

Unconditional

Victim Impact Statements Under 2018 PA 370

By David W. Thompson

In March 2018, the *Michigan Bar Journal* allowed me the opportunity to publish an article proposing to modify Michigan's Crime Victim's Rights Act.¹ Specifically, in instances when a direct crime victim is deceased, I suggested amending the act to expand the definition of "victim"—only for purposes of giving impact statements at criminal sentencing—to certain family relations who were previously excluded under the act's "victim" definition. This definition set forth a conditional order of priority that allowed only one class of relation to provide an impact statement.²

Our legislature was listening.

On April 12, 2018, Rep. Thomas Albert (R–Lowell) introduced HB 5798, which amended the definition of "victim" for purposes of who can make impact statements to be considered at criminal sentencing. After committee hearings and substituted versions that passed both houses, the final bill was signed by Gov. Rick Snyder on December 17, 2018, as 2018 PA 370. Under the new law, victim status is now unconditional for family members who wish to provide impact statements at sentencing.³

No more "ifs": Victim impact statements under 2018 PA 370

The previous version of the Crime Victim's Rights Act contained a conditional order of priority defining who constituted a "victim" for purposes of giving impact statements.⁴ Specifically, in instances when the direct victim was deceased, the act allowed for only one designated victim at the top of the priority order but denied victim status to certain family relations contingent upon other living family relations:

[T]he act establishes a priority for certain individuals other than the defendant if the victim is deceased,⁵ including the spouse of the deceased victim or the child of a deceased victim if the child is 18 years of age or older and there is no surviving spouse.⁶ Next, priority goes to the parent of a deceased victim if there is no surviving spouse or child.⁷ This priority order continues to include certain classes of relations, e.g., the guardian/custodian of a child of a deceased victim, a sibling of a deceased victim, and, finally, a grandparent of a deceased victim.⁸

I AM A
wife
husband
mother
father
son
daughter
guardian
sister
brother
grandparent
VICTIM

For example, if the direct victim's spouse was still alive, only the spouse could make an impact statement—to the exclusion of other family members further down the priority order. 2018 PA 370 eliminates the conditional order. While the main definition of victim is still found in Section (2)(1)(m) (i) of the statute (similar to its counterpart in MCL 780.752(m) (i)), the new law adds subsection (v), which expands the definition for purposes of impact statements:

- (v) For the purpose of submitting or making an impact statement only, if the victim as defined in subparagraph (i) is deceased, is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or consents to the designation as a victim of the following individuals other than the defendant:
 - (A) The spouse of the victim.
 - (B) A child of the victim if the child is 18 years of age or older.
 - (C) A parent of the victim.
 - (D) The guardian or custodian of a child of the victim if the child is less than 18 years of age.
 - (E) A sibling of the victim.
 - (F) A grandparent of the victim.
 - (G) A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and that guardian or custodian is not incarcerated.

In other words, when direct victims are deceased, all relatives named in the statute are considered victims and permitted to offer impact statements. Thus, victim status is no longer con-

tingent upon whether there are other living family members; all are designated unconditionally as victims.

2018 PA 370 also accounts for three other victim circumstances. First, it includes language providing victim designation for incapacitated direct victims who are no more capable of speaking on their own behalf than deceased victims. Second, the new law limits victim status to those for whom the direct victim “consents to the designation as a victim.”⁹ This anticipates situations in which there is internal family strife and protects the direct victim's right to withhold victim designation from certain family members. But this only applies in instances when the direct victim survives the crime. When the victim is deceased, statutory victim enumeration cannot be subject to the direct victim's consent.

Finally, the new law precludes the defendant from being designated as a victim.¹⁰ This provision ensures that family members who committed the crime cannot be statutory victims of the very crime they perpetrated. This preserves the act's original language precluding the defendant from being designated a victim for any purpose.¹¹

Crime Victim's Rights Act caselaw reconsidered

2018 PA 370 is a significant change for family members of crime victims, but not others. For example, in *People v Kisielewicz* (drunk driving, manslaughter), the deceased's parents were victims according to the order of priority because the deceased had no spouse.¹² And because the parents were at the very top of the order, the *Kisielewicz* grandparents did not have a statutory right to offer impact statements. While the grandparents were permitted to offer an impact statement,¹³ this was a creature of judge-made law premised on public policy. That is now changed. Because grandparents are specifically listed in the act but not subject to any conditions, the grandparents would now have a *statutory* right as victims to give an impact statement.

Similarly, in *People v Nowos* (homicide), the parents of the deceased who were previously denied victim status by the act because of the deceased's surviving spouse (but nonetheless were permitted to make an impact statement under *Kisielewicz*) would now be victims as a matter of statute.¹⁴ Further, in the case of *People v Hanson* (criminal sexual conduct), the complainant's sisters would now be statutory victims who may provide impact statements.¹⁵

But in the cases of *People v Caldwell* (kidnapping and felony firearm), *People v Prior* (assault with intent to do great bodily harm less than murder), and *People v Rouse* (criminal sexual conduct), 2018 PA 370 may not have made any difference. *Caldwell* involved letters from unidentified individuals who may or may not have been family members.¹⁶ In *Prior*, the impact statement was offered by an estranged

AT A GLANCE

The Crime Victim's Rights Act allows victims and enumerated family members to give impact statements concerning the effects a crime has on their lives.

Before 2018 PA 370, the act contained a priority order that allowed only one family member of a direct victim to give an impact statement when the victim was incapacitated or deceased—to the exclusion of other family members.

2018 PA 370 eliminates the priority order and allows all enumerated family members to give impact statements.



girlfriend who is not a member of an enumerated class of relation under the act.¹⁷ Similarly, in *Rouse*, the impact statements were given by victims of the defendants' prior bad acts.¹⁸ To the extent that these individuals were not family members of the direct victim, they would have no statutory right to give an impact statement, even under 2018 PA 370.

Accordingly, while 2018 PA 370 codifies the treatment courts have given family members since *Kisielewicz*, it is narrower than *Kisielewicz* in that it does not extend impact statement rights to nonfamily members. 2018 PA 370's limitation in this regard arguably preserves the balance between the rights of victims and those of defendants.¹⁹ But I believe that the holding of *Kisielewicz* (which courts in the aforementioned cases relied on to allow the impact statements) should still apply in instances when a judge determines that allowing an impact statement from a nonfamily member is appropriate as a matter of policy.

Conclusion

2018 PA 370 is a sensible update to the Crime Victim's Rights Act that more fully grasps the reality of a crime's true impacts—not only on direct victims, but also on their loved ones.

But more fundamentally, I suggest that our laws should reflect our values, including how we think about crimes, tragedies, and their impacts on victims and families. 2018 PA 370 realizes and gives truth to our values—both as to criminal justice in Michigan and to our primordial human need for closure and healing. Those values are no longer merely a matter of policy established by caselaw precedent, but are now codified in our criminal code.

I offer my deepest thanks to the *Michigan Bar Journal* for giving me the opportunity to make my voice heard in its esteemed pages. I also thank the members of the legislature—in particular, Rep. Albert for his leadership and efforts on this issue, members of the House Committee on Law and Justice, and members of the Senate Judiciary Committee for their careful review and input. And finally, thank you to Gov. Snyder for signing this important legislation. It is my firm belief that Michigan's justice system in general and its criminal code in particular are now more responsive to the needs and voices of victims as the Crime Victim's Rights Act originally intended. ■



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ENDNOTES

1. Thompson, *The Impact of People v Kisielewicz: Revisiting Impact Statements under the Crime Victim's Rights Act*, 97 Mich B J 30 (March 2018), citing MCL 780.752(m)(ii) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article3340.pdf>> (accessed April 20, 2019).
2. *Id.*
3. The Crime Victim's Rights Act, MCL 780.751 *et seq.*, grants victims various rights—including restitution. 2018 PA 370 amends MCL 780.752, MCL 780.781, and MCL 780.811 and the circumstances under which a victim impact statement can be submitted for a deceased or incapacitated victim.
4. *The Impact of People v Kisielewicz*, 97 Mich B J at 31.
5. *Id.*, citing MCL 780.752(m)(iii).
6. *Id.*, citing MCL 780.752(m)(iii)(A) and MCL 780.752(m)(iii)(B).
7. *Id.*, citing MCL 780.752(m)(iii)(C).
8. *Id.*, citing MCL 780.752(m)(iii)(D)–(F).
9. 2018 PA 370, Section (1)(m)(v).
10. *Id.*
11. MCL 780.752(m)(ii).
12. *People v Kisielewicz*, 156 Mich App 724, 728; 402 NW2d 497 (1986).
13. *Id.*
14. *People v Nowos*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2001 (Docket No. 212825).
15. *People v Hansen*, unpublished per curiam opinion of the Court of Appeals, issued November 27, 2001 (Docket No. 224328).
16. *People v Caldwell*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 1997 (Docket No. 185251).
17. *People v Prior*, unpublished per curiam opinion of the Court of Appeals, issued January 16, 1998 (Docket No. 181645).
18. *People v Rouse*, unpublished per curiam opinion of the Court of Appeals, issued November 3, 2000 (Docket No. 216303).
19. Senate Legislative Analysis, HB 5798 (June 7, 2018) ("the bill has the potential to increase criminal sentences and possibly guilty pleas.") <<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-5798-F.pdf>> (accessed April 20, 2019).