

# The PROSECUTOR

## Improving the Criminal Justice System's Response to Victimization of Persons with Disabilities



BY JAMES C. BACKSTROM

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ONE OF THE TRULY SAD REALITIES of the world we live in is that some of the most vulnerable persons in our society, those living with developmental disabilities, are at a much higher risk of criminal victimization than are others. Yet we hear very little about this problem, and we have a long way to go to fully understand it and develop tools and ideas to effectively address it. The time has come for criminal justice professionals to work together to better understand the dynamics of this serious problem, to establish policies and practices aimed at preventing this abuse from occurring in the first place, and to more efficiently and effectively intervene to address it when it has occurred.

This article will identify the scope of this problem; identify specific laws in Minnesota designed to protect vulnerable victims; explore ways to overcome this problem; discuss the need for extra support and sensitivity during the investigation, charging, pretrial, and trial process; and discuss the importance of the sentencing phase of such cases.

### SCOPE OF THE PROBLEM

Statistics relating to the criminal victimization of persons with disabilities are staggering. One in five persons in America has a mental or physical impairment, and for half

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<sup>2</sup> *First Response to Victims of Crime Who Have a Disability*, OVC Resource Center, Oct. 2002, p. 1, <http://www.disability-abuse.com/resources/OVC-ReportFirst-Response-To-Victims-Of-Crime-Who-Have-Disabilities.pdf> (last visited Sept. 1, 2015); DisabilityJustice.org, *Disability Demographics and Definitions*, <http://disabilityjustice.org/justice-denied/disability-demographics/> (last visited Aug. 5, 2015).

<sup>3</sup> See BJS.gov, *Crime Against Persons with Disabilities, 2009-2013 — Statistical Tables*, [http://www.bjs.gov/content/pub/pdf/capd0913st\\_sum.pdf](http://www.bjs.gov/content/pub/pdf/capd0913st_sum.pdf) (last visited Aug. 5, 2015); CivilRights.org, *Hate Crimes Against Individuals with Disabilities*, <http://www.civilrights.org/publications/hatecrimes/disabilities.html> (last visited Aug. 5, 2015).

<sup>4</sup> DisabilityJustice.org, *Abuse and Exploitation of People with Developmental Disabilities*, <http://disabilityjustice.org/justice-denied/abuse-and-exploitation/> (last visited Aug. 5, 2015).

<sup>5</sup> Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, [https://www.ncjrs.gov/ovc\\_archives/factsheets/disable.htm](https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm) (last visited Sept. 1, 2015).

<sup>6</sup> DisabilityJustice.org, *Abuse and Exploitation of People with Developmental*

*Disabilities*, <http://disabilityjustice.org/justice-denied/abuse-and-exploitation/> (last visited Aug. 5, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> DisabilityJustice.org, *Violent Crime and People with Developmental Disabilities*, <http://disabilityjustice.org/justice-denied/violent-crime/> (last visited August 19, 2015).

<sup>9</sup> See Encarnacion Pyle, *Groups Team Up to Fight Crimes Against Elderly, Disabled*, The Columbus Dispatch, Apr. 25, 2014, available at <http://www.dispatch.com/content/stories/local/2014/04/24/fighting-crimes-against-elderly-and-disabled.html>.

<sup>10</sup> Colleen Wieck, PH.D., Executive Director of the Minnesota Governor's Council on Developmental Disabilities, *The Perfect, Invisible Victim*, 2009, p. 2, <http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-mnddc.pdf> (last visited Sept. 8, 2015).

<sup>11</sup> DisabilityJustice.org, *Abuse and Exploitation of People with Developmental Disabilities*, <http://disabilityjustice.org/justice-denied/abuse-and-exploitation/> (last visited Aug. 5, 2015); *First Response to Victims of Crime Who Have a Disability*, OVC Resource Center, Oct. 2002, p. 1, <http://www.disability-abuse.com/resources/OVC-ReportFirst-Response-To-Victims-Of-Crime-Who-Have-Disabilities.pdf> (last visited Sept. 1, 2015).

<sup>12</sup> DisabilityJustice.org, *Abuse and Exploitation of People with Developmental Disabilities*, <http://disabilityjustice.org/justice-denied/abuse-and-exploitation/> (last visited Aug. 5, 2015).

of this population the disability is a severe one.<sup>2</sup> Numerous studies have shown that the risk of criminal victimization for persons with a disability is much higher than for persons without a disability.<sup>3</sup> Persons with disabilities are four to ten times more likely to be abused than persons without disabilities.<sup>4</sup> The number of women with disabilities who will be sexually assaulted in their lifetime ranges from 68 to 83 percent.<sup>5</sup> Children with disabilities are three times more likely to be abused than children without disabilities.<sup>6</sup> The likelihood of sexual victimization is even higher for children with intellectual or mental health disabilities.<sup>7</sup>

Persons with disabilities experience violent crimes at more than twice the rate of persons without disabilities.<sup>8</sup> Other forms of physical abuse and financial exploitation of persons with disabilities are also far too common.<sup>9</sup> As Colleen Wieck, Director of the Minnesota Governor's Council on Developmental Disabilities, put it in a 2009 report on this topic, persons with disabilities may be "the perfect, invisible victims."<sup>10</sup> These individuals are often victimized repeatedly by the same person.<sup>11</sup> Most abusers are known personally by the victim and are often family members, classmates, caregivers, neighbors and staff members assigned to work with persons with disabilities.<sup>12</sup>

Why is it that persons with disabilities fall prey to criminal victimization at such alarming rates? Persons with disabilities are taught to be compliant.<sup>13</sup> These individuals are often unable to defend themselves<sup>14</sup> and are more prone to accept improper advances without questioning or understanding the potential sinister motive behind them.<sup>15</sup> Some persons with disabilities have limited communication skills, and they are often unable to describe what was done to

them and by whom after the victimization has occurred.<sup>16</sup> Many of these victims are isolated, dependent on a small number of people, and live in segregated settings such as group homes.<sup>17</sup> Other unique barriers also contribute to the increased risk of victimization of persons with disabilities, including: social isolation, physical accessibility barriers, attitudinal behaviors, and dependence upon caretakers.<sup>18</sup> All of these factors contribute to persons with disabilities being more vulnerable to victimization.

Far too often crimes committed against persons with disabilities go unreported.<sup>19</sup> This is often due to fear of retaliation or loss of care if the victim were to report the crime.<sup>20</sup> Limited advocacy resources exist for these vulnerable victims, including lack of access to lawyers, and this is also a factor involved in the underreporting of these crimes.<sup>21</sup> A disability can affect a person's mental functioning, such as the ability to reason and use good judgment, leading to the victim not reporting the crime.<sup>22</sup> Crime victims with disabilities may also be embarrassed by what was done to them and may unjustifiably blame themselves for what occurred, which can also lead to the failure to report the crime.<sup>23</sup> Some may not even realize they have been victimized.<sup>24</sup> Many are fearful and untrusting of police and prosecutors and most do not fully comprehend the intricacies of the criminal justice system.<sup>25</sup>

Persons with disabilities are the victims of crime at significantly higher and disproportionate rates as compared to others in our society. These vulnerable victims often fall prey to persons they know and believe they can trust and this problem is amplified by multiple factors which make these victims much easier targets than persons without dis-

<sup>13</sup> Colleen Wieck, PH.D., Executive Director of the Minnesota Governor's Council on Developmental Disabilities, *The Perfect, Invisible Victim*, 2009, p. 2, <http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-mnddc.pdf> (last visited Sept. 8, 2015).

<sup>14</sup> *Id.*

<sup>15</sup> Joan R. Petersilia, *Crime Victims with Developmental Disabilities: A Review Essay*, *Criminal Justice and Behavior* Vol. 28, December 2001, p. 672, <http://cjb.sagepub.com> (last visited Sept. 9, 2015).

<sup>16</sup> Colleen Wieck, PH.D., Executive Director of the Minnesota Governor's Council on Developmental Disabilities, *The Perfect, Invisible Victim*, 2009, p. 2, <http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-mnddc.pdf> (last visited Sept. 8, 2015).

<sup>17</sup> DisabilityJustice.org, *Abuse and Exploitation of People with Developmental Disabilities*, <http://disabilityjustice.org/justice-denied/abuse-and-exploitation/> (last visited Aug. 5, 2015); Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, p. 5, [https://www.ncjrs.gov/ovc\\_archives/factsheets/disable.htm](https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm) (last visited Sept. 1, 2015); Joan R. Petersilia, *Crime Victims with Developmental Disabilities: A Review Essay*, *Criminal Justice and Behavior* Vol. 28, December 2001, p. 672, <http://cjb.sagepub.com> (last visited Sept. 9, 2015).

<sup>18</sup> Colleen Wieck, PH.D., Executive Director of the Minnesota Governor's Council on Developmental Disabilities, *The Perfect, Invisible Victim*, 2009, p. 2, [http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-](http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-mnddc.pdf)

[mnddc.pdf](http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-mnddc.pdf) (last visited Sept. 8, 2015); Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, [https://www.ncjrs.gov/ovc\\_archives/factsheets/disable.htm](https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm) (last visited Aug. 5, 2015).

<sup>19</sup> Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, [https://www.ncjrs.gov/ovc\\_archives/factsheets/disable.htm](https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm) (last visited Sept. 1, 2015).

<sup>20</sup> Joan R. Petersilia, *Crime Victims with Developmental Disabilities: A Review Essay*, *Criminal Justice and Behavior* Vol. 28, December 2001, p. 672, <http://cjb.sagepub.com> (last visited Sept. 9, 2015).

<sup>21</sup> Colleen Wieck, PH.D., Executive Director of the Minnesota Governor's Council on Developmental Disabilities, *The Perfect, Invisible Victim*, 2009, p. 2, <http://mn.gov/mnddc/resources/pdf/perfect-invisible-victim-mnddc.pdf> (last visited Sept. 8, 2015).

<sup>22</sup> See *First Response to Victims of Crime Who Have a Disability*, OVC Resource Center, Oct. 2002, p. 1, <http://www.disability-abuse.com/resources/OVC-ReportFirst-Response-To-Victims-Of-Crime-Who-Have-Disabilities.pdf> (last visited Sept. 1, 2015).

<sup>23</sup> Cheryl, Guidry Tyiska, *Working with Victims of Crime with Disabilities*, [https://www.ncjrs.gov/ovc\\_archives/factsheets/disable.htm](https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm) (last visited Sept. 1, 2015).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

abilities. Consequently, there is a clear need for greater legal protections and extra support for crime victims with disabilities in our criminal justice system.

## **SPECIFIC LAWS DESIGNED TO PROTECT VULNERABLE VICTIMS**

In Minnesota, there are a number of specific crimes which provide greater legal protections for victims with disabilities. These include:

### **1. Mistreatment of Persons Confined<sup>26</sup>**

- Anyone in charge of or employed in a public or private institution who intentionally abuses or ill-treats any person confined therein who is mentally or physically disabled or who is involuntarily confined therein by court order is guilty of a gross misdemeanor.

### **2. Mistreatment of Residents or Patients<sup>27</sup>**

- Anyone in charge of or employed in any facility licensed by the state who intentionally abuses, ill-treats, or culpably neglects any patient or resident therein is guilty of a gross misdemeanor.

### **3. Criminal Abuse<sup>28</sup>**

- A caregiver who, with intent to produce physical or mental pain or injury to a vulnerable adult, subjects a vulnerable adult to any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion is guilty of a felony if the act results in substantial bodily harm, great bodily harm, risk of death or death (the penalty is a gross misdemeanor if only bodily harm results).

### **4. Criminal Neglect<sup>29</sup>**

- A caregiver or operator (i.e., person in charge of administrative activities or decision-making for a facility) who intentionally neglects a vulnerable adult or knowingly permits conditions to exist that result in the abuse or neglect of a vulnerable adult is guilty of a gross misdemeanor.

- A caregiver or operator who intentionally deprives a vulnerable adult of necessary food, clothing, shelter, health care, or supervision, when reasonably able to make such provisions, is guilty of a felony if the deprivation could likely result in substantial or great bodily harm or the deprivation occurred over an extended period of time.

### **5. Financial Exploitation of a Vulnerable Adult<sup>30</sup>**

- This statute defines various acts of breach of fiduciary obligations, contractual obligations, and theft from or involving a vulnerable adult; and the failure to use the real or personal property or other financial resources of a vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision.
- The penalties for these crimes range from gross misdemeanors to felonies depending upon the specific violations and value of property stolen or misappropriated.

### **6. Deceptive or Unfair Trade Practices Involving Elderly or Disabled Victims<sup>31</sup>**

- Any person who commits a charitable solicitation law violation, a consumer fraud law violation, a deceptive trade practices law violation, or a false advertising law violation which is directed at a victim with disabilities or senior citizen and which causes the victim to suffer loss or encumbrance of a primary residence, principle employment or major source of income; substantial loss of property set aside for retirement or personal or family care and maintenance; substantial loss of pension, retirement plan, or government benefits; or substantial loss of other assets essential to the victim's health or welfare is guilty of a gross misdemeanor.

### **7. Criminal Sexual Conduct<sup>32</sup>**

- Criminal Sexual Conduct charges can occur if the perpetrator knows or has reason to know that the victim is mentally impaired, mentally incapacitated or physically helpless regardless of whether the victim consents to the sexual contact.
- Criminal Sexual Conduct charges can also occur if the

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<sup>26</sup> Minn. Stat. § 609.23.

<sup>27</sup> Minn. Stat. § 609.231.

<sup>28</sup> Minn. Stat. § 609.2325.

<sup>29</sup> Minn. Stat. § 609.233. (It should be noted that several exemptions and affirmative defenses exist to this crime).

<sup>30</sup> Minn. Stat. § 609.2335.

<sup>31</sup> Minn. Stat. § 609.2336.

<sup>32</sup> Minn. Stat. §§ 609.342-609.345.

perpetrator is in a “significant relationship” with the victim (including caregivers who reside in the same dwelling as the victim).

- Criminal Sexual Conduct charges can also occur if the perpetrator is an employee, independent contractor or volunteer of a state, county, city or privately operated correctional or treatment facility that houses vulnerable adults.

## 8. Failure to Report<sup>33</sup>

- Any mandated reporter<sup>34</sup> who knows or has reason to believe that a vulnerable adult is being or has been mistreated is guilty of a misdemeanor if they intentionally fail to make a report; knowingly provide information which is false, deceptive or misleading; or intentionally fail to provide all of the material circumstances surrounding the incident.

Prosecutors should be encouraged to use statutes such as these which were specifically created to address crimes committed against vulnerable victims, such as those suffering from mental or physical disabilities, whenever possible. Doing so can in some circumstances make cases easier to prove because of the specific references to the victim’s impairment (e.g., consent is not a defense to a sexual crime if the perpetrator knows the victim is mentally impaired or physically helpless). Doing so also enables the prosecutor to emphasize the victim’s vulnerability because this is a specific element of the crime, and this often allows the prosecutor to seek greater sanctions for the offender upon conviction due to the vulnerability of the victim.

## WAYS TO HELP OVERCOME THE INCREASED RATE OF VICTIMIZATION OF PERSONS WITH DISABILITIES

Preventing victimization should always be a priority. It is important to educate persons with disabilities and their families about appropriate safety precautions to take regarding a variety of activities, including the dangers associated with the use of the internet, proper management of their

financial resources and who to call if they are in need of help. Unfortunately, there are predators looking for victims on the internet, phone scammers who often prey upon the elderly and those with cognitive impairments, and other criminals looking for victims who are easy to access, control, and manipulate. For example, criminals involved in trying to steal a person’s money, property or identifying data often target victims they believe can be easily confused and convinced to trust them. Persons with disabilities are often more trusting than others and can more readily be conned by such perpetrators.

When prevention fails it is important to work toward achieving the full inclusion and participation of victims with disabilities in the criminal justice system.<sup>35</sup> It is important that sensitivity training dealing with crime victims with disabilities be made available on an ongoing basis to law enforcement agencies, prosecutors, probation officers, and others involved in the investigation, prosecution and disposition of cases involving crimes committed against victims with disabilities. Such training should include specifics on the difficulties and challenges associated with victims who have disabilities and other unique aspects associated with cases of this nature.

Networking and cross-training among criminal justice agencies and victim assistance programs are also crucial.<sup>36</sup> These agencies can create joint training opportunities with disability advocacy programs and develop ways to communicate with each other, such as exclusive e-mail listservs.<sup>37</sup> An increased level of communication allows timely information and ideas to be shared with individuals specializing in disability rights.<sup>38</sup> Utilizing community resources, such as schools, churches and citizen groups, also helps ensure that more people are aware of the issues and available resources associated with this problem.<sup>39</sup> Improved training and information sharing efforts of this nature can go a long way to ensuring that victims with disabilities are treated with the respect they deserve, that investigations of these cases are more timely and thorough, and that successful prosecutions will occur.

When crimes against persons with disabilities occur, appropriate interviewing and intake procedures should be

<sup>33</sup> Minn. Stat. §§ 609.234 and 626.557-626.5572.

<sup>34</sup> “Mandated reporter” is defined in Minn. Stat. § 626.5572, subd. 16. Mandated reporters include a professional or professional’s delegate engaged in social services, law enforcement, education, the care of vulnerable adults, nursing, physical and family therapy, psychology, behavioral health, dietetics or nutrition, dentistry, medicine, veterinary medicine, among others.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

established. Victims with disabilities are often not interviewed because they may be considered a credibility risk.<sup>40</sup> It is important to investigate and interview victims with disabilities just as in any other case because improper interviewing substantially limits the chances of prosecution.<sup>41</sup> Law enforcement personnel may believe that a person cannot be interviewed because of the severity of that individual's disability, especially if their disability results in speech and communication problems.<sup>42</sup> Intellect, however, is often unaffected in persons with such problems,<sup>43</sup> and interviews need to be attempted regardless, utilizing family members, social workers or other caregivers for assistance as needed.

Criminal justice agencies should assess potential accommodations, including the use of assistive technology in interviewing crime victims with disabilities, on a case-by-case basis.<sup>44</sup> This will help crime victims with disabilities to better communicate with law enforcement officers, prosecutors, judges and victim advocates.<sup>45</sup> Victim assistance and criminal justice agencies should also incorporate into existing policies specific procedures related to persons with disabilities who are victims or witnesses in criminal cases.<sup>46</sup>

While prevention efforts are important and needed and can help reduce the number of crimes committed against persons with disabilities, it is essential for professionals at all stages of the criminal justice system to establish appropriate procedures and policies to more efficiently and effectively address the needs of these vulnerable victims when crimes do occur. Improved training is essential in this effort, as is increased networking and cross-training between all agencies involved in the investigation, prosecution and disposition of these types of cases. The remaining sections of this article will explore in more detail the types of extra support and sensitivity needed for victims with disabilities in the criminal process.

## EXTRA SUPPORT AND SENSITIVITY DURING THE INVESTIGATION PROCESS

When investigating crimes against persons with disabilities, it is important for law enforcement investigators to take special steps to ensure that they provide extra support and treat with sensitivity crime victims who have disabilities. This would include teaming with child protection workers

in the investigative and interview process if the victim with disabilities is a juvenile or teaming with adult protection workers if the victim with disabilities is an adult. Consulting with and utilizing other advocates for persons with disabilities, such as those advocates working in state agencies or private organizations, is also a good idea prior to or during the interview process. It is important that it be made clear to the victim at the outset that what has occurred is not their fault. It is also important to take extra precautions to help reduce the stress and anxiety that the victim will likely have when speaking to an investigator. Consideration should be given to meeting with the victim at his or her home or group residence so the victim feels more comfortable and at ease.

While it is important to assess the ability of victims with disabilities to understand and follow instructions, it is equally important to let the victims speak for themselves. While a disability may make communication with a law enforcement investigator or social worker<sup>47</sup> more difficult, in most cases it is not impossible. Use of interpreters for those with hearing impairments and assistive technology for those with speech impediments should occur. The importance of hearing directly from a disabled victim about the nature of what has occurred to them, and their fears and concerns regarding the criminal process, cannot be underestimated. It is also important for law enforcement investigators to meet with the victim's social worker, caregiver, or therapist to obtain suggestions as to how to best communicate with the victim. Investigators should use that information to build specialized rapport with each victim to make the victim feel comfortable and at ease. This will assist in later communication between the victim and the prosecutor or other persons involved in the case.

## EXTRA SUPPORT AND SENSITIVITY DURING THE CHARGING AND PRE-TRIAL PROCESS

Victims with disabilities would greatly benefit from a heightened level of prosecutor involvement during the preliminary stages of a case. Similar to the investigation process by law enforcement, the prosecutor should consider meeting with a victim with disabilities prior to charging and the trial (if charges are filed) at the victim's home or group res-

<sup>40</sup> Office for Victims of Crime, U.S. Dept. of Justice, *Victims with Disabilities: The Forensic Interview*, <http://ojp.gov/ovc/publications/infores/pdf/txt/VictimsGuideBook.pdf> (last visited Sept. 1, 2015).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, [https://www.ncjrs.gov/ovc\\_archives/factsheets/disable.htm](https://www.ncjrs.gov/ovc_archives/factsheets/disable.htm) (last visited Sept. 1, 2015).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Crimes against vulnerable persons are often investigated jointly by law enforcement and social service agencies. In fact, these agencies are mandated to report the commencement of an investigation involving children or

idence so the victim feels more comfortable and at ease. It is also important for a prosecutor to work with and obtain assistance from the victim's assigned social worker, as well as the victim's family and other caregivers.

Prior to any trial, the prosecutor and/or victim assistance staff in the prosecutor's office should take extra time to provide vulnerable victims with a tour of the prosecutor's office, the courthouse and the courtroom to help reduce the victim's fear and anxiety. The prosecutor should address directly with the victim any fear he or she may have regarding seeing the defendant in the courtroom during the trial. The prosecutor should also address any other safety and security issues the victim may have concerning the case.

One relatively new aspect of providing additional support to vulnerable victims during interviews or contact at the prosecutor's office, and during a trial, is the use of support animals, specifically dogs, to provide support to and ease the fear and anxiety of a victim or witness with disabilities. Several prosecutors across the country have already begun using dogs in this manner, and such animals are specifically trained for this purpose by several organizations.<sup>48</sup> It is truly amazing to see how much more at ease a vulnerable victim or witness becomes when a courthouse dog is sitting next to them during interviews or at trial.<sup>49</sup>

## EXTRA SUPPORT AND SENSITIVITY DURING THE TRIAL

It is important for the prosecutor to request that the judge allow for appropriate courtroom accommodations to make victims and witnesses with disabilities feel comfortable. Such accommodations could include ensuring that hearings occur in wheelchair-accessible courtrooms; providing sign language interpreters or other communication enhancements; allowing the presence of a support person (or pet or stuffed animal) to be near the victim or witness while they are testifying; using a modified oath that is more easily understandable; making modifications to the setup of the courtroom (such as allowing the victim or witness to testify at a table located in front of the bench rather than from behind the witness stand); and, if necessary, allowing attorneys to use leading questions to elicit testimony from the victim or witness. As noted above, one of the newest forms

of courtroom support is the use of animals, specifically dogs, to support vulnerable victims or witnesses.<sup>50</sup>

## SENTENCING PHASE OF CASES INVOLVING VICTIMS WITH DISABILITIES

The importance of the sentencing phase of a case involving a victim with disabilities should not be overlooked. The sentencing phase of a case allows the victim the opportunity to be heard, allows for appropriate restitution claims to be addressed, and allows for an appropriate sanction to be sought which adequately reflects the seriousness of the crime and its adverse impact upon the vulnerable victim.

Under Minnesota law all crime victims have the right to make a victim impact statement at the convicted offender's sentencing hearing.<sup>51</sup> Victim impact statements are often the only opportunity the victim and members of the victim's family have to let both the court and defendant know how much they have been adversely affected by the crime. Such statements can be delivered orally by the victim; read by the prosecuting attorney, a victim services professional or a family member; or can be provided to the court in writing. It is important that all victims, including those with disabilities, be afforded the opportunity to make a victim impact statement. Efforts should be made to overcome any specific challenges arising from the disabilities of victims to enable them to make such a statement if desired. While a victim impact statement can often help in the healing process, it is especially important when dealing with vulnerable victims to ensure that this is done in a way to prevent any further trauma or anxiety that might be associated with this process.

As in all cases, prosecutors and victim services professionals should also help the victim file an appropriate restitution claim for the financial loss caused by the crime. Concerning victims with disabilities, this may require reaching out to family members or other caregivers to gather the data needed to complete such a claim. Restitution ordered by the court can be required to be paid from prison wages if the defendant is sentenced to prison for the crime and can be entered as a judgment which can be pursued through civil court action if the restitution is not paid.<sup>52</sup>

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vulnerable adults to one another whenever a crime is suspected to have occurred. See Minn. Stat. §§ 626.556, Subd. 10 and 626.557, Subd. 9a.

<sup>48</sup> See Courthouse Dogs (<http://www.courthousedogs.com/>); and Florida Courthouse Therapy Dogs (<http://www.flcourthousedogs.com/>) for two examples of such organizations.

<sup>49</sup> The following website link contains information and a video of courthouse dogs in action at the King County Prosecuting Attorney's Office in Seattle, Washington: <http://www.boredpanda.com/courthouse-dogs-calm->

[witness-victim-ellen-oneill-celeste-walsen/](http://witness-victim-ellen-oneill-celeste-walsen/)

<sup>50</sup> For a summary of recent cases on the use of facility dogs by witnesses while testifying in court, see <https://www.animallaw.info/article/recent-cases-use-facility-dogs-witnesses-while-testifying> (last visited Aug. 28, 2015).

<sup>51</sup> Minn. Stat. § 611A.038.

<sup>52</sup> Minn. Stat. § 611A.04.

If appropriate, a prosecutor should discuss with the victim restorative justice options relating to the crime, which could include the requirement of the offender to participate in group conferencing, circle sentencing, or a restorative justice panel with the victim present.<sup>53</sup> Such innovative sanctions may help the victim recover from the trauma that has been inflicted upon them. While restorative justice options may be available in all criminal cases, when dealing with victims with disabilities extra care should be exercised

sentencing guidelines whenever warranted based upon the particular vulnerability of a crime victim with disabilities.

## CONCLUSION

To better advocate for victims with disabilities, and to ensure that justice is imposed on their abusers, criminal justice agencies and victim assistance programs should begin by implementing specialized procedures for handling these cases. This paper has discussed some of the ways to better include victims with disabilities in the criminal investigation, charging, pre-trial, trial, and sentencing process.

Those of us who work in law enforcement and prosecution must work to ease the fears and uncertainties that victims or witnesses with disabilities face when they are required to participate in the criminal justice process. We must impress upon vulnerable victims that we care about their well-being and safety. We must do all that can be done to empower these victims to come forward and share their stories of the crimes perpetrated against them. We must be committed to full and thorough investigations of crimes against these vulnerable victims, even in those cases where their disabilities make it difficult or impossible for them to describe what has been done to them. We must be prepared to take on the unique challenges that these types of cases pose and do all we can to bring to justice those who have harmed these vulnerable victims. These are some of the most important and difficult cases any prosecutor will handle in his or her career. They can also be some of the most rewarding.

Far too many crimes are committed against persons with disabilities. Many of these crimes are horrendous, and those involved in the criminal justice system need to be better equipped to handle them. Improved opportunities for training of law enforcement, prosecutors and others involved in the criminal justice system regarding how to handle the unique circumstances associated with these types of cases are needed. A strong commitment from the leaders of law enforcement and prosecutorial agencies is also vital to ensure that the necessary resources to pursue crimes against persons with disabilities exist and to make these cases a priority. Then, and only then, will justice have a decent chance to prevail in these most difficult and challenging cases.

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to ensure that this is something the victim wishes to do and that these types of meetings with the offender will not cause further trauma or anxiety.

Whenever appropriate and authorized under the law, prosecutors should be encouraged to seek upward departures from sentencing guidelines due to the particular vulnerability of a crime victim with disabilities if a conviction is obtained in the case. Minnesota Sentencing Guidelines allow a prosecutor to seek an upward departure on this basis.<sup>54</sup> Doing so substantiates the serious nature of many of these crimes and is a reflection that victimizing vulnerable persons warrants increased criminal sanctions upon conviction of the offender.

The sentencing of an offender convicted of harming a victim affords the victim the opportunity to be present and heard and enables the victim to recover financial losses suffered through the imposition of a restitution order. This phase of the court process is also the opportunity for the prosecutor to seek an appropriate upward departure from

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<sup>53</sup> Restorative justice is an approach to justice that focuses on the needs of the victims and the offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, to repair the harm they've done-by apologizing, returning stolen money or by performing community service. In addition, it provides help for the offender in order to avoid future offenses. It is based on a theory of justice that considers crime and wrongdoing to

be an offense against an individual or community, rather than the state. (Wikipedia.org).

<sup>54</sup> Minnesota Sentencing Guidelines, Guideline 2, subd. D., 3b(1).