

GAO

Testimony

Before the Subcommittee on Crime,  
Terrorism, and Homeland Security,  
Committee on the Judiciary, House of  
Representatives

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# CRIME VICTIMS' RIGHTS ACT

## Increasing Victim Awareness and Clarifying Applicability to the District of Columbia Will Improve Implementation of the Act

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Homeland Security and Justice



GAO

Accountability \* Integrity \* Reliability

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Highlights of [GAO-09-1024T](#), a testimony before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

On October 30, 2004, the Crime Victims' Rights Act (CVRA) was enacted, establishing eight rights for federal crime victims and two mechanisms to enforce those rights. The legislation also directed GAO to evaluate the implementation of the CVRA. To address this mandate, GAO reviewed, among other things: (1) efforts made to implement the CVRA, (2) mechanisms in place to ensure adherence to the CVRA, (3) key issues that have arisen in the interpretation of the CVRA by the federal courts, and (4) perspectives of criminal justice system participants on the CVRA. This testimony is based on GAO's December 2008 report on CVRA, where GAO reviewed guidance and conducted surveys and interviews with criminal justice system participants. GAO cannot generalize its crime victim survey results due to a low response rate. In September 2009, GAO obtained updated information on victim's efforts to enforce their rights.

## What GAO Recommends

While this testimony contains no new recommendations, GAO previously recommended that DOJ increase victims' awareness of CVRA enforcement mechanisms, among other things. Also, GAO suggested that Congress revise the CVRA to clarify applicability to the District of Columbia. DOJ generally concurred with GAO's recommendations and convened a working group to determine how to implement them.

View [GAO-09-1024T](#) or key components. For more information, contact Eileen Larence at (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov).

## CRIME VICTIMS' RIGHTS ACT

### Increasing Victim Awareness and Clarifying Applicability to the District of Columbia Will Improve Implementation of the Act

#### What GAO Found

To implement the CVRA, the Department of Justice (DOJ) and the federal judiciary have, among other things, revised internal guidelines, trained DOJ staff and judges, provided victims with emergency, temporary housing to protect them, and proactively asked victims if they would like to speak in court.

DOJ and the courts have also implemented two mechanisms to ensure adherence to the CVRA, including processes for victims to submit complaints against DOJ employees and assert their rights in court; however, the majority of victims who responded to GAO's survey said they were not aware of these mechanisms. If victims are not aware of these enforcement mechanisms, they will not be effective at helping to ensure victims are afforded their rights. GAO also found that DOJ's complaint investigation process lacked independence, impeding impartiality. In July 2009, in response to our recommendation, DOJ revised its victim complaint investigation process such that if investigators who are located in the same office with the subject of the investigation believe that their review of the complaint could bias the investigation or give the appearance of this, they are instructed to inform a designated official at DOJ headquarters. This official may suggest that the complaint be investigated by another DOJ office.

Several key issues have arisen that require the courts to interpret various provisions of the law, including (1) when in the criminal justice process CVRA rights apply, (2) what it means for a victim to be "reasonably heard" in court, and (3) what legal standard should be used to review victim appeals of district court decisions. While judicial interpretation of various aspects of a law typically occurs after new legislation is enacted, DOJ and court officials believe that one CVRA issue may benefit from a change to the law itself. The CVRA is not explicit about whether the law applies to victims of local offenses prosecuted in the District of Columbia Superior Court. Without clarification on this issue, judges in this court may continue to differ in whether they apply the CVRA in their cases.

As to the overall impacts of the CVRA, the victims as well as the DOJ and judicial officials GAO interviewed had mixed perceptions. Most maintained that CVRA has improved victim treatment. For example, 72 percent of the victim-witness professionals—individuals who are responsible for providing services to crime victims and witnesses—who responded to GAO's survey perceived that the CVRA has resulted in at least some increase in victim attendance at court proceedings. Other officials maintained that the federal government and the courts were already treating victims well prior to the act. Victims responding to GAO's survey also reported mixed views on their knowledge of, and satisfaction with, the provision of various rights. For example, 141 of the 167 victims who responded to GAO's survey question regarding participation in the judicial process reported that they did not attend any of the proceedings related to their cases, primarily because the location of the court was too far to travel or they were not interested in attending.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our analysis of the efforts made by the Department of Justice (DOJ) and the federal judiciary to implement the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act (CVRA), which was enacted on October 30, 2004.<sup>1</sup> The CVRA defines a crime victim as "a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia."<sup>2</sup> The Act established eight rights for such victims, including, among others, the right to be notified of any public court proceeding, the right not to be excluded from such proceedings, and the right to be heard at certain of these public court proceedings related to the crime.<sup>3</sup> The law requires officers and employees of DOJ, which includes, investigative agents, prosecutors, and victim-witness professionals—individuals who are responsible for providing services to crime victims and witnesses—to make their best efforts to see that crime victims are notified of and accorded their rights under the CVRA.<sup>4</sup> Since most federal crimes—that is, crimes that violate a federal statute—are prosecuted by DOJ's U.S. Attorneys Offices (USAO), staff in these offices have primary responsibility for assisting crime victims during the prosecution phase of a case. The federal courts also have responsibilities for ensuring that crime victims are afforded their CVRA rights, such as by generally not excluding victims from certain public court proceedings.

The CVRA also established mechanisms to enforce crime victims' rights. Specifically, to ensure that DOJ employees are complying with CVRA requirements, the Act directs DOJ to establish a process for receiving and investigating victim-related complaints against DOJ employees, and to require training or impose disciplinary sanctions on any DOJ employees who fail to comply with federal law pertaining to the treatment of crime victims.<sup>5</sup> The CVRA also enables victims to assert their rights in district court by filing a motion for relief<sup>6</sup>—a formal request made to a judge for

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<sup>1</sup> Pub. L. No. 108-405, 118 Stat. 2260 (2004).

<sup>2</sup> 18 U.S.C. §3771(e).

<sup>3</sup> 18 U.S.C. §3771(a).

<sup>4</sup> 18 U.S.C. §3771(c)(1).

<sup>5</sup> 18 U.S.C. §3771(f).

<sup>6</sup> Relief is a generic term for all types of benefits or redress that a party asks of a court.

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an order or ruling—with the district court regarding their rights.<sup>7</sup> If the district court denies victims the relief they are seeking—such as a request that the judge allow the victim to be heard at a court proceeding—the victim can petition the court of appeals for a writ of mandamus, in which case the court of appeals may instruct the district court to grant the victim the relief sought.<sup>8</sup>

We have assessed implementation of the CVRA in response to sec. 104(b) of the Act, which directed GAO to evaluate the “effect and efficacy of the implementation of the [CVRA] on the treatment of crime victims in the federal system.” We issued a report on the results of that review on December 15, 2008.<sup>9</sup> My statement today summarizes most of the findings in our report and addresses the following questions: (1) What efforts have been made to implement the CVRA, what factors have affected these implementation efforts, and how have these factors been addressed? (2) What mechanisms are in place to ensure adherence to the CVRA, and how well are these mechanisms working? (3) What are the key issues that have arisen as courts interpret and apply the CVRA in cases? (4) What are the perspectives of various participants in the federal criminal justice system regarding the effect and efficacy of CVRA implementation? Our December 2008 report also includes a discussion of the methods DOJ uses to monitor performance regarding the provision of the CVRA.<sup>10</sup>

To address these questions, we reviewed CVRA guidance issued by DOJ and the federal judiciary, victim complaints submitted to DOJ, and federal

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<sup>7</sup> 18 U.S.C. §3771(d)(3). Most motions must include a written statement of the relief sought and the grounds for seeking the relief. The motion must be served on all parties, and a judge may hold a hearing for oral arguments on the motion. During a trial or a hearing, an oral motion may be permitted.

<sup>8</sup> 18 U.S.C. §3771(d)(3). A writ of mandamus is an order from a higher court directing a lower court to perform a specified action.

<sup>9</sup> GAO, *Crime Victims’ Rights Act: Increasing Awareness, Modifying the Complaint Process, and Enhancing Compliance Monitoring Will Improve Implementation of the Act*, GAO-09-54 (Washington D.C.: Dec. 15, 2008).

<sup>10</sup> GAO-09-54. We made a number of recommendations in the report to strengthen DOJ’s ability to assess how well the Department and its employees are meeting their CVRA responsibilities. DOJ agreed with our recommendations and established a working group to determine how best to implement them. As of September 2009, the working group had prepared a draft data collection instrument which, when finalized, will be used to collect standardized information from the various DOJ components regarding their compliance with the CVRA. DOJ then plans to use this information to measure the department’s performance in meeting victims’ needs.

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court rulings. We also conducted surveys and interviews of crime victims and victim-witness professionals, and interviews with investigative agents, prosecutors, defense attorneys, and federal judges.<sup>11</sup> We cannot generalize the results of the crime victim survey due to a low response rate, nor can we generalize the results of the interviews since we used a nonprobability sampling method to select the locations we visited to conduct these interviews. However, the survey results and interviews provided us with information on the perspectives of various participants in the criminal justice system about the CVRA. We conducted our audit work from May 2007 to December 2008. In September 2009, for the purposes of this testimony, we obtained updates to certain data we included in our report, such as the number of victim complaints submitted to DOJ and the number of times CVRA rights were asserted in federal court. We conducted our audit work in accordance with generally accepted government auditing standards. Appendix I of our December 2008 report contains a detailed description of our scope and methodology.<sup>12</sup>

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## Background

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### The Evolution of Crime Victims' Rights

Since 1982, the federal government has passed a number of laws that address the role of the crime victim in the criminal justice system, including the Victim and Witness Protection Act of 1982,<sup>13</sup> Victims of Crime Act of 1984,<sup>14</sup> Victims' Rights and Restitution Act of 1990,<sup>15</sup> Violent Crime

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<sup>11</sup> We surveyed by mail a stratified random probability sample of federal crime victims whose cases became active on or after January 1, 2006, and were closed no later than November 30, 2007. We included only victims whose cases were closed in order to obtain victims' perspectives over the duration of the criminal justice process. We selected our sample of federal crime victims from DOJ's Victim Notification System (VNS), which is used to notify crime victims of proceedings related to their cases. Of the 1,179 victims we surveyed, 248 (21 percent) returned completed questionnaires. Also we conducted a Web-based survey of all 201 victim-witness professionals who were located in each of the 93 U.S. Attorneys Offices as of April 2008, which is when we fielded the survey, to obtain their perspectives about CVRA implementation. We received responses from 174 (87 percent) of them. Additionally, we visited and interviewed criminal justice participants in nine federal judicial districts. We also reviewed files related to the 141 victim complaints that had been received by DOJ's Victims' Rights Ombudsman (VRO) from December 2005 to April 2008 and in which a determination had been made.

<sup>12</sup> [GAO-09-54](#)

<sup>13</sup> Pub. L. No. 97-291, 96 Stat. 1248 (1982).

<sup>14</sup> Pub. L. No. 98-473, ch. XIV, 98 Stat. 1837 (1984).

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Control and Law Enforcement Act of 1994,<sup>16</sup> Mandatory Victims Restitution Act of 1996,<sup>17</sup> Victim Rights Clarification Act of 1997,<sup>18</sup> and Crime Victims' Rights Act of 2004.<sup>19</sup>

Several of these statutes provided crime victims with rights, but they also directed federal officials to provide victims with various services, such as notification of certain public court proceedings. In particular, the Victims' Rights and Restitution Act of 1990 identified crime victims' rights, delineating seven such rights and requiring federal officials to make their best efforts to see that crime victims are accorded these rights.<sup>20</sup> The 1990 law also included a separate provision, codified at 42 U.S.C. § 10607, that requires federal officials to identify crime victims and provide them information about their cases and about services that may be available to them.<sup>21</sup> For example, the law requires officials to inform victims of a place where they may receive emergency medical and social services, to inform victims of programs that are available to provide counseling, treatment, and other support to the victim, and to assist victims in contacting persons who can provide such services.

On October 30, 2004, the Crime Victims' Rights Act, as a component of the Justice for All Act, was signed into law.<sup>22</sup> The CVRA left in place 42 U.S.C. §

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<sup>15</sup> Pub. L. No. 101-647, tit. V, 104 Stat. 4789 (1990).

<sup>16</sup> Pub. L. No. 103-322, 108 Stat. 1796 (1994).

<sup>17</sup> Pub. L. No. 104-132, tit. II, 110 Stat. 1214 (1996).

<sup>18</sup> Pub. L. No. 105-6, 111 Stat. 12 (1997).

<sup>19</sup> Pub. L. No. 108-405, tit. I, 118 Stat. 2260 (2004). The federal government has passed other laws that provide benefits and services to certain classes of crime victims including the Trafficking Victim Protection Act (for victims of human trafficking crimes) and the Justice for Victims of Terrorism Act (for victims of terrorism). Pub. L. No. 106-386, 114 Stat. 1464 (2000); Pub. L. No. 104-132, 110 Stat. 1214 (1996).

<sup>20</sup> Pub. L. No. 101-647, § 502, 104 Stat. 4789, 4820 (1990), *repealed by* Pub. L. No. 108-405, § 102(c), 118 Stat. 2260, 2264 (2004). The rights listed in the 1990 law included: (1) the right to be treated with fairness and with respect for the victim's dignity and privacy; (2) the right to be reasonably protected from the accused offender; (3) the right to be notified of court proceedings; (4) the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial; (5) the right to confer with the attorney for the government in the case; (6) the right to restitution; and (7) the right to information about the conviction, sentencing, imprisonment, and release of the offender.

<sup>21</sup> *Id.* at § 503, 104 Stat. 4820-22 (codified at 42 U.S.C. § 10607).

<sup>22</sup> Pub. L. No. 108-405, 118 Stat. 2260 (2004).

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10607—the provision requiring federal officials to inform victims about their cases and about services available to them—but the CVRA modified the provision from the 1990 law regarding crime victims’ rights and identified eight rights for federal crime victims, some of which were similar to the rights from the 1990 law and others of which were new. The CVRA provided that crime victims have the following rights:

- the right to be reasonably protected from the accused;
- the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- the right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
- the right to be reasonably heard at any public proceeding in the district court involving the release, plea, sentencing, or any parole proceeding;
- the reasonable right to confer with the attorney for the government in the case;
- the right to full and timely restitution as provided in law;
- the right to proceedings free from unreasonable delay; and
- the right to be treated with fairness and with respect for the victim’s dignity and privacy.<sup>23</sup>

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## Mechanisms for Crime Victims to Assert Their Rights

The CVRA also established two mechanisms to ensure adherence to victims’ rights under the law, neither of which had been available under previous statutes. Specifically, to ensure that DOJ employees are complying with CVRA requirements, the law directed DOJ to designate an administrative authority to receive and investigate complaints relating to the provision or violation of crime victims’ rights.<sup>24</sup> To comply with this provision in the statute, DOJ issued regulations creating the Victims’ Rights Ombudsman.<sup>25</sup> The VRO is a position within the Executive Office of United States Attorneys—the DOJ division responsible for facilitating coordination between USAOs, evaluating USAO performance, and providing general legal interpretations and opinions to USAOs, among other things. Federal crime victims may submit written complaints to the

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<sup>23</sup> *Id.* at § 102(a) (codified at 18 U.S.C. § 3771(a)).

<sup>24</sup> 18 U.S.C. § 3771(f).

<sup>25</sup> 28 C.F.R. § 45.10.

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designated point of contact for the DOJ division that is the subject of the complaint, who then investigates the complaint and reports the results of the investigation to the VRO. Victims may also submit complaints directly to the VRO. If the VRO finds that an employee failed to afford a CVRA right to a victim, the VRO must require that employee to undergo training on victims' rights. If based on an investigation the VRO determines that an employee willfully and wantonly failed to provide a victim with a CVRA right, the VRO must recommend a range of disciplinary sanctions to the official authorized to take action on disciplinary matters for the relevant office. The CVRA does not require DOJ employees to provide relief to victims whose rights have been violated, but the VRO guidelines do require investigators, to the best of their ability, to resolve complaints to the victims' satisfaction.

The CVRA also enables victims to assert their rights in district court by filing a motion—which they can do either verbally or per a written request—with the court.<sup>26</sup> Unlike the complaint process, this mechanism allows victims to assert their rights and seek relief from the court, and can be employed not only when victims believe that a DOJ employee violated their rights, but when they have general concerns regarding the provision of their rights. If the district court denies the victim's request regarding the provision of CVRA rights—such as a request to be heard at a hearing—the victim can petition the court of appeals for a writ of mandamus. Thus, if the court of appeals grants the victim's petition, it may direct the district court to take actions to afford CVRA rights to the victim. Petitions for writs of mandamus can be filed at any point in the case.

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## Authorization of Funding to Support CVRA Implementation

The CVRA authorized appropriations for fiscal years 2005 through 2009. However, it is unclear whether and exactly how much of this funding was appropriated because funds that may have been appropriated under the CVRA were likely appropriated in a lump sum with funds for other victim assistance and grant programs. The authorized amounts, years, and purposes are listed in table 1.

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<sup>26</sup> 18 U.S.C. § 3771(d)(3).



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**Table 1: Funding Authorized by the CVRA**

<b>Purpose</b>	<b>Amount and fiscal years</b>
For U.S. Attorneys Offices for Victim-Witness Assistance Programs	\$2 million for 2005, \$5 million annually for 2006-2009
For the Office for Victims of Crime for enhancement of the Victim Notification System <sup>a</sup>	\$2 million for 2005, \$5 million annually for 2006-2009
For the Office for Victims of Crime for staff to administer the appropriation for the support of organizations that provide legal counsel to federal crime victims	\$300,000 for 2005 and \$500,000 annually for 2006-2009
For the Office for Victims of Crime for the support of organizations that provide legal counsel to federal crime victims <sup>b</sup>	\$7 million for 2005 and \$11 million annually for 2006-2009
For the Office for Victims of Crime for the support of training and technical assistance to states and tribal jurisdictions to craft state-of-the-art victims' rights laws, and training and technical assistance to states and tribal jurisdictions to design a variety of compliance systems, which shall include an evaluation component	\$5 million for 2005 and \$7 million annually for 2006-2009
For grants to state, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner	\$5 million annually for 2005-2009

Source: GAO analysis of section 103(b) of the Justice for All Act of 2004.

<sup>a</sup>DOJ's Office for Victims of Crime (OVC), which provides leadership and funding on behalf of crime victims, was established in federal law in 1988 through an amendment to the 1984 Victims of Crime Act (VOCA). OVC provides federal funds to support victim compensation and assistance programs across the nation. OVC also provides training for professionals who work with victims, develops and disseminates publications, supports projects to enhance victims' rights and services, and educates the public about victim issues. DOJ uses the Victim Notification System to notify crime victims of proceedings related to their cases.

<sup>b</sup>Organizations that provide legal counsel to federal crime victims include the National Crime Victim Law Institute (NCVLI), which established 12 clinics nationwide that provide pro bono legal services to crime victims at the federal, state, and local levels.

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## Multiple Efforts Have Been Made to Implement the CVRA, and DOJ and Federal Courts Have Taken Actions to Address Various Factors that Have Presented Challenges for Affording Crime Victims Their Rights

DOJ and the federal judiciary have made various efforts to implement the CVRA—from revising internal guidelines and developing training materials for DOJ staff and judges to providing victims with emergency, temporary housing in some cases to protect them from the accused offender and proactively asking victims if they would like to speak in court. Additionally, DOJ and the federal judiciary have taken actions to address four factors that have affected CVRA implementation, including the characteristics of certain cases, the increased workload of some USAO staff, the scheduling of court proceedings, and diverging interests between the prosecution and victims.

First, the characteristics of certain cases, such as the number of victims involved and the location of the victims, make it difficult to afford victims certain CVRA rights. For instance, USAO staff stated that it can be difficult to provide timely notification of court proceedings to victims located on Indian reservations because the victims may not have access to a mailbox, a telephone, or the Internet. To address this challenge, victim-witness personnel said that they have driven to Indian reservations to personally inform victims of upcoming court proceedings.

Second, due to CVRA requirements, particularly notification requirements, USAO victim-witness staff face an increased workload—about 45 percent of staff who responded to our survey reported working an average of about 6 additional hours per week in order to meet CVRA requirements. DOJ has made efforts to address this issue by providing funding to 41 of the 93 USAOs to hire contractors to assist with clerical duties related to victim notification.

Third, inherent characteristics of the criminal justice process, such as the short period of time over which pretrial proceedings are scheduled and take place, make it difficult to provide timely notice to crime victims and afford them their right to be heard. For example, according to the investigative agents, USAO staff, and one magistrate judge with whom we met, a detention hearing—which is a judicial proceeding used to determine whether a defendant should remain in custody before her or his trial—typically takes place within a few days of an arrest (as generally required by federal law), and in certain situations, can occur within hours of an arrest. When faced with this challenge, USAO victim-witness personnel said that they have notified victims of court proceedings by telephone rather than mail, which may not arrive in enough time to enable the victim to attend the proceeding.

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Fourth, diverging interests between the prosecution and victims may affect the way in which the government affords victims their CVRA rights. For instance, according to DOJ, it is not always in the interest of a successful prosecution for victims to be notified of and attend a plea hearing for a cooperating defendant who agrees to testify against or provide information about other defendants in the case in exchange for a lesser sentence. The concern is that public knowledge of the defendant's cooperation could compromise the investigation, as well as bring harm to the defendant and others. DOJ officials stated that this issue occurs frequently in gang-related prosecutions, where, for instance, the victim is a member of the defendant's rival gang. DOJ's efforts to address this issue include requesting that the court close plea agreement proceedings—which may prevent the victim from attending such proceedings since victims' right not to be excluded only applies to public court proceedings—and proposing legislation to revise the CVRA to allow for an exception to victims' notification rights in these instances.

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**Complaint Process  
and Victims' Ability to  
File Motions Are  
Intended to Ensure  
Adherence to CVRA,  
but Some Victims Are  
Not Aware of These  
Enforcement  
Mechanisms and the  
Complaint Process  
Could Be  
Restructured to  
Ensure Independence**

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**Many Victims Who Responded to Our Survey Reported Not Being Aware of Their Ability to File Complaints Related to Their CVRA Rights, and the Structure of the Complaint Process Could Impede Impartiality**

To enforce the provisions of the CVRA, the act established two mechanisms to help victims ensure that their rights are granted. These mechanisms include processes by which victims can submit complaints against DOJ employees whom they believe violated their rights and file motions in court related to their rights. However, many of the victims who responded to our survey reported that they were not aware of these enforcement mechanisms. Of the more than 1.1 million federal crime victims who, as of September 4, 2009, were identified in DOJ's Victim Notification System as having active cases, the Victims' Rights Ombudsman—DOJ's designated authority to receive and investigate federal crime victim complaints regarding employee compliance to the CVRA—received 259 written complaints from December 2005 through August 2009. The VRO closed 235 complaints following a preliminary investigation, primarily because the complaints were related to a state or local matter as opposed to a federal matter or it was determined that the individual was not a federal crime victim. Lastly, the VRO determined that of the 19 complaints that warranted further investigation,<sup>27</sup> in no instance did a DOJ employee or office fail to comply with the provisions of the law pertaining to the treatment of these federal crime victims. We did not make a judgment on the reasonableness of the VRO's rationale for dismissing these complaints because we did not conduct an independent investigation of each complaint.

Several contributing factors most likely explain the low number of complaints filed by federal crime victims against DOJ employees. First, DOJ officials believe few victims have filed complaints because victims are generally satisfied with DOJ's efforts to afford them their rights. Second, USAO officials we spoke with have made efforts to resolve complaints directly before they reached a point where a victim would file a complaint with the VRO. Third, victims reported a lack of awareness about the complaint process itself. Specifically, 129 of the 235 victims who responded to our survey question regarding the complaint process reported that they were not aware of it, and 51 did not recall whether they were aware. USAOs have been directed to take reasonable steps to

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<sup>27</sup> There are 5 complaints for which we do not have information regarding the VRO's determination as to the merits of the complaint. As of September 2009, the VRO had yet to make a final determination regarding the merits of 2 complaints. Also, at the time we reviewed complaints that were submitted to DOJ from December 2005 through April 2008, there were 3 complaints that were still under investigation and a final determination had not been made. However, we did not follow up on the status of those complaints for the purposes of this testimony.

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provide notice to victims of the complaint process, and they generally do so through a brochure provided to victims at the beginning of the case. However, DOJ has opportunities to enhance victim awareness of the complaint process, such as by making greater use of office Web sites to publicize the process or, when appropriate, personally informing victims. If victims are not aware of the complaint process, it becomes an ineffective method for ensuring that the responsible DOJ officials are complying with CVRA requirements and that corrective action is taken when needed. Therefore, in our December 2008 report,<sup>28</sup> we recommended that DOJ explore opportunities to enhance publicity of the victim complaint process to help ensure that all victims are made aware of it. In commenting on a draft of our report, DOJ stated that it agreed that victims should be well-informed of the complaint process and intended to take steps to enhance victim awareness. However, as of September 11, 2009, DOJ had not yet determined what steps are most appropriate, but hopes to make this decision by the end of the year.

Even if victims submit complaints to DOJ regarding their CVRA rights, the lack of independence within the complaint investigation process could compromise impartiality of the investigation. Professional ombudsman standards for investigating complaints against employees, as well as the practices of other offices that investigate complaints, suggest that the investigative process should be structured to ensure impartiality. For example, in practice, the investigators are generally not located in the same office with the subject of the investigation, in order to avoid possible bias. DOJ's Office of Professional Responsibility, which investigates other types of complaints against DOJ employees, also does not use investigators who are located in the same office with the subject of the complaint. However, under DOJ's victim complaint investigation process, the two are generally located in the same office. In addition, in some instances the DOJ victim complaint investigator has been the subordinate or peer of the subject of the complaint. According to DOJ officials, the department structured the victim complaint investigation process as such due to resource constraints and the perception that complaints could be resolved more quickly if addressed locally. However, this structure gives the appearance of bias in the investigation, which raises questions as to whether DOJ employees' violation of victims' rights will be overlooked and employees will not receive appropriate training on the treatment of

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<sup>28</sup> [GAO-09-54](#)

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crime victims or disciplinary sanctions. In our December 2008 report,<sup>29</sup> we recommended that DOJ restructure the process for investigating federal crime victim complaints in a way that ensures independence and impartiality, for example, by not allowing individuals who are located in the same office with the subject of the complaint to conduct the investigation. In commenting on a draft of our report, DOJ stated that it recognized the benefits of having an investigation process that ensures independence and impartiality and that the working group, in consultation with the VRO, would explore several options that will address this concern. Subsequently, DOJ reported that on July 31, 2009, the VRO issued guidance to ensure that complaint investigators refer to the VRO any complaint where the investigator's review of the complaint would raise an actual or apparent conflict of interest. If the VRO determines that such a conflict exists, the VRO would consider reassigning the complaint to someone in a different office for investigation.

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### Few Victims Have Asserted CVRA Rights in Court, and Many Victims Who Responded to Our Survey Reported Not Being Aware of Their Ability to Do So

Among the hundreds of thousands of cases filed in the U.S. district courts in the nearly 5-year period since the CVRA was enacted, we found 49 instances in which victims, or victims' attorneys or prosecutors on behalf of victims, asserted CVRA rights by filing a motion—either verbally or in writing—with the district court.<sup>30</sup> We also found 27 petitions for writs of mandamus that were filed with the appellate courts,<sup>31</sup> the majority of which were in response to motions previously denied in the district court. Table 2 summarizes the number of times CVRA rights were asserted in the district and appellate courts and how the courts ruled in those instances.<sup>32</sup>

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<sup>29</sup> [GAO-09-54](#)

<sup>30</sup> We obtained CVRA-related cases through legal search engines, court dockets, interviews, and case compilations by the Federal Judicial Center and the National Crime Victims Law Institute. We conducted our final electronic search on September 3, 2009. The cases included are those that were available in legal databases as of that date.

<sup>31</sup> A writ of mandamus is an order from a higher court directing a lower court to perform a specified action.

<sup>32</sup> Prior to issuing our December 2008 report, we summarized all cases we identified as of June 20, 2008, in which a court issued a decision based on the CVRA. The summary of those cases can be found in appendix IV of our December 2008 report. ([GAO-09-54](#))

**Table 2: Number of Times CVRA Rights Were Asserted in District Courts and Courts of Appeals and How the Courts Ruled in Those Instances, as of September 3, 2009**

	Court ruling				Total
	Granted	Denied	Granted in part	Decision not based on the CVRA	
Number of motions (written and verbal) filed in district court <sup>a</sup>	14 <sup>b</sup>	29	1	5	49
• Filed by victim or victim's attorney	4	22		2	28
• Filed by prosecutor on victim's behalf	10	7	1	3	21
Number of petitions for writs of mandamus filed in the court of appeals <sup>c</sup>	4	21	1	1	27

Source: GAO analysis of court cases in which the CVRA was raised.

<sup>a</sup>The number of motions includes four civil claims filed under the CVRA, one motion filed by the defendant in the case, and instances in which victims asserted CVRA rights in response to a motion or other action by another party. Also, three of the motions were filed not in district courts, but in the District of Columbia Superior Court, the local trial court for the District of Columbia.

<sup>b</sup>The victims' motion in *United States v. Moussaoui* was granted by the U.S. District Court for the Eastern District of Virginia; however, the government appealed the decision and it was reversed by the U.S. Court of Appeals for the Fourth Circuit. The victims did not rely on the CVRA in their arguments at the appellate level.

<sup>c</sup>The number of petitions for writs of mandamus includes eight petitions that did not arise out of criminal prosecutions in district courts.

Victim attorneys and federal judicial officials gave several potential reasons for the low number of victim motions, including victims being satisfied with how they were treated and victims either being intimidated by the judicial process or too traumatized by the crime to assert their rights in court. However, the most frequently cited reason for the low number of motions was victims' lack of awareness of this enforcement mechanism. The results of our victim survey also suggest that victims lack this awareness. Specifically, 134 of the 236 victims who responded to our survey question regarding filing motions reported that they were not aware of their ability to file a motion to assert their rights in district court, and 48 did not recall whether they were aware. DOJ generally does not inform victims of their ability to assert their rights in court. While the CVRA does not explicitly require DOJ to do so, the law does direct DOJ to inform victims of their eight CVRA rights and their ability to seek the advice of an attorney. Thus, DOJ may be the most appropriate entity to inform victims of this provision as well. In addition, DOJ's guidelines state

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that responsible officials should provide information to victims about their role in the criminal justice process, which could include their ability to file motions with regard to their CVRA rights. If victims are not aware of their ability to assert their rights in court, it will reduce the effectiveness of this mechanism in ensuring adherence to victims' rights and addressing any violations. In our December 2008 report,<sup>33</sup> we recommended that DOJ establish a mechanism for informing all victims of their ability to assert their CVRA rights by filing motions and petitions for writs of mandamus, such as by incorporating this information into brochures and letters sent to victims and on agency Web sites. In commenting on a draft of our report, DOJ stated that it agreed that victims should be well-informed of their ability to assert their CVRA rights in district court and intended to take steps to enhance victim awareness. However, as of September 11, 2009, DOJ had not yet decided upon an approach for enhancing victim awareness, but hopes to make this decision by the end of the year.

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## Several Key Issues Have Arisen as the Courts Interpret and Apply the CVRA in Cases, and Judges Have Differing Interpretations Regarding Whether the Law Applies to the District of Columbia Superior Court

Several key issues have arisen as courts interpret and apply the CVRA in cases, including (1) when in the criminal justice process CVRA rights apply, (2) what it means for a victim to be “reasonably heard” in court proceedings, (3) which standard should be used to review victim appeals of district court decisions regarding CVRA rights, and (4) whether the CVRA applies to victims of local offenses prosecuted in the District of Columbia Superior Court.

First, the courts have issued varied decisions regarding whether CVRA rights apply to victims of offenses that DOJ has not charged in court, stating that the law applies in some circumstances and not in others. While some courts have stated that CVRA rights do not apply unless charges have been filed, other courts have stated that certain VCRA rights, under particular circumstances, may apply to victims of offenses that are investigated but have not been charged in court. In implementing the CVRA, DOJ has specified in its guidelines that CVRA rights do not apply unless charges have been filed against a defendant, based on its initial interpretation of the law, but is reviewing its policy in response to a court ruling in 2008.<sup>34</sup> On September 11, 2009, DOJ informed us that the department was initiating a review of the Attorney General Guidelines for Victim and Witness Assistance—which provides guidance to DOJ

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<sup>33</sup> [GAO-09-54](#)

<sup>34</sup> *In re Dean*, No. 08-20125 (5th Cir. May 7, 2008).



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prosecutorial, investigative, and correctional components related to the treatment of crime victims—and any changes to the department’s position on when CVRA rights apply would be reflected in the revised guidance. DOJ is uncertain when the revised guidelines will be issued.

Second, the courts have issued varied rulings that interpret the meaning of the right to be “reasonably heard” at court proceedings, with, for example, one court ruling that the right to be heard gave victims the right to speak and another ruling that the right could be satisfied by a written statement, given the specific facts of the case.

Third, the courts have differing interpretations regarding which standard should be used to review victim appeals of district court decisions regarding CVRA rights. Typically, when a party appeals a district court decision to a court of appeals, the court of appeals reviews the district court decision using what may be called the ordinary appellate standard of review. Under this standard, the court of appeals reviews the district court decision for legal error or abuse of discretion.<sup>35</sup> In contrast to an appeal, a petition for a writ of mandamus is a request that a superior court order a lower court to perform a specified action, and courts of appeals review these petitions under a standard of review that is stricter than the ordinary appellate standard of review. Under the standard traditionally used to review petitions for writs of mandamus, petitioners must show that they have no other adequate means to attain the requested relief, that the right to the issuance of the writ is clear and indisputable, and that the writ is appropriate under the circumstances. As of July 2008, 4 of the 12 circuits were split on which standard of review should be used to review petitions for writs of mandamus under the CVRA.<sup>36</sup>

When new legislation is enacted, the courts typically interpret the law’s provisions and apply the law as cases arise. As rulings on these cases are issued, the courts build a body of judicial decisions—known as case law—which helps further develop the law. The issues discussed above have arisen as cases have come before the courts, largely via motions and

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<sup>35</sup> A court would have committed a legal error if, for example, it applied the incorrect law or incorrectly interpreted the law. A court would have committed an abuse of discretion if, for example, it made a discretionary decision that is arbitrary or with which no reasonable person could agree.

<sup>36</sup> Four of the 12 circuit courts have used one of the two standards of review to decide petitions for mandamus. Other courts have discussed the standard of review under the CVRA but did not apply either standard in deciding the case at hand.

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petitions for writs of mandamus under the CVRA, and the rulings on these issues will likely contribute to the further development of case law related to the CVRA. However, DOJ and D.C. Superior Court officials stated that a statutory change would be beneficial in resolving the issue of CVRA applicability to the D.C. Superior Court.

The CVRA defines a crime victim as “a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia.” At the same time, multiple provisions of the CVRA refer to district courts, which do not include the D.C. Superior Court. While it is apparent that the CVRA applies to victims whose federal offenses are prosecuted in the U.S. district court in the District of Columbia, the CVRA is not explicit about whether the law applies to victims of local offenses prosecuted in the D.C. Superior Court. As a result, some judges in the D.C. Superior Court are applying the CVRA, and others are not. In implementing the CVRA, DOJ operates as if the CVRA applies to victims of local offenses in the District of Columbia, and in July 2005, DOJ proposed legislation to clarify whether the CVRA applies to cases in the D.C. Superior Court, but no legislation had been passed. Without clarification on this issue, the question of whether the D.C. Superior Court has responsibility to implement the CVRA will remain, and judges in the D.C. Superior Court may continue to differ in whether they apply the law in their cases. As a result, victims may be told they are entitled to CVRA rights by DOJ, but whether they are afforded these rights in Superior Court proceedings will depend on which judge is presiding over their case. In our December 2008 report, we suggested that Congress consider revising the language of the CVRA to clarify this issue. As of September 2009, no related legislation had been introduced.

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## Perceptions Vary Regarding Awareness of and Satisfaction with Victims' Rights as well as Participation and Treatment of Crime Victims, and the Potential for Conflicting Interests between Victims and Defendants Is a Concern

Perceptions are mixed regarding the effect and efficacy of the implementation of the CVRA, based on factors such as awareness of CVRA rights; victim satisfaction, participation, and treatment; and potential conflicts of the law with defendants' interests. For example, while a majority of federal crime victims who responded to our survey reported that they were aware of most of their CVRA rights, less than half reported that they were aware of their right to confer with the prosecutor. In addition, victims who responded to our survey reported varying levels of satisfaction with the provision of individual CVRA rights. For instance, 132 of the 169 victims who responded to the survey question regarding satisfaction with their right to notice of public court proceedings reported being satisfied with the provision of this right. In contrast, only 72 of the 229 victims who responded to the survey question regarding satisfaction with the right to confer with the prosecutor reported being satisfied with the provision of this right.

The general perception among the criminal justice system participants we spoke with and surveyed is that CVRA implementation has improved the treatment of crime victims, although many also believe that victims were treated well prior to the act because of the influence of well-established victims' rights laws at the state level. Furthermore, while 72 percent of the victim-witness personnel who responded to our survey perceived that the CVRA has resulted in at least some increase in victim attendance at public court proceedings, 141 of the 167 victims who responded to our survey question regarding participation reported that they did not attend any of the proceedings related to their cases, primarily because the location of the court was too far to travel or they were not interested in attending.

Finally, defense attorneys and representatives of organizations that promote the enforcement of defendants' rights expressed some concerns that CVRA implementation may pose conflicts with the interests of defendants. For example, victims have the right not to be excluded from public court proceedings unless clear and convincing evidence can be shown that their testimony would be materially altered if they heard the testimony of others first. However, 5 of the 9 federal defenders and 6 of the 19 district judges we met with said that it would be very difficult, if not impossible, to provide such evidence that the victim's testimony would be materially altered.

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Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

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## GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement include Kristy N. Brown, Assistant Director; Tracey King; and Susan Sachs. Additionally, key contributors to our December 2008 report include Lisa Berardi Marflak, David Schneider, Matthew Shaffer and Johanna Wong, as well as David Alexander, Stuart Kaufman, and Adam Vogt.

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