequate funding, lack of guidance by appellate case law interpreting the provisions of Marsy's Law, confusion around the role of victims' rights attorneys, and training needs for all allied professionals working in the criminal justice system.

The second theme emerging throughout the summit was the need to provide adequate and appropriate services to victims in the aftermath of crime, including the introduction of

trauma-informed interventions and timely administration of Victim Compensation Program claims.

The third theme, which surfaced throughout almost every aspect of the summit, was the lack of sufficient resources and overall funding for victims' services in California. Funding totals for victims have remained stagnant historically and pale in comparison to funding directed toward offenders. Federal Victims of Crime Act (VOCA) fund distribution to California has either plateaued or diminished in recent years, and poor collection of state penalty assessments and restitution orders, the other source of victims' services funding, remains a challenge statewide.

Also related to a lack of sufficient funding was the often-cited unknown impact of the 2011 Realignment legislation on both victims and the criminal justice system as a whole. The consensus was that victim advocates and other stakeholders concerned with and knowledgeable about victims' rights must be involved in their local Community Corrections Partnerships to ensure that victims' voices are heard.

Promising Practices

The summit yielded a list of promising practices surrounding the importance of collaboration. Participants repeatedly shared their experiences of success being dependent upon partnerships among all criminal-justice-system stakeholders, and the ways in which they accomplish this.

Participants also identified many promising practices for making rights a reality for victims, from the time of notification to enforcing Marsy's rights pretrial, during trial, and post-adjudication. However, they also noted the importance of practices for ensuring the rights of all victims, regardless of whether their criminal case goes forward.

Recommendations and Next Steps

The summit was a great success in eliciting both a strong consensus of the priority challenges and barriers statewide, as well as a resounding commitment to addressing them. It is time for California to take the next step in finally making the robust set of rights, services, and protections championed over the past 30 years a reality for all victims across the state.

This includes, first and foremost, convening a working group/advisory committee to develop a statewide strategic plan. As part of the strategic planning process and in all aspects of improving victims' services, California must also invest in data-driven research to inform these efforts, as well as produce effective, cost-efficient strategies for implementation and prevention.

Lastly, making rights a reality calls for comprehensive and collaborative training for all criminal-justice-system stakeholders impacting the experience of those victimized by crime.

These recommendations are meant to represent the practical components of California's vision for being a national leader in victims' rights and services. This summit affirmed the commitment statewide to measure *Real Justice: Victims' Rights Delivered* by the experience of *all* victims, each deserving the dignity, fairness, and respect hard-fought and long-promised.

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Detailed Report

In 1982, President Reagan convened a national Task Force on Victims of Crime. This Task Force presented findings on how victims were being treated in the criminal justice system and how to improve this treatment. The report declared:

> Victims who do survive their attack, and are brave enough to come forward, turn to their government expecting it to do what a good government should—protect the innocent. The American criminal justice system is absolutely dependent on these victims to cooperate. Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable. When victims come forward to perform this vital service, however, they find little protection. They discover instead that they will be treated as appendages of a system appallingly out of balance. They learn that somewhere along the way the system has lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.

The report also included 68 recommendations in five areas, including proposed executive and legislative action at both the state and federal levels.

Three decades later, *Real Justice: Victims' Rights Delivered* paid tribute to the many strides made toward the goals laid out in the 1982 report, and to the leadership of California in providing what is widely considered to be the most robust set of victims' rights and services in the nation. The past 30 years have brought many hard-fought legislative and other victories worth celebrating, all meant to improve the status and experience of victims in the criminal justice system. However, notwithstanding these considerable strides in delineating the rights of crime victims, the reality is that many of these concerns persist.

The summit provided an opportunity to honestly evaluate where we are 30 years later. As Catherine M. Duggan, CCVAA President, noted in her opening remarks that what we have now are laws of intent not laws of reality.

> Far too many victims still leave our courtrooms not understanding what happened, and why; their questions unanswered; feeling as if their voice was not heard; and feeling the pain of justice denied.

Given this reality, she described the need to develop a vision for delivering the rights so long declared that incorporates a state interest in the restoration of the victim, not a system of justice defined solely by the treatment of offenders.

As California Attorney General Kamala Harris pointed out in her remarks, "this is not an intellectual discussion. This is about real people out there who need our support."

Challenges in the Field: The Unmet Needs of Victims

Of the many challenges in the field and unmet needs of victims identified throughout the summit, three themes emerged. The combined perspectives of victim advocates, prosecutors, legislators, survivors, and other stakeholders consistently drew the discussion toward these

priorities: (1) enforcement of constitutional rights; (2) providing adequate and appropriate services to victims in the aftermath of crime; and (3) insufficient resources and funding.

Certain cross-cutting issues such as the pace and unpredictability of the criminal justice system, cultural barriers, and lack of access to interpreters, thread through all of these themes. The cross-cutting challenges constantly raised the question of what does access to justice truly mean for victims.

This tension between rights and reality was most apparent in the discussion of Marsy's Law, seen simultaneously as the cornerstone and pride of California's victims' rights movement, yet also the greatest challenge noted on the ground. Perhaps the most prevalent topic throughout the two-day summit was the many barriers to making these rights a reality through enforcement.

Enforcement of Constitutional Rights: Marsy's Law

Many protections currently afforded to victims have been in place since 1982, when California passed the Victims' Bill of Rights, the same year as the Reagan Task Force released its report. These constitutional protections were limited in scope, and augmented in subsequent years by numerous victims' rights statutes. The passage of Proposition 9 ("Marsy's Law") on November 5, 2008, elevated many of those exisiting statues to a constitutional level, and also expanded the rights of victims, particularly the rights to be present and to be heard, upon request.

Marsy's Law amended article 1, section 28 of the California Constitution and enumerated 17 rights necessary to provide victims with justice and due process in the context of a historically inefficient, overcrowded, and arcane criminal justice system.

However, the summit participants made it clear that in the years since Marsy's Law took effect, these 17 rights remain far from reality throughout the state. Participants noted that challenges persist for enforcing rights guaranteed to victims before, during, and after trial while victims attempt to regain control of their lives. Although numerous specific examples of unrealized rights came up throughout all five breakout session topic areas, all centered on inadequate funding, lack of legal clarity, and training needs.

Marsy's Law

California Constitution, article I, section 28(b):

In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
2. To be reasonably protected from the defendant and persons acting on behalf of the defendant.
3. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
4. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the

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victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
9. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
13. To restitution.
    (A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
    (B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
    (C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
14. To the prompt return of property when no longer needed as evidence.
15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
16. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
17. To be informed of the rights enumerated in paragraphs (1) through (16).

Inadequate Funding

Many participants throughout the summit shared their stories of victim empowerment and culture shift throughout the state as a result of Marsy's Law. Notwithstanding this celebration, Marsy's Law remains an unfunded mandate. Since its passage, there has never been accompanying dedicated funds to implement the many facets of Marsy's Law, creating an inconsistency felt acutely by the most marginalized victims in California.

With the sheer number of crime victims, cases filed (and not filed), and the caseloads carried by overburdened criminal-justice-system-based advocates, victims must depend on the system reaching out to them. They need advocates to explain and facilitate their constitutional rights; otherwise they are unlikely to realize them. Summit participants echoed repeatedly that those with language barriers or lack of access to resources, including women and children victimized by family violence, are particularly vulnerable. For example, for a victim who lacks access to transportation or childcare in a rural county, the probability of realizing her right to be present at all proceedings is very low.

Not only are there inadequate resources to support these rights for all victims pre-trial, during trial, and post-conviction, but Marsy's Law leaves unclear who exactly is tasked with enforcing them at most stages of the process. Given that a significant portion of a victim's constitutional rights overlap with the mandate of victim/witness assistance center advocacy services as laid out by the Penal Code, Marsy's Law represents significant change for not only victims, but for these criminal-justice-system-based service providers working with them every day.

The notification of rights in particular was cited among the protections difficult to enforce because of a simple lack of resources. Summit participants agreed that a threshold to any of the 17 rights becoming a reality is that victims must be informed of the rights, understand what they entail, and know how to assert them. However, victim assistance programs are understaffed and have high caseloads that often impede advocates' ability to explain the implications of Marsy's Law to every victim. It is not uncommon for an advocate to have well over 100 active files open at one time.

Marsy's Law requires all victims to be given a Marsy's card, a resource from the Attorney General's Office now available in 17 languages and Braille. However, many participants felt that having law enforcement hand a traumatized victim a Marsy's card, or a victim advocate mailing a card out with no follow-up, was insufficient for actual notification.

Many victim advocates attending the summit noted the increased administrative burdens brought by Marsy's Law. Numerous examples such as notifying victims of case and custody-status updates, and facilitating the victims' relationship and meetings with the prosecutor when exercising the duty to confer, have in many cases added to their day-to-day duties. Some advocates noted that these changes, and particularly the sense of not being able to deliver all that a victim may want or be entitled to, have brought increased emotional burdens as well. This includes managing a victim's expectations about his or her experience with the criminal justice system.

The Penal Code does provide victim/witness assistance centers with wide latitude to assist in enforcing these rights through its expansive and overlapping mandate of available services, whether or not this was the intent of Marsy's Law. However, the summit made clear that this hope of simultaneously ensuring many of the protections afforded by Marsy's Law while delivering victim/witness services, such as assistance with restitution and court accompaniment to ensure safety and emotional support, is not a reality for most counties that must stretch resources and do more with less.

Lack of Legal Clarity

In addition to lack of adequate resources to support the enforcement of victims' rights, many criminal justice stakeholders in the field feel challenged in interpreting these rights, both legally and administratively. As a ballot initiative, Marsy's Law was not vetted through the legislative process. Although it touches upon almost all aspects of victims' rights and services, many summit participants opined that the language and intent of various sections are overly broad or unclear.

The confusion is fueled by a lack of case law interpreting victims' constitutional rights. Marsy's Law in its relatively young stage has also had only minimal vetting through the courts. Currently there are only a handful of appellate decisions directly addressing Marsy's Law, leaving judges, prosecutors, and advocates with many questions.

Many of these questions came up during the summit, and many hope for guidance on the most common areas of confusion from the courts in the near future. The types of questions include:

- Does the duty to notify a victim entail a duty to explain? How far does this extend?
- What happens when the defendant's constitutional rights directly conflict with the victim's, for instance, the right to a speedy trial?
- Can a court require a victim to be sworn in order to speak at a bail hearing or other proceeding?

The victim's assertion of Marsy's rights may also diverge from the interests of the prosecution. Summit participants noted tension and uncertainty arising from the victims' right to provide input on plea agreements and at sentencing. The courts have held that Marsy's Law is not a vehicle by which the victim may prevent the prosecution from going forward entirely, nor can the victim use the right to confidentiality to prevent certain disclosures. However, many questions about where these lines are drawn remain.

Furthermore, advocates expressed confusion around the appropriate procedure for informing the defense that a victim is asserting the right to privacy and protection from defense counsel. Some noted an apprehension around the fact that these communications can lead to the advocate becoming a witness in a case. Based on this concern, many noted the importance, but also the difficulty, of having the victim him or herself make such assertions to the defense.

A final example of lack of legal clarity lies in the application of Marsy's Law in the juvenile system. Many noted potential conflict where rights of the juvenile offender differ, and were thought to "trump" the rights of a victim, such as tension over the juvenile's right to confidentiality versus the need for disclosure of information to victims throughout the juvenile justice process.

Some participants reported that they are not getting any information in juvenile cases, including access to the presentence reports required by Marsy's Law. They noted that technically juveniles are not "sentenced" and are not "defendants," but were unclear on what that means with respect to a victim's constitutional rights.

The consensus was that judges, prosecutors, defense attorneys, advocates, and probation officers alike need clarity on the application of Marsy's Law in the juvenile system. The variance in practices and policies in juvenile divisions throughout the state suggest that both training and appellate guidance are necessary.

Although it is likely only a matter of time before many of these issues are considered by the courts, many summit participants were concerned that cases where rights are violated are unlikely to generate an appeal. For example, the tight timeline, pace, and sheer volume of misdemeanor cases almost universally present challenges to the victim's ability to assert the breadth of his or her rights, but appeal is unlikely.

Prosecutors have limited resources as well, and often cannot afford "do-overs" in their cases, certainly not in misdemeanors. Furthermore, Marsy's Law does make clear that there is no civil liability (although sanctions may be possible). Yet the rights of these victims are no less real or important. This is particularly true of "wobblers" such as domestic violence, wherein prosecutors may elect to file as either a misdemeanor or a felony, depending on the specific facts of the case and the offender's criminal history, and other crime types where multiple factors may influence the charging or progress of the case.

Empowering Victims Through Enforceable Rights: What Are the Remedies When Rights Are Not Enforced?

In her presentation, *Integrating Enforceable Victims' Rights Into the Criminal Justice System: How it Can Work and Why We Have to Do It,* Meg Garvin of NCVLI described the difference between a "stop" and a "do-over."

Stop—A "stop" is when the proceedings or a particular aspect of the criminal justice process is stopped or delayed in order to provide the victim with the opportunity to meaningfully exercise his or her right(s). For example, if a victim wants to assert his or her right to be present, this would mean not proceeding until that victim is available to attend court in-person or in some instances telephonically.

Do-Over—A "do-over" means repeating a particular aspect of the criminal justice process or entire case if a victim is not given the opportunity to meaningfully exercise his or her right(s), recognizing this remedy as the only means of providing the victim with that opportunity.

For example, in *Kenna v. United States Dist. Court* (9th Cir. 2006) 435 F.3d 1011, the victim was denied the opportunity to speak at sentencing. The Ninth Circuit held, in a case of first impression, that under the Crime Victims' Rights Act, a victim's right to be "reasonably heard" during sentencing was not limited to written impact statements, but included the right to allocute at any public proceeding.

Concluding that "victims now have an indefeasible right to speak," and in granting the victim's petition for a writ of mandamus, this "do over" not only changed precedent, but has changed culture.

The Role of Victims' Rights Attorneys

Another topic of discussion throughout the summit was the role of victims' rights attorneys in enforcing constitutional rights. Participants noted that instances of victims retaining private attorneys were increasing, and debated the role and desirability of these attorneys in the criminal justice process.

Some opined that if prosecutors and judges are supported and trained to do their jobs in consideration of Marsy's Law, and with the presence of victims in mind, private attorneys are not necessary, and may complicate the case or confuse the jury.

Others believed that there are potential benefits to the presence of a victims' rights attorney in the criminal justice process regardless, noting that the prosecution's "client" is the state and there may be instances where the state's and victim's interests diverge. A victims' rights attorney has the ability to provide an independent voice for the victim as well as a confidential and privileged relationship. This avoids *Brady* complications for both prosecutors and DA-based victim advocates, and frees the prosecutor to prosecute the case.

The challenge of access was also noted. Many victims may not be able to retain a private attorney to assist in asserting his or her Marsy's rights, and there are currently very few sources of this type of pro bono legal assistance available. As one means of improving access, NCVLI maintains a "brief bank," and acts as a source of advisement and support to victim advocates, attorneys, and victims.

Training Needs

One of the key conclusions to come from the summit is the importance of increasing training on Marsy's Law for all criminal-justice-system stakeholders. Advocates working closest with Marsy's rights and interacting with victims every day are tasked with explaining rights they themselves do not fully understand. Ongoing training, resources, and support are necessary to quell these concerns.

Some summit participants, particularly advocates working directly with prosecutors, also are of the opinion that some prosecutors still do not fully understand or have the ability to devote the necessary attention to Marsy's Law. Several attendees noted that some prosecutors avoid asserting Marsy's rights for victims because it may mean losing control over the case or involve a potential complication. Collaborative training is necessary, particularly to ensure that prosecutors themselves are taking a proactive role in enforcing victims' constitutional rights, rather than relying too heavily on overburdened advocates.

Finally, further education of judges on Marsy's Law was cited as an important training need. Many criminal justice system stakeholders noted that enforcement of rights in many ways starts and ends with the bench. They gave examples from around the state of unsuccessful attempts to implement certain Marsy's rights due to a judge's lack of awareness of when a right is triggered. Some advocates discussed courts taking pleas without the victim present, or not allowing the victim to speak at sentencing. Some prosecutors and advocates believe the court could see them as difficult or creating delay if they advocate for victims' rights during the often unpredictable and complex criminal justice process.

Providing Adequate and Appropriate Services

As discussed above, and in detail in the recently published statewide Violence Against Women Needs Assessment report, victim/witness assistance centers are underfunded, requiring victim advocates to increasingly do more with less.

The breadth of the mandate for criminal-justice-system-based services for victims as defined by the Penal Code make these service providers particularly well-situated to respond to the immediate needs of victims and families in crisis. Even as the rights and remedies for victims

have grown according to the law, the resources available for the victim advocates tasked with meeting these needs are shrinking.

In addition to reflecting and supporting the changes in the law, resources for victims' services must also be allocated to reflect the greatest emerging needs in communities throughout the state. Not only must existing gaps in services be filled, but a more complete spectrum of needs must be identified.

Certain types of victimization remain under-identified and, therefore, under-served, including human trafficking, identity theft, and financial fraud. Furthermore, specialized and vulnerable populations of victims require culturally competent services tailored to appropriate response.

The summit made clear that dedicating attention and resources toward improving the level of service to vulnerable populations, such as LGBTQ victims, victims with disabilities, and victims from tribal communities, will promote a more just and compassionate experience with the criminal justice system for these victims. Importantly, it will also serve to promote awareness and identification of traditionally underreported or unseen victimization.

Trauma-Informed Interventions

Adequate and appropriate service provision will also require the victims' rights and services field to apply the principles of trauma-informed interventions. Research has increasingly pointed to the importance of trauma-informed care, designed specifically to address the consequences of trauma experienced by an individual, which will facilitate his or her healing.

While the criminal justice system experience may exacerbate the effects of trauma, application of these principles can serve to avoid re-traumatization, and can be invaluable for victims in the aftermath of crime. When service providers are equipped to recognize symptoms of trauma and given the tools for a collaborative and empowering approach, interventions are more likely to be successful. Victims are more than likely to regain control of their lives.

Victim Compensation Program

Throughout the summit, advocates cited issues surrounding the state Victim Compensation Program (VCP). Assisting victims with VCP applications is one of the many mandated services for victim/witness assistance centers. However, complications such as lack of training on changing regulations, high VCP staff turnover, and lengthy claim processing and appeal timelines all create challenges.

In addition to concerns about the amount of time spent providing this service, especially in counties that do not have a joint powers contract[1] with VCP, some advocates expressed challenges with the confidentiality of claims. Advocates in breakout sessions noted that in some cases they were required to notice the defense when VCP claims were filed, and in certain jurisdictions, were told interpretations of *Brady* required disclosure of the actual content of these applications.

1. A "joint powers victim witness center" is an agency under contract with the Victim Compensation and Government Claims Board to process applications under Government Code section 13954(c). CalVCP has 21 joint powers agreements with 20 counties and the city of Los Angeles.

Insufficient Resources and Funding

The greatest and most obvious challenge in advancing victims' rights and services is the lack of sufficient resources to the make the vision a reality. As discussed in the context of enforcement of constitutional rights, and noted throughout this report, the number of victims served by victim/witness assistance programs has steadily grown, yet the resources to respond to these victims have remained stagnant for over a decade.

The vision that emerged from the summit, as voiced by the many impassioned and dedicated attendees working in this field, is to finally see that growth: Growth in funding, services, and in the number of victims whose experience with the criminal justice system is dignified and in line with promises spelled out in California law.

The Need for Investment in Victims' Rights and Services

Part of the difficulty, as noted throughout the summit including by Governor Brown, is searching for increased funds during a time of unprecedented budget cuts and overall diminishing services. But what is also clear is that the need for allocation of adequate funds for victims must be reframed in these tough economic times as an opportunity for tremendous cost savings—cost savings achieved through prevention.

The criminal justice system is tasked with protecting public safety, but it is a system largely focused on the alleged criminal conduct and subsequent rehabilitation of offenders. Funding totals for victims historically and currently pale in comparison to funding directed toward offenders.

Delivering on the task of public safety requires more inclusive actions beyond investment in and response to defendants alone. Prevention of future victimization is equally critical, and this more complete concept of public safety will only be achieved through simultaneous investment in adequate and appropriate services to those victimized by crime.

True investment in victims' rights and services not only is the due process and justice promised to victims in the California Constitution, but a financially sound investment in prevention. These resources promote vital victim cooperation with the criminal justice process, the ability of victims to move on in the aftermath of crime, reduction of trauma, and reduction of vulnerability to future victimization.

So often the criminal justice debate discusses the costs and difficulties of a "revolving door" for offenders, yet the summit made clear that such a door exists for victims as well. Without a holistic investment in public safety, for many families and communities throughout the state, separate criminal justice system involvement as either a "victim" or an "offender" is a fallacy. Many offenders have themselves been victims. Unless victims receive the treatment and services justice requires, their ability to return to life and society is significantly impeded; their prospects for offending increased.

This is true not just of direct victims, but in missed opportunities for breaking the cycle of violence with their children as well. The past three decades have brought considerable research and data as to the effects of victimization on children, and the likelihood of increased involvement with the criminal justice system as both an offender and a victim following exposure to violence.

While we know that adequate and appropriate response to victims can promote significant cost savings through prevention, this area continues to suffer cuts, including a 12 percent budget cut to victim/witness assistance program funding during the last fiscal year. The summit demonstrated that an increased investment in victims' services is a key opportunity for a smarter approach to California criminal justice system funding.

Sources of Victim/Witness Assistance Program Funding

There are two sources of Victim/Witness funding: Victims of Crime Act (VOCA) funds and state penalty assessments.

VOCA Funds

The Victims of Crime Act of 1984 established the federal Crime Victims Fund, the primary method of support for programs serving victims nationally. Federal criminal fines, forfeitures, and special assessments are deposited into the Fund annually. These offender-generated revenues are distributed to various programs, including criminal-justice-system-based victim assistance in all 50 states.

VOCA is a mandatory spending bill, whereby Congress has repeatedly pledged that all amounts deposited into the Fund will remain available for victim services, not held as a federal budget "savings." The annual offender-generated revenues have continually accumulated, currently totaling a VOCA surplus of more than $7 billion.

Notwithstanding, this surplus remains untouchable due to a current congressional distribution cap. The amount of VOCA funds disbursed to California has plateaued or diminished in the past six years, the current amount for 2012 ($42,593,117)totals less than the allocation for 2006 ($44,933,000). Furthermore, this dollar amount does not have the same present-day value, particularly as the cost and need for services steadily increase.

Many leaders in the field throughout the country believe that if Congress raised the cap, allowing this excess to be disbursed to state VOCA-assistance sub-grantees, it could change the landscape of victim services substantially.

State Penalty Assessments

The second source of funding for victims' services is state penalty assessments. The Legislature established the Victim/Witness Assistance Fund for deposit of specified penalty assessments for the purpose of financing local assistance centers for victims and witnesses of crime.

Upon order from the Department of Finance, during FY 2011–12, $11 million was transferred by the State Controller from the Victim/Witness Assistance Fund to the General Fund as a loan.

Leaders in the field believe that in order to protect the legislative intent and, therefore, the integrity of the Fund, repayment must be made so as to ensure the programs supported by the Fund are not adversely affected. This includes prevention of increased fees, as well impact on victims through reduction of services. Many assert that this will require payment with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer.

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Like VOCA distribution, this source of Victim/Witness Assistance Center funding has also remained stagnant; however, funding from California state penalty assessments through the Fund has not increased in over 20 years.

This amount totaled $10,811,500 statewide in FY 2011–12. Despite maintaining a prudent reserve in the Fund, all attempts to increase funding to local centers has been to no avail, with funding hovering at or below $10,871,500 since FY 1990–91.

In the most recent report on the *Statewide Collection of Court-Ordered Debt,* published in 2010, the Judicial Council of California noted that "the overall performance of statewide collection continues to be affected by differing operational processes, information technology limitations, the high unemployment rate, and the state's economy."

Summit attendees noted the poor collection of state penalty assessments to be a significant challenge, one that directly impacts program funding and the ability of advocates to do their job. Similar concern was expressed over the impact of poor collection of restitution fines on the Victim Compensation Fund, as well as the poor collection of restitution orders paid directly to victims.

Realignment

A consistent theme throughout the summit centered on the unknown impact of California's 2011 Criminal Justice Realignment legislation (Realignment) on both victims and the criminal justice system as a whole. Often these questions manifested in terms of funding and resources for victim assistance programs.

Specifically the impact of Realignment on restitution collection was a topic of concern, as this was not directly addressed in the original legislation passed under AB 109. For example, some participants expressed trepidation that if a defendant who previously would have gone to prison was instead sentenced to county probation, these programs may not be set up to collect fines and penalties. Some worried this could impact not only victim/witness funding, but also individual victims who may not have the ability to sue in civil court.

Others noted the impact of new sentencing schemes impeding restitution collection where defendants receive a straight sentence as opposed to a split sentence. Some believe that a split sentence may be more conducive to both the ability to collect and the ability of the defendant to pay (through increased likelihood of a defendant securing employment).

In addition to the unknown impact on restitution, similar questions remain on the administrative burdens and changes to the daily work of victim advocates, especially those based in (or working closely with) county probation departments. Notification rights and duties have been impacted by Realignment, with changes continuing as counties discuss the use of home supervision, early release, and noncustodial sanctions.

With the changes to notification taking place under Realignment, some participants noted the importance of implementing the statewide VINE (Victim Information Notification Everyday) program, which is a free 24-hour service that helps victims of crime obtain information about the custody status of their offender. However, currently only 33 counties participate in the statewide system, which went online in October 2011, and is available to a wider category of interested parties in addition to the direct victims. Seventeen other counties use only the stand-alone VINE program, whereby only custody information pertaining to that individual county is available to victims.

Although there is wide support for assistance to remaining counties in accessing the statewide system, of grave concern to the field was the appropriation of $1.8 million in Victim/Witness Assistance funds to local law enforcement through the FY 2012–13 State Budget Act, to support the VINE program. Given that these funds were intended by the Legislature to support direct services provided by Victim/Witness, Rape Crisis, and Child Abuse programs, this redirection generated concern. Particularly at a time when direct services to victims are already greatly compromised, policy and administrative leaders opined that the VINE implementation funding should have been supplied from elsewhere.

The summit consensus on Realignment is that in the midst of clean-up legislation and ongoing changes, it is too early to tell what the long-term impact will be for victims and those working in the field. The consensus is that victim advocates and other stakeholders concerned with and knowledgeable about victims' rights must be involved in their local Community Corrections Partnerships to ensure that victims' voices are heard.

Promising Practices

The Importance of Collaboration

The success of victims' rights and services is dependent upon a partnership among all criminal-justice-system stakeholders:

- Utilize vertical prosecution or a similar structure that will allow the prosecutor and victim advocate to work together as a team though the life of a case.
- Convene regular multi-disciplinary stakeholder meetings in order to discuss the necessary steps to making victims' rights a reality in individual jurisdictions.
- Hold collaborative trainings that integrate perspectives of advocates, prosecutors, investigators, judges, law enforcement, probation, and the victims themselves.
- Encourage *Victim Centered Police Departments* operating under the four "Cs": Collaboration, Continuity of Care, Codification, and Competence.
- Partner in structured victim-response teams where clarity of roles is considered ahead of time.
- Strengthen advocate/law enforcement relationships through exercises that build trust. For example, when something positive occures, send a note of commendation about individual officers to the chief and command staff.
- Ensure that victim advocates and law enforcement line staff get positive feedback and formal recognition of their work.
- Utilize the International Association of Chiefs of Police (IACP) Manual geared toward integrating law enforcement and victim services.

Making Rights a Reality for Victims: Notification and Affirming the Duty to Explain

- Reach out to all victims and treat all victims the same, whether or not there is a criminal filing in their case.
- Educate victims early and often in the process, advising victims of rights on multiple occasions.
- Utilize Marsy's cards and resources in all 17 languages, and provide access to interpreters in all criminal proceedings and, where possible, all parts of victim service delivery.
- For every crime report, generate a letter about Marsy's rights and the role of victim/witness assistance centers, making these resources available in multiple languages.
- Provide direct crisis intervention (preferably face-to-face) within 72 hours.
- Follow-up with phone calls to victims wherever possible.

Enforcing Constitutional Rights in the Criminal Justice Process

- Utilize a Marsy's checklist that is given to the prosecutor and kept in the criminal case file. Look to model checklists offered by counties experiencing success with this procedure for statewide dissemination or guidance.
- Develop and utilize policies and procedures around victims' rights implementation. Formalize and guide strategies for uniformity within local victim assistance programs and prosecutor's offices, including through the use of performance reviews.
- Set up a sentencing calendar that accommodates Marsy's rights.
- Regarding confidentiality, explain to victims from the time of the first meeting about the possibility of a defense subpoena; explain the importance of knowing who they are speaking to and why.
- Redact reports where appropriate.
- Routinely inquire if the victim's records have been subpoenaed.
- Assert victims' rights on the record and request that judges state on the record why they are denying a victim request in order to provide the opportunity for appeal. This includes a prosecutor's indication on the record of a victim's presence at the start of a hearing.
- Allow for telephonic presence for victims, including reading victim impact statements through another medium if victims are unable to attend in-person.

Restitution

- Encourage victims to track all losses related to the crime from the beginning of the process. This will ensure that the necessary information and documentation is available at the time of sentencing when restitution orders are available, and therefore

promote the issuance of orders (where currently only 17 percent of inmates arriving at California Department of Corrections and Rehabilitation have a direct victim restitution order).

- Encourage timely and organized submissions of restitution information, such as receipts and estimates.
- Encourage victims to ask for non-economic damages, such as pain and suffering (available only in particular cases) and loss of support.
- Encourage victims to note every single loss, such as gas and parking at the doctor's office.
- Cultivate the relationship with the Franchise Tax Board, which has become a strong ally in restitution collection.

Recommendations and Next Steps

The summit was a great success in eliciting both a strong consensus of the priority challenges and barriers statewide, as well as a resounding commitment to addressing them. It is time for California to take the next steps in finally making the robust set of rights, services, and protections championed over the past 30 years a reality for all victims across the state.

Statewide Strategic Plan

This summit should serve as a springboard for the development of a strategic plan. It is recommended that the strategic planning process begin by convening a small group of representative key stakeholders to comprise a working group/advisory committee. This working group will develop and implement a goal-driven, action-oriented crime victim assistance strategic plan.

The statewide strategic plan will likely require a needs assessment to inform the content and direction of these efforts. The process should result in increased resources that bring the criminal-justice-system response to victims to the next level, such as specific incorporation of trauma-informed interventions and access to legal services.

Data-Driven Research

As the summit demonstrated, effective response, outreach, and approach to crime victims must adapt as our awareness of these key issues change. The criminal justice system stakeholders working with victims need to be informed of changing crime trends, new forms of victimization, and social science research on crime, behavior, and trauma in order to enhance the level of victims' rights and services.

Changing laws and policies such as Marsy's Law and Realignment require new data-driven research. This research will serve to both understand the impact of policy shifts, and assess/inform necessary solutions and effective implementation strategies. Promising practices require data and analysis that test their reliability before they can be labeled "evidence-based" and disseminated statewide.

Data-driven research can also be invaluable in times of diminished resources or fiscal uncertainty as a means to identify the most cost-efficient strategies. For example, there were frequent suggestions at the summit around increased use of technology in order to reach greater numbers of victims and minimize administrative costs. However, we lack research about the percentage of victims with access to technology.

The idea of creating a computer management system for tracking cases statewide was discussed, but research into technology limitations would need to be conducted before such a sweeping change can be made. Some advocates working in rural counties noted that such a case management program would currently not work for them because they lack access to a computer system.

Making the case for increased funding for victims' services must also be done through data-driven research, including efforts to convince Congress to release additional VOCA funding for its intended use. *Vision 21*, the strategic planning effort out of the federal Office of Victims of Crime (OVC), specified the hope that these funds could be used to address documented unmet needs in state and local jurisdictions.

Training

The summit also made clear the need for training around the state. CCVAA and CDAA, through a grant from CalEMA, are currently in the process of developing updated entry- and advanced-level training curricula for victim/witness assistance center advocates and allied victim services providers. The new curriculum and accompanying certification program will be designed to elevate the advocacy discipline and further professionalize this field.

However, the need for training for allied professionals is imperative to enforcement. As explained in the section of this report on enforcement of constitutional rights, true implementation of Marsy's Law requires that everyone in the system receive training. Policy changes under Marsy's Law and Realignment make training a priority for all criminal justice system stakeholders, including meaningful and collaborative training for judges.

Conclusion

This report and the recommendations resulting from this unprecedented event are meant to represent the practical components of California's vision for being a national leader in victims' rights and services. This summit affirmed the commitment statewide to measure *Real Justice: Victims' Rights Delivered* by the experience of *all* victims, each deserving the dignity, fairness, and respect hard-fought and long-promised.