

# Your Victim Impact Statement...

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## Your Victim Impact Statement

Judges and juries care about what you have been through. It hasn't always been that way.

Victim advocate Jo Kolanda describes a sentencing hearing she attended in the 1970's:

*I went to court for the sentencing of a defendant who had been convicted of homicide by intoxicated use of a vehicle. With me were the mom and dad of the young woman he killed. The offender's parents, friends, and pastor told the court what a wonderful guy he was. The victim's parents asked the assistant district attorney to ask the judge if they could tell the court about their daughter. The judge said they could not because it would be inflammatory. Then he added that he couldn't understand why this simple traffic case was cluttering up his court calendar in the first place.*

Judges today are compelled by law to give victims and their family members an opportunity to address the court. Every state guarantees the right to present a written or oral statement in court addressing the impact of crime on the people most affected. Victim Impact Statements are not presented during the first part of a trial. The focus of the first part of a trial is to determine the factual events surrounding the alleged crime in an effort to determine guilt or innocence. It is not intended to draw out the feelings of the victims or their family members. The Victim Impact Statement is presented after a defendant has been found guilty of a crime and the court has moved into the sentencing phase of a trial. The right to present a statement – your right – is guaranteed by your state law or constitution. That right did not come easily.

## Acknowledgments

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Victim's Right to Speak, a Nation's Responsibility to Listen\*, written in 1994 by Ellen K. Alexander and Janice Harris Lord with the support of the U.S. Department of Justice, Office for Victims of Crime, and later published by the National Victim Center and Mothers Against Drunk Driving.

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For Mothers Against Drunk Driving

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## The Beginning

Every new idea begins as a seed in someone's mind. Victim Impact Statements were the idea of James Rowland, chief probation officer in Fresno County, California. Rowland believed it was unjust that convicted offenders could use every means possible to cast themselves in a more favorable light before sentencing, while victims and their families were gagged with silence. Rowland's opinion spread and became widely accepted. In 1982, President Ronald Reagan's Task Force on Victims of Crime filed its Final Report. Among the report's many recommendations was a proposal calling for legislation that would "require Victim Impact Statements at sentencing." That same year, the Federal Omnibus Victim and Witness Protection Act required Victim Impact Statements be considered in federal criminal cases. Individual states also began passing Victim Impact Statement laws.

That was only the beginning, however. Judicial debate followed on whether Victim Impact Statements violated the rights of offenders. The most heated debates involved death penalty cases where offenders had the most at risk. The debate reached the U.S. Supreme Court in 1987 when the court agreed to hear the case of *Booth v. Maryland*. Convicted offender John Booth had been found guilty of two counts of first-degree murder and other charges. In the Supreme Court hearing, Booth's attorneys argued that their client's Eighth Amendment rights had been violated by the Victim Impact Statements given by family members of the deceased at his trial. The court agreed. In his summation, Supreme Court Justice Lewis Powell stated, "...The admission of these emotionally-charged opinions as to what conclusions the jury should draw from the evidence is inconsistent with the reasoned decision-making we require in capital cases." The U.S. Supreme Court addressed the issue two more times, before finally concluding in the case of *Payne v. Tennessee* (1997):

*The States remain free, in capital cases, as well as others, to devise new procedures and new remedies to meet felt needs. Victim Impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities... Victim Impact evidence serves entirely legitimate purposes.*

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## To Give or Not to Give a Statement

Your right to tell the court how the crime committed against you or your loved one has affected you has been nobly won. Now it is up to you to determine if you want to exercise the right. The purpose of a Victim Impact Statement is to assure a balanced picture of both offender *and* victim in determining the most appropriate sentence for the convicted offender. It is your chance to tell the court and the offender what your life has been like since the crime. It may be the only opportunity you will have to communicate with the offender.

You retain the right, however, *not* to prepare a written statement and *not* to speak or read a statement in court. Victims choose to forego this right for several reasons. Some may have cultural or spiritual concerns. Others believe their statements won't matter, are afraid they lack the necessary writing or speaking skills, or fear retaliation from the offender. These are reasonable concerns, but all require additional reflection. *Cultural or Spiritual Concerns*: In the Buddhist faith, words spoken against someone are believed to result in bad karma. Therefore, some Buddhists choose not to participate in the criminal or civil justice systems, or may avoid speaking about the impact of the crime. Other faiths or cultures that seek peace or peacemaking as their ultimate goal, including many Native American tribes, may also avoid involvement in criminal procedures. If this is an issue for you, explain it to your victim assistance provider or prosecutor. They likely will pursue the case in traditional fashion, but may grant your request to avoid active involvement.

*It won't matter*: It is possible that the judge or jury will have decided how to sentence the offender before your statement is considered. While judges claim to endorse Victim Impact Statements, research has yet to determine the degree to which reading or hearing statements actually makes a difference at sentencing. Research *has* shown that judges use the financial information in statements when ordering the offender to pay restitution for all or some of the expenses related to the crime. A restitution order does not guarantee the offender will pay the amount ordered by the court, but it can be grounds for revoking probation or parole.

Considering the issue more broadly, every victim's physical, emotional, and financial reaction is unique. The court often is bound by predetermined guidelines at sentencing. If discretion is allowed, however, it is important that the judge have access to as much information as you can provide about how your life has been negatively impacted by the offense committed against you or your loved one. If you choose not to provide this information, the balance of information could be weighted in favor of the defendant. Members of the media often have substantial interest in crime victims. Victim Impact Statements and the stories they generate may help educate the public about the effects of

crime. Therefore, the public could become more sensitive to victims even if your statement does not influence the court.

*I'm not a polished writer or speaker:* Most attorneys are skilled at presenting eloquent statements. That's not your job. The goal of your Victim Impact Statement is to help the judge or jury identify with your loss. Your statement helps present you as an ordinary member of the community who did not deserve to be victimized by crime. One research project determined judges were more likely to read handwritten statements than those typewritten on a form. Wouldn't you? A handwritten statement is more personal. If you misspell words or your grammar is incorrect, it doesn't detract from the important points you make about your loss or pain. Judges and juries make some of the same writing errors and are not likely to hold it against you.

**The offender may retaliate:** That may be a reasonable concern, but it carries less weight

when you limit what you say to your personal reaction. You will not be repeating evidence already presented in the fact-finding phase of the trial. You will simply state how the crime has affected you. No one can take issue with that perspective. Your Victim Impact Statement will become an official part of the court record if it is written, and an oral statement will be transcribed into the record in most states. Those with access to the file include the judge, prosecutor, defense attorney, prison officials, probation officers, and parole officers. In fact, the official court record is public information and can be accessed by anyone unless sealed by the judge for a specific reason. However, your address and phone number are not required on statements. If you are concerned about the offender's ability to retaliate, discuss your fears with your victim assistance provider or prosecutor. Together you can decide if it is wise to prepare a statement.

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## What You Need to Know About Your Rights

States differ regarding the form of impact statements that may be presented. All states allow presentation of a written statement. Some states provide a form for your Victim Impact Statement, although you are not required to use it in most states. Many forms do not allow enough space for you to fully express yourself. Some instructions may be confusing. If you have been given a Victim Impact Statement form, ask your victim assistance provider if you are required to use it or if you may write your statement without using the form.

Use the form below to guide you when asking questions about your Victim Impact Statement. Check the correct answers so that you can refresh your memory as the trial date approaches.

Question

Yes

No

1. Will I be allowed to read or speak my impact statement at the sentencing of the convicted offender?
2. Will I be allowed to put my statement on video, audio, or film rather than appearing in court to present my statement?
3. Will I be able to discuss the physical impact of the crime on my life?
4. Will I be able to discuss the mental and emotional impact of the crime on my life?
5. Will I be able to discuss the financial impact of the crime on my life?
6. Will I be able to ask that the offender pay for the financial costs of the crime (restitution payments)?
7. Will I be able to offer my opinion about what should happen to the offender?
8. If the case is plea-bargained, will I be able to present my statement?
9. If the offender goes to prison, will my written statement be placed in the offender's prison records?

10. Will I be informed and afforded the right to prepare a revised statement when the offender comes up for parole or probation?

In addition to the questions above, ask your victim assistance provider and prosecutor if they have other information about Victim Impact Statements to share with you.

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## Let's Get Started!

If you have decided to prepare a Victim Impact Statement, you will want to give it substantial thought before presenting your final product. Whether presented in written or oral form, you probably will want to tell the court much more than court time will allow. But begin by writing *everything* that comes to mind. You can come back later and choose the most important parts. Remember not to repeat evidence that has or will be *presented in court*. *Your job is to tell the court how those facts affect you now.*

Following are a few *Dos and Don'ts* about Victim Impact Statements.

### **Do:**

- Do write simply and descriptively. Your goal is to help the court feel your loss. While no one can understand exactly what you are feeling, you can help others identify with your loss by using words that evoke feeling. Your words will help others in the court understand your experience. For example, which of the following statements give you more understanding?
  1. Every morning when I wake up, I think about my daughter.
  2. *Every morning when I wake up, I remember that (name of daughter) will not be in her chair at the breakfast table and that I no longer will need to buy Fruit Loops, her favorite cereal. My heart skips a beat every time I pass the Fruit Loops in the grocery store and I say a quick prayer that she doesn't miss me as much as I miss her.*

The second sentence goes beyond sentiment to convey a word picture. It will be more effective in an attempt to invoke understanding by members of the court.

- Do write in short sentences and short paragraphs. Leave space between paragraphs.
- Do ask someone to check your draft for spelling and grammar before you write your final statement.

### **Don't:**

- Don't vent your anger toward the court or the offender. Your goal is to express your hurt and your pain, not to blame. Assessing blame is the court's job. You must always show respect to the court. Unsuitable language will diminish the effectiveness of your statement.
- Don't describe what you want to happen to the offender while in prison. If your state law allows you to express your wishes for the sentence, do so – but don't get descriptive about harm you wish imposed.
- Don't ask for a confession from the offender. The offender's attorneys will advise their client not to confess to the crime, even if they are found guilty. If you have an interest in meeting with the offender, it may be possible to arrange a meeting at a later time.
- Don't write anything that is not true. In most states, the defendant, through his or her attorney, can question or object to statements not believed to be factual. In a few states, the defense attorney can cross-examine the victim about what has been said in the statement. Ask your victim assistance provider if this is allowed in your state.

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**As you consider how the crime has changed your life, you may use the following questions to guide you. Remembering and writing about something so painful may be difficult for you. Pace yourself and don't feel that you have to complete your draft in one sitting. Be gentle with yourself and take as many breaks as you need.**

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## The Physical Impact of the Crime

### **When you or your loved one are injured**

If you or your family member(s) was (were) injured, describe your treatment and recovery process. What preparations had to be made for your immediate care and your aftercare? Remember to include those injuries that may have healed.

What physical limitations do you live with now? Describe the physical pain involved in getting around, in getting to the courthouse. How much do the physical injuries affect your energy level? How permanent are your injuries? How have your injuries affected your ability to work and your ability to enjoy life? List things you can no longer do.

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## The Physical Impact

### ***When a loved one is killed***

If your loved one was killed, how has this affected you physically? Do you experience more frequent headaches? Have you gained or lost significant weight? Have you developed stress-related illnesses since the death? Have you visited a doctor more frequently? Do you experience pain that you did not suffer before the death?

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## The Emotional Impact

How do you feel emotionally when you wake up in the morning? What do you think about? How often do you cry? Describe the last time you cried. What do you think about when you go to bed at night? How difficult is it for you to sleep? How long do you sleep? Do you have nightmares? About how much of every day do you feel sad? Do you feel more tired than you did before the crime? Have you been diagnosed with depression, anxiety, post-traumatic stress disorder, or any other stress-related illness since the crime? Are you on any medications for those conditions? Have you considered suicide since the crime? Have you had difficulties with relationships since the crime? How has it affected your family life? Has your view of the world as a safe and fair place changed since the crime? Has your spirituality changed since the crime?

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## The Financial Impact

On the next page, you will find a chart that can be used to help tally up the financial aspects of the crime committed against you or your loved one. This information will be helpful to the court if the offender is ordered to pay restitution. For now, however, it will be helpful to record some general statements about the financial impact of the crime on your family and/or you. List expenses you have incurred that have not been reimbursed by insurance, Crime Victims Compensation programs, or other financial resources. List the amount you have spent on medical care, prescriptions, gas, automobile upkeep for trips to the doctor, rehabilitation, and counseling. Did you have funeral or burial costs that were not reimbursed? Have you lost income as a result of the crime? Have you had to change households because the crime was so upsetting?

The court can order the offender to pay you for crime-related expenses. This money is called *restitution*. While some judges are reluctant to order restitution, especially when the offender is going to prison and may have limited opportunity to earn money, most state law requires a judge to listen to your request and to consider restitution if your request is reasonable. The worksheet below may help determine the amount ordered. Remember to include only expenses for which you have not been reimbursed. You will need to provide proof of major expenses.

Expense	Expected Amount Future		
	Amount	to Date	Amount
Emergency transportation to the hospital			
Hospital expenses			
Physician expenses			
Prescriptions			
Physical or occupational therapy			
Medical supplies (Wheelchairs, ramps, special beds, over-the-counter medications, and treatment supplies)			
Replacement of personal health items destroyed, such as eyeglasses, contact lenses, hearing aids			
Vehicular damage			
Replacement of items in damaged vehicle (luggage, etc.)			
Replacement of clothing and personal items			
Counseling expenses			
Lost wages while you were attended to by doctors, dentists, rehab, or other counselors			
Travel expenses to doctors, dentists, rehab, or other counselors			
Lost wages to attend court-related meetings, hearings, the trial			
Crime scene clean-up			
Replacement of damage to the home during the crime			
Postage and long-distance phone calls to handle			
Crime-related business			
Crime-related child care			
Crime-related elder care			
Crime-related disability care			
Photocopying of necessary documents			
Notarizing of necessary documents			
Anticipated future physical health care			
Anticipated future mental/emotional health care			
Anticipated future rehab or other therapy			
Anticipated loss of wages for future care			
Anticipated travel expenses for future care			
Other			

**TOTAL**

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## Sentencing Recommendations

If your state allows you to recommend conditions of the sentence for the offender, what do you want to happen?

If you want the offender to go to prison, ask the victim assistance provider or prosecutor for the range of years that corresponds with each conviction. You will need to recommend a number of years within that range. In addition, you may request that the court order the offender to do certain things in prison or while on *probation* (monitored by a community program *rather than* going to prison) or *parole* (monitored by a community program *after being released* from prison). Violation of the conditions of probation or parole can result in the offender going to, or back to prison.

Following are some things to consider:

- no alcohol or other drug use
- submit to random alcohol or other drug testing
- alcohol or other drug treatment
- pay for mandatory urinalysis
- participate in Victim Awareness Classes in prison (if available)
- attend Victim Impact Panels or classes if returned to the community (if available)
- have no contact with the victim or the victim's family
- pay full or partial restitution (Some victims require only a small amount paid every week to remind the offender of the crime.)
- place the victim's photo in the prison cell (Judges may not order this unless the victim requests.)
- restrictions on where the offender can live in the community
- perform community service and/or make a donation to an agency that relates to the crime, such as Mothers Against Drunk Driving (In these cases, however, both the victim and the agency must agree to the community service placement before it is ordered.)
- electronic monitoring
- installation of breathalyzer on automobiles
- meet with the victim if both desire a meeting and after both have been
- professionally prepared
- write weekly letters from prison describing prison life (to the victim's family or
- to the offender's own family or children); and
- no Internet access.



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## Relationship with the Offender

Do you have any fears about the offender attempting to intimidate, harass, or cause you future harm? If so, what is the basis of your fear? What would you like the court to do to help you feel safer when the offender returns to the community?

*Remember: Charges should be filed against any person making a threat against you.*

*Call your prosecutor or the law enforcement agency where the crime was reported. Steps can be taken to prevent any future threats or violence. This may include getting a protective order against the offender.*

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## Refining Your Statement

That was a lot of work, wasn't it? It was probably not only physically taxing, but emotionally draining as well. Attempting to write about the impact of crime can bring it all back again, and it is usually difficult to find adequate words to describe what has happened to you.

Nonetheless, words are all you have at this point, so try to make the best of them. Your Victim Impact Statement should take no more than 10 minutes of reading or listening time to make the greatest impression. So here comes the hard part. Go over what you have drafted and underline or highlight the parts of each section that you think are most important in order to understand what you are going through. You do not need to shorten the Restitution Chart.

Now let's write a new draft with a few guidelines.

### Your Honor:

- *Write a couple of sentences about how difficult it is to prepare this statement and why.*
- Write about the physical impact of the crime.
- Write about the emotional impact of the crime.
- Write about the financial impact of the crime. Don't repeat what you have checked on the Restitution Chart. You can staple it to your statement. State the general categories of your most significant expenses and give the total amount.
- If allowed in your state, write about the sentence you think would be most appropriate for the offender. Do not describe specific harm, however.
- Look over what you have written and make changes that you believe will make things more clear and descriptive. When you are satisfied with your statement and it can be read or heard in 10 minutes or less, copy it on some of your own stationery, typing paper, or notebook paper.
- *Call your prosecutor or victim assistance provider. Ask where you should take or mail your statement, and when it is due. Be sure to make a few copies for yourself in the event your original gets lost or you need extras.*

# Victim Impact Statements and Children

Following are some guidelines for writing about the impact of crime on children in your family. Use this space to draft a statement as you did previously, and then revise it until you have it ready to present.

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## Physical Impact

Was your child injured or hurt as a result of this crime? Write about the type of injuries, medical treatment received, how long the injuries lasted, and, where applicable, how long the injuries are expected to continue.

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## Emotional Impact

How has your child been emotionally impacted by this crime? Has your child regressed developmentally as a result of this crime? How has your child's school performance changed? How has your child's relationship with family members and friends changed? Has your child required counseling? If so, how has it helped? If not, why not?

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## Victim Impact Statement for the Pre-School Child

Parents: If your child is unable to read, help him or her with the blanks at the top of the page and read the instructions out loud to your child. However, please do not tell the child what to choose or draw. Remember that your child should do this only if he or she indicates an interest. What is your name? \_\_\_\_\_ How old are you? \_\_\_\_\_ Do you go to pre-school? If so, what is the name of your school or mothers-day-out program? \_\_\_\_\_ How do you feel about what happened to you?

You can circle as many as you like.

What do you think should happen to the person who caused this crime?

You can circle as many as you like.

Go to jail.

Pay money to my family.

Get some help for his or her behavior.

Nothing.

Other ideas?

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## If you would like to draw a picture for the judge, you can do so.

If you don't want to draw a picture, that's OK too.

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## Victim Impact Statement for the School-Aged Child

What is your name? \_\_\_\_\_ How old are you? \_\_\_\_\_ What grade are you in? \_\_\_\_\_ Please write or draw anything you would like the judge to know about how you feel about what happened in your family. It can be a story, poem, picture, or anything you would like to convey to the judge. If you would like to do more than one, just ask for more paper.

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## Presenting Your Statement Orally

You may be given the opportunity to present your Victim Impact Statement orally at the sentencing of the offender which is sometimes referred to as Allocution. If you are not comfortable doing so or are unable to attend the sentencing, ask your prosecutor or victim assistance provider if your statement may be recorded on audiotape or videotape, or if someone else can read it on your behalf.

Here are a few things to think about if you are appearing in court or preparing a tape.

Courtroom attire should reflect the seriousness of the business that transpires there. While it is not necessary to wear a business suit, clean, well-pressed clothing is expected. Women should wear a dress or a skirt that is not too short and a blouse that is not designed with a low-cut neckline. Pant suits are also acceptable if they are not too informal. Men should wear long pants and a solid color shirt. Soft colors are more effective than vivid colors. When in doubt, choose a conservative outfit. Avoid jewelry that could detract from your face. Hair should be clean. Men should be clean-shaven. Your goal is to have the members of the court focus on your face, not your attire. If you choose to audiotape or videotape your Victim Impact Statement, be aware that it will be less effective than your physical presence in the courtroom. Your goal on tape should be to make yourself appear as sincere as possible to the court. It is crucial that the tape be of excellent quality. Look through the Yellow Pages for professional audio or videotaping studios and call to inquire about prices. Your product should not be long (no more than 5 to 10 minutes), and you should not have it edited. You may decide to record it several times before deciding on a final version, which will require additional studio time. If the cost is prohibitive, call the journalism or radio and television department of a local college to inquire about a student-made tape. Perhaps your prosecutor has audio or videotape equipment in the office. Remember, however, that quality lighting and skilled recording will make your product more effective.

If you choose to make a statement on videotape and your physical appearance has changed since the crime, you may want to hold a photo of yourself as you looked before the crime. If your loved one was killed, you may want to hold his or her photo as you are recorded. The predominant image on the video, however, should be your face. This will enhance the ability of the court to witness the sincerity of your statement. Follow the same rules for dress and makeup as noted above. Women who wear make-up may want to wear slightly more colorful lipstick and blush to accommodate for bright lights.

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## Community Victim Impact Statements

Communities and neighborhoods, as well as individuals, can be victims of crime. A known drunk driver with a reputation for unsafe driving can frighten an entire neighborhood. A neighborhood that prides itself on peace, safety, and quality of life for adults and children is violated by the anxiety caused by a drunk driver. Concerned citizens may wish to band together to form a community watch in an effort to determine the offender's driving schedule. Knowing the habits of a drunk driver provides residents with information that may help keep their children and property safe. In these cases, prosecutors are adopting the notion of community prosecution that involves neighborhood or community Victim Impact Statements. In Milwaukee, WI, a victim assistance provider works with individuals and neighborhood associations to gather information for impact statements that are presented at the sentencing hearing. Residents are sent information regarding the offender's length of incarceration after sentencing. According to the United States Attorney's Office in the Eastern District of Wisconsin, benefits of Community or Neighborhood Victim Impact Statements include:

- Obtaining information from the neighborhood about the impact of drunk driving on the community, providing valuable information to the court.
- Providing information to the community about incarceration of drunk drivers, increasing awareness of law enforcement efforts.
- Encouraging community residents to become involved because they recognize that what they do makes a difference.

A Community Impact Statement can be prepared several ways. Citizens can come together to draft a statement; individuals can write statements that can be edited and combined into one statement signed by all; or many residents can write short impact statements that are stapled together and presented to the court as a packet.

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## Victim Impact Statements at Parole Hearings

Most states allow Victim Impact Statements at parole hearings of offenders. Your original statement may not always be included in the convicted offender's corrections file even though the law states it should be. You will want to be sure it is filed, but you may also want to present an updated Victim Impact Statement when the offender comes up for parole. To assure that you will be notified, keep the parole board updated with your current contact information. Call the victim assistance provider in your prosecutor's office or ask your MADD advocate how to assure that you will be informed when the offender is eligible for parole. Your revised statement should include new physical, emotional, or financial consequences of the crime since sentencing was imposed. It should also include any evidence of unwanted communication you have received from the offender or the offender's representatives. If parole hearings are conducted a long geographical distance from where you live, a video or audiotaped statement may be prepared if allowed by state law.

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## Tips to Remember

- Prepare early to avoid the stress of last minute writing after the conviction.
- Focus on what the crime means to you physically, emotionally, financially and spiritually.
- Write and speak from the heart about your pain.
- Don't repeat evidence presented in the trial.
- The statement should take no longer than 5 to 10 minutes to read.
- Shorter and simpler is always more powerful.
- A legible, hand-written statement is acceptable.
- Consider including a photograph as part of your statement.
- You may ask your victim assistance provider for sample Victim Impact Statements, for example from *MADDvocate*. However, someone else's story is not your story. Don't use someone else's words rather than your own. Reading other statements can give you a general idea of what a good statement is like, however.

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## Endnotes

\* Alexander, Ellen and Janice Harris Lord, *Impact Statements – A Victim's Right to Speak...A Nation's Responsibility to Listen*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 1994.

\*\* Office for Victims of Crime, *President's Task Force on Victims of Crime: Final Report*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, 1982, 77.

\*\*\* Hillenbrand, Susan, *Victim Rights Legislation: An Assessment of Its Impact on the Criminal Justice System*, Chicago:

American Bar Association, 1987.

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