



Testimony on H.711

An Act Relating to Employment Protections for Crime Victims
House Committee on Economic Development, Housing, and General Affairs
April 20, 2018

Cara Cookson, J.D.

Policy Director and Victim Assistance Program Coordinator

Thank you very much for taking the time to consider this bill. The purpose of this bill is to ensure that all Vermont crime victims are protected from employment discrimination when they experience victimization, seek to obtain a civil protection order, or exercise their right to participate in the criminal justice process.

The Center for Crime Victim Services is a small, independent state agency that serves as the voice for victims and survivors in state government. We serve all victims, regardless of the type of crime, through a range of direct services, grant programs, and training opportunities for victim service providers and allied professionals. See 13 V.S.A. § 5361. The Victim Assistance Program, funded and coordinated by the Center, ensures that all victims statewide have access to a victim advocate who can support them. In conjunction with my testimony, I will share a letter from one of those advocates, Naomi Ross, who could not be here today.

Vermont's Crime Victim Rights Statute

While most of us know about the constitutional rights of criminal defendants, many Vermonters who have not experienced crime might not have considered the fact that our U.S. and Vermont constitutions do not afford similar protections to crime victims. Instead, Vermont crime victims are entitled to a series of statutory rights that were first enacted in 1985: Title 13, Ch. 165

<https://legislature.vermont.gov/statutes/chapter/13/165> You can find a user-friendly guide at: <http://www.ccvv.vermont.gov/support-for-victims/victims-rights-in-vermont>

Compared to other states, Vermont’s victim rights provisions are basic. The most fundamental include: the right to be notified about the case; the right to be present at the proceedings; the right to restitution; and the right to speak at sentencing. For the past 20 years, the statute also has included the following provision at 13 V.S.A. § 5313:

An employer may not discharge or discipline the victim of a listed crime or a victim’s family member or representative for honoring a subpoena to testify.

This sentence constitutes the entirety of all employment protections specific to crime victims in Vermont. Even if the employment cases Naomi Ross shared in her letter had involved responding to a subpoena, the statute does not address what happens if a violation occurs.

Current Law: No Remedy, Extremely Limited Protection

Our victim rights statute also provides little, if any, mechanism for redress when the person or entity responsible for carrying out the provision fails to do so. In some states, for example, victim rights that involve prosecutors or the courts are enshrined in the state constitution with a corresponding right to sue for violations in statute. Several victim rights provisions in other states that apply to employers include criminal penalties for violations.

When it comes to employment protections for crime victims, Vermont is one of only 18 states—and the only New England state—that lacks any sort of remedy against employers. *See attached “Chart 50-State Employment Remedies.”* In New York, for example, all crime victims are entitled to unlimited unpaid leave to respond to a subpoena, consult with a prosecutor, or exercise their victim rights. Employers who discharge or penalize employees on this basis could be subject to a criminal penalty. *See* N.Y. Penal Law § 215.14. Employers in New York with four or more employees also are prohibited from discriminating based on domestic violence victim status, with a corresponding civil damages and attorneys’ fees remedy. *See* N.Y. Exec. Law § 296(a)(1).

When Naomi Ross called me last summer about one of her victims who had been fired, I told her that while the victim should try to find a lawyer to help her, but she might face an uphill battle based on the law in Vermont. There’s a strong argument that a woman who is fired based on her status as a domestic or sexual violence victim could claim a

form of sex discrimination – domestic and sexual violence victims are predominately women. Likewise, a termination on this basis should be void for public policy reasons irrespective of Vermont’s at-will employment presumption. However, convincing a judge or a jury to connect those dots shouldn’t be taken for granted. Other employment practitioners I spoke with concurred.

Most victim advocates in Vermont could share a story like one of Naomi’s stories. Countless victims don’t even consider participating in the process after a crime is charged for fear of negative employment consequences. After undertaking some research and consulting with the Vermont Human Rights Commission, The Vermont Network Against Domestic and Sexual Violence, the Attorney General’s Office, and Vermont ACLU, the Center developed language to help bring Vermont’s employment protections for crime victims into the 21st Century.

Protected Category Provision

The first section of the bill amends Vermont’s Fair Employment Practices Act (FEPA) to include “crime victim” to the list of protected categories for purposes of employment discrimination and retaliation. Ten other states, mostly in the Northeast, have enacted similar provisions for crimes that predominately effect women, such as domestic and/or sexual violence: California, Connecticut, Delaware, Hawaii, Illinois, New Hampshire, New York, Nevada, Oregon, and Rhode Island. The Center represents the interests of all crime victims and believes that all victims should be protected, irrespective of crime type or gender. For example, prosecutors have complete discretion to charge conduct that would meet the elements of a felony domestic assault as a misdemeanor disorderly conduct. Victims and their employers should not have to engage in the same analysis to know who is protected.

Unpaid Leave for Court Proceedings

The second half of the bill creates a new category of protected leave, unpaid, to attend court proceedings related to the prosecution of the underlying crime or to obtain a civil protection order. This section adopts most of the standards used for Vermont’s Parental and Family Leave Act (PFLA), including the 10-employee definition for covered employer. The covered employee definition is 20 hours per week, working for six months.

The vast majority of U.S. states ensure that crime victims have access to some form of unpaid leave to participate in the criminal justice system by accompanying the right to participate with a remedy that can address violations. *See attached "50-State Survey: Employment Discrimination Remedies to Protect Crime Victims."*

Definition of "Crime Victim"

The bill uses objective criteria to determine who is eligible for employment protection as a "crime victim." First, crime victim is defined as someone who meets the existing definition under Title 13—someone who sustains physical, emotional, or financial injury as the result of a crime (or their legal parent or guardian) and close family of homicide victims—so long as a law enforcement officer believes a crime has occurred and submits a charging affidavit to prosecution. This definition parallels the definition that the Center has used for over two decades to determine eligibility for our Victims Compensation Program. The Center does not object to the Senate Judiciary Committee's proposal to expressly exclude from protection the alleged perpetrator of a crime who is also a family member of the victim.

Second, a crime victim could also include someone who has obtained a protection order from a judge for domestic violence, stalking, sexual assault, or abuse of a vulnerable adult. All of these orders require a finding that conduct has occurred that would otherwise constitute a crime against the victim.

Discrimination Against Victims Harms All of Us

No one chooses to be a crime victim. When victimization happens, our state should do whatever it can to hold offenders accountable and minimize the consequences. Participating in prosecution should not result in losing your job, either because of negative stereotypes and victim blaming or because participating requires time away from work. Like serving on a jury, the willingness of crime victims to report crime and participate in the process is essential to maintaining the rule of law and keeping our communities safe.

Thank you for the opportunity to share this testimony.