THE STATE BAR OF CALIFORNIA

WHAT SHOULD I DO IF I AM A CRIME VICTIM?

GET THE LEGAL FACTS OF LIFE

What should I do if I am a crime victim?

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1 What should I do if I am a crime victim or a deceased victim's next-of-kin?

Remember that you are not alone. Resources and assistance are available. If you are injured, seek medical attention. Some injuries may not be apparent for several days. In order to document the crime and establish your legal right to recover money damages, you should:

- Notify local police as soon as possible and file a police report. Cooperate and provide as much information about the incident as you can.

- Ask the police officer for his or her business card and the number of the crime report. Keep this information in a secure place. Call the officer back if you remember additional details.

- Request that police notify you if the case is presented to a prosecuting attorney. If the case is filed, call the prosecutor's office and ask to speak with the prosecutor assigned to your case or to the Victim-Witness Assistance Program representative. Request information on your legal rights, and ask for updates on the progress of your case and notification of all court proceedings.

- Apply for all applicable benefits. If you have insurance, file a claim as soon as possible. If you are not certain whether your insurance covers your loss, speak to your insurance agent and obtain a copy of your policy. If you have been injured or have a family member who has been injured or killed, your local Victim-Witness Assistance Program can provide you with an application for California's Victims of Crime compensation. And a program representative can help you fill it out. If you decide to file a civil lawsuit against the offender and/or the offender's insurance company or other responsible party,

and would like assistance, however, you would need to seek legal help on your own.

- Report any address or telephone number changes promptly to the police, prosecutor, probation officer, your insurance company, the Victim-Witness Assistance Program and your attorney. If the offender is in the custody of the Department of Corrections or the Youth Authority, you must also advise them of any address changes if you wish to be notified of the offender's parole hearings, escape or release.

- Keep a complete record of your crime-related losses and expenses for future *restitution* (payment reimbursing you for your losses). Provide as much information as you can to the probation department, prosecutor or court to document your loss of property, wages and support, as well as your medical expenses. Ask the judge to order full restitution from the offender.

- Address the judge at sentencing. The Victim-Witness Assistance Program representative or other victim advocate can help you prepare a *Victim Impact Statement*.

- If the judge orders the offender to pay restitution, request a certified copy of the order and a copy of the defendant's *Statement of Assets* from the court clerk. Make several copies and keep the original in a safe place. If the probation department or other agency does not collect your restitution, you can enforce the restitution order by obtaining a judgment in civil court.

- If the defendant is sentenced to state prison, you must complete and file a *Department of Corrections and Rehabilitation Form 1707(b)*, which authorizes the Department of Corrections to collect restitution from the inmate's trust account on your behalf. You can also request special conditions of parole on this form.

The *Crime Victim's Checklist* at the end of this pamphlet may help you keep track of information and phone numbers related to your case.

2 *What are my legal rights as a crime victim?*

- To be provided with information about civil recovery and the state's Victim Compensation Program.

- To have your property returned promptly if it is no longer needed as evidence.

- To be informed that you may be entitled to witness fees and compensation for mileage if summoned to court by subpoena—and to be contacted immediately if the court proceeding is canceled.

- To be notified by the district attorney of any pending pretrial disposition (felony plea agreement), *if you have requested notification*.

- To attend all criminal proceedings open to the general public. If the victim is deceased or otherwise unable to attend, two family members or persons designated by the victim may attend in his or her place.

- To be notified of all sentencing proceedings, and to have the judge hear and consider your views. The prosecutor also must, *if you request it*, inform you of the final *disposition* (the outcome) of the criminal case.

3 *Can I submit a claim to the state for my losses?*

A crime victim who suffers physical and/or

emotional injury may be eligible for financial assistance from the state's Victim Compensation Program if his or her losses are not reimbursed by another source, such as insurance. Family members or members of the victim's household also may be eligible for assistance as *derivative victims*.

Losses covered by this program include medical and dental expenses; mental health counseling; funeral and burial costs; loss of financial support, wages or income; and job retraining expenses (if employed). Limited funds for relocation and/or home security measures may also be available. The loss of personal property or cash is not covered.

The crime must have been reported to a law enforcement agency and the victim must cooperate in the investigation and prosecution of anyone suspected of committing the crime. The victim must also cooperate with Victim Compensation Program staff and/or local Victim-Witness Assistance Center personnel in the claim verification process. Other limitations and conditions apply.

More information and applications for compensation are available from local Victim-Witness Assistance Centers located throughout the state, (as well as from the victim compensation fund Web site at **www.victimcompensation.ca.gov**).

Victim center advocates are trained to assist you in applying for financial assistance. Applicants may also be assisted by a private attorney. The state will pay private attorney fees of 10 percent of the approved award (up to a maximum of $500 per claim). For additional information, call the Victim Compensation Program toll-free at 1-800-777-9229.

4 *How can I find out if an arrest has been made?*

Call the law enforcement agency to which you reported the crime, or the agency that is investigating the case. Be prepared to provide as much of the following information as possible: your

name, the crime report number, the suspect's name and date of birth, the case number (if known) and the criminal charges. It may also help to mention the name of the officer who took your original crime report.

5 *If charges are filed, how can I check on the status of the case?*

Contact the local prosecutor's office. Look under the government listings at the front of your telephone directory and locate the listing for the Office of the District Attorney or City Attorney. Be prepared to provide as much of the following information as possible: your name, the date and location of the crime, the suspect's name, the case number (if known), and the nature of the crime or charges.

You may also call the court clerk at your local courthouse. Again, provide as much of the above information as possible.

6 *Do I have the right to be present at all court proceedings?*

Yes, you may attend all proceedings open to the general public, unless the judge orders otherwise. Grand jury proceedings are not open to the public. Many juvenile court proceedings are also closed.

7 *What should I do if I am subpoenaed to testify in court?*

Call the number listed on the subpoena to determine if you must go to court or if you can be placed "on call." "On call" means that you agree to go to court when the person who issued the subpoena notifies you.

Unless you notify the person who issued the subpoena, you must appear in court on the date stated in the subpoena. If you do not show up, the judge may issue a warrant for your arrest.

If you are concerned that you could face criminal liability by testifying, you should consult an attorney.

8 *Do I have the right to speak at sentencing?*

Yes. If possible, you should tell the prosecutor that you plan to attend and speak at sentencing. If you require any special accommodations for a disability, you should advise the court or the prosecutor before the hearing date.

As a crime victim, you have the right to attend all sentencing proceedings and to be notified before each hearing. You may attend personally, or have an attorney or support person attend for you. At the hearings, you have the right to express your views concerning the crime, the person responsible, the impact on you and your family, the need for restitution and the sentence which you believe is appropriate. A Victim-Witness advocate can help you prepare a written Victim Impact Statement. This written statement will become part of the defendant's permanent record.

If the victim is a minor, two parents or guardians may appear on his or her behalf. If the victim is deceased, the next-of-kin may address the judge at sentencing.

9 *Can I ask the judge to order the offender to pay for my losses?*

Yes, you may ask the judge to impose a *Restitution Order*. It may include the value of stolen or damaged property, medical expenses, and wages or profits lost due to the victim's injury or

the time spent in court or assisting the police. If the victim is a minor, the victim's family can recover wages or profits lost while caring for the injured minor, attending court proceedings or assisting the police. Expenses incurred by an adult victim in relocating away from the defendant, if necessary for his or her personal safety, and expenses to install or increase residential security can also be recovered.

You should present documentation to the court to support your monetary claim. If the amount of restitution cannot be determined at the time of sentencing, the judge may order the probation department to research and document the amount of loss. When the judge orders the offender to pay restitution to you, request a copy of the defendant's financial disclosure and a certified copy of the restitution order from the court clerk. Make several copies and keep the original in a safe place.

The judge must order full restitution unless there are extraordinary reasons for not doing so.

10 *How can I collect court-ordered restitution?*

If the offender is sentenced to county jail or placed on probation, you should contact the county's Victim-Witness Assistance Center, district attorney's office or probation department to inquire about restitution-collection procedures. In some counties, restitution payments are collected from the offender and forwarded to the victim.

If the offender was a juvenile when the crime was committed, the minor's parents or guardians may be legally responsible for payment of court-ordered restitution up to $25,000.

Offenders are required to disclose their assets and income to the court when restitution is ordered. The court will provide you with that financial statement and a certified copy of the

court order. You should record the restitution order at the county recorder's office. A criminal restitution order is valid until the restitution is paid in full.

If the probation department or other agency does not collect your restitution, you can enforce the criminal restitution order as a civil judgment. To do this, take the original order to the appropriate civil court for filing and entry of judgment. You may wish to contact an attorney to assist you. Attorney's fees, collection costs and interest on the unpaid portion of the judgment may be recovered from the defendant. A civil judgment is valid for 10 years and may be renewed until the obligation is satisfied; it may not be discharged in bankruptcy. When the restitution has been completely paid off, you should complete a *Satisfaction of Judgment* and file it with the court.

Your ability to enforce a restitution order may be affected if you received payment for the same losses from the state's Victim Compensation Program. The court must then order the offender to reimburse the state for the program's compensation to the victim.

11 *Will I be notified if the offender escapes or is going to be considered for parole or release?*

Yes, *but only if you submit a written request for such notification* to the California Department of Corrections (adult offender) or the California Youth Authority (juvenile offender). Crime victims, their next-of-kin, and parents or guardians of minor victims all have the right to be notified if the offender dies, escapes, or is to be considered for parole, placed in a re-entry facility, or released.

You also have the right to appear at parole hearings to suggest special parole conditions, such as restrictions on the offender's placement in the community or future contact with you. You also

have rights to assistance at parole hearings and in collecting court-ordered restitution from an offender still in prison or on parole. In addition, the Department of Corrections can provide help if you are harassed or intimidated by an offender.

Keep in mind, however, that you must file a written request for these services with the Department of Corrections or Youth Authority. Contact a county Victim-Witness advocate for assistance and the appropriate request forms.

12 *Can I sue the offender or anyone else for my losses?*

Yes. In many circumstances a crime victim can sue the offender for compensatory and punitive damages. For example, an assault and robbery victim could sue for medical expenses, property loss, pain and suffering, and punitive damages. If the offender is a minor, a victim can also sue the minor's parent(s) or legal guardian(s) for damages.

In some circumstances the victim may bring a suit against *third parties* (property owners or employers, for example) who allowed the crime to occur.

There are time limitations on most types of civil claims. Generally, claims for personal injury or death must be filed within two years of the crime. For this reason, it is important to speak with an attorney as soon as possible to avoid missing any deadlines.

13 *How can I find a lawyer to represent me?*

- **Personal recommendations:** If you do not know a lawyer, ask a friend, co-worker, or employer to recommend one.

- **Certified lawyer referral services:** State

Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet standards of experience and be State Bar members in good standing.

For an online list of certified referral services, go to the State Bar Web site at **www.calbar.ca.gov/lrs**. Or, to hear a recorded message with the phone numbers of certified services in your county, call 1-866-44-CA-LAW (442-2529). If you are calling from out of state, you can call 415-538-2250 to hear the same message. Or check the Yellow Pages of your telephone directory for a listing under "Attorney Referral Service."

Lawyer referral service fees vary. Don't forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

- **Free legal services agencies:** Depending on your income level and the nature of your legal problem, you might qualify for free or low-cost legal help from a legal services program. Check the white pages of your telephone directory for a legal services program in your county. California's legal services Web site—**www.LawHelpCalifornia.org**—can help you locate a local program and provide you with additional resources as well. Or call your local bar association for a list of free or low-cost legal service agencies in your area.

- **Prepaid legal services plans:** Perhaps you belong to a "legal insurance plan" through your employer, labor union, credit union or credit card

company. Your plan may cover the kind of legal help you need. Generally, the premiums you pay entitle you to a certain amount of a lawyer's time or to a lawyer's services at a reduced rate.

- **Victim advocate groups:** You could also check with your local victim advocacy group to find a lawyer to help you. A representative may be able to refer you to an attorney who assists victims on a contingent fee basis, or to a legal services program.

For more information, see the State Bar pamphlet ***How Can I Find and Hire the Right Lawyer?*** To order a free copy of this pamphet or for a list of other available consumer pamphlets, send an e-mail to **pamphlets@calbar.ca.gov**. To find out how to order the State Bar's publications by mail, call 1-888-875-LAWS (875-5297). Or visit the bar's Web site—**www.calbar.ca.gov**—where you will find the pamphlets, as well as information on ordering them. The pamphlets can also be ordered in bulk.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. Consult a lawyer if you have a specific legal problem.

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CRIME VICTIM'S CHECKLIST

- ☐ Date, Time and Place Crime Occurred:
- ☐ Crime Reported to Local Police:
- ☐ Responding Officer's Name and Number:
- ☐ Investigating Officer's Name and Number:
- ☐ Police/Sheriff's Crime Report Number:
- ☐ Stolen/Damaged Property (Attach Receipts):
- ☐ Injuries/Medical Treatment (Attach Receipts):
- ☐ Victim-Witness Assistance Program Advocate's Name and Number:
- ☐ Victim-Witness Assistance Program Case Number (Compensation and/or Services):
- ☐ Prosecutor's Name and Number (City or District Attorney):

- ☐ Court Case Number:
- ☐ Probation Officer's Name and Number (Restitution):
- ☐ Date Copy of Restitution Order Requested and Received from Court:
- ☐ Private Attorney's Name and Number:
- ☐ Written Request for Notification to Prison or Youth Authority:
- ☐ Correctional Advocate's Name and Number (Prison or Youth Authority):
- ☐ Youth or Adult Parole Agent's Name and Number:
- ☐ Notify Prosecutor, Police, Probation, Corrections and Parole of Address or Telephone Changes:

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