



**pennsylvania**

OFFICE OF VICTIM ADVOCATE

*Giving Crime Victims a Voice*

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## **Op Ed: Court Opening and Victims' Rights in the time of COVID**

**Jennifer Storm | August 6, 2020**

As courts begin re-opening across the Commonwealth and pivoting to meet the ever changing demands of balancing public health and public safety, we must be ever vigilant that we are also balancing rights within our justice systems. Over the course of several weeks, the Pennsylvania Office of Victim Advocate has received inquiries from victims and advocates seeking clarity on how their counties are choosing to move forward with case administration and what that means for victims of crime.

Courts are, understandably, grappling with how to properly ensure access to proceedings in courtrooms, given these new constraints issued for public safety. While we appreciate the dedication of the courts to reopen and continue to review cases swiftly, we ask that our collective focus is on those who have legal authority to be granted preference. These are unequivocally the judge, court reporter, security, prosecutor, defense counsel, defendant(s), and crime victim(s). The media and the general public also should be granted their right to attend hearings, once the aforementioned parties are considered.

Virtual hearings have become ideal, as they are the most protective in mitigating the spread of the virus and accommodating more individuals; we applaud these innovative efforts. However, advocates caution an over accommodation that could lead to violating a victims' right and/or potentially putting victims and witnesses in danger of harassment or risking their physical safety.

The process of livestreaming hearings to massive audiences is likely to result in re-traumatization for crime victims and witnesses, who are often required to disclose details of their victimization when engaging in the criminal law process. Livestreaming also fails to address victims' rights regarding safety and privacy. The number of potential viewers is nearly incalculable, adding unnecessary risks for victims and witnesses.

In our existing [Crime Victims Bill of Rights](#), Act 111, all victims are to be treated with "dignity, respect, courtesy and sensitivity" and their rights are "to be honored and protected by... judges in a manner no less vigorous than the protections afforded criminal defendants." In the past year, Act 23 was also legally enacted. It states that a crime victim is not to be excluded from any criminal proceeding unless the court determines that testimony by the victim would be materially altered if the victim heard others at the proceeding. Before making a determination, the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim. The guidance in the law also states that the court should exercise

reasonable control over the mode and order of examining witnesses and presenting evidence so as to, among other things, "protect witnesses from harassment or undue embarrassment."

On behalf of crime victims, OVA respectfully requests that PA courts implement the following guidelines:

- Not livestreaming hearings for criminal and civil protection order proceedings, release hearings, or other hearings in which the court anticipates testimony or other evidence concerning the victim will give;
- Ensuring that no recordings capture a victim's image or voice during any proceeding that will be broadcast, or ensuring redaction prior to broadcast;
- Limiting the number of "public" participants for any technology-assisted hearing to a number that does not exceed the physical capacity of the courtroom in which the hearing would have been conducted under ordinary circumstances;
- Affording the victim/witness an opportunity to proceed via a pseudonym in any technology-assisted hearing with issuance of a court order directing all parties witnesses to refer to the victim/witness via the pseudonym; and
- Preventing release of recordings of hearings to public websites, or if such release is to happen for it not to happen without prior review by a victim/witness, their advocate, and their attorney to ensure nondisclosure of any information that jeopardizes victim privacy or safety.

During these times, finding a platform that offers security features, such as waiting rooms and password protections, is paramount in adopting these protective measures. Interested parties wishing to attend live events should be required to file that request with the court administrator and be given passwords. This enables credentialed media and other interested parties their right to attend the proceeding, while lowering the risks of jury tainting and online public scrutiny, victim blaming, shaming, commenting and sharing which is never possible in a typical courtroom setting.

Advocates across PA continue to encourage our courts to open without delay so resolution can occur for all parties, and we continue to applaud the courts for their willingness to do so innovatively.

*[Jennifer Storm](#) serves as the Commonwealth Victim Advocate, and has recently been elected as the President of the National Crime Victims' Law Institute Board of Directors.*