

Crime Victims' Institute

College of Criminal Justice • Sam Houston State University

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Victims' Participation in Plea Bargain Negotiations

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In recent years, increased attention has been devoted to the plea bargaining process in criminal sentencing. This is primarily because more than 90% of all convictions in the United States are settled by a guilty plea (Dezember & Redlich, 2019; Johnson & Hernandez, 2021). A plea bargain is an agreement between a prosecutor and a defendant in which the defendant agrees to plead guilty in return for some concession from the prosecutor (Kutateladze et al., 2016). While legal scholars and social scientists have focused on the salience of plea bargaining in criminal proceedings (Bellin & Turner, 2023; Subramanian et al., 2020; Wilford et al., 2021; Yan, 2022), few have highlighted victims' participation in plea bargaining. Toward that end, this report will provide an overview of victims' rights, specifically concerning their participation in plea negotiations in criminal cases.

Significant strides have been made to provide rights to crime victims, resulting in various legislation, including the Victims' Rights and Restitution Act of 1990 (VRRRA) and the Crime Victims' Rights Act of 2004 (CVRA). Notably, much of this legislation has allowed crime victims to take an active role in criminal proceedings. For example, victims have been able to share the effects of the crime on their lives during the sentencing process, often done through preparing and delivering a victim impact statement (Craig, 2024; McDaniel, 2012). Scholars have noted that victim impact statements are essential considerations during all court proceedings (Craig & Sailofsky, 2022; Linares & Robinson, 2024), as the victim can provide all courtroom legal actors with a unique perspective that no other person can. Although the right to make an impact statement is permitted throughout the nation, when it comes to plea bargaining, the victim's participation varies widely by state. In federal cases, the CVRA states that victims have the right to be

“reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding” (18 U.S.C. § 3771(a)(4)) and “informed in a timely manner of any plea bargain or deferred prosecution agreement” (18 U.S.C. § 3771(a)(9)).

An Overview of Plea Bargaining

In the U.S., the number of misdemeanor and felony cases settled by a plea bargain continues to increase. By 2014, plea bargain convictions rose to 90% from 60% in the 1970s (Spohn, 2018). In fact, scholars have suggested that plea bargains are more common today than ever in U.S. history (Ortman, 2020; Reaves, 2013). Plea negotiations can occur at any time during criminal proceedings.

Often, the process begins when the prosecutor offers an individual the chance to plead guilty to either a lesser charge or the original charge but with a lesser sentence. Therefore, prosecutors significantly influence plea negotiations and, ultimately, the sentence that an individual may receive (Lynch, 2016). Once an agreement is reached, it is approved by a judge in court. Essentially, plea bargains have become an inevitable part of the U.S. justice system and are used to move cases more efficiently through the courts (Heumann, 1978; Tisdale & Votruba, 2024). Due to the emphasis on efficiency, many cases are settled before going to trial, which, depending on the state, may eliminate the victim's ability to confront the defendant.

Victims' Participation in Plea Bargaining

In states where victims are allowed to contribute to the plea bargaining process, the right to participate may be granted in a state statute or via an amendment to the

state constitution (Jones, 2014; Kercher, 2005; Pugach & Tamir, 2017). Participation typically occurs at one of two stages: (1) when conferring/consulting with the prosecutor during plea negotiations; or (2) in court, before the plea agreement is entered, either orally or written (Kercher, 2005). In some states, victims are given the chance to participate in both stages. When conferring with the prosecutor, the extent of victim participation varies. The variation includes broad participation, when prosecutors are required to consult victims throughout the entirety of negotiations, or limited participation, when the victim is only included at the end of the bargaining process once an agreement has been reached (Jones, 2014). Also, the varying interpretation of a victim's ability to consult or confer with the prosecutor may include a statement from the victim summarizing the impact of the crime (Kercher, 2005). This statement may also comprise sentencing recommendations from the victim. Ultimately, however, the final sentencing recommendation is left to the discretion of the prosecutor, as victims are not permitted to veto the sentencing recommendations proposed by the prosecutor in any state.

When a defendant and prosecutor reach an agreement during the bargaining process, the judge approves the sentencing recommendation in court. Before the judge can approve the agreement, the defendant has to plead guilty openly in court. In a majority of states, the victim can speak on the impact of the offense during this court proceeding. Moreover, in addition to the victim providing an impact statement, some states require prosecutors to report the victim's stance on whether the defendant should receive a plea agreement.

Victim Participation in Plea Negotiations by State

Table 1 summarizes victim participation in plea negotiation processes by state (Office for Victims of Crime, 2002; Kercher, 2005; Jones, 2014). The CVRA gives victims a federal right to appeal if they believe their rights have been denied ((18 U.S.C. § 3771(d)(3)). Table 1 shows that in Arizona, victims are granted the right to consult with a prosecutor before plea negotiations end. Moreover, victims can provide an impact statement in court before the judge approves a plea agreement. In Alabama and Indiana, prosecutors must tell victims or their family members about plea agreements, but only for felony offenses. Also, in these states, victims have the right to attend the hearing and

provide their impact statements to the court. In Maryland, prosecutors have to notify the victim of the terms of the plea agreement, and victims can voice their opinions in court. In order to receive the initial notification, victims are required to file a request to the state attorney's office. In Nebraska, the prosecutor must make every effort to speak with the victim about the negotiations before the plea agreement is finalized. Ohio allows victims to make an impact statement, and they are permitted to specify any objections related to the plea concession.

In Texas, before a judge can approve a plea agreement, they must inquire about the victim's participation in the bargaining process. Specifically, the judge will ask prosecutors whether they gave a notice to the victim about plea negotiations. Texas judges are also required to ask if the victims provided an impact statement. In Washington state, victims are granted the same notice but have the right to object to the plea agreement terms. The same terms or ability to confer with the prosecutor are given to victims in Wisconsin. Whether the victims participate in the process or not, the prosecutor can proceed with plea agreement terms at their discretion.

Contemporary Implications

Scholars continue to devote much attention to understanding the plea bargaining process and how it influences disparities in sentencing. Recently, social scientists have explored how plea negotiations may operate differently for defendants from marginalized groups (Berdejó, 2018, 2019, 2024; Kutateladze et al., 2016; Okafor et al., 2022). For instance, Frenzel and Ball (2008) suggested that minority defendants often have a higher level of mistrust in the justice system and are therefore hesitant about negotiating with a legal actor (i.e., prosecutor). Although much of the discussion concerning plea negotiations is centered on the defendant, there should be a shift in the discourse to highlight victims' participation in the process. At the same time, with recent discussions about the changing demographics of our nation's population, the discourse should also include how to better serve various victims who may come from various backgrounds (Vespa et al., 2020). This discourse would be better understood through an intersectional lens.

Crenshaw (1989) first discussed "intersectionality" in her pivotal work, *Demarginalizing the Intersection of*

Race and Sex. Crenshaw outlines how race and gender intersect to form unique experiences for women of color, particularly in the workplace, and how antidiscrimination laws overlook these experiences, due to the singular lenses often used in legislation development. Crenshaw explains how inequities can exist and persist when race and gender are viewed as separate categories, and that this misrepresents the experiences of those who deal with both racial and gender discrimination simultaneously. For example, treating a Black woman as solely a woman or solely Black will disregard the specific challenges Black women face as a group. Crenshaw argues that “intersectionality” is a prism that brings light to such dynamic experiences. Taken together, intersectionality captures the multiple axes of an individual’s identity and experiences (Knight, 2002; Ringrose, 2007). Examining an individual’s identity is complex, but that is where the importance lies. Thus, the intersectionality approach is more than just an intellectual exercise. Instead, it emphasizes the dynamic inequities faced by individuals from marginalized groups.

The intersectionality framework also focuses on the ways in which the combination of status characteristics affects an individual’s lived and perceived experiences. Prior criminological literature utilizing intersectionality often finds substantial differences in who is likely to be victimized and the support that victims may receive. Robinson and Chandek (2000) examined race and police responses to intimate partner violence incidents, and found that police were more protective of White female victims when compared to Black female victims, considering the disputant’s age. Specifically, incidents involving older White women were more likely to result in an arrest of the alleged perpetrator, but the same pattern was not reflected among older Black women victims. The authors also suggested that as individuals age, their social standing in society increases. However, this was not the case for older Black women, suggesting that even when subjected to victimization, their marginalized status may limit responses from the justice system. Furthermore, these findings suggest that support, particularly from formal agencies, may not be extended to all victims. This research highlights the salience of exploring the effects of combined characteristics on the justice and support provided to victims.

Implications for the State of Texas

In Texas, before judicial inquiries are made in the courtroom about victims’ participation in the plea bargaining process, every effort should be made by the prosecutor’s office to contact the victim. Given the recent discussion about using an intersectional lens to meet the victims’ needs, this contact may operate differently for various individuals based on their backgrounds. It may include additional training in the district attorneys’ offices regarding contact measures to get in touch with victims. For example, some victims may feel comfortable only speaking to individuals from similar backgrounds.

As previously stated, marginalized groups tend to have mistrust in the justice system or distrust based on previous experience. This could also be true for individuals encompassing numerous interwoven identities, including, but not limited to, race, ethnicity, gender, sexuality, nationality, age, and socioeconomic status (Hill-Collins, 2000). Therefore, training on contact measures should be emphasized in victim services units in state attorney offices. Moreover, importance should be placed not only on contact measures but also on the type of support (e.g., restitution, ability to speak in court, or providing a written impact statement to remain anonymous) granted to victims in all states. These suggestions should be included in any defined “good faith” efforts to contact victims of crimes, not only in Texas but across the nation.

Conclusion

This technical report addressed victims’ participation in criminal sentencing, particularly the plea bargaining process, which is often overlooked, as most attention to plea negotiations is placed on defendants’ and prosecutors’ roles. Although, in recent years, more legislation has highlighted victims’ input on negotiated plea agreements, victims’ participation varies by state. That is, based on state legislation and/or amendments to state constitutions, some victims may only receive notification of a plea agreement between the prosecutor and defendant, while other states may allow more substantive participation from the victim. Despite this variation in victims’ roles in plea agreements, it is imperative that any effort to improve participation and

align with victims’ rights should use an intersectional perspective to fully meet the needs of victims and/or their families. Needs frequently differ based on the victim’s background, and a “one-size-fits-all” approach may not always be the solution. Therefore, district attorneys’ offices, along with victim advocates, should be as inclusive as possible when providing services to victims of crimes. Fundamentally, this is the basis of a fair and equitable justice system.

Further Reading

Books and Articles

“A Victim’s Plea for a Fair Justice System: Providing Proper Disclosure Requirements Before Guilty Pleas” by Julianna Sousou. *Michigan State Law Review* (2021).

“A Victim’s Right to Confer under the CVRA” by Lauren Cook. *Campbell State Law Review* (2021).

“Crime Victims’ Rights during Criminal Investigations? Applying the Crime Victims’ Rights Act Before Criminal Charges Are Filed” by Paul Cassell, Nathanael Mitchell, and Bradley Edwards. *Journal of Criminal Law and Criminology* (2014).

“Perceptions of Plea Bargaining in Cases of Elder Financial Abuse” by Andrea Riederer and Jonathan Golding. *Journal of Elder Abuse & Neglect* (2020).

“The Invisible Revolution in Plea Bargaining” by Nancy King and Ronald Wright. *Texas Law Review* (2016).

“Transparency in Plea Bargaining” by Jenia Turner. *Notre Dame Law Review* (2021).

“Victims and Plea Negotiations” by Arie Freiberg and Asher Flynn. Palgrave Macmillan (2021).

“Victims’ Participation in an Era of Multi-Door Criminal Justice” by Beatrice Coscas-Williams, Hadar Dancig-Rosenberg, and Michal Alberstein. *Connecticut Law Review* (2024).

“Victims’ Rights in Plea Agreements Across Different Legal Systems” by Dana Pugach and Michal Tamir. *Oxford Research Encyclopedia of Criminology* (2020).

“Women and Victims: Neglected Voices in Plea Negotiations” by Monique Moffa, Arie Freiberg, and Asher Flynn. *The Research Handbook on Plea Bargaining and Criminal Justice*. Edward Elgar Publishing.

Websites

National Crime Victim Law Institute: <https://ncvli.org/>

Texas Attorney General – Services for Crime Victims: <https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims>

Table 1. Victim Participation in Plea Negotiations by State

State	Confer/Consult with Prosecutor	Victim Impact Statement and/or Obtaining Victim Viewpoint of Plea Deal	Details	
Alabama	X	X		ALA. CODE § 15-23-71 (2001)
Alaska	X	X		ALASKA CONST. art. I, § 24 (2002)
Arizona	X	X		ARIZ. CONST. art. II, § 2.1; ARIZ. REV. STAT. § 13-4423 (2000)
Arkansas			Various victim rights to receive notification about case developments and provide impact statement, not specific to plea bargained cases.	AR. CODE § 16-90-1112 (2020)
California	X (limited)	X (limited)	Prosecutors only required to inform victims of the plea deal. If victim wants to speak, they have to let their victim advocate know as well.	CAL. PENAL CODE § 679.02 (2001)
Colorado	X	X		COLO. REV. STAT. § 24-4.1-303 (2001); COLO. REV. STAT. § 24-4.1-302.5 (2001)
Connecticut	X	X		CONN. GEN. STAT. §§ 54-91C, -203 (2001)
Delaware	X	X		DEL. CODE ANN. tit. 11, §§ 9405, 9411 (2000)
Florida	X	X		FLA. STAT. ANN. § 960.001 (2001)
Georgia	X	X		GA. CODE ANN. §§ 17-10-1.1, 17-17-11 (2000)
Hawaii	X	X		HAW. REV. STAT. § 801D-4 (2000)
Idaho	X (limited)	X (limited)	Prosecutors only required to inform victims of the plea deal. Victim can voice opinion but have to submit request to prosecutor.	IDAHO CODE § 19-5306 (2000)
Illinois	X	X		725 ILL. COMP. STAT. 120/4.5 (2001)
Indiana	X	X		IND. CODE §§ 35-35-3-2, -3 (2000)
Iowa	X (limited)		Prosecutors only required to inform victims of the plea deal. Victim can voice views with an impact statement but not specific to plea bargains.	IOWA CODE § 915.13 (2001)
Kansas	X (limited)	X (limited)	Prosecutors only required to inform victims of the plea deal. Victims can voice opinion in court if personal interests are affected.	KAN. STAT. ANN. § 22-3436 (2000)
Kentucky	X	X		KY. REV. STAT. ANN. § 421.500 (2001)
Louisiana	X	X		LA. REV. STAT. ANN. § 46:1844 (2001)
Maine	X	X		ME. REV. STAT. ANN. tit. 17-A, § 1173 (2000)
Maryland	X (limited)	X	Victim must file notification request with state attorney office.	MD. ANN. CODE art. 27, § 770 (2000)
Massachusetts	X	X		MA. GEN. LAW ch. 258b § 4 (2023)
Michigan	X	X		6 MICH. COMP. LAWS § 780.756 (2001)
Minnesota	X	X		MINN. STAT. § 61A.03 (2000)
Mississippi	X	X		MISS. CODE ANN. § 99-43-27 (2001)
Missouri	X	X		MO. CONST. art. I, § 32; MO. REV. STAT. §§ 557.041, § 595.209 (2000)
Montana	X	X		MONT. CODE ANN. § 46-18-115 (2000)
Nebraska	X		Victim can voice views with an impact statement but not specific to plea bargains.	NEB. REV. STAT. ANN. § 23-1201 (2001)
Nevada	X (limited)	X (limited)	Victim has to contact the prosecutor regarding any concerns related to plea agreement.	NV. REV. STAT. § 178.5698 (2022)
New Hampshire	X	X		N.H. REV. STAT. ANN. § 21-M:8-k (2000)
New Jersey	X	X		N.J. STAT. ANN. § 52:4B-44 (2001)
New Mexico	X	X		N.M. STAT. § 31-26-4 (2023)
New York	X	X		N.Y. EXEC. LAW § 647 (2001)
North Carolina	X	X		N.C. GEN. STAT. § 15A-832 (2000)
North Dakota	X (limited)	X (limited)	Victims have to register with the state attorney's office to be informed and be able to make a statement in court.	N.D. CENT. CODE § 12.1-34.02 (2001)
Ohio	X	X	Victim can state any objections to the plea agreement.	OHIO REV. CODE ANN. § 2930.06 (2001)
Oklahoma	X (limited)		Prosecutors only required to inform victims of the plea deal.	OKLA. STAT. tit. 19, § 215.33 (2000)
Oregon	X	X		OR. REV. STAT. § 135.406 (1999)
Pennsylvania	X	X		18 PA. CONS. STAT. §§ 11.201, .213 (2001)
Rhode Island	X	X		R.I. GEN. LAWS §§ 12-28-3, -4.1 (2001)
South Carolina		X		S.C. CODE § 16-3-1535 (2023)
South Dakota	X	X		S.D. CODIFIED LAWS § 23A-28C-1 (2001)
Tennessee	X	X		TENN. CODE ANN. § 40-38-103 (2001)
Texas	X	X		TEX. CODE CRIM. PROC. ANN. art. 26.13 (2000)
Utah	X			UT. CODE § 77-38-3 (2023)
Vermont	X	X		VT. STAT. ANN. tit. 13, § 5321 (2001)
Virginia	X	X		VA. CODE ANN. § 19.2-11.01 (2014)
Washington	X	X	Victim can object to the proposed plea negotiation.	WASH. REV. CODE § 9.94A.080 (2001)
West Virginia	X	X		W. VA. CODE § 61-11A-6 (2001)
Wisconsin	X	X		WIS. STAT. § 971.095 (2000)
Wyoming	X (limited)		Prosecutors only required to inform victims of the plea deal.	WYO. STAT. ANN. § 1-40-204 (2001)

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