

Victims of Crime with Disabilities

Applicable Laws

A. The Victims of Crime Act – 1984

The **Victims of Crime Act** (VOCA) was an attempt by the Federal Government to help the victims of criminal actions through means other than punishment of the criminal. It created a federal victims compensation account funded by fines assessed in federal criminal convictions and bond forfeitures, and it established provisions to assist state programs that compensated the victims of crimes.

VOCA is administered by the Office for Victims of Crime, which is responsible for this training. Although the specific type of outreach provided varies by need and location, the common goal of OVC and VOCA is to reach out with a compassionate, skilled, and effective response to victims who have suffered physical, sexual, emotional, and financial harm as a result of crime.

OVC administers two major formula grant programs. One involves formula grants for victim compensation, which reimburse victims for out-of-pocket expenses resulting from the crime. *The other formula grant program is for victim assistance, and is awarded through subgrants to state agencies and local service providers to provide direct services to crime victims, such as crisis intervention, counseling and referrals, criminal justice advocacy, and emergency transportation.*

As a result of the Victims of Crime Act, most states have adopted some form of **Constitutional State Victim's Rights Amendments**. You can find out about your specific state at the National Conference of State Legislatures Web site, **ncsl.org**

B. The Justice For All Act – 2004

The **Justice for All Act** was signed into law by President George W. Bush in 2004. Some of the goals of the Act are to protect crime victims' rights, eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, and improve and expand the DNA testing capacity of federal, state, and local crime laboratories.

The first section of the Act establishes the rights of crime victims in federal criminal proceedings and provides mechanisms for enforcing these rights. The rights include:

1. The right to be reasonably protected from the accused.
2. 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.
3. 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.
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
5. The reasonable right to confer with the attorney for the Government in the case.
6. The right to full and timely restitution as provided in law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the victim's dignity and privacy.

The Act adds new victims' rights and modifies some of the existing rights. Most notable is the new right of victims to be reasonably heard at any public proceeding involving release, plea, or sentencing.

C. Violence Against Women Act – 1994

The **Violence Against Women Act (VAWA)**, passed by Congress in 1994, sought to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault, and stalking in the United States. The Act was developed and passed as a result of extensive grassroots efforts in the early 1990s, with professionals from the victim services field, law enforcement agencies, prosecutors' offices, the courts, and the private bar urging Congress to adopt significant legislation to address domestic violence. Since its original passage in 1994, VAWA's focus has expanded to address—in addition to domestic violence—dating violence, sexual assault, and stalking.

The Act funds services to protect adult, teen, and child victims of these crimes, and supports training on these issues, to ensure consistent responses across the country. STOP Grants (State Formula Grants), Transitional Housing Grants, Elder Abuse Grant Program Grants, and Protections and Services for Disabled Victims Grants are just a few of the grants funded by VAWA.

VAWA also emphasizes a coordinated community response and supports the work of community-based organizations that are engaged in work to end domestic violence, dating violence, sexual assault, and stalking, particularly those groups that provide culturally and linguistically specific services. Additionally, VAWA provides specific support for work with tribes and tribal organizations to end domestic violence, dating violence, sexual assault, and stalking against Indian women.

VAWA also provided \$1.6 billion to enhance investigation and prosecution of the violent crime perpetrated against women, increased pretrial detention of the accused, imposed automatic and mandatory restitution on those convicted, and allowed civil redress in cases prosecutors chose to leave unprosecuted.

D. The Civil Rights Act of 1964

The **Civil Rights Act** was a landmark piece of legislation. It extended voting rights throughout the U.S. and outlawed racial segregation in schools, at the workplace, and in facilities that served the general public (“public accommodations”). The Act prohibited discrimination in public facilities, in government, and in employment. It became illegal to compel segregation of the races in schools, housing, or hiring.

The Act authorized the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, and to establish an Equal Employment Opportunity Commission (EEOC).

Once the Act was implemented, its effects were far reaching and had tremendous long-term impacts on the whole country. Because it prohibited discrimination in public facilities, in government, and in employment, the Jim Crow laws in the southern U.S. were invalidated. It also became illegal to compel segregation of the races in schools, housing, or hiring.

Powers given to enforce the Act were initially weak, but were supplemented during later years. Congress asserted its authority to legislate under several different parts of the Constitution, especially the Fourteenth Amendment (which guarantees all citizens equal protection under the law) and the Fifteenth Amendment (which describes the government’s duty to protect voting rights).

E. The Americans With Disabilities Act (ADA) – 1990

The **Americans With Disabilities Act** is a federal civil rights law for people with disabilities, comparable to the civil rights law passed in the 1960s for other minorities. It covers employment, state and local government services, public accommodations, and telecommunications for the deaf. The ADA covers all people with disabilities, visible and hidden. To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. The ADA does not specifically name all of the impairments that are covered.

Title I requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others.

Title II covers all activities of state and local governments regardless of the government entity's size or receipt of federal funding. Title II requires that state and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings, but they are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by title III.

F. The Rehabilitation Act of 1973

The **Rehabilitation Act** is considered the first “rights” legislation to prohibit discrimination against people with disabilities. However, it applies only to programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.

Section 504 of the Rehabilitation Act is a key component of the legislation. This section protects qualified individuals from discrimination based on their disability. It forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. Specifically, this section defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Section 504 protects *qualified individuals with disabilities*. Under this law, *individuals with disabilities* are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. Also covered are people who have a history of, or who are regarded as having, a physical or mental impairment that substantially limits one or more major life activities. Major life activities include caring for one’s self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning.

Under Section 504, a recipient of federal financial assistance may not, on the basis of disability:

- Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits.
- Deny access to programs, services, benefits, or opportunities to participate as a result of physical barriers.
- Deny employment opportunities, including hiring, promotion, training, and fringe benefits, for which they are otherwise entitled or qualified.

G. The Civil Rights of Institutionalized Persons Act – 1980

Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the U.S. Attorney General to investigate conditions of confinement at state and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. Its purpose is to allow the Attorney General to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions. The Attorney General does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized persons.

The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are “egregious or flagrant,” that they are subjecting residents to “grievous harm,” and that they are part of a “pattern or practice” of resistance to residents’ full enjoyment of constitutional or federal rights.

Under CRIPA, the Department of Justice Civil Rights Division focuses on significant problems, such as abuse and neglect in nursing homes and juvenile facilities, sexual victimization of women prisoners, inadequate education in facilities serving children and adolescents, and the unmet mental health needs of inmates and pretrial detainees. In addition, the Civil Rights Division enforces the rights of institutionalized persons with disabilities to receive adequate habilitation and active treatment and to be served in the most integrated setting appropriate to their needs.

H. The Crime Victims with Disabilities Awareness Act – 1998

The **Crime Victims with Disabilities Awareness Act (CVDAA)** was signed into law by President Clinton in October 1998. In describing reasons for passing the Act, Congress noted that although research conducted abroad demonstrated that individuals with developmental disabilities are at a 4 to 10 times higher risk of becoming crime victims than those without disabilities, there were no significant studies in the U.S. It also noted that studies in Canada, Australia, and Great Britain showed that crime victims with developmental disabilities were at risk for repeated victimization because so few of the crimes against them were reported and even when they were, law enforcement and the criminal justice system were reluctant to rely on their testimony.

Congress concluded that research needed to be conducted in the U.S. to understand the nature and extent of crimes against individuals with developmental disabilities; to describe how the justice system responds to crimes against individuals with developmental disabilities; and to identify programs, policies, or laws that hold promises for making the justice system more responsive to crimes against individuals with developmental disabilities.

Consequently, the Act has a threefold purpose:

1. To increase public awareness of the plight of victims of crime who are individuals with developmental disabilities.
2. To collect data to measure the extent of the problem of crimes against individuals with developmental disabilities.
3. To develop a basis to find new strategies to address the safety and justice needs of victims of crime with developmental disabilities.

I. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act – 2009

The **Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act** was signed into law by President Obama in October 2009. The law was named for Matthew Shepard, a gay Wyoming teenager who died after being kidnapped and severely beaten in October 1998, and James Byrd Jr., an African-American man dragged to death in Texas the same year. The law makes it a federal crime to assault an individual because of his or her gender, gender identity, sexual orientation, or disability. The new measure expands previous hate crimes laws, including the Civil Rights Act of 1968, the Hate Crimes Statistics Act of 1990, the Violence Against Women Act of 1994, and the Hate Crimes Sentencing Enhancement Act of 1994.

The law also:

- Removes the prerequisite that the victim be engaging in a federally-protected activity, like voting or going to school.
- Gives federal authorities greater ability to engage in hate crimes investigations that local authorities choose not to pursue.
- Provides \$5 million per year in funding for fiscal years 2010 through 2012 to help state and local agencies pay for investigating and prosecuting hate crimes.
- Requires the Federal Bureau of Investigation to track statistics on hate crimes against transgender individuals (statistics for the other groups are already tracked).

The Act is the first federal law to extend legal protections to transgender individuals. Of all the Acts mentioned in this training the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act is the only legislation that makes it a crime to assault someone with a disability.

State hate crime legislation. Forty-five states and the District of Columbia have statutes criminalizing various types of hate attacks. Several have statutes for civil causes of action as well.

For additional information:

<https://www.ovcttac.gov/views/TrainingMaterials/dspSupportingCrimeVictims.cfm>