

CHAPTER 13

VICTIMS AND THE LAW

CHAPTER OUTLINE

I. Introduction

II. Who Is a Victim?

III. A Short History of the Victim

A. The Philosophy of Victim Compensation

B. Victims' Assistance Programs Today

IV. Victims' Rights Legislation

A. The Growth of Victims' Rights

B. "Son of Sam" Laws

C. Victim Impact Statements

V. Victim Statistics

A. The National Crime Victimization Survey

B. Violence Against Women

C. Young Black Male Victims

D. Elderly Victims

E. The Uniform Crime Reports

VI. Restitution

A. The Restoration Movement

LECTURE OUTLINE

I. Introduction

Discuss the case involving Jonathon David Bruce.

II. Who Is a Victim?

The concept is foreign to civil law, which speaks of one who is wronged or injured. The word victim in criminal law denotes someone against whom a criminal offense has been committed. Review and discuss book definition.

III. A Short History of the Victim

Early social norms, before the emergence of the criminal justice system, resorted to the support of family and friends in finding and exacting revenge against those who had victimized them. Eventually, crimes came to be viewed as offenses against society. Modern day philosophy has evolved to recognize the need for the system to focus upon the victim as someone more than a mere witness or the target of criminal activity.

A. The Philosophy of Victim Compensation

There are seven different schools of thought to support the need for victim compensation programs: 1) strict liability, 2) government negligence theory, 3) equal protection theory, 4) humanitarian theory, 5) social welfare theory, 6) crime prevention theory, and 7) political motives theory. Discuss these and the philosophy behind them.

B. Victims' Assistance Programs Today

These provide a wide array of services, including support, explaining the court process, escorts, assistance in completing victim compensation forms, educating the public, and providing transportation.

Discuss the National Organization for Victim Assistance (NOVA) and the National Center for Victims of Crime (NCVC), both located in Washington, D.C., with the mission of providing leadership in victim education, lobbying Congress, and holding conferences and workshops to assist local victim/witness assistance programs.

IV. Victims' Rights Legislation

Review some of the significant victims' rights legislation providing financial support for police, prosecutors and victims' services, rights of allocution to the victim or victim's family during sentencing, the concept of restitution, increased penalties against certain victims, and enhanced funding of victim-support programs.

A. The Growth of Victims' Rights

Some states have built the philosophy of victims' rights into statutes which call for specific rights of protection, notice, and reparation to victims. Some states have even ratified constitutional amendments to protect the rights of victims. Review California Constitution and statutes.

B. "Son of Sam" Laws

These laws were designed to prevent a convicted offender from capitalizing on his/her crime through various media deals. The first state legislation, from which the "Son of Sam" laws were first enacted, came from New York. Today, they exist in numerous states as well as in federal statutes. In most states, the victim must obtain a civil judgment for eligibility to file a claim. In other states, claim applications are made through the state's victim compensation program.

C. Victim Impact Statements

Such statements may take the form of written documents made a part of the probation department's pre-sentence report furnished to the court. These statements allow a victim or the family of a victim to describe their loss, suffering, and trauma experienced from the crime. Many jurisdictions also allow for oral allocution, that is, the right to make a statement in open court prior to the court imposing sentence. The impact of these on courts, however, is questionable.

Discuss the constitutional implications such impact evidence may have in the context of a capital murder offense, *Payne v. Tennessee*. (Notice how the court's recitation of the facts almost telegraphs the court's holding.)

Although generally acceptable, there are due process limits to the admission of victim impact evidence. Victim evidence that is unnecessarily duplicative or prejudicial may be excluded by trial courts. Trial judges must make the decision of allowing victim impact evidence after considering the relative value-added status of the victims.

V. Victim Statistics

Two major surveys provide for the annual reporting of crime in the U.S. These are the Uniform Crime Reports (UCR), which also incorporates the National Incident-Based

Reporting System (NIBRS). The other is the National Crime Victimization Survey (NCVS).

A. The National Crime Victimization Survey

Data obtained twice each year from a nationally representative sample, this provides the largest national forum for victims to describe the impact of crime on their lives. The survey is administered by the Bureau of Justice Statistics. Discuss some of its findings and whether the accuracy of these statistics can be supported or refuted with empirical data or theory.

B. Violence Against Women

Discuss reporting issues since violence against women is primarily caused by a current or former husband, cohabiting partner, boyfriend or casual date. The prevalence of stalking against women is also higher according to reports than it is against men.

C. Young Black Male Victims

According to both major crime reports, black males between the ages of 12 to 24 are victimized by violent crime at a significantly higher rate than any other population group. For instance, although they comprise roughly 1.3 percent of the population, they represent 17.2 percent of all single victim homicides.

D. Elderly Victims

Contrary to some beliefs, person 65 and older have the lowest victimization rates for all types of crimes. The reported crime rates are low and are declining. However, this age group appears to be more susceptible to crime motivated by economic gain, such as robbery, theft, burglary, and motor vehicle theft. This group is also more likely to be attacked by a stranger than other age groups. They are less likely to protect themselves in an attack, more likely to report crime, and the lowest income persons in this group are more prone to being victimized.

E. The Uniform Crime Reporting (UCR) Program

Administered by the Federal Bureau of Investigation, this program collects information on offenses known to law enforcement in two major categories: Violent crime and property crime. Outline the crime categories. The program uses the rule of hierarchy, which requires only the most serious offense in a multiple offense incident be counted toward the report.

Review statistics with students and discuss.

VI. Restitution

This concept recognizes that the crime victim often suffers financial consequences as a result of being victimized. It differs from those victim assistance programs backed by the government that were previously discussed. However, in this instance, restitution requires the offender to bear the financial obligation for compensating the victim for his/her loss. Such loss may be in the form of medical bills, lost wages, property damage, etc.

A. The Restoration Movement

Restorative justice builds upon the concept of restitution and other sentencing strategies to include community service, mediation, victim-related programs, etc., with the philosophy that all parties affected by the crime, the victim, the offender, and society, will benefit.

RESEARCH PAPER TOPICS

1. Many states have evidence rules that prohibit the introduction of certain types of conduct, statements, and offers made by the defendant to the crime victim. Do these exist in your state? Why is such evidence excluded if it is relevant to whether the defendant committed the offense? What policy reasons exist for excluding such evidence?
2. Find states that have specific laws which focus upon victimization of the elderly. What types of crimes or enhancements exist that protect elderly victims? Why are those laws necessary if the elderly have the lowest rate of victimization?

STUDENT ACTIVITIES

1. Attend a court proceeding where a sentencing takes place. Observe and report on a case that had a victim. Did the victim make a statement prior to sentencing? Did the defendant acknowledge the victim, show any remorse, or offer any apology? Did it appear from the sentence imposed that the court considered the victim's statement?

CASE STUDIES

1. Does the mandatory registration of adjudicated sex offenders have any effect to prevent the creation of future victims? A new study (April 2009) looks at cases and the effect of "Megan's Law."

www.ncjrs.gov/pdffiles1/nij/225402.pdf