

NATIONAL CRIME
VICTIM LAW INSTITUTE

Crime Victims' Rights 101

South Dakota

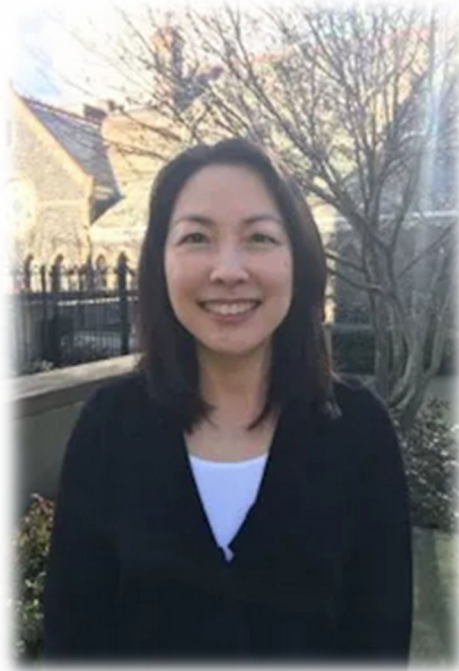
July 24, 2024

NCVLI actively promotes comprehensive and enforceable legal rights & access to knowledgeable attorneys.

Crime Victim Centered:

- Education
- Legal Advocacy
- Resource Sharing

Presenters



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Director of Victim Assistance and Training
National Crime Victim Law Institute

Amy Liu,
Senior Appellate Attorney
National Crime Victim Law Institute



- Welcome & Warm Up
- Introduction to Crime Victims' Rights
- Scenarios
- Wrap Up

Warm Up

If you had to choose between parallel parking an 18-wheeler in Times Square once
OR
losing all your phone contacts each week, which would you pick?



Photo from Wikipedia



Photo by Brett Jordan on Unsplash

The apostrophe
matters . . .





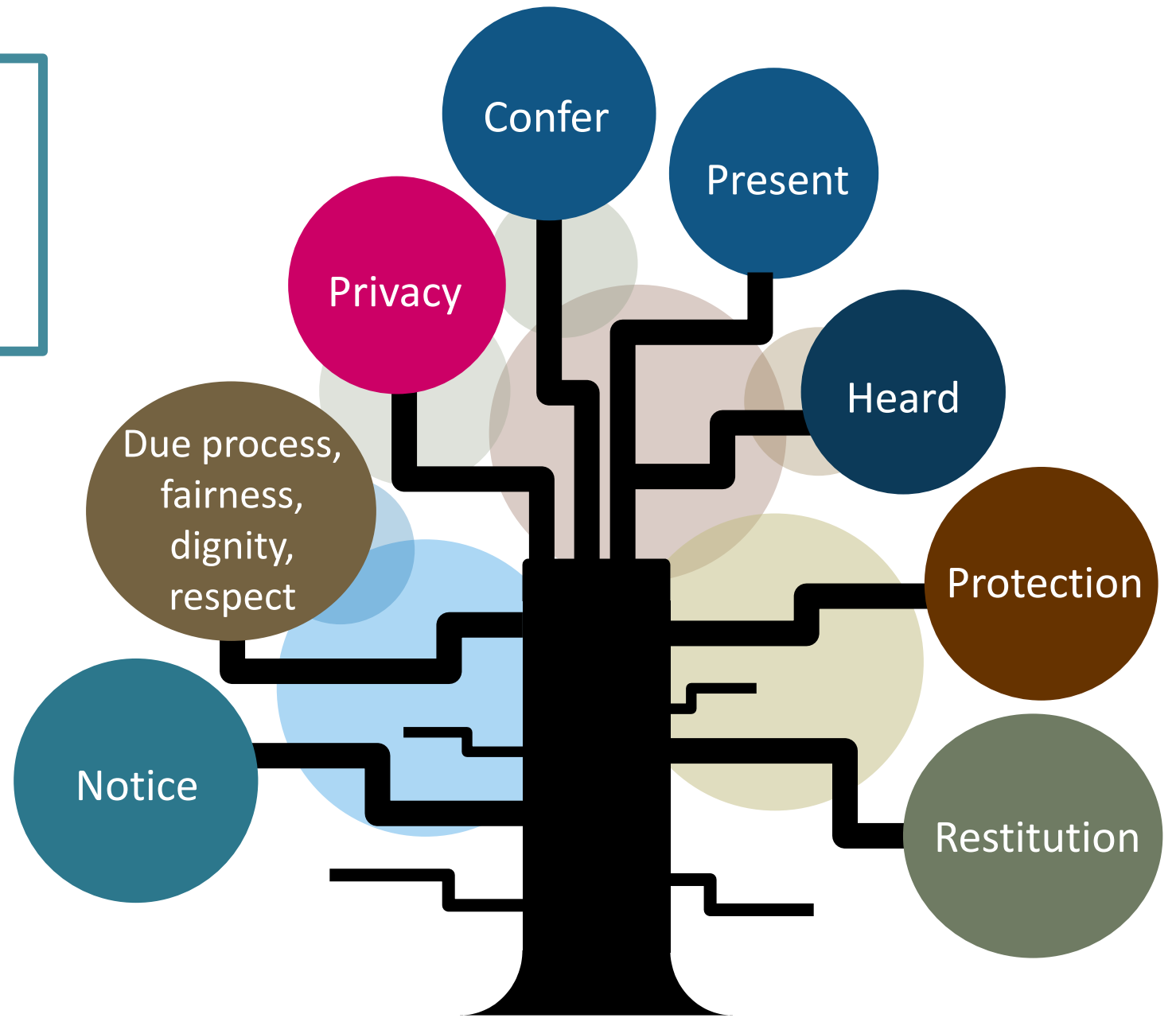
Using the chat box:

Type one crime victims' right that you know.

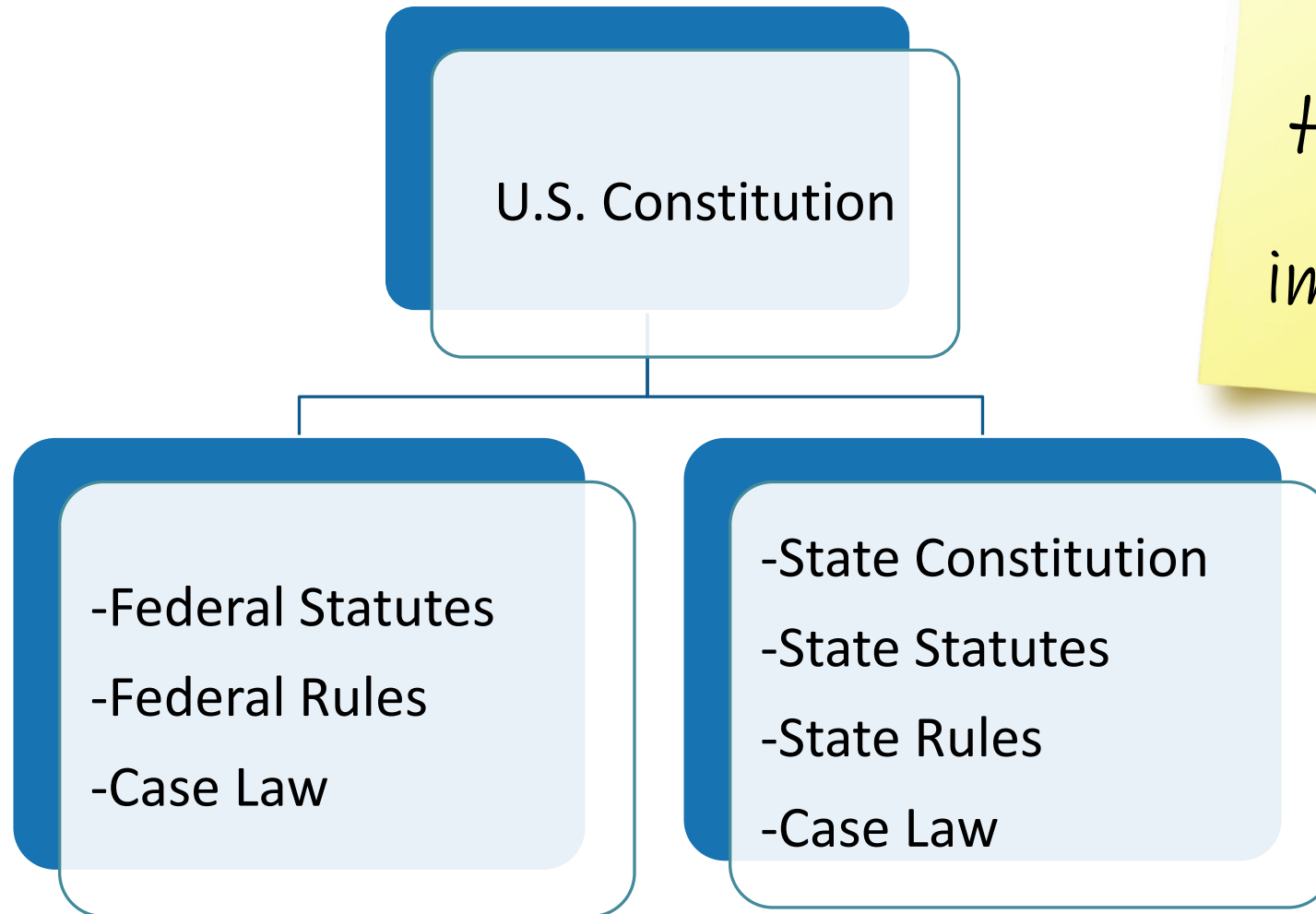
If you don't know any, type "none."

Common Victims' Rights

**This is just
the beginning**



Where to Find Victims' Rights?



Example: Federal Crime Victims' Rights Act

Be reasonably protected from the accused

Reasonable, accurate and timely notice of court proceedings

Not be excluded

Confer with the attorney for the government

Be reasonably heard at any proceeding

Full and timely restitution as provided in law

Proceedings free from unreasonable delay

Be treated with fairness and with respect for their dignity and privacy

Be informed of plea bargain or deferred prosecution agreement

18 U.S.C. § 3771

SD Constitutional Rights (Marsy's Law) (1 of 2)

Due process; treated w/ fairness & respect for V's dignity

Free from intimidation, harassment & abuse

Reasonably protected

Have the V and family's safety & welfare considered in bail & release decisions

Heard in any proceeding involving release, plea, sentencing, adjudication, disposition, or parole, or proceeding in which a V's right is implicated

Provide info re impact of the offender's conduct, and to have such info considered in sentencing or disposition recommendations

Full & timely restitution in every case

Proceedings free from unreasonable delay, and a prompt and final conclusion of the case

Be informed of these rights, and be informed that a V can seek the advice of an attorney w/ re the V's rights

SD Constitutional Rights (Marsy's Law) (2 of 2)

Rights “upon request”

Prevent disclosure of info/records that could be used to locate/harass the V and family, or which could disclose confidential/privileged info, and be notified of requests

Privacy, which includes right to refuse an interview, deposition or other discovery request, and to set reasonable conditions

Reasonable, accurate and timely notice of, and be present at, proceedings involving the criminal/delinquent conduct, including release, plea, sentencing, adjudication, disposition, or parole, or proceeding in which a V's right is implicated

Prompt notification of release or escape of the accused

Confer with the attorney for the government

Receive a copy of any pre-sentence report or plan of disposition, and any other report/record relevant to the exercise of a victim's right, except if confidential by law

Prompt return of the V's property

Informed of conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, scheduled release date, and the release of or escape from custody

Informed timely of post-judgment processes and procedures, to participate in such processes and procedures, to provide info to the release authorities to be considered before release decision, and to be notified of any release decision

Informed timely of clemency and expungement procedures, provide info, and have that info considered before a clemency/expungement decision

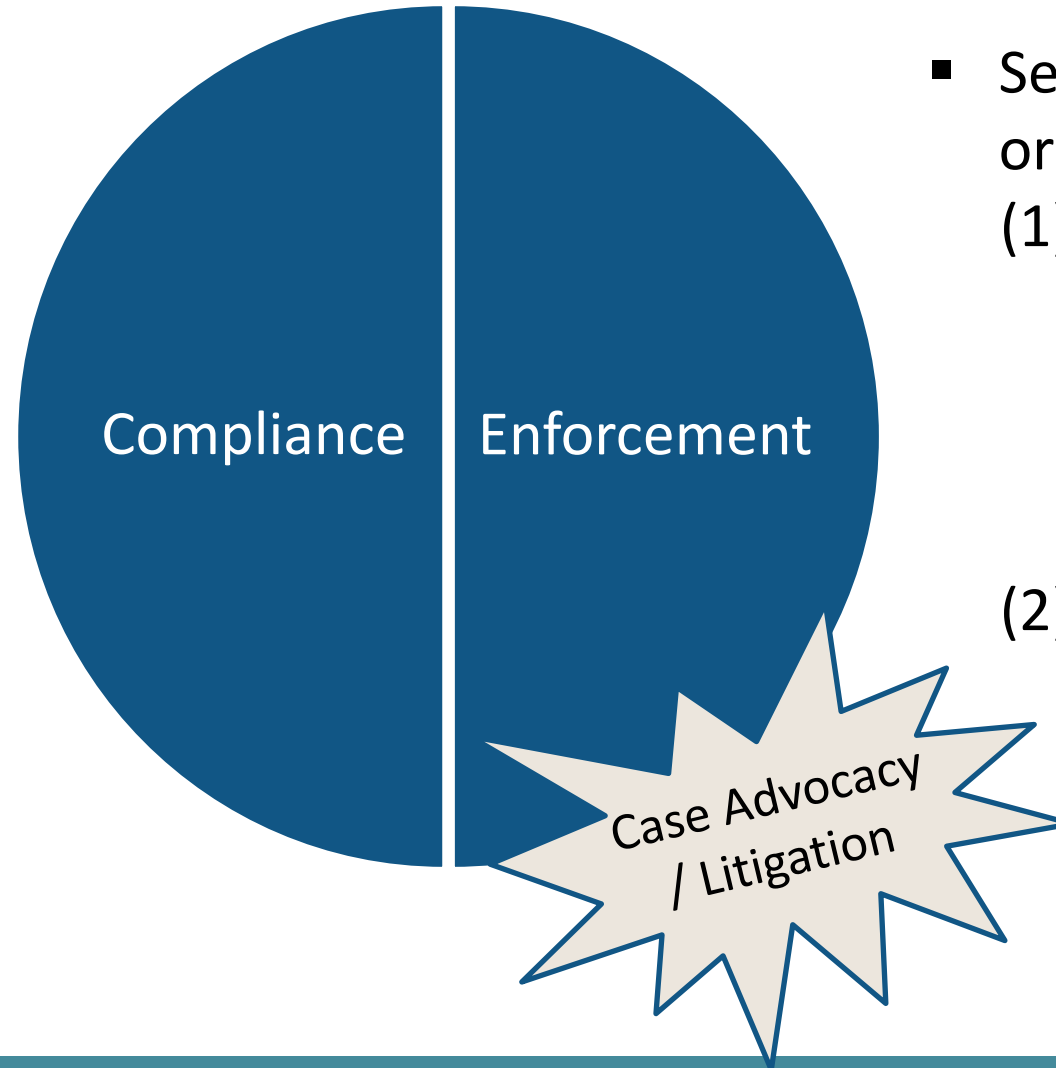


More than just words on paper



Compliance vs. Enforcement

- Fulfilling legal responsibilities to victims
- Making efforts to reduce willful, negligent or inadvertent failure to fulfill legal responsibilities to victims



- Seeking a judicial order that
 - (1) directs others to comply with victims' rights laws; and/or
 - (2) provides a remedy for a violation of those laws



Break Time



Photo by Alessandro Bianchi on Unsplash

Let's Look At One Right

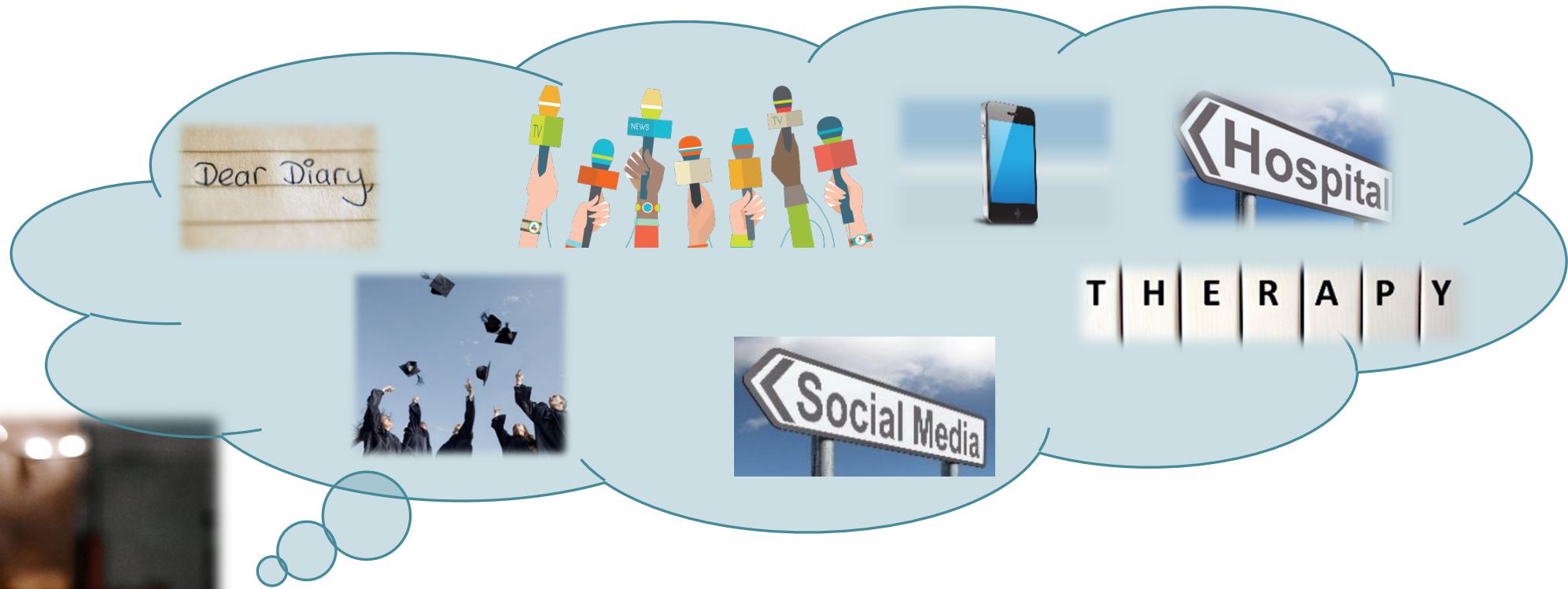


Why privacy?





Photo by kevin turcios, Unsplash



How might privacy be implicated in system interactions?



Examples of Moments During The Criminal Process Where Victims' Privacy May Be Implicated



Police requests for access to victims' clothing & phones in the emergency room



Information in police reports & charging documents



Pretrial subpoenas for victims' health records



Victim Impact Statements



Restitution Requests



Being survivor centered requires respecting that each survivor is unique and empowering them to build and then choose doors that are right for them.

How do we do that?

Scenario 1

During a sexual assault forensic exam, the victim says: “I think there might be things on my cell phone that could help the police. What should I do?”



Options &
Referrals

Scenario 2

Defendant subpoenas the victim's health records, arguing they will show that the victim did not describe their encounter as an assault and instead pursued further contact.



Victims' Rights

**Options &
Referrals**

Scenario 3

After meeting with law enforcement, the victim requested in writing that they be notified of all upcoming developments, including any change in the custodial status of the defendants, who had been arrested when officers responded on scene. The victim later calls law enforcement, extremely upset, after seeing one of the defendants in the parking lot of their local grocery store; they did not know that any of the defendants had been released from custody.



Victims' Rights

Options & Referrals



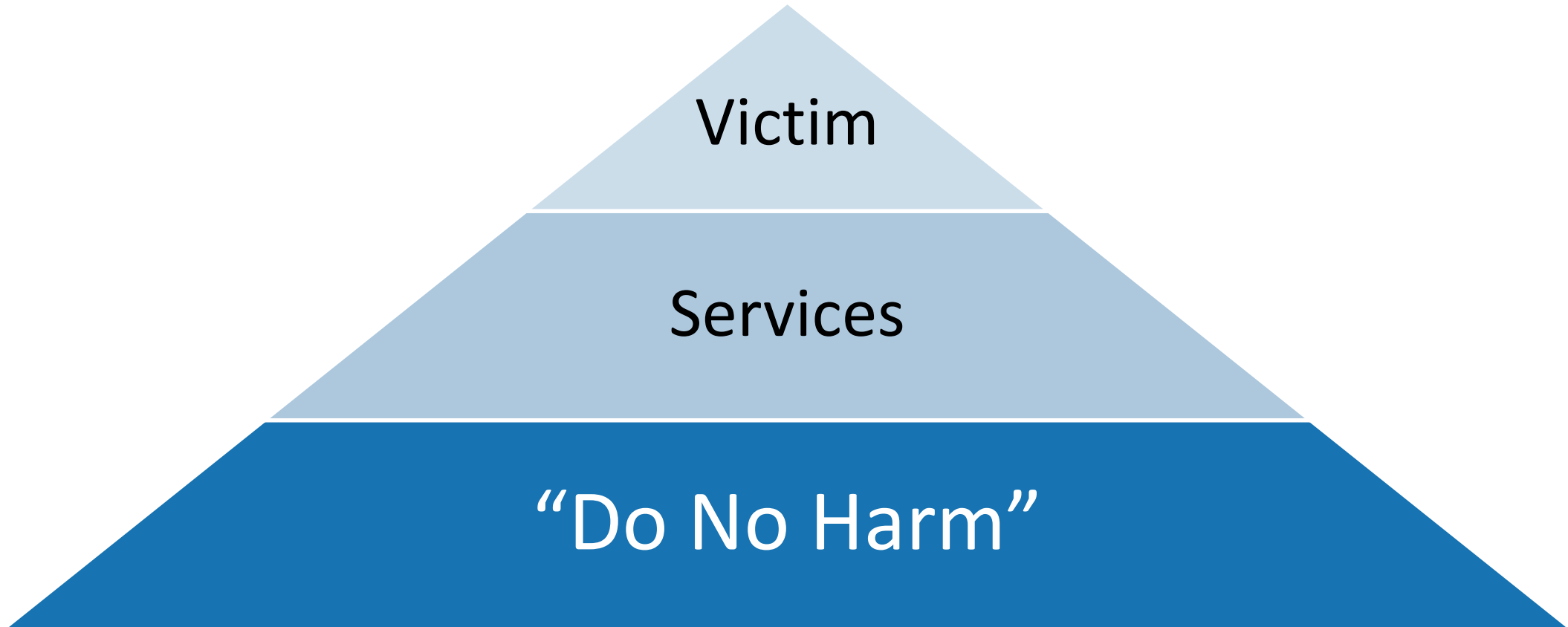


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Everything is
theoretically
impossible,
until it is done.

-Robert A.
Heinlein

Foundational Principle



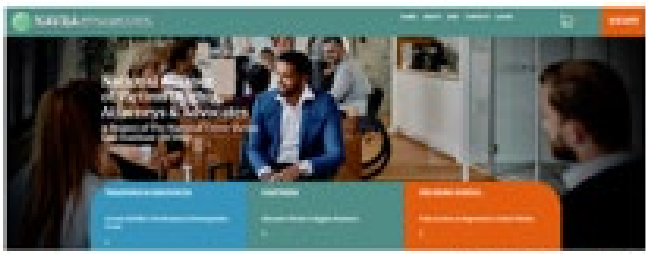
In House Policies & Procedures

- Have conversations now and develop, clarify or revise policies and procedures to protect victims' rights. They might include:
 - ❑ Policy to enhance training on victims' rights, including cross-departmental training.
 - ❑ Procedures that identify moments where a victim's rights may be implicated and steps to take in response.
 - For example, if you work in a hospital emergency department, what steps are staff expected to take when law enforcement enters the emergency room and seeks access to the victim's cell phone? A victim has a state constitutional right to privacy "upon request." A victim may not be aware of the existence of this right at the exact moment; the victim may not understand they have to explicitly request this right; or the victim may not have capacity to request at that moment while experiencing trauma. Steps in response to such an inquiry *might include*:
 - ✓ Presuming the victim has or will request the right to privacy and act accordingly.
 - ✓ Pausing and asking how might turning over the information/item impact or harm the victim?
- Prepare a list of no cost legal referrals for victims.

Questions/Comments



Victims' Rights: Additional Resources



Professional Resources

Victim Law Library

Rights Enforcement Toolkit

Victims' Resources

Know Your Rights

NCVLI's Know Your Rights / Outbooks provide a general overview of victims' rights.

[View Details](#)

Victim Resources Database

NCVLI's Victim Resources Database is a tool for victims with links to organizations that provide aid, information, and support directly to victims of crime.

[View Details](#)

TECHNICAL ASSISTANCE

AMICUS SUPPORT

TRAINING

And More!



Pro Bono Attorneys Make a Difference

The work of ensuring victims' rights in connection with the criminal justice system is supported by a team of passionate pro-bono attorneys who are willing to expand their practice to serve survivors for free or at a reduced rate.

Pro-bono opportunities include:

- Representing a victim to qualify a subpoena for privileged counseling records
- Providing legal assistance to survivors seeking criminal or civil protective orders
- Providing legal advice regarding victims' rights under post-conviction review
- Serving as legal counsel to an attorney firm
- And more.

Pro-bono attorneys or law firms will individual attorneys work closely with survivors by helping them to understand their legal system, to asserting and seeking enforcement of their victims' rights, outcomes.

Enroll as a Pro Bono Attorney today.

NCVLI



**RIGHTS ENFORCEMENT
TOOLKIT** that guides
practitioners through
the steps of asserting
victims' rights



National, regional,
local, and online
TRAININGS on
victim law



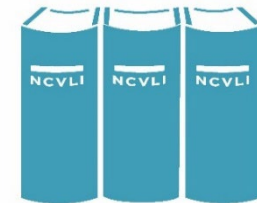
Basic victims'
rights information
in short video
QUICKTOOLS



Listings of victims'
rights and resources
by location and topic
in an online **VICTIM
RESOURCE MAP**

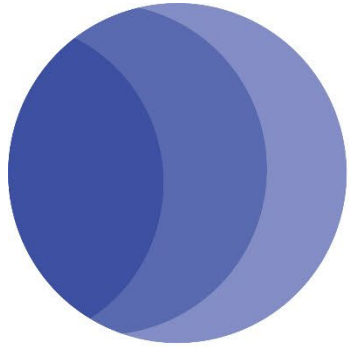


**TECHNICAL
ASSISTANCE** in
the form of legal
research, writing,
strategic advice,
and amicus curiae
briefing



**VICTIM LAW
LIBRARY** filled with
innovative legal
articles

Save The Date



CRIME VICTIM LAW CONFERENCE

NATIONAL CRIME VICTIM LAW INSTITUTE

May 19-21, 2025

Portland, OR

Now accepting presentation proposals on our website:

ncvli.org/crime-victim-law-conference/

