

**Office of the  
Attorney General**

**Idaho**

**Manual on the  
Rights of Victims of Crime**



**JUNE 1998**

(Reprinted April 2003)

**LAWRENCE WARDEN**  
Attorney General  
Statehouse  
Boise, ID 83720-0010  
[www.state.id.us/ag](http://www.state.id.us/ag)



# **State of Idaho**

## **Office of Attorney General**

### **Lawrence Wasden**

#### **INTRODUCTION**

For too many years, the criminal justice system ignored the rights of crime victims. In Idaho, that changed with the overwhelming voter ratification of the Victims Rights Amendment to the Idaho Constitution in November 1994.

The amendment is found in article I, Section 22 of the Idaho Constitution. Article I of the Idaho Constitution is entitled, “The Declaration of Rights.” It enshrines the rights Idahoans treasure the most. These rights include the right of free speech, the right of assembly, the right to a trial by jury, the right to keep and bear arms and, now, the rights of crime victims.

The Idaho Legislature, in its first session following ratification of the amendment, enacted House Bill 175. This legislation amended Idaho Code § 19-5306 relating to victims’ rights. Its primary purpose was to create statutory provisions for victims’ rights consistent with the constitutional amendment passed by the people of Idaho.

I hope this manual is helpful to crime victims. Our criminal justice system can be complex and confusing for many people. Being thrust into the system, on top of the emotional and physical trauma many crime victims suffer, can be overwhelming.

This manual may also be of assistance to prosecutors and judges who are working to implement the constitutional amendment and Idaho Code § 19-5306.

This manual does not cover all victim-related issues, only those dealing with procedural rights. Idaho law also addresses issues of victim compensation. Space does not allow for a discussion of victim compensation laws in this manual. For further information on victim compensation, please see title 19, chapter 53, Idaho Code, and title 72, chapter 10, Idaho Code.

My Intergovernmental and Fiscal Law Division has prepared this manual for your review. If you have questions, feel free to call your city or county prosecuting attorney, or my office at (208) 334-2400.

**LAWRENCE G. WASDEN**  
Attorney General

# TABLE OF CONTENTS

- Relevant Statutes**.....1
- Questions And Answers**.....3
- Who Is The Victims’ Rights Law Designed To Protect?**.....3
  - 1. To Whom Does The Victims’ Rights Law Apply? .....3
  - 2. Who Is A Victim? .....3
  - 3. What Does The Word “Crime” Mean In This Law? .....4
  - 4. What If The Victim Is A Minor? .....4
  - 5. Who Are Considered Victims In A Homicide? .....4
- What Crimes Are Covered By Art. 1, Sec. 22 Of The Idaho Constitution And Idaho Code § 19-5306?** .....4
  - 6. Does A Person Have To Be The Victim Of A Violent Crime To Receive Victims’ Rights? 4
- What Are Victims’ Rights?** .....4
  - 7. When Do Victims’ Rights Begin? .....4
  - 8. Are Victims Allowed To Attend Court Proceedings? .....4
  - 9. How Does The Victim Know When The Offender Is Going To Trial, Receives Sentencing, Appeals, Or Is Up For Parole?.....4
  - 10. Who Is Responsible For Notifying The Victim Throughout The Court Proceedings? .....5
  - 11. Does The Victim Have The Right To Make A Statement To The Court? .....5
  - 12. Can The Prosecutor Enter Into A Plea Agreement Without The Victim’s Knowledge?.....5
  - 13. How Can A Victim Influence The Sentence Given The Criminal Defendant?.....5
  - 14. Is A Victim Allowed To See A Copy Of The Presentence Report? .....5
  - 15. Will The Victim Be Notified If The Defendant Escapes Or Is Released From Custody Prior To Final Conviction? .....5
  - 16. What Can A Victim Do If The Offender Does Not Receive The Sentence That The Victim Feels The Offender Deserved? .....6
- What Can Victims Do If Their Rights Are Violated?** .....6
  - 17. Can Civil Action Be Taken Against The Prosecutor, Court Or Police If The Prosecutor, Court Or Other Authority Fails To Comply With The Provisions Of Idaho Code § 19-5306 Or Art. 1, Sec. 22 Of The Idaho Constitution? .....6
  - 18. If The Courts Do Not Comply With The Victims’ Rights Amendment, Can The Court’s Decision Be Overturned?.....6
  - 19. What Remedies Are Available To A Victim For Violation Of Rights Outlined In Art. 1, Sec. 22 Of The Idaho Constitution Or Idaho Code § 19-5306? .....6
- How Can Victims Best Serve Themselves And Their Families During The Court Proceedings?** .....6
  - 20. What Is The Easiest Way For A Prosecutor To Keep The Family Of A Homicide Victim Informed During The Court Process?.....6

21. What Does A Victim, Who Is Afraid For His Or Her Life, Do To Keep Informed Of The Whereabouts Of His/Her Offender? .....7

22. Where Can A Victim Turn If The Victim Has Questions Regarding Court Procedure And Process? .....7

23. Does Idaho Law Provide For The Financial Compensation Of Crime Victims? .....7

**Glossary Of Terms Used In The Criminal Justice Process.....8**

**Court Decisions Interpreting Constitution And Statutes Related To Rights Of Victims Of Crime.....12**

## RELEVANT STATUTES

### CONSTITUTIONAL PROVISIONS – IDAHO CONSTITUTION

#### **Art. 1, sec. 22. Rights of crime victims.**

A crime victim, as defined by statute, has the following rights:

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.
- (8) To refuse an interview, ex parte contact, or other request by the defendant, or any other person acting on behalf of the defendant, unless such request is authorized by law.
- (9) To read pre-sentence reports relating to the crime.
- (10) To the same rights in juvenile proceedings, where the offense is a felony if committed by an adult, as guaranteed in this section, provided that access to the social history report shall be determined by statute.

Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute. This section shall be self-enacting. The legislature shall have the power to enact laws to define, implement, preserve, and expand the rights guaranteed to victims in the provisions of this section.

### STATUTORY PROVISIONS – IDAHO CODE

#### **19-5306. Rights of victim during investigation, prosecution and disposition of the crime.**

- (1) Each victim of a criminal or juvenile offense shall be:
  - (a) Treated with fairness, respect, dignity and privacy throughout the criminal justice process;

- (b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings;
  - (c) Entitled to a timely disposition of the case;
  - (d) Given prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration, placing on probation or release of the defendant;
  - (e) Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result;
  - (f) Afforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children;
  - (g) Allowed to refuse an interview, ex parte contact or other request by the defendant or any other person acting on behalf of the defendant, unless such request is authorized by law;
  - (h) Consulted by the presentence investigator during the preparation of the presentence report and have included in that report a statement of the impact which the defendant's criminal conduct had upon the victim and shall be allowed to read, prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report, and shall not disclose its contents to any person except statements made by the victim to the prosecuting attorney or the court;
  - (i) Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence;
  - (j) Notified whenever the defendant or suspect is released or escapes from custody. When release is ordered prior to final conviction, notice to the victim shall be given by the law enforcement authority from whose custody the defendant was released. When the release is granted subsequent to a final conviction, notice shall be given to the victim by the law enforcement authority from whose custody the defendant was released unless release is granted by the commission of pardons and parole, in which case the commission shall notify the victim. When a release on probation is being considered following a period of retained jurisdiction, notice of the hearing shall be given to the victim by the prosecuting attorney.
- (2) Upon the filing of a criminal complaint or juvenile petition, the prosecuting attorney shall inform the victim of the various opportunities provided by this section. The victim may exercise any of the rights provided by this section by completing a written request on a form provided by the prosecuting attorney to the clerk of the district court. The clerk thereafter shall notify the appropriate authorities of the victim's requests. Notice thereafter shall be given to the victim at the address

provided unless the victim subsequently provides a different address. The victim's address shall be kept confidential by the court except for carrying out the provisions of this chapter.

- (3) The provisions of this section shall apply equally to the immediate families of homicide victims or immediate families of victims of such youthful age or incapacity as precludes them from exercising these rights personally. The court may designate a representative from the immediate family to exercise these rights on behalf of a deceased, incapacitated, or minor victim.
- (4) Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney's fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute; nor be construed to require the court appointment of legal counsel or the payment of transportation costs.
- (5) As used in this section:
  - (a) "Victim" is an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense;
  - (b) "Criminal offense" is any charged felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense;
  - (c) "Juvenile offense" is charged conduct that is a violation of law that brings a juvenile within the purview of title 20, chapter 5, Idaho Code, and which conduct committed by a juvenile would be a felony if committed by an adult.

## QUESTIONS AND ANSWERS

- **Who is the victims' rights law designed to protect?**

**Question No. 1:** To whom does the victims' rights law apply?

**Answer:** The intent of the victims' rights law is to protect and inform victims of crime. The letter of the statute provides guidelines with which the state must comply, but it is the victims' responsibility to declare themselves as victims by completing a written request on a form provided by the prosecuting attorney which should then be given to the clerk of the district court. (Idaho Code § 19-5306(2)).

**Question No. 2:** Who is a victim?

**Answer:** Victim is defined in Idaho Code § 19-5306(5)(a): "Victim is an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense."

**Question No. 3:** What does the word “crime” mean in this law?

**Answer:** According to Idaho Code § 19-5306(5)(b), “criminal offense is any charged felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense.”

**Question No. 4:** What if the victim is a minor?

**Answer:** If the victim is a minor, the minor’s immediate family is also classified as “victims,” allowing the family to secure victims’ rights for the minor or themselves. Idaho Code § 19-5306(3), see also § 19-5304(1)(e).

**Question No. 5:** Who are considered victims in a homicide?

**Answer:** As in the case of a minor, the immediate family of the actual victim in homicide cases can be considered to be the victim under Idaho Code § 19-5306(3). See also § 19-5304(1)(e).

- **What crimes are covered by art. 1, sec. 22 of the Idaho Constitution and Idaho Code § 19-5306?**

**Question No. 6:** Does a person have to be the victim of a violent crime to receive victims’ rights?

**Answer:** No. Idaho Code § 19-5306 provides victims’ rights to any individual who is a “victim” of crime or a juvenile offense. “Crime”, or “criminal offense”, is defined by § 19-5306 as any misdemeanor involving physical injury or any felony regardless of physical injury.

- **What are victims’ rights?**

**Question No. 7:** When do victims’ rights begin?

**Answer:** Upon the filing by the prosecutor of a criminal complaint or juvenile petition, the prosecutor is required to inform the victim of the provisions of Idaho Code § 19-5306. A victim’s rights begin after the victim has completed a written request form provided by the prosecuting attorney which is then given to the clerk of the district court. The clerk will then notify the appropriate authorities of the victim’s requests. Information and notices will be given to the victim at the address provided unless the victim subsequently provides a different address.

**Question No. 8:** Are victims allowed to attend court proceedings?

**Answer:** Yes. Victims can be present at all justice proceedings or juvenile proceedings unless there is a conflict with a subpoena which has been issued.

**Question No. 9:** How does the victim know when the offender is going to trial, receives sentencing, appeals, or is up for parole?

**Answer:** Section 19-5306 entitles the victim to prior notification of trial court, appellate and parole proceedings. The victim must request information about the offender’s sentence, incarceration or release.

**Question No. 10:** Who is responsible for notifying the victim throughout the court proceedings?

**Answer:** Because practices vary from county to county, the section does not specify who should inform the victim except where probation is considered following a period of retained jurisdiction, but most counties have delegated the responsibility to the prosecuting attorneys because they represent the victim. Counties should develop a clear protocol which ensures victim notification. Where probation following retained jurisdiction is being considered, the prosecutor is required to give notice to the victim.

**Question No. 11:** Does the victim have the right to make a statement to the court?

**Answer:** Both art. 1, sec. 22 of the Idaho Constitution and Idaho Code § 19-5306 guarantee a victim's right to be "heard upon request" at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant. The right to be heard extends only to these proceedings and does not apply to all proceedings or hearings.

**Question No. 12:** Can the prosecutor enter into a plea agreement without the victim's knowledge?

**Answer:** Yes. If the victim does not communicate with the prosecuting attorney after having been notified that discussion concerning a plea agreement will take place.

**Question No. 13:** How can a victim influence the sentence given the criminal defendant?

**Answer:** The sentence given a criminal defendant is solely in the judge's discretion. However, the victim has the right to be consulted in the presentence investigation and to have a statement of the impact the crime had on the victim included in the pre-sentence report. As noted in the answer to question 11, the victim also has the right to be heard at the sentencing hearing.

**Question No. 14:** Is a victim allowed to see a copy of the presentence report?

**Answer:** Under Idaho law, presentence investigation reports are confidential; however, Idaho Code § 19-5306(1)(h) grants the victim the right to read the presentence report prior to the sentencing hearing. The victim is not entitled to keep a copy of the report and may not disclose or discuss the contents of the report except in conversations with the prosecutor or statements of the court.

**Question No. 15:** Will the victim be notified if the defendant escapes or is released from custody prior to final conviction?

**Answer:** Yes. The victim should be given notice by the law enforcement authority "from whose custody the defendant was released" or escaped (Idaho Code § 19-5306(1)(i)). For example, if release is granted by the commission of pardons and parole, the commission shall notify the victim.

**Question No. 16:** What can a victim do if the offender does not receive the sentence that the victim feels the offender deserved?

**Answer:** Nothing. The state employs judges, attorneys and support staff to ensure that justice is delivered. At times, a victim may argue that a criminal's sentence was not severe enough; however, the length of time a criminal spends in prison does not necessarily represent the long-term effects the crime has on their life. Convicted criminals who serve jail time, no matter how long, are permanently affected in the work force and in society.

- **What can victims do if their rights are violated?**

**Question No. 17:** Can civil action be taken against the prosecutor, court or police if the prosecutor, court or other authority fails to comply with the provisions of Idaho Code § 19-5306 or art. 1, sec. 22 of the Idaho Constitution?

**Answer:** No. The amendment does not provide for any money damages against these agencies. (Idaho Code § 19-5306(4)).

**Question No. 18:** If the courts do not comply with the victims' rights amendment, can the court's decision be overturned?

**Answer:** No. A violation of the victim's rights does not constitute a mistrial (Idaho Code § 19-5306(4)).

**Question No. 19:** What remedies are available to a victim for violation of rights outlined in art. 1, sec. 22 of the Idaho Constitution or Idaho Code § 19-5306?

**Answer:** Neither the statute nor the constitution outline any specific remedies for victims for violations of victims' rights. Both the statute and the constitution make it clear that violations of either may not serve as the basis of an action for monetary damages against the police, prosecutor or the courts. Similarly, failure to comply with art. 1, sec. 22, or § 19-5306 cannot serve as the basis for overturning any criminal judgment.

Although not yet determined by a court, it appears the constitutional provision and statute might serve as the basis for injunctive action by a crime victim seeking a court order against an officer or governmental entity who fails or refuses to give the notice required by the constitution or under § 19-5306. This issue, however, has yet to be resolved in court.

- **How can victims best serve themselves and their families during the court proceedings?**

**Question No. 20:** What is the easiest way for a prosecutor to keep the family of a homicide victim informed during the court process?

**Answer:** An easy way to keep family and friends informed during the course of a trial is to appoint one family member, who has time to be present during the proceedings, to represent the family. Provide the prosecutor with one phone number and one address where the prosecutor will be able to reach the designated family member on a regular basis. See Idaho Code § 19-5306(3).

**Question No. 21:** What does a victim, who is afraid for his or her life, do to keep informed of the whereabouts of his/her offender?

**Answer:** The victim should provide the prosecuting attorney with a number where the victim, or someone close to them, may be reached, even though it is not mandatory that the prosecutor call the victim. Most information concerning the case will be mailed to the victim, but the victim may call correction facilities and the prosecuting attorney for information regarding the case.

**Question No. 22:** Where can a victim turn if the victim has questions regarding court procedure and process?

**Answer:** The courts, prosecutors and some law enforcement entities have victim coordinators who assist victims in their dealings with the courts. Questions can also be answered by clerks of the court and prosecuting attorneys.

**Question No. 23:** Does Idaho law provide for the financial compensation of crime victims?

**Answer:** Yes. Title 19, chapter 53, Idaho Code, and title 72, chapter 10, Idaho Code, both cover rights of crime victims to compensation. The provisions of title 19, chapter 53 address the rights of the victim to compensation from the person found guilty of the crime resulting in harm or injury to the victim. Title 72, chapter 10 addresses the state's crime victims' compensation fund. The Idaho Code may be found at the county law library or accessed from the State of Idaho's home page on the internet at [www.idwr.state.id.us/legislat/idstat.html](http://www.idwr.state.id.us/legislat/idstat.html).

## **GLOSSARY OF TERMS USED IN THE CRIMINAL JUSTICE PROCESS**

**Acquittal:** The judgment of the court, based upon the verdict of the jury or judge, that a defendant is not guilty of the offense for which he or she has been tried.

**Alleged:** A term to describe the crime or defendant prior to conviction.

**Appeal:** To seek review of a court order or decision by a higher court. Criminal cases may be appealed to the court of appeals and to the supreme court.

**Appellant:** The person who disagrees with the initial court order or decision and seeks to have a higher court review the case.

**Arraignment:** A hearing before the court in which the identity of the defendant is established, the defendant is informed of the charges and his or her rights. The defendant is required to enter a plea of guilty or not guilty at the arraignment.

**Bail:** Security, usually in the form of money or property, given to a court in exchange for the release of a person in custody or to assure the defendant's appearance in court at a later date. Bail is a right of all arrested persons prior to conviction except Class A felonies, felonious assault, sexual abuse in the second degree, kidnapping, robbery in the first degree, arson in the first degree or burglary in the first degree.

**Beyond a Reasonable Doubt:** The burden of proof required for a criminal conviction. The evidence presented by the prosecutor must establish the defendant's guilt beyond a reasonable doubt.

**Bind-Over:** Once the judge has determined that probable cause exists that a crime was committed and that the defendant committed the crime, the judge orders the defendant to district court to stand trial.

**Case Law:** The law as formed by past court decisions, opinions and interpretations.

**City Prosecutor:** An attorney appointed by a city who is authorized to handle only simple misdemeanor offenses occurring within city limits.

**Common Law:** The law as formed by court tradition and custom.

**Compensation:** Reimbursement of a victim's out-of-pocket expenses that are incurred as the result of injury to the victim, including psychological injury.

**Concurrent Sentences:** Sentences for different offenses which are served at the same time. The court determines if an offender's sentence will be concurrent or consecutive.

**Consecutive Sentences:** Sentences for different offenses that are served one after the other. A defendant would complete one sentence and then begin the next.

**Continuance:** The postponement of a legal proceeding to another date or time. A continuance is requested by an attorney in a case.

**Conviction:** The judgment of the court, based upon the verdict of the jury or judge, that the defendant is guilty of the crime charged.

**Criminal Appeals Attorney:** An attorney working in the attorney general's office who prosecutes a case when it is appealed to the Idaho Court of Appeals, the Idaho Supreme Court, or the U.S. Court of Appeals.

**Defendant:** The person accused of committing the crime.

**Deposition:** The testimony of potential witnesses taken under oath outside the courtroom. The testimony is transcribed word-for-word and may later be used in the court proceeding.

**District Court:** The court that handles all felony cases after the preliminary hearing in associate district court.

**Felony:** A crime carrying a minimum penalty of more than one year in state prison.

**Guilty Plea:** A defendant's admission of guilt to criminal charges. It can be used in a civil suit as an admission of liability.

**Guilty Verdict:** The decision of a jury or judge finding a defendant guilty of the crime for which he or she was tried.

**Hung Jury:** The inability of a jury to reach a verdict. This results in a mistrial and the defendant may be retried.

**In Camera Hearing:** A hearing that is held in judge's chambers without public or jury attendance.

**Information:** A charge filed by the prosecutor in district court, after a preliminary hearing or grand jury indictment, stating the facts and conduct which form the alleged criminal offense.

**Judgment:** The order of the court stating that the defendant is acquitted or convicted of the offense for which he or she was tried. Not the same as verdict.

**Jurisdiction:** The type of crime or judicial district over which a court has authority (i.e., the magistrate court has jurisdiction over misdemeanor offenses, bond setting and preliminary hearings).

**Magistrate:** A person appointed by each county magistrate-appointing commission to fulfill judicial functions. Magistrates have jurisdiction over simple misdemeanors, including traffic and ordinance violations, preliminary hearings and small claims. Magistrates also have jurisdiction over emergency detention and hospitalization.

**Magistrate Court:** The court which handles misdemeanor offenses, bond setting and preliminary hearings.

**Misdemeanor:** A crime carrying a maximum penalty of one year in jail.

**Mistrial:** A trial that is declared invalid because of an error in court procedure or other wrongdoing. Outbursts by persons not under oath and inadmissible statements by

attorneys can result in a mistrial. If a judge declares a mistrial, the offender has not been found guilty, but may be ordered to stand trial again.

**Motion:** A request by the prosecutor or defense attorney to the judge about a procedure or information in a trial.

**Motion to Suppress:** A motion often filed by a defense attorney requesting that certain information or evidence not be used at a trial.

**Not Guilty Plea:** A defendant's denial of guilt to criminal charges.

**Not Guilty Verdict:** An acquittal by a jury or judge finding the defendant not guilty of the crime for which the defendant was tried.

**Offender:** An adult who has been convicted of a crime.

**Parole:** The conditional release of an offender from prison by the commission of pardons and parole prior to serving the full sentence.

**Parole Hearing:** A hearing held by the commission of pardons and parole to determine if the offender should be released from prison prior to serving the full sentence.

**Plea Bargain:** An agreement between the prosecutor and defendant to reduce the charges against the defendant to a lesser crime or one that carries a lesser sentence.

**Pre-Trial Release:** The release of a defendant from custody prior to trial, on the defendant's own recognizance or with the posting of bail.

**Preliminary Hearing:** A hearing before the court to determine if probable cause exists. The court must decide whether a crime has been committed; whether the crime occurred within the jurisdiction of the court; and whether there are reasonable grounds to believe that the defendant committed the crime.

**Preponderance of Evidence:** The burden of proof required in civil cases. A lesser burden than required in criminal cases.

**Presentence Investigation:** An investigation of a convicted offender prior to sentencing. The investigation includes information about the offender's character and background, as well as any victim impact statements. The investigation report is meant to assist the judge in determining a fair sentence.

**Probable Cause:** The burden of proof necessary to make an arrest. A set of facts or circumstances which would cause a reasonably intelligent and prudent person to believe that a crime had been committed and that a particular person committed the crime. Probable cause may also refer to the standard of proof required at a preliminary hearing to bind the defendant over to district court. For probable cause, the information must show that a crime was committed and that the defendant is the one who likely committed it.

**Probation:** The conditional release of an offender after conviction without requiring the offender to go to prison or jail. Probation is granted by the court.

**Prosecuting Attorney:** An attorney elected in a county or appointed by county commissioners who is authorized to prosecute all offenses occurring within that county.

**Prosecutor:** The county prosecutor, city prosecutor, or criminal appeals attorney in the attorney general's office who represents the state in the prosecution of a crime.

**Prosecutorial Discretion:** The authority of the elected or appointed attorney to decide on which actions to file criminal charges.

**Restitution:** Part of an offender's sentence by the court requiring the offender to make payment to the victim for property damage or injury caused by the crime.

**Retained Jurisdiction:** A period of 180 days following the sentencing of an offender to prison after which a judge may suspend, modify, or impose the sentence. Also referred to as a Rider.

**Sentence:** The ruling of a judge concerning the punishment the convicted offender receives for the crime. A sentence may include an order for jail or prison time, a fine or penalty, performance of community service, attendance at special training or counseling, restrictions on behavior or contact with certain persons, and restitution to victims of the crime.

**Statutory Law:** The law as passed by the legislature, signed by the governor, and contained in the Idaho Code.

**Stipulation:** An agreement between the prosecutor and defense attorney generally relating to evidence at trial.

**Suspended Sentence:** The suspension of a jail or prison sentence if the offender meets certain requirements. The conviction stays on the offender's record.

**Trial:** A criminal proceeding held in a court to examine the facts and laws in a case for the purpose of reaching a judgment of conviction or acquittal of the defendant.

**Verdict:** The decision of the jury or judge that the defendant is guilty or not guilty of the offense for which the defendant was tried.

**Victim Impact Statement:** A written statement which is given to the prosecutor by a victim to be filed with the presentence investigation report or the judge prior to sentencing. The victim impact statement includes an account of the victim's physical injury and economic loss, a report of the impact of the crime on the victim's personal welfare and family relationships, and any request for psychological services for the victim or family affected.

**Voir Dire:** The process of questioning potential jurors.

**Witness Bond:** The amount of bond set by a judge when a witness in a criminal case refuses to appear after being issued a subpoena. The prosecutor may request an arrest warrant be issued to ensure the presence of a witness.

## COURT DECISIONS INTERPRETING CONSTITUTION AND STATUTES RELATED TO RIGHTS OF VICTIMS OF CRIME

### **Including:**

#### **Refusal to Meet Defendant.**

I.R.C.R. 16(b)(6) does not entitle a defendant or his agent contact with victims or witnesses of an alleged crime. In fact, such victims and witnesses may constitutionally refuse such an interview unless otherwise required by law. LaBelle v. State, 130 Idaho 115, 937 P.2d 427 (Ct. App. 1997).

#### **Right to Address Court.**

The right of a crime victim to address the court at the offender's sentencing hearing is guaranteed by both Idaho's constitution and statutory law. State v. Guerrero, 130 Idaho 311, 940 P.2d at 419 (Ct. App. 1997).

#### **Effectiveness of Counsel.**

Murder defendant's counsel was not ineffective for failing to object to statements by the victim's father in the pre-sentence report concerning impact of the crime. Such statements by a victim are allowed under this section and immediate family members of a minor are included in the definition of a victim. Fodge v. State, 125 Idaho 882, 876 P.2d 164 (Ct. Ap. 1994).

#### **Sentencing Inquiry by Judge.**

A sentencing judge may properly conduct an inquiry broad in scope, largely unlimited, either as to the kind of information he may consider or the source from which it may come. State v. Chapman, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991), aff'd, 121 Idaho 351, 825 P.2d 74 (1992).

#### **Victim Impact Statement.**

In the absence of the death penalty, a sentencing court may properly consider any victim impact statements contained in a pre-sentence report during sentencing and a district judge's inquiry into the status of the victim is not inconsistent with the purpose and goals of criminal sentencing procedures. State v. Bivens, 119 Idaho 119, 803 P.2d 1025 (Ct. App. 1991).

#### **Failure to Strike.**

The sentencing court did not err by denying defendant's motion to strike the victim impact statement when it imposed a fixed life prison term for first degree murder. State v. Searcy, 118 Idaho 632, 798 P.2d 914 (1990), modified on other grounds, 124 Idaho 107, 856 P.2d 897 (Ct. App. 1993); 120 Idaho 882, 820 P.2d 1239 (Ct. App. 1991).

The district court properly exercised its discretion in denying a vehicular manslaughter defendant's motion to strike from the presentence report the statements of

the two girls who were injured in the auto accident which killed victim, and the statements of the girls' parents. State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994).

**Scope.**

This section does not contain any limitations which would prevent a victim of a crime, at sentencing, from sharing the victim's opinion of the defendant or making a sentence recommendation. State v. Matteson, 123 Idaho 622, 851 P.2d 336 (1993).

**YOUR CASE INFORMATION**

---

Case Number

---

Detective(s)/Police Officer(s)

---

Prosecuting Attorney

---

Victim/Witness Coordinator

---

Defendant(s)

---

Date of Arraignment

---

Date of Preliminary Hearing/Grand Jury

---

Date of District Court Arraignment

---

Date of Trial

---

Date of Sentencing Hearing

**IMPORTANT:**

Please contact your Prosecuting Attorney’s Office prior to each court date to verify date and time. Immediately contact the Prosecuting Attorney’s Office if you’ve changed your address and/or phone number.