



**NATIONAL DISTRICT
ATTORNEYS ASSOCIATION**
THE VOICE OF AMERICA'S PROSECUTORS

March 4, 2026

Honorable Melba V. Pearson
Chair, Criminal Justice Section
American Bar Association

Honorable Christina Heid
Section Director, Criminal Justice Section
American Bar Association

Honorable Kevin Scruggs
Director, the Standards
Criminal Justice Section
American Bar Association

Re: Standards on Victims of Crime

Dear Chair Pearson, Director Heid and Director Scruggs:

As the National District Attorneys Association's (NDAA) President, (Tim Cruz) and NDAA's representative on the ABA Task Force on Victims of Crime, (Bob Berlin) we are very concerned after reviewing what we are being told is the final draft of the Revised Criminal Justice standards for the Treatment of Victims. We are both career prosecutors, with Tim Cruz being the Plymouth County's (MA) District Attorney since 2001, and Bob Berlin being the DuPage County State's Attorney (IL) since 2010.

I (Bob) was appointed to the Task Force on November 16, 2020 as the representative for NDAA. Chaired by the Honorable Judge Virginia M. Kendall, the Task Force met numerous times both in-person and via zoom. Our last meeting was via zoom on March 25, 2024. Since that time, the Task Force was never presented with a final draft, and we never voted to approve the final draft. We both saw the final draft for the first time last week.

NDAA took detailed notes at the meetings and was an active participant in the process. While the final draft incorporates some of the language the Task Force agreed on, there are several areas in the draft where the language is contrary to what the Task Force approved, or the language was added by the Reporters with no opportunity for discussion. We will attempt to detail our concerns below:

Standard 1.2 Principles and Objectives

Paragraph b. "Jurisdictions should recognize the persistence of inequities in the treatment of victims based on race, class, sex, national origin, disability, sexual orientation or gender identity, and any other inequities in the treatment among victims, and should develop practices to reduce those inequities."

The committee agreed to remove extraneous conclusory statements that advance a political agenda.

Standard 1.3 Definitions

- a. Paragraph e. “Marginalized Victim: Victims who belong to underserved communities that have historically been denied access to consistent and systemically fair, impartial, and just treatment, such as women, girls, Black, Latino, and Indigenous and Native American and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, gender queer, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality, including persons who are or have been incarcerated.

This definition is far more expansive than what the Task Force agreed on. This definition includes virtually every type of person in the community, and once again, is a political statement that does not belong in the standards. Moreover, including persons who are incarcerated in the definition of “marginalized person” is offensive.

Standard 2.2 Increasing Access to Justice for Marginalized Victims

“Jurisdictions should increase access, outreach, and promote interventions for marginalized victims of crime at all points of intervention from investigation through to sentencing. Jurisdictions should pursue a comprehensive approach to advancing equity for all victims, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

This language was the subject of much discussion. An earlier draft stated that jurisdictions should “prioritize” the needs of marginalized victims. The Reporters replaced “prioritized” with “promote interventions.” Prosecutors are representatives of “a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all.” *Berger v. United States*, 295 U.S. 78 (1935) While prosecutors must be mindful of the needs of marginalized victims, “promoting interventions” for marginalized victims violates a prosecutor’s ethical duty to treat all victims equally, with fairness, respect, and dignity.

Standard 3.2 Access to Information

This section states that the prosecution “should”

- i. At the earliest juncture and at all relevant times throughout the case, inform victims of their legal rights under state or federal law and of other interests and concerns arising out of their victimization. ;
- ii. Inform victims about their ability to maintain confidential the information about them, including explaining to victims that law enforcement may not be able to keep all victim information confidential;
- iii. Have sufficient training so that they can assist victims’ understanding of legal procedures and issues; and
- iv. Communicate with victims in an effective and trauma-informed manner.
- v. Inform victims about how to ascertain the status of an accused or convicted person, including release status.

The word “should” needs to be replaced with “must” or “shall.” Many states have passed constitutional amendments codifying the rights of victims. A prosecutor has a legal duty to ensure a victim’s constitutional rights are respected and complied with.

Standard 3.3 Access to Services and Compensation

Paragraph b. “Victim services should be provided independent of a victim’s decision to participate in the criminal justice system. If a victim is entitled, victim compensation should be provided by a court after a conviction or adjudication, notwithstanding a victim’s testimony or participation in the criminal case.”

Courts have no authority to provide victim compensation after a conviction or adjudication. A court does have authority to order a defendant to make restitution, but that restitution is paid by the defendant, not the court.

This entire section was not included in the last draft the Task Force discussed in March, 2024. We did discuss a Standard 8.5 titled “Restitution, Compensation, and Services.” The language in that Standard, which was not included in the most recent draft, stated that “Courts should consider all reasonable requests for restitution from victims.”

Standard 4.1 Personal Safety and Dignity

- a. Paragraph e. “There should be a presumption against the prosecution requesting a material witness warrant, seeking a subpoena, or seeking to prosecute, incarcerate or otherwise penalize a victim for the victim’s decision not to participate in the criminal justice system. In weighing whether to invoke any of these means, the prosecution should consider whether the public benefit of securing the victim’s testimony outweighs any harm to the victim.”

As Justice Sutherland wrote in *Berger v United States*, Prosecutors “may prosecute with earnestness and vigor – indeed [they] should do so.” It is the role of a prosecutor to evaluate the evidence in a case and make decisions on what witnesses to call and what evidence to present. A prosecutor has the legal right to subpoena a victim to testify. A subpoena is enforced by the court, not the prosecutor. While prosecutors should take into consideration a victim’s decision not to participate in the criminal justice system, there should never be a presumption against the prosecution requesting a material witness warrant, seeking a subpoena, or asking the court to enforce a subpoena.

- b. Paragraph f. “Consistent with the presumption against using the means in subdivision (e): The prosecution should be able to use a subpoena to compel the appearance of a victim before a grand jury, a trial jury, or at a testimonial hearing before the court.”

The statement that a prosecutor “should be able to use a subpoena to compel the appearance of a victim before a grand jury, a trial jury, or at a testimonial hearing before the court” is not consistent with paragraph e, which states there “should be a presumption against the prosecution requesting a material witness warrant, seeking a subpoena, or seeking to prosecute, incarcerate, or otherwise penalize a victim for the victim’s decision not to participate in the criminal justice system.” A subpoena is a court order. A victim cannot choose to ignore a court order. Violation of a subpoena to testify can subject a victim to contempt of court.

Similarly, paragraph f. v. states, “If seeking a victim’s incarceration for the victim’s refusal to testify when ordered to do so, the prosecution should be required to demonstrate to the court in an adversary proceeding in which a victim unable to afford a lawyer is provided with one:

1. a substantial reason to believe that confinement is necessary to secure the victim’s testimony, and,
2. limiting the length of commitment to the minimum necessary to serve a compelling, paramount purpose.”

Again, a subpoena is a court order enforceable by a judge’s contempt powers. A court has the power to enforce a subpoena and to punish someone for contempt, and that power cannot be limited. The language in this section limits a court’s ability to enforce a legal order.

The Task Force discussed this section at length. An earlier draft included language that there was “a strong presumption against prosecutors requesting material witness warrants” or “otherwise penalizing victims for their decision not to participate in the criminal justice system.” We agreed the language would be modified to reflect that a prosecutor should balance a victim’s desire not to participate against the need to protect the victim and/or the community, and there should not be a “presumption” against a prosecutor using the subpoena process to compel a victim’s testimony.

Standard 5.1 Right to Legal Representation

Paragraph a.

“All system actors should refer victims to victims’ rights attorneys from first contact and regularly throughout to ensure access to justice and separation of duties.”

Paragraph d.

- a. “An indigent victim’s request for appointed counsel should presumptively be granted when:
 - i. the victim may be subject to deportation or other significant legal jeopardy relating to the victim’s participation in the case;
 - ii. the victim may be incarcerated or penalized relating to the victim’s participation in the case, including for asserting rt against self-incrimination, refusing to testify, or to otherwise cooperate;
 - iii. the prosecution does not adequately support the victim’s reasonable assertion of a privacy right, a right to restitution, or another significant right that is implicated in the proceeding; or
 - iv. the victim otherwise has a substantial need for disinterested legal advice or advocacy relating to the victim’s rights and participation in the proceeding.”

Again, this section compromises a judge’s discretion. A judge should have unbridled discretion to appoint counsel for an indigent victim, but it is improper to have a standard dictating a presumption on how a judge should decide the issue.

Standard 7.1 Options Within and Outside the Criminal Justice System

“The prosecution should encourage greater victim participation by:

- a. recognizing the benefit of alternatives to traditional criminal justice system interventions when victims' needs and express wishes can be met with less punitive intervention."

The language the Task Force discussed was that "System actors should advise victims of available alternatives to the traditional legal process. System actors, however, should not seek to coerce victims to participate in those types of programs."

The Reporters took the liberty of changing the language to now state that prosecutors should "encourage greater victim participation" in alternatives to the traditional criminal justice system "when victims' needs and express wishes can be met with less punitive intervention." This language completely overlooks the fact that the entire community is victimized by crime. Prosecutors do not just represent the victim, they represent all the people in their jurisdiction. While prosecutors should always consider the victims' needs and express wishes, prosecutors must also consider the wishes and needs of the community at large before deciding how to proceed on a given case. Moreover, the language in the latest draft does not limit consideration of alternatives to traditional criminal justice system interventions to "appropriate cases."

Prosecutors, law enforcement officers, probation and parole officers, and judges should not be referring victims to specific attorneys. The language the Task Force discussed was "all indigent victims should have appointed counsel where they have legal interests at stake that are not adequately protected." The language in the latest draft goes far beyond what we discussed, and raises ethical concerns for legal system actors.

Standard 7.3 Victim Participation in Restorative Justice Programs

- a. Jurisdictions should:
 - i. Support or establish restorative justice programs as one particular alternative to, or within, the criminal justice system to respond to the diverse needs and interests of victims.
 - ii. Design restorative justice programs to benefit victims and accused persons in ways that are not available in the traditional criminal justice system. Accordingly, such programs should be designed to increase benefits, including higher rates of satisfaction by victims in the achievement of justice, reduce recidivism by accused persons, increase perceptions of legitimacy and fairness, improve accessibility for persons who are part of marginalized communities, and encourage reporting of offenses by victims who have been ignored by the criminal justice system.
 - iii. Encourage victims to participate in such programs when it is to their advantage.
- b. System actors should consider eligibility for the broadest pool of potential participants and victims and should ensure that all those eligible can participate in restorative justice programs.
- c. Prosecutors should recognize and give weight to victims' preferences with respect to restorative justice programs. Prosecutors should not pressure victims to participate in restorative justice programs.

This section goes far beyond the mission of the Task Force, which is to revise criminal justice standards for the treatment of victims. Statements like, “Jurisdictions should design restorative justice programs to increase benefits, including higher rates of satisfaction by victims in the achievement of justice, reduce recidivism by accused persons, increase perceptions of legitimacy and fairness, improve accessibility for persons who are part of marginalized communities, and encourage reporting of offenses by victims who have been ignored by the criminal justice system” are political in nature and make broad assumptions about the unfairness of the criminal justice system. This statement assumes, without evidence, that victims are dissatisfied with the current system of justice and that certain victims have been ignored by the criminal justice system.

The Task Force discussed this paragraph and there was general agreement that while victims should be informed of available alternatives to the traditional legal process if those alternatives are appropriate, the victim does not and should not get to choose how to proceed in a given case. The prosecutor should consult with and get input from the victim, but it is the job of the prosecutor, who represents the entire community, to decide whether or not to make use of a restorative justice program. The statement in paragraph c. that “Prosecutors should recognize and give weight to victims’ preferences with respect to restorative justice programs,” directs prosecutors to “give weight” to victim’s preferences, but does not mention a prosecutor’s duty to take into account a crime’s effect on the community and the need to keep the community safe. These standards are supposed to be a guide for prosecutors on how to treat victims, not a forum to advance a political agenda.

Standard 10.1 Duties Prior to Trial or Plea

Paragraph d. ii. of this section states that at a minimum, the prosecution should “Emphasize that they do not represent the victim and that they can refer the victim to an independent lawyer to speak about their rights.”

Again, prosecutors cannot refer victims to specific lawyers. Doing so can create an ethical problem.

Paragraph e. of this section states, “Unless the public interest indicates otherwise, the prosecution should explore and utilize, alternatives to the criminal justice system, particularly when those alternatives are in the best interests of victims.”

This is a political statement advancing the use of alternatives to the criminal justice system. It presumes prosecutors should utilize alternatives to the criminal justice system unless the public interest indicates otherwise. While prosecutors should consider alternatives to the criminal justice system, there should never be a presumption of exploring and utilizing them.

In addition, the proposed standard makes no mention of a prosecutor’s duty to inform victims of truth in sentencing laws and laws that provide credits resulting in reductions of a defendant’s sentence. Victims have a right to know that in many instances a ten-year sentence does not mean a defendant will actually serve ten years. Additionally, a victim has the right to know when a defendant is getting released from the Department of Corrections. A prosecutor has a duty to inform victims of this information. The proposed draft makes no mention of this obligation.

Standard 12.1 Balancing the Rights of the Accused Person and the Rights of Victims

Paragraph c. states that "Prior to the entry of a plea of guilty by the accused, the judge should determine whether the prosecution has notified the victim of the plea and whether the victim had the opportunity to discuss with and give input to the prosecution, and whether the victim had any significant disagreements with the proposed plea and whether the victim would like to be independently heard on the matter."

The Task Force never discussed a judge's obligation to ask the victim if they would like to be independently heard prior to the entry of a plea of guilty. The Reporters added this language without any opportunity for discussion by Task Force members.

In conclusion, the final draft of the Revised Criminal Justice Standards for the Treatment of Victims was never circulated, discussed, or approved by a vote of the Task Force members. The ABA Standards on Victims of Crime Task Force worked extremely hard on the standards over the course of more than four years, and Judge Virginia Kendall has done an outstanding job of leading the Task Force, making sure everyone's voices are heard, while attempting to forge a consensus on the standards. Our work is not complete, however. We respectfully urge the Council to allow the Task Force to have an opportunity to discuss the final draft and attempt to achieve a consensus on the provisions in the document. We are confident the Task Force will be able to produce a document that will protect the rights of crime victims and serve the needs of every stakeholder in the criminal justice system.

Very truly yours,



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