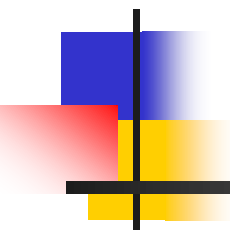




# Victim Rights

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# Laws – You should know!

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# State Constitutional Rights: Crime Victim's Bill of Rights

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- Right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts
  - In every case, regardless of the sentence or disposition imposed



# Penal Code 679 – Legislative Intent

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- To ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity.



# Statutory Rights PC679.02

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- 1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required (such as **continuances**).



# Statutory Rights PC679.02

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- 2) Upon request of the victim or a witness to be informed by the prosecuting attorney of the **final disposition** of the case. PC 11116.10



# Statutory Rights PC679.02

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- 3) For the victim, victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be **notified of all sentencing proceedings,** and the right to appear, to reasonably express his or her views, have those views preserved by audio or video .. And to have the court consider his or her statements.
  - Victim Impact Statement

# Victim Notification







# Statutory Rights PC679.02

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- 5) Upon request by the victim or the next of kin of the victim if the victim has died, to be **notified of any parole eligibility hearing** and of the right to appear, either personally ... to reasonably express his or her views, and to have his or statements considered...



# Penal Code 679.02

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- Requires DA to notify specified sexual assault victims of the right to request, on a form provided by DA
- Notice from the sheriff about convicted defendant's probation status and expected release date.
- Requires sheriff to inform victim who requested notice of probation and release.



## PC646.93 - Release from jail

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- Requires Sheriff to give notice of the release on bail of any person arrested for stalking to the DV Unit of the prosecuting agency of the county or city where the victim resides.
- Requires the Prosecutor to notify the jail in writing as to the persons to be notified.
- Requires the Prosecutor to notify the victim of the bail hearing.
- Authorizes the victim to be present and to address the court on the issue of bail.

# PC646.93 - Continued



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- Requires the court to impose the following conditions, unless good cause is shown otherwise:
  - Not initiate contact in person, by telephone, or any other means with the alleged victim
  - Not knowingly go within 100 yards of victims, victim's residence, or work
  - Not possess any firearms
  - Obey all laws
  - Provide court with home & work address & telephone
- Violation of bail condition can result in a no-bail warrant.



## Statutory Rights PC679.02

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- 6) Upon request by the victim or the next of kin of the victim **if the crime was a homicide**, to be notified of an inmate's placement in a reentry or **work furlough program**, or notified of the inmate's **escape** as provide by Section 11155.



## Statutory Rights PC679.02

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- 7) To be notified that he or she may be entitled to **witness fees and mileage**, as provided by Section 1329.1



# Statutory Rights PC679.02

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- 8) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund
  - Gov Code 13959; PC 1191.2
  - **See SDPD's "Information for Victims of Domestic Violence/Sexual Assault"**



# Statutory Rights PC679.02

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- 9) To the expeditious **return of his or her property** which has allegedly been stolen or embezzled, when it is no longer needed as evidence





# Statutory Rights PC679.02

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- 10) To an expeditious disposition of the criminal case



# Statutory Rights PC679.02

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- 11) To be notified, if applicable, if the defendant is to be placed on parole
  - PC679.03, 3058.8



# Statutory Rights PC679.02

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- 12) To be notified by the district attorney's office **where the case involves a violent felony**, as defined by PC667.5 c, or in the event of a **homicide**, the victim's next of kin, of a pending **pretrial disposition** before a change of plea is entered before a judge.
  - Felony DV cases



# Statutory Rights PC679.02

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- A) **a victim of any felony may request to be notified** by the district attorney's office of a pretrial disposition
- B) if it is not possible to notify the victim of the pretrial disposition before the change of plea is entered, the DA's office or Probation Dept shall notify the victim **as soon as possible**
- C) the victim may be notified by any **reasonable means** available



# Statutory Rights PC679.02

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- (b) These rights shall be set form in the information and educational materials prepared per Sec. 13897.1
  - Shall be distributed to local law enforcement agencies and local victims' programs by the **Victims' Legal Resource Center** established by Sec. 13897.
    - **DA's Victim Witness Program**



# Statutory Rights PC679.02

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- © Local law enforcement agencies shall make available copies of these materials to victims and witnesses.

# Things Officers must do to help Victims of DV



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# Overview

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- Emergency Services
- Assist in Pursuing Criminal Options
- Provide certain Written Info at Scene
- Provide Victim Information or DV card
- Right to make a citizen's arrest & How to do it
- Sexual Assault Rights & Procedures





# Duties to Victim - PC13701(c)

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- Emergency Services
  - Medical care
  - Transportation to shelter or **hospital for treatment when necessary**
  - Police standbys for removing personal property
  - Safe passage out of victim's residence



# Duties to Victim - PC13701(c)

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- Assist in Pursuing Criminal Options
  - Crime report number
  - Who to contact at police department
  - Who to contact at prosecutor's office



# Duties to Victim - PC13701(c)

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- Provide Written Information at Scene about:
  - Restrained person may be released at any time
  - Information about a shelter, you may contact \*\*\*
  - Services in the Community, you may contact \*\*\*
  - Information about California Victims' Compensation, you may contact 1-800-777-9229
  - You may ask DA to file criminal complaint
  - Restraining Orders, including EPO
  - Right to file a civil suit



# Duties to Victim - PC13701(c)

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- Right to make a citizen's arrest & how to safely execute the arrest. PC836(b).



# “Victims of Domestic Violence (Sexual Assault) Card”

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- Applies to the following crimes:
  - PC273.5 – felony domestic violence
  - 243(e) – misdemeanor domestic violence
  - 261, 261.5, 262 – sexual assault
  - 286, 288a or 289 – child molestation



# Sexual Assault Victim- PC264.2 or 679.04

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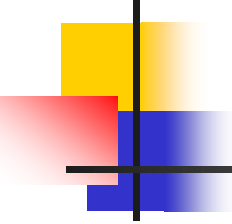
- Right to be notified orally or in writing by law enforcement or district attorney of rights.
- **Right to victim advocates (EC1035.2) and support person of victim's choosing present at any interview by law enforcement authorities, district attorneys or defense attorneys or their agents.**



# Victim Confidentiality - PC293 and Gov. Code 6254(f)(2)

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- The name of a victim of certain crimes may be withheld at the victim's request:
  - Sexual Assault Crimes
    - PC 261, 261.5, 262, 264.1, 286, 288, 288a, 289
  - Crimes of Violence
    - PC 273a, 273d, **273.5**, 422.6, 422.7, 422.75
  - Stalking PC646.9
- Many agencies use victim confidentiality request forms: Modesto Police & CHP



## PC 841.5 – Disclosure of address or phone number of victim or witness

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- No law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.





# Gov. Code 6206 – Address Confidentiality

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- Application completed in person at a community-based victims' assistance program.
- Applicant must meet with counselor and receive orientation information about program.
- Secretary of State approves application.



# Gov. Code 6206 – Address Confidentiality

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- Documentation:
  - Police report involving DV
  - Temporary or permanent protective order
  - Stay of 3 nights or more at a shelter within the last year
- Sworn statement:
  - Victim of DV
  - Fear for his or her safety or safety of children



# CP 1219 – Contempt

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- In a finding of contempt for a victim of DV who refuses to testify, the **court shall not incarcerate the victim**, by may require the victim to attend up to 72 hours of a DV program for victims (**counseling**) or require the victim to perform up to 72 hours of appropriate **community service**, provided in a subsequent finding of contempt for refusing to testify arising out of the same case, the court shall have the option of incarceration



# PC 868.5 – Support Person

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- A prosecuting witness in a case involving
  - PC187, 203, 205, 211, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.6, 277, 285, 286, 288, 288a, 288.15, 289, 647.6
  - Shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness ... during the testimony of the prosecuting witness.



# PC1191.16 – Victim Impact Statement

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- How has this crime affected you?
- What physical injuries or symptoms have you or others close to you suffered as a result of this crime?
- Discuss changes you have made in your life as a result of these injuries?
  - Perform work? Make a living? Run a household? Go to school? Etc.



# Restitution – Victims of Crime Program

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- State Board of Control administers the Victims of Crime Program
- Reimburses eligible crime victims for specified out of pocket losses as a result of a crime
  - Wage loss, medical expenses, mental health counseling, funeral/burial expenses, support, job restraining, relocation, security.
- Payer of last resort



# Who is not eligible?

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- Persons who committed the crime
- Contributed to or took part in crime
- **Persons who do not cooperate with**
  - law enforcement in the investigation of the crime
  - prosecution of any known suspects
  - Victim/witness assistance center in the processing of the application
- **Persons convicted of a felony on or after 1-1-89**



# Gov Code 13961 – Application for Assistance

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- Victim may file a claim with the board
- Within one year after the date of the crime or one year after the victim attains 18
- Board may grant a 3-year extension upon good cause





# Application

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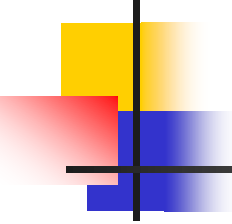
- Victim Info
- Claimant Info
- Application Info
- Crime Info
- Felony conviction
- Related claims
- Representative info
- Federal Reporting
- Reimbursement or recovery sources
- Medical, dental or mental health bills
- Employment Info
- Wage/Income Loss
- Support Loss
- Funeral/Burial
- Additional Info
- Declaration



# PC 1202.4 - Restitution Fines

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- In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record.
  - Felonies - \$100 - \$10,000
  - Misdemeanors - \$100 - \$1,000



# Gov Code 13961.1 – Emergency Awards to Victims of Violent Crimes

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- If, victim incurs loss of income or the derivative victims incurs loss of support;
- If, victim requires emergency medical treatment
- Disbursements of funds for emergency awards shall be made within 30 business days of the application



# Health Practitioners & Mandated Reporters

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## Mandated Reporting



# Types of Reporting Laws

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- Medical Mandated reporting - PC11160
  - Health practitioners must call immediately and submit written report of domestic violence (& other crimes) within 2 days to police
- Elder Abuse - WI 15630(a)(1)(2) & 15633(a)(b)
  - Police, as mandated reporters, must cross report to APS incidents of abandonment, isolation, financial abuse, or neglect.
  - Need to observe or have knowledge



# FC6228 - Free DV reports

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- Local law enforcement agencies shall provide, free, one copy of all DV incident report face sheets and incident report to a victim of domestic violence upon request.
- Face sheet shall be made available within 48 hours and no later than 5 days.



# Labor Code

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# Labor Code 230 & 230.1 - Protects DV Victim at Work

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- Prohibits employers from discharging or discriminating or retaliating against an employee who is a victim of domestic violence who takes time off from work to obtain a restraining order or injunctive relief and requires the employee to give the employer reasonable notice of this court appearance.
- See handout.





# Penal Code

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# PC633.6 - Orders to permit victim to record conversations from Def.



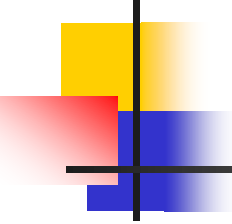
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- Authorizes a judge issuing a DV protective order, upon the request of the victim, to include a provision in the order that permits the victim to record any prohibited communication made to the victim by the perpetrator.



# Federal Laws

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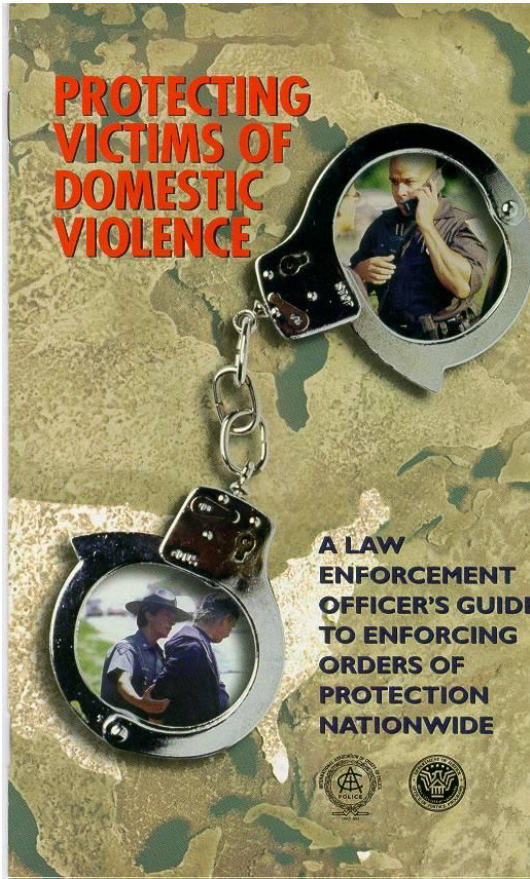


# VAWA, FF & C & Federal Gun Control Act of 1994

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- Interstate domestic violence or sexual assault
  - Section 2261(a)(1) & (a)(2)
- Interstate violation of protection order
  - Section 2262(a)(1) & (a)(2)
- Firearms disability provision
  - Section 922(g)(8)
- Full Faith & Credit - out of state restraining orders are valid in all states

# Guide to Enforcing National Protective Orders



- National DV Hotline 1-800-799-Safe
- International Assoc. of Chiefs of Police, 800-the-IACP
- Full Faith & Credit Project, 800-256-5883
- Battered Women's Justice Project, 800-903-0111,x2
- American Indian Law Center, 505-277-5462



# VAWA of 1994

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- Battered Women may self-petition to become a lawful permanent resident
  - Battering or extreme cruelty by a US citizen or LPR inflicted on spouse or parent (for children)
  - Good-faith marriage and resident with US citizen or LPR
  - Good moral character within 3 years
  - Extreme hardship



# Questions?

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