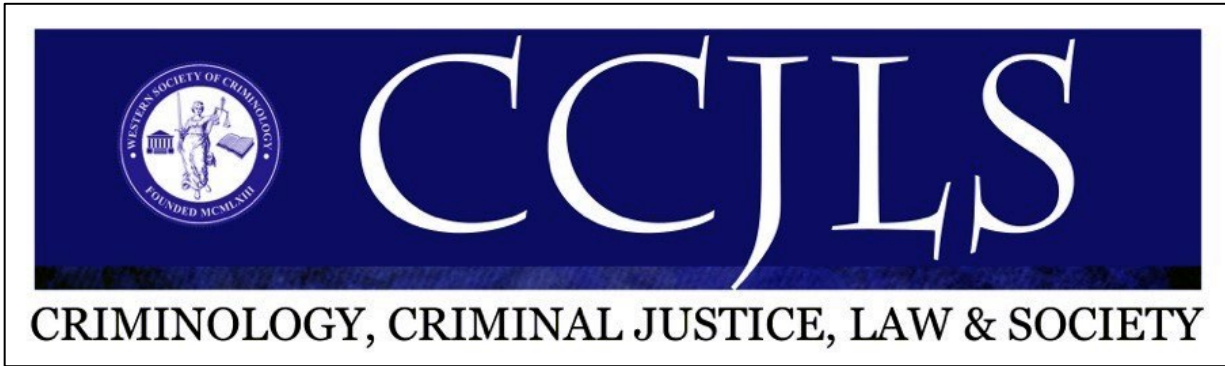




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Victim Impact Statements in the American Court System: A Legislative Exploration of Application Across the United States

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ABSTRACT AND ARTICLE INFORMATION

In *Payne v. Tennessee*, the right for victims to present victim impact statements, and to be heard, was granted as an avenue to remind jurors that victims exist as unique individuals. Despite concerns that victim impact statements may potentially impede the rights of defendants, their legal utilization has gone largely unchecked. To better understand this legal landscape, this article explores legislation across all 50 states, Washington, D.C., and the federal government to determine how victim impact statements are formalized across the country. These findings show that victim impact statements lack consistent implementation, providing unequal access for victims and defendants alike.

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Victim impact statements are statements provided by the victim of an offense that detail the impact that being victimized had on the individual (Cassell & Erez, 2011; Craig & Sailofsky, 2022; Paternoster & Deise, 2011). These statements can be presented orally or in a written format, either by the primary victim, a victim representative, or their family and friends (Kunst et al., 2021; Miller, 2013; West et al., 2019). The harm discussed in the statements typically focuses on physical, mental, emotional, or financial damages that occurred either as a direct result of their victimization or as a later consequence of their victimization (Cassell, 2009; Craig & Sailofsky, 2022; Kunst et al., 2021; Miller, 2013; Sheley, 2017).

Victim impact statements in the American courtroom started as an effort to provide an avenue for victim participation in the courtroom (Wemmers, 2009). The intersection between the victims' rights movement, the women's rights movement, and the increasingly conservative shift in criminal policy during the 1970s resulted in the introduction of victim impact statements, which aimed to not only create a true role for victims in the criminal legal system, but to also recenter victims as the harmed party in the offense rather than the state (Cassell & Erez, 2011; Holder et al., 2021; Myers & Greene, 2004; Richards, 2009; Schuster & Proppen, 2010; Trueblood, 2010; Wemmers, 2009). From 1980, when Wisconsin passed the first state-level victims' bill of rights, to 2004, when the federal Crime Victims' Rights Act was enacted, victims' rights within criminal legal proceedings became legally formalized—particularly, a victim's right to be heard, specifically via presentation of a victim impact statement, within the courtroom (Boateng & Abess, 2017; 18 U.S.C. § 3771, 2004; Trueblood, 2010).

The integration of a victim's right to be heard via victim impact statements in the American court system provides opportunities to increase a victim's sense of fairness in the conclusion of the trial, thus increasing their perceptions of procedural justice (Cassell, 2009, 2017; Giannini, 2010). This increased sense of procedural justice is of the utmost importance in preserving the legitimacy of the criminal legal system, as victims with a decreased sense of procedural justice are likely to be less cooperative with the system at a later date (Giannini, 2010). For this reason, the formalization of a victim's right to be heard, which is most commonly practiced as victim impact statements, has been described as the “most visible opportunity to have a voice,” (Englebrecht, 2011, p. 147) specifically in its ability to allow victims to both describe their perspective on their victimization, and to believe that their audience listened to them (Englebrecht, 2011; Van Camp & De Mesmaecker, 2014).

Despite growing interest in further understanding victim impact statements in the courtroom, no prior studies have examined the language used in legislation guiding their usage. This article sets out to determine how states, Washington, D.C., and the federal government have chosen to integrate victim impact statements into their criminal legal system. In doing so, this article hopes to determine where thematic trends overlap and differ across state legislation and how much structure victim impact statements have been given for their application.

Literature Review

The Right to Be Heard

The right to be heard refers to the victim's right to have a voice during at least one portion of the criminal legal process. This right, though vague in meaning, aims to provide victims with an opportunity to vocalize their perspective on their victimization, which can increase their sense of fairness in the legal process (Cassell, 2009, 2017; Cassell & Erez, 2024; Giannini, 2010). This is in alignment with the idea that a victim's sense of procedural justice will be increased when they are provided an avenue to have a voice, especially when victims feel that they were treated with dignity and respect, that the outcome of the trial was neutral, and that the outcome was determined in a trustworthy manner (National Initiative for Building Community Trust and Justice, 2015).

Victim impact statements function as an explicit opportunity for victims to include their voice in legal proceedings. By creating opportunities for their usage within the court proceedings, channels are present for victims who feel that sharing their story is necessary, whether they feel it is necessary for the court or their own purposes (Cassell & Erez, 2024). Prior literature often emphasizes the importance of the timing of victim impact statements to maximize the impact of the victim's voice. If the statement is given prior to the sentencing decision, then victims are provided an opportunity to feel that their voice impacted the outcome of the trial, whether or not that is the reality of the situation (Cassell & Erez, 2011; Sheley, 2017; Trueblood, 2010). Ultimately, victim impact statements function as a way to formalize the victim's voice as a standard portion of criminal proceedings.

Although the right to be heard is a largely unexamined area, studies conducted in the Netherlands have shown that victims who engage in the creation of victim impact statements have expressed positive feelings towards their participation (Kool & Moerings, 2004; Lens et al., 2014). These positive feelings towards victim impact creation then

lead to positive feelings towards the criminal legal process, therefore increasing victim perceptions of procedural justice. However, limitations to the increased perceptions of procedural justice do exist, as victims are often dissatisfied with the process when asked to modify the language of their perspective or when impact statements are prepared by criminal legal practitioners rather than the victim, which can change how their harm is described completely (Van Camp & De Mesmaecker, 2014). Even without the censorship of language, victims have also felt dissatisfied with the process, thus decreasing their sense of procedural justice, when they feel that their impact statement does not hold much influence over the court's decision (Van Camp & De Mesmaecker, 2014). Cassell and Erez (2024) also identified a therapeutic impact of victim impact presentation when examining the impact statements given by those victimized by Larry Nassar. Victims were able to direct their thoughts on their victimization towards both Nassar and the judge to express the harms they endured and their perceptions of Nassar. While prior literature has demonstrated how victim impact statements help victims develop positive perceptions of procedural justice, there are barriers that exist, preventing them from reaching their full potential.

The Right to Be Heard

Over the course of four years, the United States Supreme Court (hereafter “the Supreme Court”) established precedent for victim impact statement usage in capital trials, affirmed it, and promptly overruled it. Despite these decisions specifically relating to victim impact presence in capital trials, the decisions greatly influenced the existing statutory landscape, and subsequent development, of victim impact statement application in the courtroom. Therefore, these decisions made within the Supreme Court provide a map for the development, or lack thereof, of victim impact statement guidelines.

The 1987 decision in *Booth v. Maryland* established that victim impact statements cannot be considered in sentencing decisions, as it is an Eighth Amendment violation when jurors consider their contents due to their inclusion of irrelevant information. The Supreme Court felt that the inclusion of irrelevant information within capital trials would result in jurors arbitrarily and capriciously assigning capital punishment to defendants based on the contents of victim impact statements, thus violating the defendant's Eighth Amendment protections. Two years later in *South Carolina v. Gathers* (1989), this precedent was extended, as the Supreme Court ruled that victim impact evidence can be considered by jurors for sentencing if the contents help to further

prove the blameworthiness of the defendant; otherwise, the contents continue to violate the defendant's Eighth Amendment protections. In this extension to *Booth*, the Supreme Court emphasized that characterizations of the defendant, the crime, and the sentencing suggestions do not provide evidence of defendant blameworthiness, therefore making their inclusion in a victim impact statement unconstitutional. Although the *Gathers* decision stemmed from a prosecutor who kept making comments to the jury about how the defendant deserved to be sentenced to death for killing a religious man, the Supreme Court saw these comments as indistinguishable from the victim impact statements examined in *Booth*, thus counting the prosecutor's comments as one. However, this short-lived precedent was overturned by the 1991 decision in *Payne v. Tennessee*, which stated that the use of victim impact statements in capital courtrooms is not fully banned by the Eighth Amendment and instead serves to remind jurors of the individual uniqueness of victims, extending the right to consideration of one's uniqueness that is also provided to defendants (see also *Woodson v. North Carolina*, 1976). Although the Supreme Court said that the *Payne* decision would not overturn the precedent established by *Booth* and *Gathers*, their claim that victim impact statements are another way to inform jurors about specific harms prior to sentencing and their usage to inform sentencing decisions deviated from *Booth*'s ban.

Statutory Recognition of Victims' Right to Be Heard

Despite existing interest in how victim impact statements potentially influence courtroom outcomes, virtually no interest has been given to the extent to which states and the federal government have formalized victim impact statements within their legislation. Knowing how they have been implemented helps to provide an understanding of the extent of formalized victims' rights in state governments, as well as how the federal government has utilized its own precedent set in *Payne*. Only one study has examined the state adaptations of the federal Crime Victims' Rights Act (see Boateng & Abess, 2017), though a more in-depth understanding of the role of victim impact statements across the states is still severely lacking.

The federal Crime Victims' Rights Act, and subsequently the state adaptations of the Act, grant victims the right to “be heard.” This right is fundamental to modern victims' rights, as it helps victims to feel a sense of control in the aftermath of their victimization, thus providing them with a sense of procedural justice. Though this right is fundamental

to modern victims' rights, little is known about how states have taken this right and expanded it into the utilization of victim impact statements within the courtroom. Without a more thorough understanding of how victim impact statements are utilized in legislation, the right to "be heard" for victims is difficult to truly understand.

Current Study

To fill a gap in the understanding of how victim impact statements have been incorporated legislatively, this article aims to be the first to examine legal provisions to identify thematic trends across the United States through these two questions:

- 1) To what extent have victim impact statements been formalized in state and federal legislation? Formalization in this context refers to how fleshed out the concept of victim impact statements are within the legislation.
- 2) How has this formalization clarified what constitutes a victim's right to be heard?

Methods

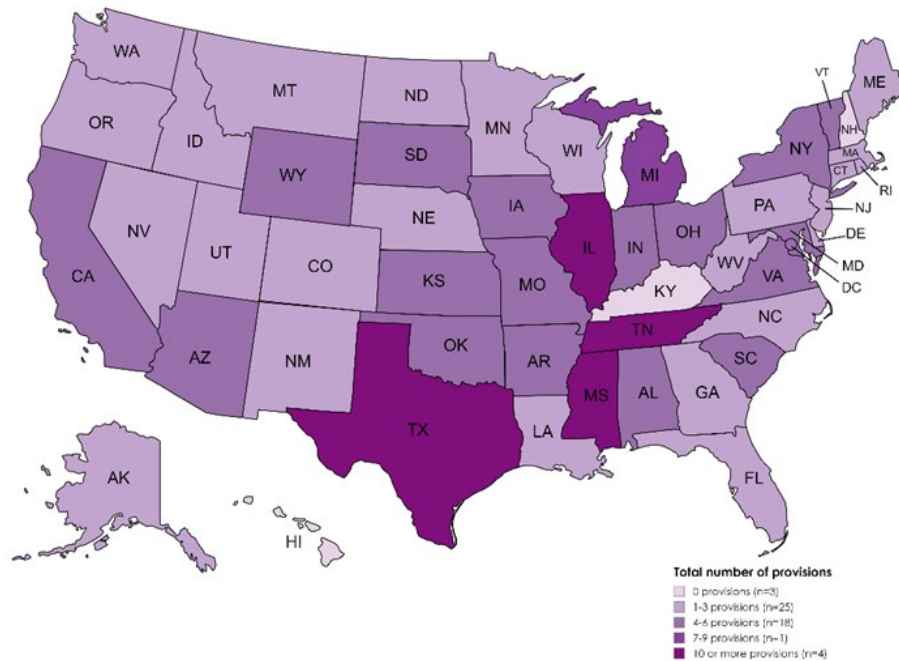
This study employs a doctrinal, inductive qualitative approach to both gather and analyze relevant legal provisions (Hutchinson & Duncan, 2012). A doctrinal, inductive qualitative approach is a legal research method where one critically examines all relevant legislation on a topic to better understand the scope of the law (Hutchinson, 2015; Hutchinson & Duncan, 2012). Relevant legal provisions for all 50 states, Washington, D.C., and the federal government were collected from Westlaw legal database using the search query "victim impact statement OR victim statement OR impact statement." The results were

then narrowed from the initial 262 legal provisions, removing any provisions focusing on victim impact statements in parole, juvenile court proceedings, or copyright infringement, leaving a remaining pool of 191 provisions. The relevant legislation collected was then analyzed for common themes occurring throughout. The provisions were first analyzed to determine if states defined what a victim impact statement was in their provision and if states specified the type of harm that victims could discuss in their statements. Once this was complete, the provisions were then analyzed using an exploratory approach to capture themes that had begun emerging when the initial themes were analyzed. The provisions were then grouped together by their most relevant themes to then discover potential regional trends in the United States.

Findings

Regional Distribution

Victim impact statements were determined to be present in legislation across the United States, with 47 states, Washington, D.C., and the federal government all having at least one relevant legal provision mentioning impact statements in some manner. The findings for this distribution are presented in Figure 1 below. Overall, there was great variation in how present victim impact statements are in legislation, ranging between zero (Hawaii, Kentucky, New Hampshire) and 16 (Texas) provisions. These provisions are primarily concentrated in the southern United States, with a total of 81 provisions, followed by the mid-west region ($n = 53$), the west ($n = 32$), and the northeast ($n = 23$). This distribution is largely skewed by the large number of provisions in some states, as 36 of the provisions in the south belong to Mississippi ($n = 10$), Tennessee ($n=10$), and Texas ($n=16$) alone.

Figure 1. *Provisional Distribution by State*

Thematic Trends

Defines Victim Impact Statement. A total of 13 states define in their provisions as to what they mean by a victim impact statement in some fashion. Four of these states (Arkansas, Massachusetts, Rhode Island, Wyoming) define them as a statement detailing the impact or injury the victim sustained when victimized by the offense (Ark. Code Ann. § 5-65-102, 2019; Mass. Gen. Laws Ann. ch. 279, § 4B, 1995; 12 R.I. Gen. Laws Ann. § 12-28-3, 2007; Wyo. Stat. Ann. § 7-21-101, 1990). Nine states include far more detail in their definition, expanding on what types of harm sustained the victim should talk about, how the victimization has changed their life, and any other information that the states may want victims to include. Five definitions include family or friends as victims of an offense, especially when the primary victim is deceased. Three states ask for information specifically on how the offense has impacted the primary victim and their families, without specifying if families constitute as victims (Miss. Code. Ann. § 99-19-155, 1987; Okla. Stat. Ann. tit. 21, § 142A-1, 2019; Tenn. Code Ann. § 40-38-203, 2010).

When Victim Impact Statements Can Be Included in the Legal Process. A total of 43 states, Washington, D.C., and the federal government specify where the inclusion of victim impact statements belong in the legal process. Twenty-six states and the federal government include at least one legal provision

specifying that victim impact statements can occur as part of the presentence investigation, therefore separate from the trial itself. Sixteen states and Washington, D.C. include at least one provision specifying that victim impact statements can be included prior to a sentencing hearing. Twenty-seven states and the federal government include at least one provision specifying that victim impact statements can occur as part of a sentencing hearing. Five states include at least one provision that states that victim impact statements can occur once the sentencing hearing is complete. Four states and the federal government allow victim impact statements to be included during plea deal proceedings. Lastly, four states simply state that victim impact statements can be included during any portion of legal proceedings that occur.

Several states also specify the allowance of victim impact statement presentation in certain circumstantial hearings. One such state is Kansas, which allows victim impact statements to be reviewed by the court at hearings involving potential departure from the typical sentence for a felony offense (Kan. Stat. Ann. § 21-6817, 2011). Pennsylvania allows victims to present or submit a victim impact statement in hearings to determine if life without parole is appropriate for the specific case being examined (18 Pa. Stat. and Cons. Stat. Ann. § 1102.1, 2012). In Idaho and South Dakota, victim impact statements can be included during special sentencing proceedings that are held to determine if capital punishment is

appropriate for the specific case being examined (Idaho Code Ann. § 19-2515, 2022; S.D. Codified Laws § 23A-27A-2, 1994).

The Right to Be Heard or Present Victim Impact Statements. Thirty-six states, Washington, D.C., and the federal government grant victims the right to “be heard” or present victim impact statements in the courtroom. Though most of the provisions provide this right by simply stating that victims have the right to be heard or the right to present a victim impact statement, some states provide more details. Seven states provide more information on who all counts as a victim with this right, including the family and friends of the primary victim, especially if the primary victim is deceased (Ariz. Rev. Stat. Ann. § 13-752, 2012; Cal. Penal Code § 679.02, 2022; Cal. Penal Code § 1191.1, 1993; Ga. Code Ann. § 17-10-1.1, 2005; Mich. Comp. Laws Ann. § 780.765, 2018; Or. Rev. Stat. Ann. § 137.013, 1987; 725 Ill. Comp. Stat. Ann. 120/4.5, 2023; 12 R.I. Gen. Laws Ann. § 12-28-4, 2001). Florida states that courts must inform victims of both their right “to be heard at all stages of criminal proceedings” and their right to make a victim impact statement at sentencing (Fla. Stat. Ann. § 960.0021, 2023). However, not all states provide the right in an unrestricted manner. Idaho grants victims the right to be heard during any criminal proceeding, unless being heard would result in injustice (Idaho Code Ann. § 19-5306, 1998).

Specifies Types of Harm. Thirty-four states and Washington, D.C. establish categories of harm that can be included in victim impact statements. Most states provide broad categories, typically focusing on any physical, psychological, or economic harms or traumas endured by the victim. However, some states do provide more in-depth explanations as to what they believe the victims should focus on. For example, some states expand on what they mean by economic harm and specify any wages the victim lost out on, the cost of physical healthcare, property damage, or any other forms of monetary loss directly caused by their victimization (Fla. Stat. Ann. § 921.143, 2004; La. Code Crim. Proc. Ann. art. 875, 2013; Mich. Comp. Laws Ann. § 780.763, 1985; N.D. Cent. Code Ann. § 12.1-34-02, 2019; Ohio Rev. Code Ann. § 2930.13, 2023; 730 Ill. Comp. Stat. Ann. 5/5-5-6, 2019; Wyo. Stat. Ann. § 7-21-102, 1991). States, however, tend to not expand on what they categorize as being forms of physical or psychological harm endured by victims, leaving those categories open to interpretation.

Specifies Offense or Offense Categories. Thirty-one states, Washington, D.C., and the federal government state what type of offense or offense

category for which victims can provide victim impact statements. Five states have at least one provision that specifies that victim impact statements can be used in homicide cases or in cases of felonies that resulted in physical injury or property damage. Four states have at least one provision that allows the use of victim impact statements in cases eligible for capital punishment or life without possibility of parole. Two states have at least one provision that allows the use of victim impact statements for drug offenses, offenses against a child, or domestic violence. Fifteen states have at least one provision that simply allows the use of victim impact statements in felony cases. Five states have at least one provision that specifies the use of victim impact statements for offenses that do not fit within the other categories.

One such state is Washington, which allows the use of victim impact statements in felony cases except for those eligible for capital punishment or life without possibility of parole (Wash. Rev. Code Ann. § 9.94A.500, 2021). Similarly, Nebraska also allows the use of victim impact statements in felony cases except for first degree murder (Neb. Rev. Stat. Ann. § 29-2261, 2023). South Dakota allows victims of vehicular accidents to present a victim impact statement, in instances of both death via vehicular accident and in instances of physical injury (S.D. Codified Laws § 23A-28C-1, 2020). Lastly, Kansas allows victims of human trafficking to present victim impact statements (Kan. Stat. Ann. § 22-3424, 2022).

Specifies Format of Victim Impact Statements. Thirty states and Washington, D.C. specify the acceptable formats in which victim impact statements can be made. All 30 states and Washington, D.C. specify in at least one provision that victims can provide a written victim impact statement. Twenty-five states specify that victims can make a victim impact statement orally. Six states allow victims to submit a video victim impact statement. Five states allow victims to submit an audio recording of their victim impact statement. Though most states grant victims the option to choose between providing a written or an oral victim impact statement, three states (Nebraska, Rhode Island, and Virginia) and Washington, D.C., allow victims to only provide a written statement, and two states (New York and Tennessee) specify that victims can choose between a written statement or providing a recording of their statement (D.C. Code Ann. § 23-1905, 2013; Neb. Rev. Stat. Ann. § 29-2261, 2023; N.Y. Crim. Proc. Law § 440.50, 2021; Tenn. Code Ann. § 40-28-504, 2022; 12 R.I. Gen. Laws Ann. § 12-28-3, 2007; Va. Code Ann. § 19.2-11.01, 2023).

If Victim Impact Statements Can Be Considered in Sentencing Decisions. Twenty-four states and Washington, D.C. allow judges and/or juries to consider information included in victim impact statements to determine an individual's sentence. Four states have at least one provision specifying that victim impact statements can be used not only to assist in determining appropriate sentencing but also to aid in determining if restitution is necessary for victims. Two states (Kansas and Tennessee) allow courts to utilize victim impact statements to determine what mitigating and aggravating factors exist for the individual who committed the offense (Kan. Stat. Ann. § 21-6815, 2019; Tenn. Code Ann. § 40-38-207, 2014). One extension of this utilization of victim impact statements is done by Illinois, which grants courts the ability to consider victim impact statements when determining whether the individual who committed the offense needs any sort of mental health services (725 Ill. Comp. Stat. Ann. 120/6, 2020). Mississippi justifies their use of victim impact statements as a factor to consider when determining an individual's sentence by stating that it helps in imposing a "just" sentence (Miss. Code Ann. § 99-19-153, 1987).

Gathers Requirement. Twenty-three states require that the information included within victim impact statements be "relevant," thus following the requirement sent by the *Gathers* decision that victim impact statements be relevant to sentencing. Though this requirement is largely vague across states, some states provide much more structure to this requirement than others. Idaho specifies that relevant information excludes "characterizations and opinions about the crime, the defendant and the appropriate sentence" (Idaho Code Ann. § 19-2515, 2022). Missouri and West Virginia require that victim impact statements relate solely to the facts of the offense committed, including its impact on the victim rather than victim's opinions (Mo. Ann. Stat. § 217.762, 2018; Mo. Ann. Stat. § 595.229, 2017; W. Va. Code Ann. § 61-11A-2, 2012). New York only allows the presence of a victim impact statement to be included in presentence reports if the statement is deemed to be relevant to the recommendations for the court (N.Y. Crim. Proc. Law § 390.30, 2019). This is similar to Ohio, which allows courts to redact victim impact information if it is deemed to be irrelevant (Ohio Rev. Code Ann. § 2930.13, 2023).

Allows Victim Perspective. Twenty-one states and the federal government allow victims to provide their personal opinion on their victimization, beyond just how they were specifically impacted. Eight states have at least one provision that allows victims to

express their needs for restitution as a result of their victimization. Thirteen states have at least one provision that allows victims to comment on what sort of sentence they find appropriate. Four states and the federal government include at least one provision that simply mentions that victims are able to provide their perspective on their victimization, which they specify is different from the harms experienced, without explaining what separates the two. Specifically, the federal government allows child victims to complete a form to express their perceptions of the consequences of their victimization to the court (18 U.S.C.A. § 3509, 2018). Virginia also allows victims to provide their opinion on any sort of disposition of the case, which can include anything from dismissal to sentencing (Va. Code Ann. § 19.2-11.01, 2023).

Ability to Cross-Examine or Rebut Victim Impact Statements. Fifteen states and Washington, D.C. include information in their legal provisions about the defendant's ability to cross-examine or provide a rebuttal to the contents of a victim impact statement. Most states allow defendants to cross-examine or rebut victim impact statements, as only four states say that victim impact statements are not subject to cross-examinations. However, the rules across the 11 states and D.C.'s provisions differ in application. For example, Texas and West Virginia allow defendants to provide evidence to rebut any false information, whereas New York only allows "relevant" information to be challenged (N.Y. Crim. Proc. Law § 380.50, 2021; Tex. Code Crim. Proc. Ann. art. 56A.158, 2021; W. Va. Code Ann. § 61-11A-3, 1994). Washington, D.C.'s provision allowing challenges to victim impact statements is also unique, as defendants are allowed to rebut the presentence investigation report, which is what allows the rebuttal of victim impact statements (D.C. Code Ann. § 23-103, 1989).

Simply References Victim Impact Statements. Seven states have provisions that do not fall under the other thematic categories while not falling into defined themes of their own, and thus simply mention victim impact statements within them. This largely takes the form of provisions stating that victim impact statements are included within the file of the defendants for the state's respective department of corrections (Mo. Ann. Stat. § 217.305, 2003; S.C. Code Ann. § 16-3-1555, 2006; 730 Ill. Comp. Stat. Ann. 125/14, 2015; Tex. Code Crim. Proc. Ann. art. 42.09, 2023). One such exception to this trend is Texas, as many of their provisions exist to develop and evaluate the victim services division in their aid to victims in their creation of victim impact statements (Tex. Code Crim. Proc. Ann. art. 56A.152, 2021; Tex.

Code Crim. Proc. Ann. art. 56A.160, 2021). Tennessee clarifies that nothing in their legislation requires that victims submit a victim impact statement (Tenn. Code Ann. § 40-38-208, 1994).

Specifies Victim Advocate Assistance. Five states include in their provisions that victims can be assisted by victim advocates in the preparation of their victim impact statements. Specifically, these provisions outline victim impact statements as part of the job description of victim advocates, whether it be by providing information about victim impact guidelines to victims or by aiding in the completion of the impact statement itself. Two states include a booklet or card to inform victims of their rights, including their access to a victim advocate to aid in the preparation of victim impact statements (Cal. Penal Code § 679.08, 2007; Tex. Code Crim. Proc. Ann. art. 56A.202, 2021). Three states simply state that victim advocates can assist victims in the preparation of their impact statements (Ala. Code § 15-18-171, 2015; Conn. Gen. Stat. Ann. § 53a-46d, 2017; Conn. Gen. Stat. Ann. § 54-220, 2018; 12 R.I. Gen. Laws Ann. § 12-28-9, 2001).

Community Impact Statement. Three states and Washington, D.C. allow communities, instead of just victims of an offense, to provide an impact statement. These provisions define community impact statements very similarly to victim impact statements, although the focus is the scope of harm across the community rather than the individual (D.C. Code Ann. § 23-1905, 2013; Ga. Code Ann. § 17-10-1.2, 2010; 18 Pa. Stat. and Cons. Stat. Ann. § 1102.1, 2012; 12 R.I. Gen. Laws Ann. § 12-28-4, 2001). Washington, D.C.'s provisions are interesting in regard to community impact, as it allows multiple communities to submit an impact statement when multiple communities have been impacted by an offense (D.C. Code Ann. § 23-1904, 2010).

Discussion

The incorporation of victim impact statements into legislation has been widespread across the United States, with only three states not including relevant legal provisions for their use in the courtroom. Across all 13 identified themes, the states, Washington, D.C., and the federal government have largely incorporated five aspects: (1) when in the court process impact statements should be included, (2) the victim's right to be heard or present an impact statement, (3) what types of harm victims should discuss in their statements, (4) the offense or offense categories for which victims can provide impact statements, and (5) what formats are appropriate for impact statements.

Therefore, victim impact statements have been largely formalized in legislation in a manner that assists victims in the creation of their impact statements rather than in creating barriers for their use. However, there is still a large lack of consistency across legislation, as there is no agreement on when in the court process impact statements should be included, if defendants are allowed to cross-examine or rebut impact statements, or even how victim impact statement is defined in the first place. Although there is some consistency present, there is still a large lack of agreement in legislative formalization.

How These Trends Inform the Right to be Heard

The right to be heard is a vague promise to victims, as illustrated by enacted provisions. Though most states, Washington, D.C., and the federal government guarantee victims their right to be heard, or to provide a victim impact statement, they do not necessarily elaborate on what the boundaries are for this right. As prior literature has indicated, this lack of consistency prevents victims from accessing consistent, structured opportunities to be heard in the courtroom and provides many opportunities for victims to feel completely dissatisfied with the court process (Van Camp & De Mesmaecker, 2014; Zappalà, 2010).

The examined provisions, however, do indicate that some states have begun to provide limitations on how far this right extends. For example, defendants being allowed to refute incorrect information or cross-examine victims on the contents of their impact statements means that some states do understand the need to keep information relevant as per the *Gathers* decision, although cross-examination may not necessarily be the best approach. Although this allowance provides some protections to the rights of defendants, it impedes on victims' access to being fully heard, thus limiting their sense of procedural justice. Victims may feel as if they cannot fully elaborate on the harm they suffered, which can impact how fair they view the criminal legal system to be.

Although some states may attempt to provide boundaries on the right to be heard, others have chosen to forgo them completely. Numerous states allow the inclusion of videos as applicable victim impact statements, although states lack guidelines on what is acceptable content within them, thus resulting in videos including sad music and childhood photographs to emotionally influence the court's decision (see Updegrove, 2020). Even with the inclusion of the *Gathers* requirement in just under half of all state's legal codebooks, a similar number of states allow the inclusion of the victim's perspective

that *Gathers* aimed to ban. Although this lack of restrictions may positively influence victim perceptions of procedural justice, as they have the ability to speak to the court freely, this freedom is provided at the expense of the rights of defendants.

A middle ground must be reached to provide victims with the opportunity to be heard, and thus play a role in the courtroom, without violating the defendant's Eighth Amendment rights. However, the current legal landscape does not achieve this goal. The findings of this study are then consistent with prior literature that determined that the victims' right to be heard is a nebulous concept, without any form of consistency across the nation.

Limitations

Although this article is the first to examine the thematic trends present in victim impact statement legislation, it is important to acknowledge its limitations. First, this study focuses on legal provisions collected between July and September 2023, so any developments that may have occurred afterwards are missing, especially any that may have impacted the study's findings. Second, the search query of "victim impact statement OR victim statement OR impact statement" could have potentially excluded legal provisions that refer to victim impact statements as "victim impact evidence," "victim impact testimony," or vaguely referred to impact statements as the right to be heard. Lastly, the ability to establish intercoder reliability in the interpretation of legislation was not possible as this was a project conducted by a single person. Despite these limitations, this study is the first comprehensive examination of victim impact statement legislation, making it an important contribution to the field.

Policy Implications

Based on these findings, policymakers should consider providing boundaries for what constitutes an appropriate victim impact statement. For example, Young (2016) has made a similar argument to be explicit about defining the contours of a victim's right to be heard in parole hearings. Similarly, Hellerstein (1989) recommends limiting the use of victim impact statements to language that is not overly prejudicial and to discussions of harm that were intended by the defendant—if a defendant intended to cause physical harm and not emotional harm, this limitation requires that victims solely describe the impact of the physical harm. Although Hellerstein's (1989) suggestion that victims do not describe the unintended harms is stricter than this study would recommend, the elimination of prejudicial language is necessary. The suggested boundaries, then, are that victims should be allowed to use language to describe the harms they

sustained but not language describing eternal damnation, assumptions about the defendant's capability for evil, or discriminatory language.

Additionally, while victim engagement in court is important, statements pointing to the defendant's blameworthiness can impede a defendant's constitutional rights. In particular, inflammatory or emotional narratives that present the victim's perceptions of the defendant as an inherently "bad" or "evil" human being, could lead to biases in sentencing decisions especially if court actors (judges or juries) give weight to these statements. Therefore, states should return to incorporating *Gathers*' (1989) expansion to the *Booth* (1987) decision in their legislation: Victims should be allowed to present to the court how they were harmed and demonstrate themselves as unique individuals, without presenting irrelevant information on their perceptions of the defendant to the courtroom. Returning to the *Gathers* decision would provide a balance between the victims' and defendants' rights.

Likewise, restrictions should be placed on the inclusion of video impact statements within the courtroom. As discussed by Updegrave (2020), allowing videos introduces too many variables that will bias the jury against defendants by nature of being a video. Allowing sad music, childhood photographs, and narration of these photographs into the courtroom introduces far more biases than the victim's personal perceptions in an oral or a written statement. Policymakers should consider placing restrictions on video impact statements as they may be overly inflammatory and not entirely appropriate (see *State v. Hess*, 2011, in which the New Jersey Supreme Court determined that the defendant's counsel was deficient for not objecting to video impact statements that had the potential to stir courtroom emotions and that the video itself needed the music, photographs of the victim's childhood and grave, and news segment about the victim's funeral to be redacted if the video is to be courtroom admissible).

In sum, the findings of this study have implications for both the right to be heard and for victims' rights in general. It is impossible to ensure that one's rights are protected when they are a broad, meaningless concept, thus making this an important issue. Further structure is required if victim impact statements continue to play a role within the courtrooms to prevent the limitation of defendants' rights in favor of the victims' voice. Since the field continues to strive to become more victim inclusive, it is necessary to ensure that legislators and court actors alike provide victims with an avenue to be heard, without encroaching on the rights of defendants.

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