

Note 13:

Cases Involving Loss of Life: Communicating With Family Members

Victims who have lost a family member or loved one because of a criminal act such as murder will have both similar and unique experiences when compared to direct victims of crime.

In situations of sudden and unexpected loss, friends and family will have had no opportunity to mentally prepare themselves for the loss and grief as they would have, had their loved one been seriously ill. They may experience denial and shock, and feel anger and grief, for longer and more deeply.

Some common reactions of family members and loved ones:

Physical reactions

- Fatigue, exhaustion and lethargy;
- Sleep problems - insomnia, disturbed sleep or nightmares;
- Hyperactivity;
- Health problems – colds, headaches, digestive issues;
- Loss of appetite or comfort eating;
- Startled reactions and sensitivity to sudden noises or movements.

Thought patterns

- Difficulty concentrating;
- Flashbacks to the scene of the crime;
- Difficulty problem-solving;
- Memory disturbance, particularly short-term memory;
- Absent-mindedness, forgetfulness;
- Difficulty making decisions.

Emotional reactions

- Extreme focus on the offending and preoccupation with revenge;
- Fear;
- Guilt, self-blame;
- Emotional numbing;
- Over-sensitivity;
- Anger;
- Irritability, 'snappiness';
- Frustration;
- Anxiety;
- Depression;
- Feelings of helplessness.

For more information about the potential reactions of victims who have lost family members to crime, see the [Homicide Victims Support Group website](#).

Involvement in the legal process: Potential exacerbation

The experience of grief has many expressions and involvement in the legal process may exacerbate trauma or contribute to a feeling of resolution.

Some victims may want to be involved in the legal process, others may not. Some may want to confront the perpetrator whilst others may not. There is little guidance on how to approach the needs of such victims when engaging in the legal process.

Many of the considerations set out in the other Guidance Notes will be applicable, depending on the circumstances. For example, if the victim is giving evidence or reading aloud a victim impact statement.

However, there are some unique considerations that apply to victims who have lost loved ones. Some of these are set out on the next page, along with examples of acknowledgements in recent judgments.

During my 30 years working in the criminal justice system, I have witnessed first-hand the impact of violent crime on its victims, particularly family members and friends who have lost a loved one. While grieving for their loved one, they are thrust into the unfamiliar world of the criminal justice system and can feel bewildered, stressed and anxious.

John Champion, Director of Public Prosecutions, 'Taking the Next Step: A guide to the Victorian court system for bereaved families', 2012

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Key points to consider: Communicating with family members

Avoid using the term ‘the deceased’ or other clinical terminology when referring to or describing a victim:

It is generally best to acknowledge the deceased victim by name rather than by reference to ‘the deceased’. This consideration applies throughout the court process.

There may be additional considerations as to the mode and form of address to be used. Some family may expect formal titles to be adopted such as Ms, Mr, Mx etc. Others may find formality alienating and distressing. In some circumstances, the victim may have been known by a name different to their legal name.

It is also important to consider the cultural background of the family when deciding how to refer to the deceased victim (see [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#)). For example, without prior warning, deceased Aboriginal and Torres Strait Islander victims should not be referred to by name, nor should their image or voice be used (see [Guidance Note 7: Aboriginal and Torres Strait Islander Peoples](#)).

Other considerations may be the nature of the crime, the family’s desire for privacy (consider the use of pseudonyms) and legal restrictions on the publication of the victim’s name.

Where the deceased victim’s preferred name or the family expectations are not clear from the material presented, it may be appropriate to raise the question with counsel during any preliminary hearings or to direct court staff to make that enquiry of the solicitors or counsel in advance of hearings.

When referring to principles from other cases concerning a deceased victim, it can be appropriate to refer to the victim in the other case as ‘the deceased’.

Acknowledge family and friends as victims:

Acknowledge the distinct position of family members and friends as victims of crime. This might be assisted through the use of victim impact statements.

“... [the VIS] allows the family of the victim one single opportunity to bring that person’s life into the court, to speak about their presence within their family and of course their painful absence”

A Victim’s Voice – Victim Impact Statements in Victoria, October 2009

Be aware of the journey of family members before prosecution commenced: There are many disruptions to daily life associated with the legal process that victims may have had while managing their grief and loss and significant tasks associated with funerals and administering an estate.

They may have been treated as suspects by police or by other family members or friends; they may have had to engage actively with the police investigation; they may have had to deal with the media; and there may have been coronial investigations.

For more information see [‘Taking the Next Step: A guide to the Victorian court system for bereaved families’](#) produced by the Victorian Office of Public Prosecutions and [‘Unlocking the Homicide Maze: Information for people affected by homicide’](#) produced by the South Australian Commissioner for Victims’ Rights.

Be aware of family dynamics: There may be situations in which relationships with the deceased victim are contested.

For example, a long-term partner may not be considered family by the parents and may not be formally acknowledged by them and vice versa. The prosecution should inform court staff of such dynamics and court staff may be able to assist in seating victims separately in the courtroom.

Desire for privacy: Consider whether the court can assist the victims to avoid any large media congregations that may be waiting at the entrance to court by facilitating arrival and exit through an alternative entrance. Judicial officers can also consider what degree of personal detail discussed during the hearing or on the plea is required to be published in the formal sentencing reasons.

Can the inclusion of personal details be balanced against an expressed desire for privacy?

Graphic content warning: Consider encouraging counsel to discretely warn victims in advance when graphic content will be presented or described to the court or jury.

Some victims may not want to be reminded of the violence of offending in such detail but fear missing out on other important aspects of evidence if they do not sit through the entire hearing. A short adjournment may allow for an inconspicuous departure

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Achieving recognition and balance: It can be challenging to express appropriate recognition of victim impact. It is important to avoid placing excessive weight on victim impact and to avoid any implication that the value of a lost life is measured by the degree to which it is mourned by others.

Examples: Acknowledging victims

Mr Kocjancic's family and a close friend provided moving victim impact statements, which described him as a warm, generous and loving husband, father and son, with a big personality. Mr Kocjancic's wife described the difficulties she experienced coming to terms with his death emotionally, as well as with becoming the sole parent to their then 16-year-old son who has severe autism, and 13-year-old daughter.

As a result of the collision, the family lost its sole source of income and she had to sell the family home to provide for her family. Mr Kocjancic's daughter described her sadness at her father not being there for milestones in her life and how her brother, who does not fully understand his father's death, had lost his best friend.

DPP v Guseli [2019] VSCA 29 [19]

Before I consider your personal circumstances, I want to say something about the effect your actions have had on others. Victim impact statements were filed by Mr Jonuzi's three sisters, and by his former long-term partner. Mr Jonuzi was the youngest sibling, and the only son, in his large and close-knit family. His loved ones all miss his happy, caring nature, and his infectious laughter. Understandably, they are struggling to make sense of how and why he died.

There is nothing this court can say or do that will bring back Mr Jonuzi, or heal his loved ones' grief and pain. The sentence I am going to impose is not a reflection of the worth or value of Mr Jonuzi's life; rather it is a reflection of the large number of factors which judges are required by law to take into account, only one of which is the victim impact statements.

DPP v Colton [2019] VSC 154 [28]-[29]

From the way the victim impact statements have been framed, I discern not just heartbreaking grief but also thorough decency in acknowledging neither you, Kevin Perry, nor you, Ian Perry, intended to cause anyone's death or injury. What I need to say is that the sentences I impose are not to be taken as the measure of the lives of Rossleigh Younger or Charlotte Younger. Their lives were and are still felt to be priceless. My sentence ultimately expressed in mathematical terms of a period of time or the amount of a fine cannot return things to the way they were before. The pain of such a loss is enduring. What I have to do is simply fix a just and appropriate sentence.

DPP v Perry [2017] VCC 1383 [23]-[24]