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Fundamentals Of Victims' Rights: An Overview of the Legal Definition of Crime "Victim" in the United States

I. Introduction

Common sense tells us that it should not be difficult to determine whether a person is a crime victim.¹ It should be obvious, for example, that the person who had her laptop stolen is a victim of a theft. But whether that person is a "victim" who is entitled to assert crime victims' rights in any given case can be a challenging question to answer.² The answer depends largely on the legal definition of "victim" that is set forth in applicable constitutional amendments, statutes, and rules,³ and this definition varies from jurisdiction to jurisdiction.⁴

To further complicate matters, even within a single jurisdiction, whether a person is a crime "victim" may depend on the particular right at issue or the stage and procedural posture of the case.⁵ Thus, a threshold inquiry for victims' rights attorneys and advocates during *each* stage of a case is whether the client qualifies as a "victim" for purposes of asserting a particular right.⁶ Answering this question requires consideration of many factors, and an exhaustive examination of all possible factors is beyond the scope of this bulletin. Rather, the goal of this bulletin is to highlight some of the more common elements of the legal definition of "victim" and identify certain factors that may complicate this analysis.⁷

II. Common Elements of the Legal Definition of Crime "Victim."

A. Type of offense and injury

A few jurisdictions define crime "victim" broadly to include persons harmed by any criminal offense, *i.e.*, any prohibited conduct that is punishable by fines or imprisonment or both.⁸ Some jurisdictions define "victim" to include persons harmed by any misdemeanor or felony.⁹ For example, in California, "victim" "means a person against whom a crime has been committed," and "crime" "means an act committed in this state which, if committed by a competent adult, would constitute a misdemeanor or felony."¹⁰

In the majority of jurisdictions, however, the legal definition of "victim" limits victim status to persons who are harmed only by certain types of offenses.¹¹ To illustrate, Arkansas' victims' rights statute provides that "victim" refers to "a victim of a sex offense or an offense against a victim who is a minor and a victim of any violent crime," and "violent crime" means "any felony which resulted

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in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree . . . and stalking.”¹² West Virginia’s statute provides that a “victim” for the purpose of the right to give a statement at sentencing “means a person who is a victim of a felony” or a misdemeanor only if “a death occurs during the commission of” that misdemeanor.¹³ In New Mexico, only victims of the following crimes are considered “victims” for crime victims’ rights purposes:

- (1) negligent arson resulting in death or bodily injury . . . ; (2) aggravated arson . . . ; (3) aggravated assault . . . ; (4) aggravated battery . . . ; (5) dangerous use of explosives . . . ; (6) negligent use of a deadly weapon . . . ; (7) murder . . . ; (8) voluntary manslaughter . . . ; (9) involuntary manslaughter . . . ; (10) kidnapping . . . ; (11) criminal sexual penetration . . . ; (12) criminal sexual contact of a minor . . . ; (13) armed robbery . . . ; (14) homicide by vehicle . . . ; (15) great bodily injury by vehicle . . . ; (16) abandonment or abuse of a child . . . ; (17) stalking or aggravated stalking . . . ; (18) aggravated assault against a household member . . . ; (19) assault against a household member with intent to commit a violent felony . . . ; (20) battery against a household member . . . ; or (21) aggravated battery against a household member[.]¹⁴

Like New Mexico, several other jurisdictions limit those who qualify for legal “victim” status to persons against whom enumerated offenses have been committed.¹⁵

Consequently, when conducting the legal “victim” analysis, an initial step is to examine whether only certain offenses and injuries can satisfy the jurisdiction’s definition of “victim,” and, if so, whether the client and the crime meet these requirements.

B. Causation

Whether a defendant can be held legally responsible for the injury at issue—i.e., whether defendant’s conduct *legally caused* the injury—lies at the heart of the causation inquiry.¹⁶ Many jurisdictions’ legal definitions of “victim” have an express causation requirement. For example, several federal statutes—the Crime Victims’ Rights Act (CVRA), Mandatory Victim Restitution Act (MVRA), and Victim and Witness Protection Act (VWPA)—define “victim” to mean a person “directly and proximately harmed” by the commission of the offense.¹⁷

Direct causation embodies the concept of “but for” cause; it asks whether but for this conduct, would the harm have occurred?¹⁸ Proximate causation considers whether “the harm is a reasonably foreseeable consequence of the criminal conduct.”¹⁹ This question arises when defendant’s criminal conduct sets off a chain of events that lead to an injury.²⁰ An injury that is caused by conduct that is “too attenuated and unrelated to” defendant’s offense will not satisfy this proximate cause requirement.²¹

Other jurisdictions that explicitly include a causation requirement in their legal definition of “victim” typically define “victim” to mean persons harmed as a “result” or “direct result” of the commission of the offense.²² But even where the constitutional, statutory or rule provisions do not refer to “direct” or “proximate” causation, courts may nevertheless interpret the legal definition of “victim” to require that defendant’s conduct directly and proximately have caused the injury in question.²³

Therefore, when conducting the legal “victim” analysis, it is important to examine whether a showing of causation is required, and, if so, what type of causation must be established.

C. Relationship to the victim who is a minor, or is deceased, incompetent or incapacitated

When the victim is a minor, or is incapacitated, incompetent, or deceased, crime victims' rights laws generally allow courts to recognize other persons who can exercise rights either in addition to or on behalf of that direct victim.²⁴ In a number of jurisdictions, the family members or other representatives of such victims are included within the legal definition of "victim,"²⁵ which arguably allows those individuals to assert all victims' rights on their own behalf as well as on behalf of the direct victim. In other jurisdictions, family members or other persons are authorized to act as the direct victim's "representatives" and exercise victims' rights in a representative capacity.²⁶

In many cases, particularly homicide cases, two questions arise when determining who qualifies as the direct victim's family members or lawful representatives for purposes of exercising victims' rights.²⁷ First, to be a legally cognizable family member under victims' rights laws, how close of a relationship must one have with the direct victim? Second, is there a limit as to the number of family members or lawful representatives who may exercise the victims' rights?

1. The degree of the relationship.

With regard to the requisite degree of relationship, the answer varies greatly. Several jurisdictions allow only particular relations—typically the direct victim's spouse, child, parent/legal guardian, sibling, and sometimes grandparent—to be eligible as the legal "victims" or victim's representative.²⁸

Other jurisdictions limit the relationship to "immediate family members" without defining that phrase in the victims' rights laws, thus leaving the answer for the courts to determine.²⁹ As one court acknowledged, "[t]he meaning of 'family' necessarily depends on the context in which the word is used, the purpose intended to be accomplished by it, and the facts and

circumstances of each case."³⁰ In Iowa, the state supreme court has concluded that the phrase "immediate family members" under the crime victims' rights statute refers to "spouses and persons related within the second degree of consanguinity or affinity," which would include only parents, children, siblings, grandparents, and grandchildren.³¹

A number of jurisdictions have statutes that arguably would allow more distant relations.³² For example, the Minnesota statute defines "victim" to include "the family members" of the actual victim without further limiting language.³³ And the CVRA contains broader language, allowing "*family members[] or any other persons appointed as suitable by the court*" to assume the crime victim's rights, although excluding defendant from being named as this representative.³⁴

These legal relationship limitations may naturally lead to another inquiry: If there are no persons who could satisfy the legal definition, do courts have the power to recognize other "victims" who could assert certain rights? Case law indicates that courts may have that power in some circumstances.³⁵

2. The number of family members or representatives.

Whether the law imposes a limit on the number of family members or other representatives who may assert victims' rights in any given case is a question that often arises in connection with the right to give victim impact statements at sentencing.³⁶ Few crime victims' rights laws explicitly address this issue, and there is no consensus among those that do.

For example, in Illinois, the statute limits the number to "a *single* representative who may be the spouse, parent, child or sibling of a person killed as a result of a violent crime perpetrated against the person killed."³⁷ In comparison, while the Louisiana statute implies that a single family member is the default number, "[i]n specific

cases, the court or the district attorney may allow more than one designated family member.”³⁸ In Arkansas, courts have statutory authority to limit the number of family members who may exercise the actual victim’s rights, suggesting there could be a limit in certain cases.³⁹ In contrast, Minnesota law expressly rejects the imposition of a limit when it comes to the number of family members who may give victim impact statements.⁴⁰

In sum, when the legal “victim” inquiry requires consideration of persons who could assert victim status in addition to, or on behalf of, a victim who is a minor, or is incapacitated, incompetent, or deceased, the definitions set forth in applicable constitutional amendments, statutes, or rules provide merely a starting point in the analysis. In most jurisdictions, given the absence of clarity in the legal definition, the next step involves asking the court to resolve this issue.

D. Status as the accused, an offender, or an incarcerated person

In over two dozen jurisdictions, the crime victims’ rights laws further limit the definition of “victim” or victim “representative” to exclude persons who fit within one or more of the following classes: (i) a person who is accountable for the crime or another crime arising from the same conduct, criminal episode or plan; (ii) a person alleged to have committed the crime at issue or another crime arising from the same conduct, criminal episode or plan; and (iii) a person who is in custody (either as a pretrial detainee or a prisoner) for any offense.⁴¹

1. Excluded from eligibility as a victim, a victim’s relation, and other lawful representative.

In fifteen jurisdictions, a person who falls into one or more of the above three categories cannot obtain direct “victim” status.⁴² For example, the Arizona Constitution defines “victim” to “mean[] a person against whom the criminal offense has been committed . . . except if the person is in

custody for an offense or is the accused.”⁴³

Among these jurisdictions, a few legal definitions exclude only a person who has “committed” or is “accountable” for the crime or “a crime arising from the same conduct, criminal episode or plan.”⁴⁴ Other definitions exclude a person who is *alleged* to have committed the crime or a crime arising out of the same conduct, episode or plan.⁴⁵ For example, in Minnesota, a person “charged with or alleged to have committed the crime” cannot be a “victim.”⁴⁶ And in Utah, “victim” refers to “any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted . . . unless the natural person *is the accused or appears to be accountable or otherwise criminally responsible* for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.”⁴⁷

A few of these jurisdictions also exclude persons who are in custody for any offense from obtaining “victim” status.⁴⁸ For example, the Arizona statute defines “victim” to exclude a person who “is in custody for an offense or is the accused.”⁴⁹ Thus, an Arizona prisoner who is the subject of an attempted murder by another prisoner could be excluded as a crime “victim” for victims’ rights purposes during the subsequent attempted murder prosecution.

2. Excluded only from eligibility as a family member or other lawful representative.

In almost a dozen jurisdictions, an accused or an offender is not eligible to assert victims’ rights only in their capacity as a family member or other lawful representative of a victim who is a minor, or is deceased, incompetent or incapacitated.⁵⁰ For example, the CVRA provides that:

[T]he term “crime victim” means a person directly and proximately

harm as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, *but in no event shall the defendant be named as such guardian or representative.*⁵¹

Similarly, under the Georgia victims' rights statute:

(A) "Victim" means . . . [a] person against whom a crime has been perpetrated or has allegedly been perpetrated; or

(B) In the event of the death of the crime victim, the following relations *if the relation is not either in custody for an offense or the defendant:*

- (i) The spouse;
- (ii) An adult child if division (i) does not apply;
- (iii) A parent if divisions (i) and (ii) do not apply;
- (iv) A sibling if divisions (i) through (iii) do not apply; or
- (v) A grandparent if divisions (i) through (iv) do not apply; or

(C) A parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if *such parent, guardian, or custodian is in custody for an offense or is the defendant.*⁵²

Accordingly, another important step in the legal "victim" analysis is to examine whether the legal definition limits victim status to persons who are not the accused, an offender, or an incarcerated individual. If the jurisdiction has such a

limitation, and the client falls within the excluded class, the next step is to examine whether the limitation applies to the client's eligibility as the direct victim or only to his or her eligibility as a family member or other lawful representative of the direct victim.

III. Conclusion

When determining whether a person is a crime "victim" for victims' rights purposes, victims' attorneys and advocates must carefully analyze the definition of "victim" as it is written in the jurisdiction's constitutional amendment, victims' rights statute, or court rules. Even when a victims' rights provision appears to answer the question, it is still important to consider whether that provision is constitutional⁵³ and whether authority outside the victims' rights laws—*e.g.*, the court's equitable powers—may allow the client to assert certain victims' rights.⁵⁴

¹ This bulletin addresses "victim" only as the term is legally defined for victims' rights purposes in the criminal law context. A discussion of the legal definition of "victim" in other contexts, *e.g.*, administrative crime victims' compensation programs, is outside the scope of this publication.

² A person who meets the elements of the legal definition of "victim" under the law of any particular jurisdiction in the United States has a number of constitutional and/or statutory rights, which may include, *inter alia*, the rights to due process, fairness, dignity and respect; right to privacy; right to notice; right to information and referrals to services; right to be present at trial and other criminal proceedings; right to be heard at sentencing and other criminal proceedings; right to receive reasonable protection; and right to restitution. See, *e.g.*, 18 U.S.C. § 3771; Ala. Const. Amend. art. I, § 6.01; Alaska Const. art. I, § 24; Ariz. Const. art. II, § 2.1; Cal. Const. art. I, § 28; Colo. Const. art. II, § 16a; Conn. Const. art. I, § 8(b); D.C. Code §§ 23-1901 to -1906; Fla. Const. art. I, § 16(b); Idaho Const. art. I, § 22; Ill. Const. art. I, § 8.1; Ind. Const. art. I, § 13(b); Kan. Const. art.

15, § 15; La. Const. art. I, § 25; Md. Const. Decl. of Rights, art. 47; Mich. Const. art. I, § 24; Miss. Const. art. III, § 26A; Mo. Const. art. I, § 32; Neb. Const. art. I, § 28; Nev. Const. art. I, § 8; N.J. Const. art. I, ¶ 22; N.M. Const. art. II, § 24; N.C. Const. art. I, § 37; Ohio Const. art. I, § 10a; Okla. Const. art. II, § 34; Or. Const. art. I, § 42; R.I. Const. art. I, § 23; S.C. Const. art. I, § 24; Tenn. Const. art. I, § 35; Tex. Const. art. I, § 30; Utah Const. art. I, § 28; Va. Const. art. I, § 8-A; Wash. Const. art. I, § 35; Wis. Const. art. I, § 9m.

³ The legal definition also depends on the courts' interpretation of the applicable constitutional amendments, statutes, and rules.

⁴ As a result, the person who had her laptop stolen may be a crime "victim" in a state like Alaska, where "victim" includes any "person against whom an offense has been perpetrated," but she would not be a crime "victim" in a state like Colorado, where persons harmed by simple theft crimes are excluded from the legal definition of "victim." Compare Alaska Stat. § 12.55.185(19)(A) (defining "victim" to mean "a person against whom an offense has been perpetrated"); Alaska Stat. Ann. § 11.81.900(a)(39) (defining "offense" to mean conduct for which a sentence of imprisonment or fine is authorized") with Colo. Rev. Stat. Ann. § 24-4.1-302(1), (5) (defining "victim" to mean "any natural person against whom any crime has been perpetrated or attempted" and "crime" to mean any of 43 enumerated "offenses, acts, and violations").

⁵ For example, in West Virginia, a "victim" for purposes of the right to be heard at sentencing "means a person who is a victim of a felony, or, where a death occurs during the commission of a felony or a misdemeanor, the fiduciary of a deceased victim's estate or a member of a deceased victim's immediate family, if known to the prosecutor." W. Va. Code Ann. § 61-11A-2(a). However, a "victim" for purposes of the right to notification regarding an offender's release, placement or escape "means a victim of a [murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson, any sexual offense against a minor, or any violent crime against a person] who is alive and competent." W. Va. Code Ann. § 61-11A-8(e), (i)(2).

⁶ In some cases, even if the client were to fall outside the scope of the legal definition of "victim," the court may have discretion to consider that person a victim for certain purposes. See, e.g., *Beck v. Commonwealth*, 484 S.E.2d 989, 905 (Va. 1997) (concluding that the victims' rights statute did not limit the trial court's discretion to consider victim impact statements from persons who fall outside the statutory definition of "victim"); *People v. Albert*, 523 N.W.2d 825, 826 (Mich. Ct. App. 1994) (concluding that the trial court did not abuse its discretion in permitting a victim's civil attorney to speak at sentencing even though he falls outside the statutory definition of victim on the ground that "a sentencing court is afforded broad discretion in the sources and types of information to be considered when imposing a sentence, including relevant information regarding the defendant's life and characteristics"); *People v. Rivers*, 262 A.D.2d 108, 108-09 (N.Y. App. Div. 1999) (concluding that the trial court properly exercised its discretion in permitting the family members of a deceased police officer to give victim impact statements during the sentencing hearing for an attempted assault conviction, "[e]ven if these persons were not 'victims' within the meaning of [the statute]," because "we read the statute as granting victims the right to make statements at sentencing, not as limiting the court's discretion to permit additional persons to speak"). But see *State v. Behrnes*, 706 So. 2d 179 (La. Ct. App. 1997) (concluding that the trial court committed reversible error by allowing the rape victim's stepsisters to give victim impact statements when "this class of relatives is not enumerated in the statute" and by refusing to permit defendant to rebut the stepsisters' statements).

⁷ Among the other possible issues that may arise but are not fully explored in this bulletin, two are worth noting here. The first potential complication concerns whether a person who is neither identified as a victim in the charging papers nor the target of the crime can be afforded "victim" status. Federal courts analyzing federal law have looked to the offense in question and afforded such a person "victim" status as long as the court finds the crime is the legal cause of his or her injuries. See, e.g., *In re Stewart*, 552 F.3d 1285, 1289 (11th Cir. 2008) (finding that the federal victims'

rights statute “does not limit the class of . . . victims to those whose identity constitutes an element of the offense or who happen to be identified in the charging document” and concluding that the mortgage borrowers, while not the targets of the crime, were victims of the conspiracy to deprive a bank of honest services where defendants’ fee splitting arrangement caused borrowers to pay excess fees); *United States v. Washington*, 434 F.3d 1265, 1266-70 (11th Cir. 2006) (holding that a police department and condo association were victims of the bank robbery and therefore entitled to restitution under federal law because the bank robbery directly and proximately led to the high speed chase and the ensuing damage to the police car and condo association property). But see *In Re Local # 46 Metallic Lathers Union et al. v. Metal Lathers Local 46 Pension Fund*, 568 F.3d 81, 85-87 (2d Cir. 2010) (holding that the district court did not abuse its discretion in finding that the union was not a victim of the conspiracy to engage in money laundering charge to which the defendant had pled guilty because whether defendant intended to use the laundered funds to defraud the union was not a relevant element of the offense). The second potential complication concerns whether a person loses his or her “victim” status when the charges involving that victim are dropped or dismissed as a part of a plea bargain. Compare *Ex parte Littlefield*, 540 S.E.2d 81, 86 (S.C. 2000) (concluding that the petitioners were not “victims” with the rights to notice and to be heard at a plea hearing when the charge involving one victim had been dismissed and both victims were not included in the guilty plea resolution even though the Victims’ Bill of Rights does not explicitly address this issue) with *Ariz. Rev. Stat. Ann. § 13-4402.01(A)* (providing that “the victim of the offenses involved in the dismissed counts, on request, may exercise all the applicable rights of a crime victim throughout the criminal justice process as though the count or counts involving the person had not been dismissed”) and *Utah Code Ann. § 77-38-2(9)(c)* (providing that “[f]or purposes of the right to be present and heard at a public hearing as provided in [§] 77-38-2(5)(g) and the right to notice as provided in [§] 77-38-3(7)(a), “victim of a crime” includes any victim originally named in the allegation of criminal conduct who is not a victim of the offense to which the defendant

entered a negotiated plea of guilty).

⁸ See, e.g., *Alaska Stat. § 12.61.900(3)* (referring to the definition in § 12.55.185), § 12.55.185(19)(A) (defining “victim” to mean “a person against whom an offense has been perpetrated”), § 11.81.900(a) (39) (defining “offense” to mean conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation”); *Wis. Stat. Ann. § 950.02(4)(a)* (defining “victim” to mean “[a] person against whom a crime has been committed”), §§ 950.02(1m), 939.12 (defining “crime” to mean “conduct which is prohibited by state law and punishable by fine or imprisonment or both”).

⁹ See, e.g., *Cal. Penal Code § 679.01(a), (b)* (defining “victim” to mean “a person against whom a crime has been committed” and “crime” to mean “an act committed in this state which, if committed by a competent adult, would constitute a misdemeanor or felony”); *Or. Rev. Stat. Ann. § 147.430(7)* (defining “victim” to mean “any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological or physical harm as a result of a crime”), § 161.515 (defining “crime” as “an offense for which a sentence of imprisonment is authorized[,] . . . either a felony or a misdemeanor”); *Wash. Rev. Code Ann. § 7.69.020 (1), (3)* (defining “victim” to mean “a person against whom a crime has been committed or the representative of a person against whom a crime has been committed” and “crime” to mean “an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law”).

¹⁰ *Cal. Penal Code § 679.01(a), (b)*.

¹¹ See, e.g., *Ala. Code § 15-23-60(7), (19)* (defining “victim” to mean “[a] person against whom the criminal offense has been committed” and “criminal offense” to mean “[c]onduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence has been committed”); *Ark. Code Ann. § 16-90-1101(8), (9)* (defining “victim” to mean “a victim of a sex offense or an offense against a victim who is a minor and a victim of any violent crime” and “violent crime” to mean “any felony which resulted

in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree . . . and stalking”); Colo. Rev. Stat. Ann. § 24-4.1-302(1), (5) (defining “victim” to mean “any natural person against whom any crime has been perpetrated or attempted” and “crime” to mean any of 43 enumerated “offenses, acts, and violations”); D.C. Code § 23-1905(2)(A)(i) (defining “victim” to mean “a person who or entity which has suffered direct physical, emotional, or pecuniary harm . . . [a]s a result of the commission of any felony or violent misdemeanor in violation of any criminal statute in the District of Columbia”); Ga. Code Ann. § 17-17-3(4), (11)(A) (defining “victim” to mean “[a] person against whom a crime has been perpetrated or has allegedly been perpetrated” and “crime” to mean “an act committed in this state which constitutes any violation of” enumerated offenses); 725 Ill. Comp. Stat. Ann. 120/3(a), (c) (defining “victim” to mean “a person physically injured [or who suffers injury to or loss of property] as a result of a violent crime perpetrated or attempted against that person . . . or . . . any person against whom a violent crime has been committed or . . . any person who has suffered personal injury as a result of a violation of [certain vehicular offenses]” and “violent crime” to mean “any felony in which force or threat of force was used against the victim, or any offense involving sexual exploitation, sexual conduct or sexual penetration, or a violation of [certain child pornography statutes], domestic battery, violation of an order of protection, stalking, or any misdemeanor which results in death or great bodily harm to the victim or any violation of [particular vehicular offenses], if the violation resulted in personal injury or death”); Iowa Code Ann. § 915.10(3) (defining “victim” to mean “a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, other than a simple misdemeanor”); La. Rev. Stat. Ann. § 46:1842(9) (defining “victim” to mean “a person against whom any of the following offenses have been committed: [a]ny homicide, or any felony offense defined or enumerated in R.S. 14:2(B); . . . [a]ny sexual offense; . . . vehicular negligent injuring and first degree vehicular negligent injuring; . . . [and] [a]ny offense against the person . . . committed against a family or household member . . . or dating partner”); N.M. Stat. Ann. § 31-26-

3(B), (F) (defining “victim” to mean “an individual against whom a criminal offense is committed” and “criminal offense” to refer to 21 enumerated offenses); Tenn. Code Ann. § 40-38-302(1), (4)(A) (defining “victim” to mean “[a] natural person against whom a crime was committed” and “crime” to mean “[a]ny offense the punishment for which is a Class A, B, C, D or E felony; . . . [f]irst degree murder; or . . . [a]ssault under § 39-13-101(a)(1)”); Tex. Code Crim. Proc. Ann. art. 56.01(3) (defining “victim” to mean “a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another”); Va. Code Ann. § 19.2-11.01(B) (i) (defining “victim” to mean “a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery . . . , stalking . . . , sexual battery . . . , attempted sexual battery . . . , maiming or driving while intoxicated”).

¹² Ark. Code Ann. § 16-90-1101(8), (9).

¹³ W. Va. Code Ann. § 61-11A-2(a).

¹⁴ N.M. Stat. Ann. § 31-26-3(B), (F). The New Mexico Constitution identifies a smaller set of eligible offenses. Compare N.M. Stat. Ann. § 31-26-3(B) (not including offenses such as armed robbery, stalking or aggravated stalking, aggravated assault against a household member, assault against a household member with intent to commit a felony, battery against a household member, or aggravated battery against a household member) with N.M. Const. art. II, § 24(A) (“A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child . . . shall have the following rights as provided by law”).

¹⁵ See, e.g., Colo. Rev. Stat. Ann. § 24-4.1-302(1), (5) (defining “victim” to mean “any natural person against whom any crime has been perpetrated or attempted” and “crime” to mean any of 43

enumerated “offenses, acts, and violations”); Del. Code Ann. tit. 11, § 9401(2), (7) (defining “victim” to mean the person “identified as the victim of a crime” and “crime” to mean “an act or omission committed by a person . . . which . . . is punishable by incarceration and which violates one or more of” 71 enumerated criminal law statutes); Ky. Rev. Stat. Ann. § 421.500(1) (defining “victim” to mean “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as” 20 enumerated offenses); Neb. Rev. Stat. § 29-119(2) (a) (defining “victim” to mean “a person who, as a result of [10 enumerated offenses], has had a personal confrontation with the offender,” “a person who has suffered serious bodily injury . . . as a result of [certain statutes or ordinances involving motor vehicles]” and, in cases involving certain offenses against a minor, “a person who was a child . . . and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified”); N.M. Stat. Ann. § 31-26-3(B), (F) (defining “victim” to mean “an individual against whom a criminal offense is committed” and “criminal offense” to refer to 21 enumerated offenses).

¹⁶ Cf. *In re Rendon Galvis*, 564 F.3d 170, 175 (2d Cir. 2009) (holding that the district court did not err in finding that the mother of the deceased was not a victim under federal crime victims’ rights law because defendant’s participation in a drug conspiracy to import cocaine into the U.S.—the crime to which he had pled guilty—was not the direct and proximate cause of her son’s murder in Columbia); *State v. Superior Court (Coronado)*, 922 P.2d 927, 930 (Ariz. Ct. App. 1996) (concluding that the parents of the deceased are not victims under state crime victims’ rights law because the government failed to offer sufficient evidence to establish that defendant’s act of sexually assaulting the daughter caused the daughter’s death by suicide).

¹⁷ See 18 U.S.C. § 3771(e) (CVRA); 18 U.S.C. § 3663A(a)(2) (MVRA); 18 U.S.C. § 1593(c) (VWPA). Unlike the CVRA, MVRA, and VWPA, two federal victim restitution statutes do not explicitly include a “direct” or “proximate” cause requirement. Compare

18 U.S.C. § 3771(e) (defining “victim” to mean “a person directly and proximately harmed as a result of the commission of an offense”) and 18 U.S.C. § 3663A(a)(2) (same) and 18 U.S.C. § 1593(c) (same) with 18 U.S.C. § 1593(c) (providing for mandatory restitution under the Victims of Trafficking and Violence Protection Act and defining “victim” to mean “the individual harmed as a result of a crime under this chapter”); 18 U.S.C. § 2259 (providing for mandatory restitution for child-victims of sexual exploitation and other abuse under the Violent Crime Control and Law Enforcement Act and defining “victim” to mean “the individual harmed as a result of a commission of a crime under this chapter”).

¹⁸ *In re Fisher*, 640 F.3d 645, 648, reconsideration denied, 649 F.3d 401 (5th Cir. 2011) (citing *In re McNulty*, 597 F.3d 344, 350 (6th Cir. 2010)).

¹⁹ *Id.* “Foreseeability is at the heart of proximate harm; the closer the relationship between the actions of the defendant and the harm sustained, the more likely that proximate harm exists.” *U.S. v. Sharp*, 463 F. Supp. 2d 556, 565 (2006). Cf. *Brown v. Commonwealth*, 685 S.E.2d 43 (Va. 2009) (analyzing causation in the context of general criminal liability and upholding defendant’s involuntary manslaughter conviction on the ground that defendant’s actions of evading the police “‘put into operation’” the high-speed chase that resulted in the deceased bystander-driver’s collision with a police car).

²⁰ This inquiry arises whether the chain of events includes other acts committed by defendant, a third party, or the proposed victim. See, e.g., *In re Antrobus*, 519 F.3d 1123, 1125-26 (10th Cir. 2008) (holding that the trial court did not clearly err in concluding that under the CVRA, the murder victim was not a “victim” of defendant’s crime—the unlawful sale of a firearm to a juvenile—where defendant was unaware of the juvenile’s intentions at the time of the sale, the law is unsettled about whether selling a gun to a minor is the proximate cause of injury to third persons, and the petitioners cannot establish that the unlawful sale of a firearm to a juvenile would foreseeably lead to the commission of the murders seven months later when the buyer was no longer a juvenile); *Coronado*, 922 P.2d at 930 (concluding that the parents of the deceased

are not “victims” because the government failed to offer sufficient evidence to establish that defendant’s act of sexually assaulting the daughter caused the daughter’s death by suicide).

²¹ *Sharp*, 463 F. Supp. 2d at 564 n.16.

²² See, e.g., Cal. Const. art. I, § 28(e); Kan. Stat. Ann. § 74-7333; Ky. Rev. Stat. Ann. § 421.500(1); Idaho Code Ann. § 19-5306(5); 725 Ill. Comp. Stat. Ann. 120/3(a); Ind. Code Ann. § 35-40-4-8; Iowa Code Ann. § 915.10(3); Mass. Gen. Laws Ann. ch. 258B, § 1; Md. Code Ann., Crim. Proc. § 11-601; Mich. Comp. Laws Ann. § 780.752(1)(m); Minn. Stat. Ann. § 611A.01(b); Mont. Code Ann. § 46-24-106(5); Mo. Ann. Stat. § 595.200(6); Neb. Rev. Stat. § 29-119(2)(a); N.H. Rev. Stat. Ann. § 21-M:8-k(1)(a); N.J. Stat. Ann. § 52:4B-37; Okla. Stat. Ann. tit. 21, § 142A-1(1); Or. Rev. Stat. Ann. § 147.430(7); see also 18 U.S.C. § 1593(c) (Victims of Trafficking and Violence Protection Act); 18 U.S.C. § 2259 (Victims of Sexual Exploitation and Other Abuse of Children Act).

²³ See, e.g., *State v. Lampien*, 223 P.3d 750, 757 (Idaho 2009) (explaining that the phrase harm “as the result of” defendant’s crime in the statutory definition of “victim” requires a showing of causation, consisting of direct and proximate cause, and concluding that the police and probation officers were “victims” of defendant’s crime of harboring and protecting a felon); *People v. Carron*, 699 N.E.2d 241, 243-44 (Ill. App. Ct. 1998) (concluding that decedent’s parents and brothers are “victims,” defined to mean “the spouse, parent, child[,] or sibling of a person killed *as a result of* a violent crime perpetrated against the person killed,” where the evidence shows defendant’s DUI was the proximate cause of decedent’s death) (emphasis added); cf. *Coronado*, 922 P.2d at 929-30 (concluding that “[w]hile the constitutional definition of ‘victim’ does not explicitly state that a deceased victim must have been killed *by the alleged* criminal offense, we think that such a limitation is implied in the language of the constitution” and observing that causation requires a showing of “something more than just any nexus” because “an act cannot be said to be the cause of a death if the chain of natural effects and causes between them is broken by intervening events

which are abnormal or unforeseeable”) (emphasis in original).

²⁴ For purposes of this discussion, “direct” victim refers to the minor, incompetent, incapacitated, or deceased victim.

²⁵ See, e.g., Cal. Const. art. I, § 28(e) (“The term ‘victim’ also includes the person’s spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated.”); S.C. Code Ann. § 16-3-1510(1) (“‘Victim’ also includes any individual’s spouse, parent, child, or the lawful representative of a victim who is: (a) deceased; (b) a minor; (c) incompetent; or (d) physically or psychologically incapacitated.”); Vt. Stat. Ann. Tit. 13, § 5301(4) (“‘Victim’ means a person who sustains physical, emotional or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, incompetent or a homicide victim.”).

²⁶ See, e.g., 18 U.S.C. § 3771(e) (“In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter, but in no event shall the defendant be named as such guardian or representative.”); Ark. Code Ann. § 16-90-1114(a) (“If a victim is a minor or is incapacitated, incompetent, or deceased, a member of the victim’s family may exercise the rights of the victim under this subchapter.”); Ark. Code Ann. § 16-90-1101(2) (“‘Member of the victim’s family’ means the spouse, a child by birth or adoption, a stepchild, a parent, a stepparent, a sibling, or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan”).

²⁷ Other cases where these inquiries would be relevant are cases involving a direct victim who is a minor or is legally incompetent or incapacitated.

²⁸ See, e.g., Del. Code Ann. tit. 11, § 9401(7) (providing that “victim” “includes the following relations of a deceased victim if the relation is not the defendant, codefendant or conspirator: a. The spouse; b. An adult child or stepchild; c. A parent; or d. A sibling”); Ga. Code Ann. § 17-17-3(11)(B) (providing that in the event the victim is deceased, “victim” means “the following relations if the relation is not either in custody for an offense or the defendant: (i) The spouse; (ii) An adult child if division (i) does not apply; (iii) A parent if divisions (i) and (ii) do not apply; (iv) A sibling if divisions (i) through (iii) do not apply; or (v) A grandparent if divisions (i) through (iv) do not apply”; and in the event the victim is a minor or a legally incapacitated person, “victim” means “[a] parent, guardian, or custodian . . . except if such parent, guardian, or custodian is in custody for an offense or is the defendant”); Mo. Ann. Stat. § 595.200(4), (6) (providing that “victim” “also includes the family members of a minor, incompetent or a homicide victim” and “family member” means “a spouse, child, sibling, parent, grandparent or legal guardian of a victim”).

²⁹ See, e.g., Iowa Code Ann. § 915.10(3); Mont. Code Ann. § 46-24-106(5)(b); N.H. Rev. Stat. Ann. § 21-M:8-k(I)(a).

³⁰ *State v. Sumpter*, 438 N.W.2d 6, 8 (Iowa 1989).

³¹ *Id.* (concluding that the deceased victim’s aunts and uncles were not “victims” under the statutory definition and therefore had no standing to submit victim impact statements).

³² See, e.g., 18 U.S.C. § 3771(e); D.C. Code § 23-1905(2)(B); Minn. Stat. Ann. § 611A.01(b); Utah Code Ann. §§ 77-38-2(7), -9(2), -9(3).

³³ Minn. Stat. Ann. § 611A.01(b).

³⁴ 18 U.S.C. § 3771(e) (emphasis added). Compare *United States v. Johnson*, 362 F. Supp. 2d 1043, 1055-56 (N.D. Iowa 2005), *aff’d in part*, 495 F.3d 951 (8th Cir. 2007) (concluding that aunts and uncles are considered “family members” of the deceased victims within the meaning of the CVRA) with *Sumpter*, 438 N.W.2d at 8 (concluding that aunts and uncles are not considered “immediate family members” of the deceased victim under Iowa law).

³⁵ See, e.g., *Beck*, 484 S.E.2d at 905 (holding that

the legal definition in the victims’ rights act does not limit the trial court’s discretion to consider additional victim impact statements and concluding that victim impact testimony from non-family members is permissible even where the statute defines “victim” to include only the “spouse, parent or legal guardian” of the deceased); *Albert*, 523 N.W.2d at 826 (concluding the trial court did not abuse its discretion in permitting the civil attorney of one of the victims to speak at sentencing even though he “did not constitute a ‘victim[]’” under the legal definition on the ground that “a sentencing court is afforded broad discretion in the sources and types of information to be considered when imposing a sentence, including relevant information regarding the defendant’s life and characteristics”). Cf. *State ex rel. Romley v. Dairman*, 95 P.3d 548, 552-53 (Ariz. 2004) (holding that the statute that allows the trial court to appoint a representative for minor-victims “[i]f the criminal offense is alleged against a member of the minor’s . . . immediate family” does not restrict the court’s ability to appoint a representative to only when the defendant is a member of the minor’s “immediate family” because the trial court maintains the equitable power to appoint a representative for minor-victims in appropriate cases).

³⁶ This question may also arise when addressing other rights such as the right to confer with the prosecutor and the right to be heard at all other critical proceedings.

³⁷ 725 Ill. Comp. Stat. Ann. 120/3(a) (emphasis added). Notwithstanding this statutory restriction, at least one court has indicated that case law and the overall statutory scheme of the Illinois crime victims’ right laws support giving trial courts discretion to “consider victim impact evidence from more than one source.” *People v. Gonzales*, 673 N.E.2d 1181, 1183 (Ill. App. Ct. 1996) (concluding in dictum that the trial court did not clearly err in considering two victim impact statements at sentencing).

³⁸ La. Rev. Stat. Ann. § 46:1842(3).

³⁹ See Ark. Code Ann. § 16-90-1114((b) (providing that “[i]f more than one (1) member of the victim’s family attempts to exercise those rights, the court may designate which of them may exercise those rights”).

⁴⁰ See Minn. Stat. Ann. § 611A.01(b) (providing that

“[i]n a case where the prosecutor finds that the number of family members makes it impracticable to accord all of the family members the rights described in sections 611A.02 to 611A.0395, the prosecutor shall establish a reasonable procedure to give effect to those rights”; however, “[t]he procedure may not limit the number of victim impact statements submitted to the court”).

⁴¹ See, e.g., Ala. Code § 15-23-60(19) (“except if the person is in custody for an offense or is the accused”); Ark. Code Ann. § 16-90-1101(8) (“but does not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan”); Ariz. Const. art. II, § 2.1(C) (“except if the person is in custody for an offense or is the accused”); Cal. Const. art. I, § 28(e) (“‘victim’ does not include a person in custody for an offense”); Colo. Rev. Stat. Ann. § 24-4.1-302(5) (“unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as crime is defined under the laws of this state or of the United States”); D.C. Code § 23-1905(2)(C) (“‘victim’ shall not include any person who committed or aided or abetted in the commission of the crime”); Ind. Code Ann. § 35-40-4-8 (“victim” “does not include a person that has been charged with a crime arising out of the same occurrence”); Mich. Comp. Laws Ann. § 780.752(3) (“individual who is charged with a crime arising out of the same transaction from which the charge against the defendant arose is not eligible to exercise the privileges and rights established for victims”); Minn. Stat. Ann. § 611A.01(b) (“‘victim’ does not include the person charged with or alleged to have committed the crime”); Or. Const. art. I, § 42(7) (“In no event is it intended that the criminal defendant be considered the victim”); 18 Pa. Stat. Ann. § 11.103 (“direct victim” “shall not include the alleged offender”); S.C. Code Ann. § 16-3-1510(1) (“‘[v]ictim’ does not include any individual who is the subject of an investigation for, who is charged with, or who has been convicted of or pled guilty or nolo contendere to the offense in question” and “also does not include any individual who was imprisoned or engaged in an illegal act at the time of the offense”); Tenn. Code Ann. § 40-38-302(4)(B) (“‘[v]ictim’ does not include any person charged with or alleged to have committed the crime or who is charged with some form of criminal responsibility for commission of the crime”); Utah Code Ann. § 77-38-2(9)(a) (“unless

the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state”); Wis. Stat. Ann. § 950.02(4)(b) (“‘[v]ictim’ does not include the person charged with or alleged to have committed the crime”); see also 18 U.S.C. § 3771(e) (excluding the defendant if the direct victim is a minor, incompetent, incapacitated, or deceased); 18 U.S.C. § 3663A(a)(2) (same); 18 U.S.C. § 3663(a)(2) (same); Alaska Stat. § 12.55.185(19)(B)-(C) (same); Del. Code Ann. tit. 11, § 9401(7) (excluding the defendant, codefendant or conspirator if the direct victim is deceased); Ga. Code Ann. § 17-17-3(11)(C) (excluding a relation who is “either in custody for an offense or the defendant” if the direct victim is a minor, deceased, or incapacitated); 725 Ill. Comp. Stat. Ann. 120/3(a) (excluding “the defendant or prisoner” if the direct victim is deceased or “physically or mentally incapable of exercising such rights”); Ky. Rev. Stat. Ann. § 421.500(1) (excluding the defendant if the direct victim is deceased); Mass. Gen. Laws Ann. ch. 258B, § 1 (excluding the defendant if the direct victim is a minor, incompetent or deceased); Neb. Rev. Stat. § 29-119(2)(b), (d) (excluding the “alleged perpetrator of the homicide” if the direct victim is either deceased or a minor of certain sex crimes); N.C. Gen. Stat. Ann. § 15A-830(a)(6), (b) (excluding “the accused unless the charges are dismissed or the person is found not guilty” if the direct victim is deceased); Okla. Stat. Ann. tit. 21, § 142A-1(1) (excluding the defendant if the direct victim is deceased); Va. Code Ann. § 19.2-11.01(B) (excludes “a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a [direct] victim” if the direct victim is a minor, incapacitated or deceased).

⁴² See Ala. Code § 15-23-60(19); Ariz. Const. art. II, § 2.1(C); Ark. Code Ann. § 16-90-1101(8); Cal. Const. art. I, § 28(e); Colo. Rev. Stat. Ann. § 24-4.1-302(5); D.C. Code § 23-1905(2)(C); Ind. Code Ann. § 35-40-4-8; Mich. Comp. Laws Ann. § 780.752(3); Minn. Stat. Ann. § 611A.01(b); Or. Const. art. I, § 42(7); 18 Pa. Stat. Ann. § 11.103; S.C. Code Ann. § 16-3-1510(1); Tenn. Code Ann. § 40-38-302(4)(B); Utah Code Ann. § 77-38-2(9)(a); Wis. Stat. Ann. § 950.02(4)(b).

⁴³ Ariz. Const. art. II, § 2.1(C).

⁴⁴ See Ark. Code Ann. § 16-90-1101(8); Colo. Rev. Stat. Ann. § 24-4.1-302(5); D.C. Code § 23-1905(2) (C). For example, the Colorado victims' rights statute defines "victim" to "mean[] any natural person against whom any crime has been perpetrated or attempted, *unless the person is accountable* for the crime or a crime arising from the same conduct, criminal episode, or plan as crime is defined under the laws of this state or of the United States[.]" Colo. Rev. Stat. Ann. § 24-4.1-302(5) (emphasis added); *accord* D.C. Code § 23-1905(2) (defining "victim" to "not include any person who committed or *aided or abetted* in the commission of the crime.") (emphasis added).

⁴⁵ Ala. Code § 15-23-60(19); Ariz. Const. art. II, § 2.1(C); Cal. Const. art. I, § 28(e); Ind. Code Ann. § 35-40-4-8; Mich. Comp. Laws Ann. § 780.752(3); Minn. Stat. Ann. § 611A.01(b); Or. Const. art. I, § 42(7); 18 Pa. Stat. Ann. § 11.103; S.C. Code Ann. § 16-3-1510(1); Tenn. Code Ann. § 40-38-302(4)(B); Utah Code Ann. § 77-38-2(9)(a); Wis. Stat. Ann. § 950.02(4) (b).

⁴⁶ Minn. Stat. Ann. § 611A.01(b).

⁴⁷ Utah Code Ann. § 77-38-2(9)(a) (emphasis added). Victims' rights provisions are generally silent as to the meaning of the term "accused." In Arizona, "[a] ccused" is defined to mean "a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial." Ariz. Rev. Stat. Ann. § 13-4401(1). Applying this definition, the Arizona Supreme Court has concluded that an unindicted suspect is a victim under the Arizona Bill of Rights in a case that involves her alleged co-conspirator's murder of their children. See *Knapp v. Martone*, 823 P.2d 685, 687 (Ariz. 1992).

⁴⁸ See, e.g., Ala. Code § 15-23-60(19); Ariz. Const. art. II, § 2.1(C); Cal. Const. art. I, § 28(e).

⁴⁹ Ariz. Const. art. II, § 2.1(C). An Arizona appeals court has construed "in custody for an offense" to mean "in custody" at the time the crime at issue was committed. See *State v. Nichols*, 233 P.3d 1148, 1153 (Ariz. Ct. App. 2010).

⁵⁰ See, e.g., 18 U.S.C. § 3771(e); 18 U.S.C. § 3663A(a)(2); 18 U.S.C.A. § 3663(a)(2); Alaska Stat. § 12.55.185(19)(B)-(C); Del. Code Ann. tit. 11, § 9401(7); Ga. Code Ann. § 17-17-3(11)(C); 725 Ill.

Comp. Stat. Ann. 120/3(a); Ky. Rev. Stat. Ann. § 421.500(1); Mass. Gen. Laws Ann. ch. 258B, § 1.; Neb. Rev. Stat. § 29-119(2)(b), (d); N.C. Gen. Stat. Ann. § 15A-830(a)(6), (b); Okla. Stat. Ann. tit. 21, § 142A-1(1); Va. Code Ann. § 19.2-11.01(B).

⁵¹ 18 U.S.C. § 3771(e) (emphasis added).

⁵² Ga. Code Ann. § 17-17-3(11) (emphasis added).

⁵³ For example, where the statutory definition of "victim" is more narrowly defined than the constitutional definition of "victim," a court invalidated the statutory definition on the ground that it is unconstitutional. See *State ex rel. Thomas v. Klein*, 150 P.3d 778, 781-82 (Ariz. Ct. App. 2007) (holding that the definition of "criminal offense" as set forth in Arizona Revised Statute section 13-4401(6) is unconstitutional because the definition, amended after the Victims' Bill of Rights was enacted, excludes a category of people—"those who have had a misdemeanor committed against them that did not involve physical injury, the threat of physical injury, or a sexual offense"—who are not excluded by the definition of "victim" that is set forth in the Victims' Bill of Rights).

⁵⁴ See, e.g., *Dairman*, 95 P.3d at 552-53 (concluding the trial court maintains the equitable power to appoint a representative for minor-victims in appropriate cases without regard to the statutory limitations); *Beck*, 484 S.E.2d at 905 (concluding the trial court maintains discretion to consider victim impact statements from persons who fall outside the statutory definition of "victim"); *Albert*, 523 N.W.2d at 826 (same).

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