Webinar DA February 2023

Thu, Feb 23, 2023 3:21PM 44:56

SUMMARY KEYWORDS

victim, victims, district attorney's office, vra, case, court, request, rights act, complaint, crime, sentencing, defendant, hearing, records, law enforcement, informed, point, opt, notification, statute

SPEAKERS

Kim Branham

Kim Branham 00:00

Hello, my name is Kim Branham, and I am the Victim Rights Act Specialist in the Office for Victims Program in the Division of Criminal Justice. This training is everything a deputy district attorney's office needs to know regarding the Victim Rights Act. In this training, I'm going to talk about the history of the Victim Rights Act, we're going to talk about the responsibilities underneath the district attorney's office, and then the complaint process. So what it would look like for an agency as well as for a victim, if a victim filed a victim rights complaint. To get us started, we want to talk about the history of the Victim Rights Act. It started back in 1982, when President Reagan had an assassination attempt made upon his life, as he was going through the criminal justice system, he realized that he didn't have very many rights as a victim of crime. Now, I always say he probably had more rights than you or I would have had if that had happened to us back then. But he realized as the President if he wasn't receiving information, and he didn't feel like he was involved, in his case, as a victim, what were other victims of crime not receiving from the system. So the President created a task force and asked for the task force to go out and talk to victims of crime, ask them what they liked about the system, what they didn't like about the system, and what they'd like to see change. When that task force came back, they had reported to the President that we were at a national disgrace on how our victims were being treated. And had they had the opportunity to report the crime, they never would have done it again, because of the way that they were treated by our system, and not necessarily by the perpetrator. That got the ball rolling across our nation. For our Victim Rights Act, Colorado passed ours on November 3 of 1992. And it went into effect on January 14, of 1993. It passed with over 80% of the votes. In our Colorado constitution, we have that victims have the right to be heard, informed and present. These are the three things that that taskforce heard from the victims that said that they did not have those rights. They didn't feel that they were informed on their case, they weren't allowed to be present in the courtrooms and they weren't allowed to address the court. So these are the three things that we have felt most important and we have added them into our Colorado constitution. In our legislative declaration, I always read the last part where it talks about all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded two criminal defendants. Basically, what we're saying here is that we would like for our witnesses and our victims to be treated better than our defendants. And I see this more as a goal that we are constantly

working towards to try to ensure that our victims feel that they are being treated properly through this system, and that they do have more rights than the defendants do. Not all crimes are covered underneath the Victim Rights Act, so I have two slides that will will talk about for all of the crimes. I'm not going to go through every single one of these but just know that it is every every one on this slide and the next slide, and any criminal attempt, conspiracy, solicitation and accessory to any of these crimes. Anything that is a domestic violence, crime is considered a Victim Rights Act. So you will see as we go through these slides that harassment by itself is not a VRA crime, but if it's harassment with domestic violence, then it would be a VRA crime. You will also see on this slide, there are three different new crimes that are highlighted in blue. These are new crimes that were passed in 2021 or 2022, that have impacted our Victim Rights Act. And the first one for that is harassment. That is bias motivated. That one passed in June of 2021. We have second degree burglary of a dwelling. So we've had first degree burglary for quite some time and we've recently added second degree burglary. When we talk about a dwelling, what we're looking at is any place that somebody is living in or if it is a place that is intended for somebody to live in. So the obvious is, is their homes, apartments, those types of things, anything that you may not consider or think about right off the bat is something like a homeless camp, or a jail cell. Those could also be considered dwellings because an individual is living in them at that time. If somebody is living out of their car and their car gets burglarized, we would consider that a second degree burglary, the part where it's intended for somebody to live in. It may be a situation where it's a model home or a home that's under renovations and it gets burglarized. We would consider that era crime as well because the intent is that somebody is going to be living in it at some point. The other addition is we've had retaliation against victim witness judge prosecutor and your but now we have added elected official, and that one went into effect on July 1 2021. A couple other important VRA crimes that were added in May of 2022 is first degree arson and invasion of privacy. So we've had invasion of privacy as one of our VRA crimes. But it's invasion of privacy with the intent to commit a sexual act. So we do not have that intent that is added on here. So this one is, it's easier for law enforcement to prove or the district attorney's office to prove to know that, we know that there was a sexual gratification piece to that. However, we just can't prove that piece of it. And we still feel that this is important enough to be a VRA crime. So they've added that invasion of privacy. Both of these two new crimes were added to our victim rights act through a new bill that was passed on May 6 of 2022. In our Victim Rights Act, we've broken down the definition of victim into three sections. So it's any natural person, it is not considered a corporation. And they're considered the victim unless the person is accountable for the crime or the crime or raising arising from the same conduct or plan. And the most simplest example that I can give of this would be your typical bar fight where you have two individuals who are both in a bar, they both assault each other. They're both arrested for assault and charged with assault. Neither of them are considered victims underneath our Victim Rights Act, because they were engaging in the same conduct or the same plan. They're often many other scenarios that could apply to this, we can look at domestic violence and dual arrest, if law enforcement is on scene to a domestic violence situation, and they don't know if there's a primary aggressor, or if there is a true victim. At that point, law enforcement may arrest both parties. If they arrest both parties, neither of them are considered victims underneath our Victim Rights Act. At that time, neither of them like I say, well would be considered victims underneath the VRA. However, if law enforcement submits those cases to the district attorney's office for a filing decision, and the district attorney's office determines that we have a primary victim, and we have a primary aggressor. At that point, that case would likely be dismissed against the victim, and then that vra notification is going to kick in at the point of that dismissal. Okay. And then the defendant would be charged on the other case. So until that decision is made, neither of the parties would be considered victims. If a person is deceased, deceased or incapacitated, the person, spouse, parent legal guardian, there could be

multiple people who would be considered a representative for that victim. So just know that as you're working with victims, you may have to consider family dynamics and take that into consideration when you're providing information and notification to those individuals. So having conversations with the family to find out who that primary person would be for the family, we do not require that you provide notification to the entire family, if you could talk to them to find out who the point of contact would be if you could designate one or two of them, possibly three. And then they give that information out to the rest of the family, that would be sufficient. I encourage everybody to document who those primary point of contacts are. So we know moving forward when you're working with this case, or if the case gets handed over to a different deputy district attorney to manage, they will know who the primary point of contacts are for that family. And then any child victim that turns 18. During the course of the case, they can request that all information be provided to them from that point forward. Or they can request that it continued to go to their designee and then to themselves, it is up to them once they turn 18 and become an adult. notification when the parent is the offender. There are different situations here where maybe the let's give an example here of you know, a parent who's driving down the road, they get pulled over for DUI, and then law enforcement, arrest them for DUI, and they've got a child in the back so they charged child abuse. In that case, we would look to see if there is a another point of contact for that child, is there another non offending parent that we could provide the information to? Is there a family member that we could get involved a grandma, grandpa and uncle, somebody else that could be there to help provide that notification to that child moving forward. If there there is not that we can move into the Department of Human Services, if they're involved, they can be the notification party for them or a foster family if that is the case. If the offender if the offending parent is the only point of contact, you may provide notification letters to the child, this is a situation where you can make that determination yourself depending on the age of the child. So if the child is you know 1617 You can provide that information possibly to them if you feel that they are mature enough, old enough to be able to manage that information. Although you always want to take into consideration the safety concerns for that child when you're doing that. We never want to put a child in the way of harm if that's the case that we are going to provide that information. The other suggestion to you guys is to make sure that you're documenting everything that you were doing. So all the steps that you're taking, what steps did you take to establish that there was a another individual or there was a designee? Did you reach out to aunts, uncles. Document everything. All the steps that you took to follow through DHS, we understand that those cases get turned over quite a bit. And so if there's a new DHS person who's going to be handling that case, make sure you've got their contact information. Again, we always want to make sure that there's enough documentation in there for anybody to be able to pick up this case and be able to run with it, and know exactly what's going on and who the point of contacts are for our victims as we move through the case. Victims have that option to retain an attorney, and they we still need to continue to provide them information. My suggestion is always to have a conversation with the victim to find out how they would like that information provided to them, would they like it provided directly to their attorney and have no communication with you whatsoever. Would they like for you to provide that information to the attorney as well as possibly cc them on anything that comes through any phone conversations if you'd be involved in that. Any email communication, you'll be included in that email. So what would that victim prefer moving forward. If you can get something in writing from that victim stating how they would prefer that notification, that would always be best. And then again, documenting everything. And I know, you're going to hear me say documentation through this entire process and this entire training, but it is very, very important that we document. If it's not documented, it didn't happen. And that's the number one thing we're going to talk about when we have those victim rights complaints, if they come forward, is that if it's not documented, and our subcommittee needs to, then they're going to ask for documentation on

what you did to reach out to a victim. What information did you provide them. So we need to have that documentation stated somewhere. Victims also have that opportunity to opt out of notification, so maybe they don't want you to contact them. They no longer want to be involved in the case, if you can get something in writing from them, stating that they no longer want communication with your office, that would be the best. Now I understand that's not always the case. So again, if you're having a phone conversation, and you've got a victim, who's yelling and saying, and I'd never want to have contact with you, again, document that conversation of what happened and what took place, I always think it's important to have something in writing. And the point of this for the victim is to understand what they are opting out of I don't think they quite understand what when that communication stops, what they will not receive, they will not receive information regarding plea agreements, they will not receive information regarding sentencing options, or a sentencing date. So they can address the court regarding a victim impact statement. All of those things, if a victim opts out, they will no longer receive. So if you can put something in writing, if you have a declination letter or something like that, that they can see everything that they're opting out of that would be ideal. If a victim does opt out, they can opt back in at any point in time. So just because they had opted out at the beginning of the case, and maybe now we're six months in and things are starting to move along, and they decide that Nope, they want to be involved. Again, they do have the option to opt back in. And just because they're opting out of the process through the district attorney's office does not mean that they're opting out of all agencies from that point forward with post sentencing. So they will still have to opt out of those agencies as well. In our Victim Rights Act, the very first thing you're going to see is that victims shall be treated with fairness, respect and dignity. It is the number right number one right that victims have. It is also the number one right that is violated across all criminal justice agencies. To be treated with fairness, respect, and dignity is considering the tone of voice that you're using when you talk to the victim. Considering the choice of words that you use when you talk to them, slowing down, taking the time to speak with them and listen to what they have to say and not rushing through conversations with them. It's also important to remember to return their phone calls or their emails in a timely manner. If you've got a victim who is contacting you constantly and they have a lot of questions, respond to them, let them know that you know, at this point, you don't have the time to speak with them. Because you're in trial, you have other responsibilities at that time that you need to meet, but plan at that separate time that you can speak with them. So schedule a time and block it out in your calendar to let them know that their conversation and their position on what is happening moving forward is very important to you and schedule that time for them. If you do not have that time is there somebody else within your office, your victim advocates that you can hand that victim over to to be able to have that conversation until you're able to speak with them in a timely manner. So that is those are a couple things that we will look at when we have those complaints that are filed for fairness, respect, and dignity. We're going to look to see is is this a pattern of behavior? Is this something that you know you are not responding to in a timely manner? Is it an egregious act where you just intentionally rude and appropriate to a victim. So those are a few things that we will look at when we're reviewing those complaints. The other part of our core Victim Rights is that victims shall have the right to be informed, present, and heard, and we're going to go through those specifically here through this presentation. So our initial critical stages, there are certain hearings that the victims have the right to be informed of, and there's certain hearings that the victims have the right to be heard. So our victims have the right to be informed of the filing of charges, the decision not to file felony charges. So if it's a misdemeanor case, and we're gonna do a no file declination, that's going to be on law enforcement. And then felony is going to be the District Attorney's Office, unless your district has a separate policy set in place. And there should be an MOU or something in writing to state what that's going to look like. However, in statute, decisions not to file felony charges are an information only to the victims from the DA's

office. The right to be informed a preliminary hearings, arraignments hearings on motions and trials, the victims have the right to be heard on a bond reduction or a modification. So just ensure that the victim if there's a safety risk there if we're going to reduce that bond, and that defendant is going to be able to bond out, so we want to make sure that they have that right to be heard in that process. Any sort of dispositions or pleas and we'll talk a little bit more about them about plea agreements here in a little bit. Tey have the right to be heard on sentencing and re sentencing, a subpoena for their records concerning victims medical history, their mental health or education or their crime victim compensation. They also have the right to be heard when there's a request by the defendant to modify the mandatory protection order. So again, this is around that safety concern. So if the defense is going to request to modify that protection order, the victim has that right to be present in court, and they have that right to be heard regarding that modification. Before that protection order is modified. Other DA related critical stages after sentencing, the rights to be informed are appellate reviews, the decision to conduct DNA testing and the results of those DNA testing, attack on judgment or conviction, and then the petition by a sex offender to cease registration. So this is a dual role between the courts because the courts are going to receive that motion to cease registration as a sex offender. And then the courts are going to reach out to the district attorney's office to contact that victim to get to inform them of that. Victims have the right to be heard on a modification of sentence or re sentencing and your 35 A's and your 35. B's. Any hearing concerning a petition for expungement of juvenile records, and then the sealing of records the victim does have that right to be heard on sealing as well. We do have some clarification regarding our modification of sentencing. So the DA's office shall inform the victim of the sentence or modification hearings for 35 As and 35 Bs as we mentioned, and again, that's that right to be heard, if there is a revocation hearing, if we've got a defendant who was sentenced to probation, and the victim does have to opt in to receive notification from probation. So if a victim had opted in to receive that, then probation is responsible for notifying victims of that revocation hearings and any early termination hearings or request. So that is a responsibility that is under probation. And it is not under the district attorney's office. It formally was but that is currently changed. So it is the probation department's responsibility to notify those victims if they have opted in for that. Victims have the right to be heard when they're unavailable. So oftentimes, our victims will want to be a part of the court process, but they don't want to be there in person. So maybe it's a safety risk for them. Maybe they're unable to be there in person because of work or child care, or they live out of state so they can't be there in person. As the district attorney's office, it is still your responsibility to communicate with the victim and to allow them another option to be present. So that may be something where they appear by phone virtually, or by audio or video, or similar technology. So that is something that the district attorney's office will have to work out with the victim and then coordinate with the courts to ensure that that option is available to the victims. As you will see on this slide we have highlighted the virtual by audio or video. That is a change that took place in the VRA in May of 2022. To say that victims now have that right to appear virtually, and that is through those WebEx options to allow that that option for the victim. So again, it's going to take some coordinating between your office and the courts and the victim to ensure that they are available to be there in person if they can't be there in person to be there in another another fashion. Other things that victims have the right to be informed of and that is and resources within their community is what can we do to help them to appear in court if they need to with travel arrangements? Is there something we can help them with child care financial assistance, translation interpretation that says in here, it's the DA is in the courts, the DA is Office is going to work with the victim if the victim needs a translator or interpretation services, and then the district attorney's office will let the courts know it is now a courts responsibility to provide that service for the victim as well as the defendant. Any other follow up support that the victim may need counseling referrals or assistance with creditors or employers, this is all responsibilities and letting victims know that these resources could be

available through the district attorney's office. So walking them through that process and helping them obtain those if they need them. Other rights underneath the VRA for victims is that victims have the right to be informed of the status of the case and any changes of the case. And especially if we know what those changes are going to be, we need to let the victim know that in a timely manner. We never want to be calling the victim the day before to let them know that oh, we have a we have a hearing tomorrow when the defendant is going to take a plea, that is not going to be okay for the victim to be able to process that information to process the plea and to be able to take time off or to get child care to be there in person if they want to be heard. So if we know that there's going to be any changes in that case, we need to let them know in a timely manner, the same thing as the opposite if the if the hearing is going to get continued or the hearing is vacated, ensuring that we let the victims know as soon as we know. So that the victims cannot don't have to take time off of work or they don't show up in court. And then the case was was no longer the hearing was no longer going to be held. Victims may be present at all critical stages, unless it's going to impact the defendants right to a fair trial. And we'll talk about sequestration here in a little bit. But the key point to remember around that is ensuring that our victims are part of that process and a part of those hearings the most and that they possibly can be a part of that. And we understand that is a court's decision at the end of the day, but just ensure that you're fighting for that victim to be a part of that case. And victims have the right to be informed of the results of court ordered HIV testing and sex assault cases. And then as we talked about before protection orders of victims having that right to be heard when the defendant motions to modify that protection order. Victims have the right to be in a secure waiting area. Most of our district attorney's office have a victim witness unit that are victims can go into, but we want to make sure that they are safe and they feel safe through this process. It is a scary time for victims to be in a courtroom next to their defendants many times. And if we can avoid them sitting out in the lobby with the defendant or the defendants family, we need to make sure that we can do that. So if there is not a victim witness unit in your district attorney's office, where else are in your courtroom, can you have that victim go to ensure that they are safe before that court hearing is held the right to be to have a swift and fair resolution of their case and the right to be informed and expect delays. These are some things that is you know, tempering expectations for that victim to let them know that this court case may go on for months for years depending on competency issues. So if those are some concerns that you have moving forward, and you know that letting the victim know ahead of time that this process is going to take a while and what they can expect. But if the defense is the one that is sitting there requesting continuances, what are you doing to stop the continuances? Are you are you advocating for the victim on that point to say we do you know we need to proceed with this. This is getting too difficult on the victims to be prepared to testify and then to come up every time and have this court hearing continued. So what can you do to to speed up that process. And we need to make sure that all victims Social Security information is redacted out of the records before it is released to the public. That is something that the victim doesn't have to request, we just need to ensure that we are redacting those social security numbers. Victims can request to review the pre sentence investigation report. It is at the discretion of the district attorney's office whether they released that or they allow the victim to review that. I know some departments will not allow the victim at all to review the psi R. However, there are some that they will allow the victim to come look at it in person. They will take out anything that's under confidential cover and they may not let them view the entire thing but portions of it they could so it is ultimately up to the DA's office whether that is it's at your discretion whether you choose to do that or not. The other part is the right To determine restitution. So we do need to work with our victims to collect receipts information regarding restitution, and ensuring that that gets to the courts in a timely manner, that the laws have changed around the restitution. Now to say that victims no longer always have that 91 days, they can reserve that restitution 91 days outside of sentencing. So it's always important to get

that restitution up front, the best we can as sentencing so that can be ordered by the court. As I mentioned before, victims have to opt in to receive notification from probation. They are the only post sentencing agency that the victim has to opt in for so they will receive notification automatically from Community Corrections from the Department of Corrections Division of Youth Services. But when it comes to probation, the victim does have to opt in. So it is a district attorney's responsibility to inform the victim how they can opt in so communicating with your probation department, or referring that victim over to the to the probation department to opt in for that. And then victims have the right to know about restorative justice practices that are in their community. So if you are aware of restorative justice programs, is this something that you can put into your brochures to let the victims know what's available, and then they can reach out to them? Or can you do a soft handoff over to those restorative justice programs if they are available in your community. Um, the victims have the right to request the initial incident report. And this is a law enforcement report. This is typically a law enforcement responsibilities. But as of May of 2022, there were some changes to this, that have impacted the district attorney's office. So a victim can request initial incident report, they will get this report for free, it is a requirement that they do get it however, it is still at the discretion of the agency when it is released. So they can request it from your department, they can request it from law enforcement, typically, it's going to be law enforcement, because it is their report. And in that report, it will be unredacted. So when we say unredacted, anything that has the victim's name, offender's name, the date of the crime, the charges and a summary of the incident, because what we were seeing prior to changing this law is that victims would request a copy of this report, it would be redacted so much that the victim wouldn't even be able to identify that it was them or their case. Sometimes the victim may need this for protection order purposes, they may need it for an employer for insurance purposes. So if it's if there's no identifying information for them, they may or may not be able to get their needs met. So we have changed the law in our statute in our VRA, to say that they get this initial incident report, they get it for free, and it will be unredacted. The redacted piece of that or other victims names in the case and any personal identifying information to the parties or the witnesses will also be redacted. Law enforcement shall notify the district attorneys of the information that the victims received in the report and when it was provided to the victim. And then the district attorney's office shall provide this information to the defendant involved through the discovery process. So that last piece there is where we've made some changes, and included responsibilities underneath the DA's office for this initial incident report. So like I mentioned before sequestration is a right that the victim has sequestration is a rule of evidence, while the right to be present is a constitutional right. So we understand that the victim and the defendant both have rights here and the defendant has that right to a fair trial. However, the victim does have a right to be a part of that process. If the victim is sequestered, the district attorney's office must prioritize and minimize the time that the victim is sequestered. So is it something that we can do to have that victim testify first, if you're not going to bring them back so they can testify, and then they can be a part of that process throughout throughout the case. A great research source for you is to review Colorado court of appeals case People v. Kony. This is a great one to reference if you're running into this issue where the defense continually requests to have that victim sequestered from the process. We often have quick set overs where it may be that you're in court, and the judge wants to set the matter over till the next day. And this is a VRA case. And the victim has that right to be present and heard at that hearing. And maybe the victim is not there that day. And it's going to be set over to tomorrow or two days away. That is not sufficient time for you to be able to get a hold of the victim. So we encourage you to stop the court to say Your Honor, this is a VRA case. The victim has the right to be heard they're not present in the courtroom today. I would ask you know the court if we could send this out to allow me that opportunity to get a hold on the victim. So we're VRA compliant. Most courts will stop at that point, they may not set it over for the next day, they may give you a few more

days to allow you that time to get a hold of the victim. I think as long as you make a record that you tried to stop that quick set over, you will be okay. It'll be up to the courts as to their decision. So if they do go ahead and proceed till the next day, you've at least made the record to try and set it out. If we do get a victim that files a VRA complaint to say that they did not have sufficient notification to attend that hearing, we will pull those transcripts. And we will look to see what efforts did the district attorney's office make to stop that or to extend that hearing date out a little bit further. We've also heard about many times where the courts will will take a recess and say, Hey, go see if you can reach out to the victim while we're on recess. And we'll call this case back up later, try to get a hold of them to see if they can appear tomorrow. If you do that, that's fine. Document every efforts that you can to get a hold of the victim. And you can report back to the court what your findings were. If you still cannot get a hold of the victim, again, request to have it set over. What are reasonable attempts to notify a victim? There is no set number that is in statute of how many times you need to reach out to the victim. It is also a case by case basis. So we're going to look at if you did one call out to the victim, and you weren't able to get a hold of them. Maybe their mailbox isn't set up or it's full and you can't leave a message. And then you don't make any other attempts after that are very subcommittee is likely going to find you in violation, you need to make other attempts to try to get a hold of them. If that is the case, you need to leave them a you need to document what steps you've taken. So again, if you leave them that message, document that you left them a message, what was left on the message. If you can't leave a message because that mailbox is full or it's not set up, document that and then try again at a later point in time. You also may have to call them after hours, maybe they can't take phone calls during the day. Is there a way to text them if their communication and their preferred method of communication is through text and your department allows your victim advocates or you to communicate through text messages, document those text messages, we also want to make sure that we're able to download all of those text messages. So if there is a complaint, we're going to want to be able to review what what was said in the text is, same thing with email. Are we locating an email address? So again, it's going to come down? Did you did you do due diligence to try and reach out to this victim? How many steps did you take? Now we don't want you over here spinning your wills and spending gobs and gobs of time on it. However, we need to show that you made an effort to try to reach out to them. Victims have the right to consultation. So as I talked about before that fairness, respect and dignity is our number one complaint for our all of our agencies. The number two complaint under the District Attorney's offices is the right to consult. And the reason for that is the manner in which consultation takes place. We want to ensure that the victims conversation that they have with you is a full frank discussion with the victim regarding any explanation of the initial criminal charges, the potential consequences of such charges, any lesser charge being considered any sentencing considerations and the condition of possible outcomes. All of this needs to have had with the victim prior to that conversation with the defendant. And so that way that makes that makes that victim feel that they are part of this process. We don't want to go into this having a conversation with the victim to say, All right, thanks for meeting me here today. Here's what I'm gonna do. That's not consulting with them a better approach to have that consultation conversation with the victim, as to say thank you for meeting me here today. What would you like to see happen with that case, and try to understand where they're coming from and what they would like to see happen as their outcome, if you don't agree with them, or what they're asking for is not realistic of what we can do within our statutes. It's okay to say thank you for your perspective. I appreciate that. However, here's the direction that I'm considering going or here's what we're looking at. And explain to them why. Okay, I think a victim will appreciate that conversation more than you coming in there telling them what you're going to do, and telling them that ultimately they have no right that it is up to them. It's not up to them, excuse me. Also some changes to consultation that we've had in May of 2022. With our new bill was also diversion. So we've

added diversion in here, that the victim has the right to consult with the prosecutor prior to any pre or post filing of a diversion case. So again, the same applies with diversion. Now, we never had anything in our VRA around diversion. So that is a new thing. Other things regarding diversion is the right to be informed when the DA's office grants an early termination from diversion, and then the right to be informed at the termination date from a diversion program. So again, we're going to do that consultation when it's pre or post filing on a diversion, we're going to let the victim know if there's going to be an early termination request and then the final termination date for diversion programs. There are some privacy issues where as we talked about with Social Security information, that is automatically going to be redacted. There are certain things that the victim needs to request to have their address redacted. This is not the address confidentiality program. This is something completely different. But the victim does need to know how to request to protect their address and the as of the Colorado rules of criminal proceedings, just to help protect them as for safety, especially before the information goes out into the public or before it gets released to the defense. There were also some changes around the subpoena for records. There's a few slides here. And I'm just going to read through them a little bit because it's a lot of information. I've got the statutes that are attached on here, but any party issuing a subpoena for privilege records or victim compensation records shall file with the court and serve on the opposing party. Any copy of the subpoena, a certificate stating that the party has good faith and lawful basis for the subpoena, a copy of notice that parties may not released the records until the court orders the release or a hearing and parties may only provide the records to the court if the court orders the party to release the records, and then any motion stating there's a lawful basis for the subpoena. If the records are subject to a claim of privilege, a good faith claim that the victim has expressed or impliedly waived and any privilege to allow the courts to properly receive the records. After considering all evidence, the court shall quash the subpoena and not receive any records, release records of the victim expressly or impliedly waived the statutory privilege. If the court hearing is held the court shall proceed after the victim input or determine if the DA's office made reasonable efforts to notify the victim. So reasonable efforts that kind of goes back to the same How many times do we need to reach out to the victim, we have to give enough effort to try to get a hold of them before their records are released. If the court orders release of the records, the party has parties have no less than seven days to produce records to the court and the court may order less than seven days to avoid the delay of a jury trial. The point of making all of these changes to the subpoena for records is that once those records are released, there's nothing we can do about it. So what we're trying to do is stop that process from happening before the victims records are released to the defense. The victims also have the right to be informed and to be heard regarding the sealing of their records. In 2017, we made it a little bit easier for victims to be able to receive their records even after it has been sealed. So a victim can request from law enforcement or the district attorney's office, if they can show the lawful purpose why they need those records, they can do a request even after the case has been sealed and requests that so they just need to prove that there's some sort of lawful purpose that they are going to need those records for. So again, it could be protection order, it could be for maybe a divorce hearing, it could be for an employer, whatever it may need to be as long as they can show some lawful purpose for it, we can release those records even after they're sealed. We did have a change or the victim having that right to be heard. And this went into effect on September of 2021. Before that records are sealed. Now this is not for all of the sealing statute. It is only for sealing statutes of 24-72-706, 24-72-709 and 24-72-710. So when the Court receives a motion to seal, they will inform the district attorney's office. If the DA objects or the victim requests a hearing, the court shall set a hearing and the victim has that right to be heard. The court shall decide the motion after considering the position of the DAs and the severity of the case the criminal history, the number of convictions and then also taking the position from the victim as well before they seal those records. So again, we want to

make sure that the victim is informed of that sealing, we want to ensure that they have that right to be heard, and it is only on certain sealing statutes. It is not all sealing statutes. Again, 706, 709 and 710. We're going to move into the complaint process. We have two types of VRA complaints. The first is the informal complaints and these are the most often the calls that I will receive. I handle about 150 to 200 calls that are resolved locally and info Normally, there are times that the victim will want to file a formal complaint. And that is something that they have that option to do. But we will always do a screening process to see it if it is something that we can do to resolve it locally before it gets to that formal complaint. I also want to screen them to ensure that the goals of the victim are in line of what the goals of our office in the DCJ and what we can do regarding those very complaints. So we are based on system change. We want to make sure that this doesn't happen to other victims in the future. And there's and there's things that we just cannot do, we cannot go back and fix it for the victim. What's happened, unfortunately has already happened. But we can change things moving forward for that victim, as well as for other victims going through the system. And we always want to reach a resolution and again, prevent those future violations. If a victim files a formal VRA complaint, it will be reviewed by our VRA subcommittee. We are a very subcommittee that is again, a subcommittee to the Victim Service Advisory Board, we have seven members who sit on our subcommittee, and they are from all over the state of Colorado. So it's not just the Denver Metro is making decisions. We have a judge, we have a deputy district attorney, a Victim Witness director, we have a police chief, a victim of a major crime, we actually currently have a community representative. And we don't have a rural representative from a DV or sex assault program like this slide says we actually changed that. We currently have a representative from the Department of Corrections. So we have somebody from the post-sentencing agencies to be able to be a part of that process and on the board. If an agency is found in violation, again, we're based on that system change. So we want to make sure that this doesn't happen to other victims in the future. So we're gonna look at doing things such as a Victim Rights Act training for that department, and it would be a mandatory training for the entire department. So it wouldn't just be on the victim advocate or the deputy district attorney who made the mistake, her violated a victim's right it would be on the entire department. With that VRA training, I would be the one to provide it as well as our deputy district attorney who sits on our VRA subcommittee, she would also be there to help with the process and the training. But we are also in favor of doing policy change. So what is your policy on how you consult with the victim if that's what the violation was surrounding so we may ask for updated policies or new policies regarding what the VRA is she was a victim empathy training, this is something if there was a fairness respect and dignity complaint that took place, we may have to we may encourage you or may require you to do a victim empathy training. And again, that would be mandatory for the entire department. And then a meeting with the victim if this is something that the victim had requested, we do ask our victims to tell us what they want to see happen through this complaint process. And if that is something that they have requested that we would encourage that we would help facilitate that meeting. What we are not again, like I said, we're not a do over process. So there is nothing that we can do to go back and fix what happened. We can't make courts, we hold hearings, we can't make the District Attorney's Office file a case, we can't make law enforcement arrest anyone. We can't make probation to revoke anybody. And we can't change the outcome of the case ultimately, but again, we can change what is happening moving forward for that existing victim and for other victims. This is a screenshot of the VRA complaints that we've received over the last 10 years. As you guys can see law enforcement and the district attorney's office have the bulk of the VRA complaints. They also have the bulk of the VRA in statute, so your chances of getting a complaint are a lot higher than our post-sentencing agencies. Unfortunately, in 2021, and 2022, the DA's office had the majority of those complaints in law enforcement actually went down quite a bit. So just know that there's quite a few. I average about 45 complaints, VRA complaints across the state. And these are the

formal ones. Of course, this is 45 for all criminal justice agencies, not just the district attorney's office. So we're working with these as they come in, we're working with victims and we're working on trying to get our District Attorney's Offices into compliance underneath our VRA the best that we can. This is my contact information. You guys are welcome to contact me at all. If you have any questions regarding the Colorado Victim Rights Act for your office for the state of Colorado. This is my office line, my cell line and also my direct email. Feel free to reach out to me at any point. I appreciate you taking this training today and have a good rest of your day. Thank you