



Survivor Rights Act

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Abstract

Establishing a crime victims' rights compliance office, civil remedy, and designating police officers as first responders will provide for the enforcement of crime victims' rights in Illinois. These enforcement mechanisms will be funded from fines and penalties imposed on convicted offenders and will not be a cost to tax payers. The enforcement of victims' rights will prevent victims from becoming further victimized by the system and be a stronger system of justice.

Introduction

The Crime Victims' Rights Act is intended for victims of violent crimes who file police reports for the purpose of bringing their offenders to justice. However, the enforcement of crime victims' rights to be informed, present, and heard throughout the criminal justice system remains unenforceable. Victims' rights experts agree that victims' rights cannot be made a reality until crime victims have the ability to redress their complaints and governments undertake measures to monitor the provision of victims' rights. Therefore, this paper proposes to establish the following criteria needed to improve and enforce victims' rights. First, the Illinois general assembly must amend the State statute, Rights of Crime Victims and Witnesses Act (RCVWA) to establish a Crime Victims' Rights Compliance Office (CVRCO) that would act as an investigatory agency with authority to receive, investigate, and attempt to resolve crime victim complaints and have the ability to assert victim's rights during the criminal justice process and impose consequences on offending agencies or officials found to have violated a victims' rights. Second, allow victims to file a civil remedy against offending agencies or officials found to have violated their rights as stated in the law. Third, designate police officers as first responders who will provide victims of violent crimes with information of their rights at the time they file a police report.

Although the purpose of the RCVWA was to implement, preserve and protect the rights guaranteed to crime victims by the Illinois Constitution throughout the criminal justice proceedings, it clearly stated:

This Act does not ... grant any person a cause of action for damages or attorneys fees. Any act of omission or commission by any law enforcement officer, circuit court clerk, or State's Attorney, ... or by any employee of any State agency or private entity under contract pursuant to Section 8 acting in good faith in rendering crime victim's assistance or otherwise enforcing this Act shall not impose civil liability upon the individual or entity or his or her supervisor or employer. (93-258, 2006)

Since, the intent of the Crime Victims' Bill of Rights Act was to grant victims the right to be informed, present, and heard throughout the criminal justice system, the Illinois General Assembly must amend the law to make victims' rights enforceable. The enforcement of crime victims' rights is extremely critical for Illinois residents and their

children and/or loved ones who become victims of violent crime to prevent them from becoming further victimized by the system.

According to Cynthia Hora, Chief, Crime Victims Services Division of the Illinois Attorney General's Office:

In 1984, the General Assembly found that when crime strikes, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal, and that the victim or witness is frequently forgotten or further victimized by the criminal justice system. Nevertheless, the single most important determinant of whether a case is resolved is the information and assistance provided by the victim or witness. In response to these findings, the General Assembly passed the Violent Crime Victims' Assistance Act to help change attitudes toward victims and enhance efforts to assist victims in any way possible. (Hora, 2009)

The Office of the Illinois Attorney General administers the VCVA program to agencies to assist criminal justice agencies in giving more personal attention to victims and witnesses; sensitize those working with crime victims; attempt to decrease the incidence of unreported crimes; assure victims are informed of the progress of their cases; and encourage public use of services.

Rape crisis centers are one example of State agencies who receives funding from VCVA because they offer court advocacy to victims of sexual violence. Court advocates claim they will work with the State's Attorney to keep the victim updated on the case and make sure victim's rights are respected. However, advocates are not attorneys and do not have the authority to make sure victims' rights are respected. Nor can advocates assert victims rights throughout the criminal justice system. Legal and court advocates presume the responsibilities and roles of an attorney based on what they say an advocate can do during the court process on their literature. The literature lists Crime Victims' Bill of Rights which states a victim's right to have an advocate or other support person in court but does not state their victims' right to retain an attorney, as specified in the State statute. Legal standing for crime victims is important to make victims' rights a reality. Without legal standing to enforce rights, there is no effective means for a victim to assert his or her rights during the criminal justice process, when time of often of the essence.

Crime Victims' Rights Compliance Office (CVRCO)

According to the testimony of Susan Howley, Public Policy Director, National Center for Victims of Crime, Howley stated:

We know from years of observation regarding victims' rights at the state level that meaningful enforcement is the key to promoting compliance. Victims regularly tell us they believe their rights are being violated, but too often we have no place to send them for specialized legal assistance. [Although, Howley's staff counseled a victim about advocating for herself, she said] This victim clearly needed a knowledgeable attorney to help her assert her rights, but her state has no victims' rights clinic (Howley, 2009).

The CVRCO should be established within a governmental agency, independent of the judiciary and given the authority to assert victim's rights during the criminal justice process. A CVRCO will act as a mediator between the victim/witness and criminal justice authorities. The CVRCO will be funded from the VCVA program. According to the Office of the Attorney General, "The VCVA program awards about \$8 million in grant funding to programs and agencies that provide services to victims of violent crimes" (Book, 2009-2010). Funding for the VCVA program is generated from fines imposed on convicted criminals and traffic offenders.

Civil remedy

The enactment of a penal code to impose a civil remedy will ensure compliance from the appropriate governmental agencies that are designated to assist crime victims throughout the criminal justice system. Not only will the penal code provide victims with a civil remedy of up to \$1,000.00 that will be assessed for any willful and/or malicious violation(s) of a victim's right(s), it will guarantee a victim's Constitutional right to due process. However, the fine will not be paid directly to the victim and instead will be used to finance the CVRCO. Since the CVRCO will provide victims with pro bono legal representation to assert their rights in court and mediate on their behalf to remedy any violation(s) of their rights throughout the criminal justice system, the rights listed under the RCVWA will be enforced and deemed "satisfactory."

First responders

Police officers have the responsibility of informing victims of their rights. By designating and training police officers as first responders, victims will be able to build trust and confidence in working with law enforcement officials directly, and receive information of their rights at the time they file a police reports. As first responders, police officers should receive priority funding from the VCVA program to assist in their training to a) improve their communication skills in working with victims of violent crimes, b) educate themselves on the rights, service and compensation to victims, and c) follow-up with victims on the information they provide. Additionally, law enforcement officers are professionals who can assist victims through the criminal justice system.

Federal funding

The Justice for All Act of 2004 (JFAA) added new victims' rights and modified some of the existing rights at the Federal level. In addition to the rights it provides, the Act authorized funding for the following:

1. Grants to state, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims' rights.
2. Grants to organizations that provide legal counsel and support services for victims in criminal cases, for the enforcement of crime victims' rights in federal jurisdictions, and in states and tribal governments that have laws substantially equivalent to the provisions of the [JFAA].
3. Training and technical assistance to state and tribal jurisdictions that wish to craft state-of-the-art victims' rights laws, and design compliance systems to ensure that those rights are enforced (Crime, 2006).

Senator Mike Crapo (R-ID) said, "We expect a steady increase over the next five years in this fund and I will aggressively work to make sure these resources go to the people for whom they were originally intended. Unfortunately, victims of violence

nationwide remain significantly underserved. Congress needs to honor the commitment it made to these victims 25 years ago” (Crapo, 2009).

Conclusion

Currently, the State of Illinois does not provide crime victims with any redress to promote compliance among law enforcement authorities or States attorneys with victims’ rights obligations, nor is there a victims’ rights clinic to help assert victim’s rights in Illinois. While victims’ rights remain unenforceable in Illinois and victims of violent crimes remain significantly underserved, the proposed amendment to enact a CVRCO, civil remedy, and designate police officers as first responders will provide for the enforcement of victims’ rights and result in a stronger system of justice.

Bibliography

93-258, P. (2006, 06 01). Retrieved November 11, 2010, from Illinois General Assembly:
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1970&ChapAct=725%26nbsp%3BILCS%26nbsp%3B120%2F&ChapterID=54&ChapterName=CRIMINAL+PROCEDURE&ActName=Rights+of+Crime+Victims+and+Witnesses+Act>.

Book, I. B. (2009-2010). Retrieved December 17, 2010, from Illinois Secretary of State:
http://www.cyberdriveillinois.com/publications/illinois_bluebook/attorneygeneral.pdf

Crapo, S. (2009). *The Crime Victims Fund Preservation Act of 2009*. Retrieved November 11, 2010, from National Association of VOCA Assistance Administrators:
<http://www.navaa.org/cvf/index.html>

Crime, O. o. (2006, April). *The Justice for All Act*. Retrieved December 17, 2010, from the Office of Justice Programs:
<http://www.ojp.gov/ovc/publications/factshts/justforall/content.html>

Hora, C. (2009, December). *Letter to Legislature*. Retrieved October 22, 2010, from the Illinois Attorney General's Office:
http://www.illinoisattorneygeneral.gov/victims/2009_letter_to_legislature.pdf

Howley, S. (2009, September). *Testimony of Susan Smith Howley*. Retrieved November 15, 2010, from the National Center on Victims of Crime:
<http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=46889>

