

# Washington University Journal of Law & Policy

---

Volume 41 *The Law School in the New Legal Environment*

---

2013

## Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection

Mary Beth Ricke  
*Washington University School of Law*

Follow this and additional works at: [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/law_journal_law_policy)



Part of the [Constitutional Law Commons](#), [Criminal Law Commons](#), and the [Fourteenth Amendment Commons](#)

---

### Recommended Citation

Mary Beth Ricke, *Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection*, 41 WASH. U. J. L. & POL'Y 181 (2013),  
[https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol41/iss1/9](https://openscholarship.wustl.edu/law_journal_law_policy/vol41/iss1/9)

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Journal of Law & Policy by an authorized administrator of Washington University Open Scholarship. For more information, please contact [digital@wumail.wustl.edu](mailto:digital@wumail.wustl.edu).

# Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection

Mary Beth Ricke\*

## I. INTRODUCTION

Academy Award, BAFTA Award, Critic's Choice Award, Golden Globe Award, SAG Award, and Grammy Award winner Jennifer Hudson is widely known as an actress, singer, and spokesperson after being a finalist in the 2002 television hit *American Idol*.<sup>1</sup> However, despite her fame and successful entertainment career, Hudson is not immune to tragedy. In October 2008, Hudson's mother, brother, and seven-year-old nephew were murdered in Chicago.<sup>2</sup> The alleged killer is William Balfour, the estranged husband of Hudson's sister.<sup>3</sup> The murders occurred in October 2008, Balfour was indicted in December 2008 with his first court appearance in January 2009, and while the trial was scheduled to begin in February 2012, it was delayed until April 2012.<sup>4</sup> Among other charges, the defendant was finally found guilty on all three counts of murder in May 2012, with

---

\* J.D. Candidate (2013), Washington University School of Law; B.A. (2010), Rhodes College. I would like to thank Catherine Vannier and the Missouri Office of Prosecution Services, and all of the editors on the *Washington University Journal of Law & Policy*.

1. *Biography for Jennifer Hudson*, IMDB, <http://www.imdb.com/name/nm1617685/bio> (last visited Dec. 24, 2012). *Winners! A Complete List from the 2009 Grammys*, E! ONLINE, <http://www.eonline.com/news/98902/winners-a-complete-list-from-the-2009-grammys> (last visited Dec. 24, 2012).

2. *Jennifer Hudson's Family Murder Trial: Alleged Killer's Lawyers Want to Talk to Star*, HUFFINGTON POST (Feb. 8, 2012, 10:55 AM), [http://www.huffingtonpost.com/2012/02/08/jennifer-hudsons-family-m\\_n\\_1262437.html](http://www.huffingtonpost.com/2012/02/08/jennifer-hudsons-family-m_n_1262437.html).

3. *Id.*

4. Caitlin Fry, *Jennifer Hudson's Murder Trail [sic] is Further Delayed*, RUNNING LIP (Jan. 19, 2012, 10:56 PM), <http://runninglip.com/celebrity/2012/01/jennifer-hudsons-family-murder-trail-is-further-delayed/>.

an appeal assured to be filed.<sup>5</sup> An emotional Jennifer Hudson served as the first witness for the prosecution seeking justice for her murdered family members.<sup>6</sup>

While the family members of victims suffer from delays in the trials of alleged offenders, the victims themselves often suffer as well. A burglar broke into the home of an eighty-six-year-old woman, brutally raped and beat her, and left behind a traumatized victim and his own DNA.<sup>7</sup> The defendant, Richard L. Newberry, was charged with these crimes as his DNA matched the DNA left at the crime scene.<sup>8</sup> However, the case against Newberry was not resolved for three years due to twelve trial delays.<sup>9</sup> The defendant was not

---

5. Alex Perez, *Jennifer Hudson Family Murder Trial: Guilty on All Counts*, ABC NEWS (May 11, 2012), [http://abcnews.go.com/US/jennifer-hudson-family-murder-trial-guilty-counts/story?id=16312497#.UEptP3ZO\\_DY](http://abcnews.go.com/US/jennifer-hudson-family-murder-trial-guilty-counts/story?id=16312497#.UEptP3ZO_DY). The defendant was also found guilty on additional counts of home invasion, burglary, kidnapping, and possession of a stolen vehicle.

6. Monica Davey, *Actress Takes Stand at Trial in the Killings of Relatives*, N.Y. TIMES (Apr. 23, 2012), available at <http://www.nytimes.com/2012/04/24/us/jennifer-hudson-testifies-for-prosecution-at-murder-trial.html>.

7. Stephanie Smith, *Rules Add to Trials of Victims Prosecution Delays Cause Frustrations*, SUN SENTINEL (Oct. 11, 1992), [http://articles.sun-sentinel.com/1992-10-11/news/9201260724\\_1\\_crime-victims-victim-services-coordinator-speedy-trial](http://articles.sun-sentinel.com/1992-10-11/news/9201260724_1_crime-victims-victim-services-coordinator-speedy-trial).

8. *Id.*

9. *Id.* The following demonstrates the delays in this case of the rape of the 86-year-old victim:

November 11, 1989: Defendant is charged with sexual battery with force or injury, burglary with assault or battery and robbery.

December 21, 1989: Set for a plea conference. Defendant turned down a plea bargain, and the case is set for trial on March 6, 1990.

March 2, 1990: The defense is granted a continuance and the trial is postponed to May 21, 1990.

May 18, 1990: Defense again asks for a continuance, and the trial is reset for Sept. 4, 1990.

August 31, 1990: Defense asks for continuance, reset for December 10, 1990.

December 7, 1990: Defense asks for continuance, reset for February 19, 1991.

February 15, 1991: Defense asks for continuance, reset for March 25, 1991.

March 25, 1991: Case reset by the judge to May 13, 1991.

May 7, 1991: Trial postponed by the judge to July 1, 1991.

July 1, 1991: Case transferred to another judge.

October 10, 1991: Case passed over for another jury trial.

December 3, 1991: Trial set for Feb. 3, 1991.

convicted; rather, the charges were dropped.<sup>10</sup> The trial seeking justice for the rape victim was deemed “pointless” because the defendant was sentenced to life imprisonment resulting from his crimes in another case.<sup>11</sup> The victim, eighty-nine years old at the time the case was resolved, responded with, “I think it took quite a long time. It took three years. That seems long, doesn’t it?”<sup>12</sup> The sources of the delays were mainly continuances requested by the defendant several days before the trial was scheduled to begin and postponements made by the judge.<sup>13</sup>

A common problem in the prosecution of crimes against victims is that the trial is typically delayed through scheduling conflicts, continuances, and other unexpected delays throughout the course of the trial.<sup>14</sup> Victims of the crimes are already heightened emotionally with anxiety and anticipation of the impending trial, and these delays lead to further and unnecessary trauma.<sup>15</sup> Several states include victims’ bills of rights in their constitutions or enact statutes in an attempt to acknowledge and protect a victim’s interest in a speedy trial.<sup>16</sup> Other states have done the same, but for only a specified class of victims, particularly child victims.<sup>17</sup>

While more states should enact similar legislation or include a similar bill of rights in their constitutions, the problem with these existing bills of rights and statutes is that they are under-utilized and go largely unnoticed.<sup>18</sup> This Note proposes that these statutes and bills of rights should be used more frequently and be given more authority for several reasons. First, the four-factor test determining if

---

Jan. 27, 1992: Case passed over for another trial. Trial reset for April 13, 1992.

April 10, 1992: State drops charges because Newberry is convicted in the rape of another elderly woman and sentenced to life in prison.

The newspaper’s source is cited as the Clerk of Courts.

10. *Id.*

11. *Id.*

12. *Id.*

13. Smith, *supra* note 7.

14. *See supra* note 9 and accompanying text. *See also infra* note 100 and accompanying text.

15. *See infra* notes 97–103 and accompanying text.

16. *See infra* notes 59–63 and accompanying text.

17. *See infra* notes 70–90 and accompanying text.

18. *See infra* notes 105–11 and 117 and accompanying text.

a defendant's right to a speedy trial has been violated is also relevant in determining if the victim's right to a speedy trial has been violated. In other words, the interests of the defendant and victim in having a speedy trial may sometimes overlap, thus suggesting that the victim's right to a speedy trial should be held in high regard and held with great importance as well. Second, many studies demonstrate the negative effects of prolonging the trial on the victim and on his or her ability to cope and heal from the trauma.<sup>19</sup> Finally, there are practical aspects to the integrity of the judicial process that are affected when a trial is prolonged unnecessarily. This Note proposes alternative means to achieve the desired result when the victims' bills of rights and statutes fail or fall short, principally through the use of victim advocates and counselors.

Part II of this Note examines the Sixth Amendment right defendants have to a speedy trial, the evolution of the test in determining if a violation of this right has occurred, and a discussion of the current four-factor test. Part II then discusses the states where victims' bills of rights and victims' rights statutes have been enacted, focusing on the State of Arizona and the victims' bill of rights enacted there. Part II also discusses the legislative intent and purpose behind the Arizona bill of rights and explains how the bill of rights was applied and analyzed in a Supreme Court case. Part III critiques the current use of victims' bills of rights and argues why the utilization must be more widespread. It then discusses alternative ways to reach the purpose behind victims' bills of rights—particularly the right to a speedy trial—through other means.

## II. HISTORY

The Sixth Amendment to the United States Constitution<sup>20</sup> guarantees criminal defendants the right to a speedy trial. It is applied to the states through the Due Process Clause of the Fourteenth Amendment.<sup>21</sup> In determining if a violation of the defendant's right to

---

19. See *infra* notes 97–100 and accompanying text.

20. The relevant portion of the Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ." U.S. CONST. amend. VI.

21. The relevant section of the Fourteenth Amendment states:

a speedy trial has occurred, there is no set formula,<sup>22</sup> and the Court has struggled to define the balancing test currently used.<sup>23</sup>

The Supreme Court rejected the proposed solution that the defendant must be afforded a trial within a specific time period in order to comply with the defendant's right to a speedy trial.<sup>24</sup> The United States Court of Appeals for the Second Circuit defined a rule that the Government must be prepared for trial within six months of the defendant's arrest or the charge would be dismissed absent unusual circumstances.<sup>25</sup> The Supreme Court refused to adopt this approach because "such a result would require this Court to engage in legislative or rulemaking activity, rather than in the adjudicative process to which we should confine our efforts."<sup>26</sup> The Court found no basis in the Constitution that the right to a speedy trial may be "quantified into a specified number of days or months."<sup>27</sup>

Another approach rejected by the Supreme Court would require that an accused demand a speedy trial in order for a court to even begin to analyze the potential violation of the right, termed the

---

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

22. See *Barker v. Wingo*, 407 U.S. 514, 521 (1972) where Justice Powell, in delivering the opinion of the Court, states,

[T]he right to speedy trial is a more vague concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial.

*Id.* (internal citations omitted).

23. See *infra* notes 24–31 and accompanying text.

24. *Barker*, 407 U.S. at 523.

25. *Id.* (citing Second Circuit Rules Regarding Prompt Disposition of Criminal Cases (1971)).

26. 407 U.S. at 523. Justice Powell also stated that the states are "free to prescribe a reasonable period consistent with constitutional standards, but our approach must be less precise." *Id.*

27. *Id.*

“demand-waiver doctrine.”<sup>28</sup> The Court faulted this approach because the presumption of a fundamental right’s waiver from simple inaction is inconsistent with the Court’s assertions on these types of waivers.<sup>29</sup> The Court further faulted this approach because the State brings the defendant to trial and therefore the State possesses the duty to ensure the trial is “consistent with due process.”<sup>30</sup> With these considerations, the Court rejected the notion that if the defendant fails to demand a speedy trial he or she waives his or her right, but it still declared that the defendant’s assertion of the right or failure to assert the right to a speedy trial is a factor in determining if there is a deprivation of the constitutional right.<sup>31</sup>

In rejecting these two rigid approaches to determining if the constitutional right to a speedy trial has been violated, the Court adopted a more flexible balancing test with multiple factors in *Barker v. Wingo*.<sup>32</sup> These four factors include the “[l]ength of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.”<sup>33</sup>

In assessing the first factor of length of the delay, the Court indicated that the type of crime and surrounding circumstances influence the permissible length of the delay.<sup>34</sup> The second factor of reason for the delay logically dictates that the prosecution may not use a delay to gain an advantage over the defendant or harass the defendant, while a valid reason, such as a missing witness, would

---

28. 407 U.S. at 523–25. The Court defined the demand-waiver doctrine as providing that “a defendant waives any consideration of his right to a speedy trial for any period prior to which he has not demanded a trial. Under this rigid approach, a prior demand is a necessary condition to the consideration of the speedy trial right.” *Id.* at 525.

29. 407 U.S. at 525–26. These pronouncements on waiver of constitutional rights include a definition of a waiver as “an intentional relinquishment or abandonment of a known right or privilege” (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); “Courts should ‘indulge every reasonable presumption against waiver’” (quoting *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937)); and “they should ‘not presume acquiescence in the loss of fundamental rights’” (quoting *Ohio Bell Tel. Co. v. Public Utilities Comm’n*, 301 U.S. 292, 307 (1937)). *Id.*

30. 407 U.S. at 527. The Court also cites *Hodges v. United States*, 408 F.2d 543, 551 (8th Cir. 1969) for its assertion that the responsibility for the expeditious trial of criminal cases is not solely on the defendant. *Id.* at 527 n.27.

31. 407 U.S. at 528–29.

32. *Id.* at 530.

33. *Id.*

34. *Id.* at 530–31. The Court gave the example that the delay tolerable for an “ordinary street crime is considerably less than for a serious, complex conspiracy charge.” *Id.* at 531.

justify the delay.<sup>35</sup> Furthermore, a “more neutral reason such as negligence or overcrowded courts should be weighed less heavily” against the government.<sup>36</sup> However, it is still an important consideration because the government possesses the ultimate responsibility to ensure the defendant is not burdened by a delay.<sup>37</sup> In describing the third factor of the defendant’s assertion of his right, the Court emphasized that “failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.”<sup>38</sup>

The fourth factor of prejudice to the defendant is the most complex of the inquiries. The Court articulated the three central interests the defendant’s right to a speedy trial seeks to protect: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.”<sup>39</sup> The Court was concerned with the impact on the lives of defendants awaiting trial, be it loss of job, disruption of family life, or idleness.<sup>40</sup> Furthermore, the Court was perhaps even more concerned with the ability of the defendant to present a defense, reasoning that a jailed defendant is “hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.”<sup>41</sup> Finally, the Court recognized that the defendant in a criminal trial is often disadvantaged by the aura of anxiety, suspicion, and hostility.<sup>42</sup> Courts must consider these three interests of the defendant in determining if the defendant has been prejudiced by the delay and then carefully balance the remaining three factors to ascertain if there is a deprivation of the defendant’s right to a speedy trial.

---

35. *Id.* See also *United States v. Marion*, 404 U.S. 307, 325 (1971); *Polland v. United States*, 352 U.S. 354, 361 (1957).

36. 407 U.S. at 531.

37. *Id.*

38. *Id.* at 532.

39. *Id.* The Court cites to *United States v. Ewell*, 383 U.S. 116, 120 (1966), and *Smith v. Hoey*, 393 U.S. 374, 377–78 (1969) in identifying these three interests.

40. 407 U.S. at 532 (citing *TO ESTABLISH JUSTICE, TO INSURE DOMESTIC TRANQUILITY, FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE* 152 (1969)).

41. 407 U.S. at 533.

42. *Id.*

In *Barker*, the Supreme Court of the United States upheld the judgment of the Court of Appeals that the defendant was not deprived of his due process right to a speedy trial.<sup>43</sup> While the delay between arrest and trial was well over five years for no legitimate reason, the Court found the prejudice to the defendant to be minimal because the defendant's witnesses remained available.<sup>44</sup> Additionally, the defendant did not want a speedy trial and instead strived to take advantage of the delay.<sup>45</sup> The Court's method of balancing the four factors in this case is an illustration of how the factors must be considered together to determine if a violation of the right to a speedy trial exists.<sup>46</sup>

While the United States Constitution clearly protects the criminal defendant's right to a speedy trial, the federal government and many states have enacted legislation to protect the interests victims have in a speedy trial, particularly child victims.<sup>47</sup> The Crime Victim's Rights Act<sup>48</sup> states that, among other rights, crime victims have "[t]he right to full and timely restitution as provided in law"<sup>49</sup> and "[t]he right to proceedings free from unreasonable delay."<sup>50</sup> This statute was first introduced in 2004 with the intent to protect crime victims' rights.<sup>51</sup> In applying this statute to a case in which there was a parties' joint waiver of speedy trial time, a New York court held that the consideration of whether the waiver would result in an unreasonable delay warranted notification to the victims pursuant to 18 U.S.C. § 3771(a)(7).<sup>52</sup> Thus, the court acknowledged the victims' interest in being informed of the potential delay in the trial resulting from the

---

43. *Id.* at 536.

44. *Id.* at 534.

45. *Id.* at 534–36.

46. This four-factor test continues to be the inquiry determining if the defendant's right to a speedy trial has been violated. *See* 21A Am. Jur. 2d *Criminal Law* § 948 (2011).

47. *See infra* notes 48–50, 53–54, 59–63, 65, 70–90 and accompanying text.

48. Crime Victims' Rights, 18 U.S.C. § 3771 (2009).

49. § 3771(a)(6).

50. § 3771(a)(7).

51. Justice for All Act of 2004, Pub. L. No. 108-405, 118 Stat. 2260.

52. *United States v. Turner*, 367 F. Supp. 2d 319 (E.D.N.Y. 2005). The judge stated that in granting the waiver, he "did so without the benefit of any victim input . . . conclud[ing] that the brief period of delay the parties proposed—35 days—would not unduly delay the proceedings and was otherwise warranted in the interest of justice." *Id.* at 336.

decision of both the prosecution and defense to waive the speedy trial time.

The statute defending child victims' and child witnesses' rights<sup>53</sup> provides further legal protection for victims under the age of eighteen who are or are alleged to be a victim of a crime of "physical abuse, sexual abuse, or exploitation" or "a witness to a crime committed against another person."<sup>54</sup> Among many other rights protected, the statute mandates that courts must ensure a speedy trial in specially designated cases involving child victims and witnesses to minimize the stress of the children involved with the trial.<sup>55</sup> This consideration also applies when a court considers whether or not to grant a continuance.<sup>56</sup> This statute was first introduced as a part of the Crime Control Act of 1990 with the purpose to "control crime."<sup>57</sup> Courts have held that allowing the prioritization of proceedings involving children providing testimony over all other proceedings does not violate defendants' right to adequately prepare for trial.<sup>58</sup>

Along with the federal statutes, many states also have enacted statutes protecting victims generally or child victims specifically.<sup>59</sup>

---

53. 18 U.S.C. § 3509 (2009).

54. § 3509(a)(2)(A)–(B).

55. § 3509(j). The relevant portion of the statute states:

In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

56. *Id.*

57. Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (1990).

58. *E.g.*, *United States v. Broussard*, 767 F. Supp. 1536 (D. Or. 1991).

59. *See* Nat'l Dist. Attorneys Ass'n, *Speedy Trial Statutes in Cases Involving Child Victims and Witnesses*, <http://www.ndaa.org/pdf/NCPCA%20Speedy%20Trial%202011.pdf> (last updated May 2011).

Arizona,<sup>60</sup> Tennessee,<sup>61</sup> Vermont,<sup>62</sup> and Utah<sup>63</sup> have implemented constitutional amendments or statutes pertaining to the general interest of all victims in a speedy trial, thus guaranteeing that all

---

60. Arizona has a victims' bill of rights. ARIZ. CONST. ART. II, § 2.1 (2012). The relevant portion of the victims' bill of rights states:

(A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right . . .

(10) To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence. . .

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

*Id.*

61. In Tennessee, victims' rights are also constitutionally protected. TENN. CONST. ART. I, § 35 (2012). The relevant provisions state:

To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights . . .

6. The right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence . . .

The general assembly has the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section.

*Id.*

62. In Vermont, victims' interest in a speedy trial is protected by statute. VT. STAT. ANN. TIT. 13, § 5312 (2012). The statute states:

(a) The prosecutor's office shall make every effort to inform a victim of a listed crime of any pending motion that may substantially delay any deposition, change of plea, trial, sentencing hearing, or restitution hearing. The prosecutor shall inform the court of how the victim was notified and the victim's position on the motion, if any. In the event the victim was not notified, the prosecutor shall inform the court why notification did not take place.

(b) If a victim of a listed crime objects to a delay, the court shall consider the victim's objection.

*Id.*

63. In Utah, the rights of victims are codified in a bill of rights. UTAH CODE ANN. 1953 § 77-37-3 (West 2012). The relevant parts of the statute state,

(1) The bill of rights for victims and witnesses is . . .

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

*Id.*

victims of crimes should be granted a speedy trial. The language of the legislation and constitutional amendments are very similar, protecting the interest of victims in the speedy dispositions of trials, and some of the legislation allocates authority to certain state actors.<sup>64</sup> Missouri has also enacted a statute protecting rights of victims,<sup>65</sup> but the protections are limited to victims of dangerous felonies,<sup>66</sup> victims of murder in the first degree,<sup>67</sup> victims of voluntary manslaughter,<sup>68</sup> and victims of an attempt to commit one of the preceding crimes.<sup>69</sup> States appear to be more willing to enact legislation and constitutional amendments protecting the interests of children and other particular special victims and witnesses in a speedy trial. States that have enacted such legislation include: Alabama,<sup>70</sup> Arkansas,<sup>71</sup> California,<sup>72</sup> Delaware,<sup>73</sup> the District of Columbia,<sup>74</sup> Florida,<sup>75</sup> Idaho,<sup>76</sup> Illinois,<sup>77</sup> Kentucky,<sup>78</sup> Massachusetts,<sup>79</sup> Michigan,<sup>80</sup> Missouri,<sup>81</sup> Nebraska,<sup>82</sup> Nevada,<sup>83</sup> New Hampshire,<sup>84</sup> New Jersey,<sup>85</sup>

---

64. *See supra* notes 60–63 and accompanying text.

65. MO. REV. STAT. § 595.209(1)(16) (2012).

66. Victims of dangerous felonies are defined in section 556.061 of the Missouri Revised Statutes. MO. REV. STAT. § 556.061 (2012).

67. Murder in the first degree as defined by section 565.020 of the Missouri Revised Statutes. MO. REV. STAT. § 565.020 (2012).

68. Voluntary manslaughter as defined in section 565.023 of the Missouri Revised Statutes. MO. REV. STAT. § 565.023 (2012).

69. An attempt to commit one of the preceding crimes is defined in section 564.011 of the Missouri Revised Statutes. MO. REV. STAT. § 564.011 (2012).

70. ALA. CODE 1975 § 15-25-6 (2012).

71. ARK. CODE ANN. § 16-80-102 (2012).

72. CAL. PENAL CODE § 1048 (West 2012).

73. DEL. CODE ANN. tit. 11, § 9404 (2012).

74. D.C. CODE § 23-1903(d) (2012).

75. FLA. STAT. ANN. § 918.0155 (West 2012).

76. IDAHO CODE ANN. § 19-110 (2012).

77. 725 ILL. COMP. STAT. 5/114-4(k) (2012).

78. KY. REV. STAT. ANN. § 421.510 (West 2012).

79. MASS. GEN. LAWS ch. 278, § 16F (2012).

80. MICH. COMP. LAWS. § 780.759 (2012).

81. MO. REV. STAT. § 491.710 (2012).

82. NEB. REV. STAT. § 29-1925 (2012).

83. Nevada has enacted two statutes protecting the interests of child witnesses and victims in a speedy trial. NEV. REV. STAT. §§ 174.515(3), 174.519 (2011).

84. N.H. REV. STAT. ANN. § 632-A:9 (2012).

85. N.J. STAT. ANN. § 2A:163-5 (West 2011).

New York,<sup>86</sup> North Dakota,<sup>87</sup> Oregon,<sup>88</sup> Rhode Island,<sup>89</sup> and Washington.<sup>90</sup>

The states with the laws most protective of victims' right to a speedy trial are Tennessee and Arizona.<sup>91</sup> In these states, victims to all crimes are provided with their own bills of rights to be enforced by the states.<sup>92</sup> In Arizona, the legislature clearly and unequivocally dictated its legislative intent and the purpose of the bill of rights for the victims of crimes.<sup>93</sup> The Arizona legislature "recognize[d] that many innocent persons suffer economic loss and personal injury or death as a result of criminal acts," and it is thus the intent of the Legislature to ensure that "article II, section 2.1, Constitution of Arizona, is fully and fairly implemented and that all crime victims are provided with basic rights of respect, protection, participation and healing of their ordeals" and that "employees of this state and its political subdivisions who engage in the detention, investigation, prosecution and adjudication of crime use reasonable efforts to see that crime victims are accorded the rights established by article II, section 2.1, Constitution of Arizona."<sup>94</sup> As victims' right to a speedy trial is included in this section of the Arizona Constitution, the legislature directly states its intention is to ensure that this right enables victims to heal more quickly and that it is the responsibility of the employees of the state of Arizona to enforce this right to a speedy trial.<sup>95</sup> This idea is further reflected in the purpose of the victims' bill of rights because, in the direct words of the legislature, "before passage of the victims' bill of rights, victims had no assertable right to a speedy and prompt resolution or to a prompt and final conclusion of a case after the conviction and sentence."<sup>96</sup> Thus,

---

86. N.Y. EXEC. LAW § 642-a (McKinney 2012).

87. N.D. CENT. CODE § 12.1-35-05 (2011).

88. OR. REV. STAT. § 44.545 (2012).

89. R.I. GEN. LAWS § 11-37-11.2 (2012).

90. WASH. REV. CODE § 10.46.085 (2012).

91. *See supra* notes 60 and 61 and accompanying text.

92. *See supra* notes 60 and 61.

93. Victims' Rights Implementation Act, 1991 Ariz. Sess. Laws ch. 229, § 2; Act Relating to Victims' Rights, 2007 Ariz. Sess. Laws ch. 290, § 13.

94. 1991 Ariz. Sess. Laws ch. 229, §§ 2(2), 2(4).

95. 1991 Ariz. Sess. Laws ch. 229, § 2; 2007 Ariz. Sess. Laws ch. 290, § 13.

96. 2007 Ariz. Sess. Laws, ch. 290, § 13(B).

it is clear the Arizona Legislature intended to guarantee crime victims certain rights, such as the right to a speedy trial, because of the effect the crime has on a victim, and a prolonged trial delays the healing process for the victim.

There are multiple studies supporting this conclusion of the Arizona Legislature, demonstrating the negative effect on a victim's healing process when there is a prolonged trial of the alleged attacker because the actual judicial process is a burden on the victim. According to the National Center for Victims of Crime, survivors of crime will experience a variety of emotional responses, described as "crisis reaction."<sup>97</sup> Many victims of violent personal assaults suffer from Post-Traumatic Stress Disorder (PTSD), resulting in anxiety attacks, flashbacks, and living in constant fear.<sup>98</sup> Studies indicate that PTSD levels are high among victims and their families who had high exposure to the criminal justice system, and that victims of sexual assault, aggravated assault, and family members of homicide victims are the most likely to develop PTSD.<sup>99</sup>

Researchers state that while PTSD symptoms in victims gradually diminish and fortunately sometimes disappear, the crisis reaction and its symptoms may be triggered by a victim's participation in a trial, as "[t]he process of a trial can be very traumatic for the victim" and "may add more pain to an already painful process."<sup>100</sup> In other words, the delay of the trial increases the risk that PTSD symptoms will reappear in the victim, thus impeding the victim's recovery from the violent action taken against him or her.

Studies also indicate that prolonged trials hinder the judicial process in other ways. Research indicates that many rapes and crimes of a sexual nature remain unreported; specifically, only 12.9 percent

---

97. *The Trauma of Victimization*, NAT'L CTR. FOR VICTIMS OF CRIME (2008), <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/trauma-of-victim-ization>.

98. AM. PSYCHIATRIC ASS'N, *THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (4th ed. 2000).

99. See *Posttraumatic Stress*, DARKNESS TO LIGHT (1995), [http://oldsite.d2l.org/KnowAbout/articles\\_pstraumatic\\_stress.asp?showstaticmenu=1](http://oldsite.d2l.org/KnowAbout/articles_pstraumatic_stress.asp?showstaticmenu=1) (citing Kilpatrick, Dean & Ritchie Tidwell, *Victims' Rights and Services in South Carolina: The Dream, the Law, the Reality* (Crime Victims Research & Treatment Ctr., Medical Univ. S.C. 1989)).

100. T. Allen Gore, *Posttraumatic Stress Disorder*, MEDSCAPE REFERENCE, <http://emedicine.medscape.com/article/288154-overview> (last updated Apr. 25, 2012).

of men and 19.1 percent of women who were raped reported the crime to the police.<sup>101</sup> This can be explained by the fear of having to undergo the excruciating, long process before trial and having to face the attacker at trial. Particularly in prosecutions where the victim of the crime is a child, recantation is frequent because the child victim's caregivers do not wish to proceed with the prosecution for fear of traumatizing the child even further.<sup>102</sup>

A final class of victims to these crimes consists of the family members of victims to the crimes, even though they were not harmed physically. For example, 23.4 percent of surviving family members of homicide victims will develop PTSD.<sup>103</sup> The relatives of the eleven women killed by an alleged serial killer in Cleveland are currently petitioning the Cuyahoga County Prosecutor's office to accept the guilty pleas of defendant Anthony Sowell in exchange for life imprisonment without the possibility of parole so they do not have to "endure a trial" because "a prolonged trial and re-enactment of Sowell's demented actions will create great distress on the families of victims."<sup>104</sup>

With the legislative intent and purpose of the Arizona victims' bill of rights against this backdrop of research, it is next important to explore how this bill of rights has been utilized and interpreted. The first thing to note is that not many cases cite the right to a speedy trial provision of the victims' bill of rights, thus implying it is underutilized.<sup>105</sup> In *State v. Dixon*, this provision was a factor in the

---

101. Patricia Tjaden & Nancy Thoennes, U.S. DEP'T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF RAPE VICTIMIZATION: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 33 (2006), available at <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf>.

102. See Tamara E. Hurst, *Prevention of Recantations of Child Sexual Abuse Allegations*, 2(11) CENTER PIECE 1, 2-3 (2010), available at <http://www.ncptc.org/vertical/Sites/%7B8634A6E1-FAD2-4381-9COD-5DC7E93C9410%7D/uploads/%7BEDA13E5A-2350-408C-B673-34CAEB3FD7E7%7D.PDF>.

103. Dean G. Kilpatrick, Angelyne Amick & Heidi S. Resnick, U.S. DEP'T OF JUSTICE, THE IMPACT OF HOMICIDE ON SURVIVING FAMILY MEMBERS (1990), available at <https://www.ncjrs.gov/pdffiles1/Digitization/130823NCJRS.pdf>.

104. Charles Montaldo, *Victims Relatives Want 'House of Horrors' Plea Deal*, ABOUT.COM (June 9, 2011), <http://crime.about.com/b/2011/06/09/victims-relatives-want-house-of-horrors-plea-deal.htm>.

105. For example, in Arizona, the state with the most protective legislation for victims, very few cases cite the victim's bill of rights, thus demonstrating that Arizona courts rarely consider the victims' bill of rights in deciding a case. See *infra* notes 106-14 for discussion of the rare cases citing this provision.

trial court judge's decision to deny the defendant's motion for a continuance, which Dixon argued on appeal was an abuse of discretion.<sup>106</sup> The defendant was convicted in a jury trial of first-degree murder of a twenty-one-year-old college student on January 6, 1978.<sup>107</sup> The victim was strangled with a belt and stabbed several times, with the attacker's DNA left on her body and on her underwear.<sup>108</sup> The police were unable to match this DNA with a suspect until 2001, when police matched the DNA with the defendant through a national database.<sup>109</sup> The defendant was arraigned in January 2003 and after multiple continuances filed by the defendant, the trial began on November 13, 2007: twenty-nine years after the victim's murder, six years after matching the defendant's DNA to the DNA found on the victim's body, and four years after the defendant's arraignment.<sup>110</sup> The parents of the victims, also considered victims,

---

106. *State v. Dixon*, 250 P.3d 1174, 1183–84 (Ariz. 2011).

107. *Id.* at 1177–78.

108. *Id.* at 1177.

109. *Id.*

110. *Id.* at 1183–84. The following details in the court's opinion provide further insight into the circumstances surrounding the motions for continuances filed by the defendant:

Dixon was arraigned in January 2003; the State filed a notice of intent to seek the death penalty in March of that year. In July 2003, defense counsel suggested that it might take longer than usual to compile mitigation evidence because Dixon spent his early life on the Navajo reservation. After counsel stated that the mitigation specialist would need "a year," the judge set the trial date for June 15, 2004. Over the next few years, the court repeatedly granted defense requests to continue the trial. In April 2004, the public defender estimated that if a new specialist were assigned, the mitigation investigation could be completed in five months. The court granted a defense motion for a continuance and vacated the June trial date. After the case was reassigned to a new specialist, the deadline for disclosure of mitigation evidence was accordingly extended to January 2005. That deadline was not met, and after Dixon was granted permission to represent himself in March 2006, the trial date was set for October 18, 2006. In September 2006, however, Dixon estimated that his mitigation evidence would not be ready for "nine months or a year." The court continued the trial to June 25, 2007, "a date certain." In May 2007, however, Dixon told the court his mitigation was still not ready and sought another continuance. The trial was reset for August 2007. Two months later, Dixon requested another continuance. Although he expressed frustration, the judge reset the trial date for September 13, 2007. At a subsequent hearing, the trial date was moved back to November 13, 2007. A week before trial was scheduled to begin, Dixon asked for a three-month continuance. The court denied the motion, noting in a minute entry that "[t]he defense mitigation work-up in this case has been ongoing for well over four years." Dixon claims that the court erred in denying this last continuance request.

*Id.*

repeatedly asserted the right to a speedy trial throughout the defendant's multiple requests for continuances, and the Arizona Supreme Court ruled that "the superior court did not abuse its discretion, after granting numerous continuances, in finally honoring their request that the trial proceed."<sup>111</sup>

The Arizona Supreme Court, in analyzing the superior court's decision to deny the defendant's motion for continuance, further stated,

A continuance of any trial date shall be granted only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice. A continuance may be granted only for so long as is necessary to serve the interests of justice. In ruling on a motion for continuance, the court shall consider the rights of the defendant and any victim to a speedy disposition of the case.<sup>112</sup>

Arizona courts have also stated that the court "must consider the defendant's right in conjunction with a victim's constitutional right to a speedy trial and the trial court's prerogative to control its own docket."<sup>113</sup> However, Arizona courts have also made it clear that a defendant's federal constitutional rights outweigh a victim's state constitutional rights if they directly conflict.<sup>114</sup> Accordingly, it is the trial judge's responsibility to balance these rights and implement the legislative intent of the Arizona legislature.<sup>115</sup>

---

111. *Id.* at 1184.

112. *Id.*

113. *State v. Evans*, No. 1 CA-CR 09-0162 2010, 2010 WL 4969031, at \* 4 (Ariz. Ct. App. 2010) (quoting *State v. Lamar*, 72 P.3d 831, 836-37 (Ariz. 2003)).

114. *P.M. v. Gould*, 136 P.3d 223, 227-28 (Ariz. Ct. App. 2006) (citing *State v. Riggs*, 942 P.2d 1159, 1162 (Ariz. 1997)).

A defendant's rights may also conflict with a victim's rights. It is well-accepted that "if, in a given case, the victim's state constitutional rights conflict with a defendant's federal constitutional rights to due process and effective cross-examination, the victim's rights must yield." *State v. Riggs*, 189 Ariz. 327, 330, 942 P.2d 1159, 1162 (1997), citing *Roper*, 172 Ariz. at 236, 836 P.2d at 449.

*Id.*

115. *State v. Thompson*, No. LC2004-000076-001 DT, 2004 WL 2607771, at \*2 (Ariz. Super. Ct. 2004).

### III. ANALYSIS AND PROPOSAL

As the development of the interpretation of the defendant's constitutional right to a speedy trial demonstrates, the interpretation of laws protecting victims' right to a speedy trial is similarly complicated, and it is also limited to only a few jurisdictions.<sup>116</sup> Arizona has few cases interpreting the state constitutional protection for victims, and in Tennessee, the other state with a similar constitutional protection, there is only one case interpreting the protection, which concerns pretrial hearings.<sup>117</sup>

The four factors courts use to weigh the right of the defendant to a speedy trial also apply to victims' interest in a speedy trial.<sup>118</sup> First, victims also have an interest in the length of delay. The victim of rape at age eighty-six was forced to witness the charges against her attacker dropped after three years, and she had an interest in the length of the trial as it affected her ability to receive some sort of closure.<sup>119</sup> The family of the victim in the *Dixon* case also had an interest in the length of the trial, especially given the fact that the crime against their daughter occurred twenty-nine years before arraignment.<sup>120</sup>

Second, the reason for the delay is used to determine if a victim's right to a speedy trial has been violated. For example, in *Dixon*, the Supreme Court of Arizona explained that the trial court did not abuse its discretion in denying the defendant's motion for a continuance because, among other things, the reason the defendant gave for a

---

116. See *supra* notes 47–90 and accompanying text.

117. *State v. Layman*, 214 S.W.3d 442 (Tenn. 2007). In interpreting the victims' bill of rights, the court stated:

The State also argues that the trial court impermissibly allowed the [victim's] family to direct the prosecution of the case by permitting their attorney to participate in the hearing. We agree. The "right to confer" as defined by the General Assembly does not allow victims or their attorneys to appear before the court and offer legal arguments in opposition to those of the prosecutor. Tenn. Code Ann. § 40-38-114(c). We conclude that the participation of the Powers [victim's] attorney in the pretrial hearing exceeded the right to confer granted to victims under the Tennessee Constitution.

*Id.* at 454.

118. See *supra* notes 33–46 and accompanying text.

119. See *supra* notes 7–13 and accompanying text.

120. See *supra* notes 106–12 and accompanying text.

continuance was to develop more mitigating evidence, which was never substantially used.<sup>121</sup> In other words, the defendant may not manipulate the court system in an attempt to delay the trial for an unfair reason.<sup>122</sup>

Third, courts may and do look to the victim's or the victim's family's assertion of the right to a speedy trial as courts look to the defendant's assertion. This again occurred in the *Dixon* trial, as the court highlighted the fact that the victim's parents "repeatedly asserted that right [the victim's right to a speedy trial]."<sup>123</sup> It is necessary for victims or families of victims to assert this right through the prosecutors, which differs from the method utilized by defendants: when they assert their right to a speedy trial, defendants assert the right through their attorneys as the client. However, the "client" of the prosecutor is the State and not the victim or the victim's family. Therefore, because no attorney directly represents the victim or the victim's family in a criminal prosecution, the courts and legislatures must take affirmative steps to protect the interest of victims in a speedy trial.

Fourth, just as in assessing the prejudice to the defendant in order to determine whether the right to a speedy trial has been violated, courts may also analyze the three factors to determine the level of prejudice to the victim. These three factors include the interests in: (1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility

---

121. *Dixon*, 250 P.3d at 1184.

122. See *Vermont v. Brillon*, 129 S. Ct. 1283 (2009) (holding the delays caused by public defenders could not be counted against the State when the defendant claimed his Sixth Amendment right to a speedy trial had been violated and that in determining if a violation had occurred, the court must take into account the disruptive behavior of the defendant). Throughout Brillon's nearly three-year trial for felony domestic assault and habitual offender charges, he employed many antics prolonging the trial and at least six attorneys were assigned to him. *Id.* at 1287–90. In weighing these delays against the defendant because of his actions, the Court warned against the incentives the defendant may have to "employ delay as a 'defense tactic': delay may 'work to the accused advantage' because 'witnesses may become unavailable or their memories may fade' over time." *Id.* at 1290 (citing *Barker v. Wingo*, 407 U.S. 514, 521 (1972)). Not only does this case remove the incentive for the defendant to manipulate the court system in an attempt to cause the case to be dismissed for the lack of a speedy trial, but it also acknowledges the fact that the delay of a trial may negatively impact the prosecution by causing witnesses to become unavailable or have faded memories.

123. *Dixon*, 250 P.3d at 1184.

that the defense will be impaired.<sup>124</sup> The first factor does not directly apply to the victims' interest in a speedy trial, while the second and third factors do directly apply. Anxiety and concern during the course of the trial directly affect the victims: anxiety about their testimonies, anxiety about the end of the trials, anxiety about moving on with their lives, and anxiety about whether the accused will be convicted and therefore unable to harm them again.<sup>125</sup> These fears are directly reflected in the PTSD symptoms many victims are inflicted with, which are then enhanced by delays and the participation in a trial.<sup>126</sup> Additionally, delays in the prosecution of the victims' alleged attacker might also negatively impact prosecution.<sup>127</sup> For example, child victims and witnesses are more likely to recant, witnesses for the prosecution may no longer be available, and the victims may become restless and therefore less willing to cooperate.<sup>128</sup> Consequently, the factors the courts use in determining if a defendant has been denied the constitutional right to a speedy trial are also relevant and may be used in determining if the victim has also been denied the right to a speedy trial.<sup>129</sup>

When the defendant's right and victim's right to a speedy trial conflict with each other, the defendant's federal constitutional right to due process will always trump the victim's state constitutional right.<sup>130</sup> The remedy is also different; when the court determines the defendant's right to a speedy trial has been violated, the conviction may be overturned.<sup>131</sup> However, when a court determines that a

---

124. See *Barker*, 407 U.S. at 532.

125. See *supra* notes 97–104 and accompanying text.

126. See *supra* notes 97–104 and accompanying text.

127. See *supra* note 122 and accompanying text concerning *Vermont v. Brillion*, 129 S. Ct. 1283 (2009). See also *supra* notes 101–02 and accompanying text.

128. See *supra* notes 102–04 and accompanying text.

129. See *supra* notes 118–28 and accompanying text.

130. See *supra* note 114 and accompanying text concerning *P.M. v. Gould*, 136 P.3d 223 (Ariz. Ct. App. 2006); *State v. Evans*, No. 1 CA-CR 09-0162 (Ariz. Ct. App. Nov. 30, 2010); *State v. Thompson*, LC2004-000076-001 DT (Ariz. Super. Ct. Sept. 2, 2004).

131. See *United States v. Carini*, 562 F.2d 144 (2d Cir. 1977) (reversing the conviction of the defendant because of the violation of the right to a speedy trial). The court stated:

While we think, on the whole, that the showing of prejudice here is not particularly strong, we believe that the other three factors enumerated in *Barker* lean generally against the government. The delay was a patently long one and it was largely chargeable to the government. Even if we were to disregard the time during which a

victim's right to a speedy trial is violated, the court may deny the defendant's request to a continuance, and higher courts will use this analysis to deny the defendant's appeal of abuse in discretion in denying the continuance.<sup>132</sup> Both inquiries (if there has been a violation of the defendant's right to a speedy trial and if there has been a violation of the victim's right to a speedy trial) involve a great deal of discretion for the trial judge and the higher courts.

In the states with statutes or bills of rights protecting the victims' right to a speedy trial, the fact that there are so few cases citing this authority is telling: either judges and prosecutors are unaware of it, or there is barely any authority behind the statutes or bills of rights. The same can be said of states with a victims' bill of rights for certain victims only.<sup>133</sup> While courts are willing to acknowledge general rights of victims, they are less willing to make significant decisions in protecting the acknowledged right to a speedy trial victims supposedly have.<sup>134</sup>

---

mutually agreeable termination of the case remained a possibility, much of the delay occurred after the defendant had forthrightly begun to assert his right to a speedy trial. Yet, despite the fact that these three factors favor appellant, we would hesitate without an additional factor to conclude only on the basis of the factors set forth in *Barker* that Carini was denied his constitutional right to a speedy trial. What tips the scales in appellant's favor is the conceded violation of the Speedy Trial Act resulting from the failure to have Carini's trial commence by December 27, 1976. Although the deadline was exceeded by only thirty-one days, the resulting violation of the Act, which might otherwise seem inconsequential, assumes much greater importance when those thirty-one days are viewed against the pre-existing background of protracted delay directly or constructively chargeable to the government. The violation of the Act was clearly foreseen, yet, despite the significant prior delays and Carini's timely invocation of his Sixth Amendment rights, the violation was permitted to occur.

*Id.* at 151–52 (emphasis added).

132. See *supra* notes 106–12, 121, and 123 and accompanying text describing *Dixon*.

133. Take Missouri as an example. See *supra* notes 65–69 and accompanying text. In interpreting the victims' and witnesses' rights statute, Missouri courts have acknowledged these rights in general. See *State v. Allen*, 274 S.W.3d 514 (Mo. Ct. App. 2008) (holding the trial court correctly allowed the robbery victims to be present at all pre-trial hearings given the "strong language" of the statute); *Sharp v. State*, 908 S.W.2d 752 (Mo. Ct. App. 1995) (holding the state did not breach the plea agreement to remain silent on the defendant's sentence for involuntary manslaughter and second-degree assault when the victim requested maximum sentence); *State v. Woltering*, 810 S.W.2d 584 (Mo. Ct. App. 1991) (holding the prosecutor's statements during closing arguments about the murder victim's rights were not improperly prejudicial against the defendant). The specific right of the victims to a speedy trial and disposition in the trial of their alleged abuser has not been specifically addressed.

134. See *supra* note 105 and accompanying text.

As the Arizona legislative intent and purpose states in explaining the Arizona victims' bill of rights,<sup>135</sup> the whole purpose behind a victims' bill of rights and statutes describing these rights is to make the process easier for victims to ensure they may heal or start to heal more quickly.<sup>136</sup> A key obstacle to this is that sometimes the victim's right to a speedy trial directly conflicts with the defendant's right to a speedy trial, and as the defendant's right is a federal right to due process, the defendant's right will always trump the victim's.<sup>137</sup> There is also the problem that many victims and the families of victims are unaware of their right to a speedy trial in jurisdictions with these provisions.<sup>138</sup> As victims are rarely represented by their own attorneys, a victim is more likely to become confused with the judicial process, thus further hindering the goals and purpose behind a victims' bill of rights.<sup>139</sup> Therefore, different approaches must be taken in order to achieve the goals of the purpose of the victims' bill of rights.

There are ways prosecutors and other state workers can help victims and victims' families through the painful process leading up to the trial and the trial itself, thus making the job of prosecuting the defendant easier. If the trauma inflicted on the victim is addressed early through the use of victim advocates, the "severity of the victim's reactions may be eased, and the risk of developing PTSD is diminished."<sup>140</sup> These victim advocates are crucial to the criminal justice process, and they must be utilized.<sup>141</sup> While some continuances may be unavoidable, cases of domestic violence, sexual assault, child abuse, homicide, and any case involving a victim of

---

135. See *supra* notes 93–96 and accompanying text.

136. See *supra* notes 93–96 and accompanying text describing the legislative intent of the Arizona statute.

137. See *supra* note 114 and accompanying text.

138. As an attorney does not directly represent the victim or the family of the victim because the prosecutor represents the State, the victim and family members do not have an attorney looking out for their interests exclusively. Therefore, it is unlikely they will be aware of their rights even if the state has enacted legislative protections.

139. See *supra* notes 93–96 and accompanying text.

140. N.Y.C. ALLIANCE AGAINST SEXUAL ASSAULT, *Factsheets: Posttraumatic Stress Disorder*, available at [http://www.svfreencyc.org/survivors\\_factsheet\\_41.html](http://www.svfreencyc.org/survivors_factsheet_41.html) (internal citations omitted).

141. See generally THE NAT'L CTR. FOR VICTIMS OF CRIME, available at <http://www.victimsofcrime.org/> (last visited Oct. 22, 2012).

violent crime must be given high priority in the interest of the victim and efficiency of the prosecution. Additionally, when the defendant seeks a continuance, prosecutors should emphasize to the judge the adverse effect the delay will have on the victim. In jurisdictions where there is a victims' bill of rights or statute providing the same protection, the prosecutor must bring this to the judge's attention. Even in jurisdictions providing limited rights to victims or no rights at all, prosecutors should still become familiar with the legislation in other jurisdictions and present it to the judge. If continuances become necessary, the court and prosecutor should make every effort to decrease the amount of delay caused to the case.

Additionally, prosecutors can also be responsible for causing delays in seeking continuances, sometimes unnecessarily. In making the decision to seek a continuance, prosecutors should consider the potentially negative impact the continuance would have on the victim and potentially the case. Prosecutors also have an interest in a speedy trial from a purely practical aspect. As they bear the burden to establish that the defendant committed the crime against the victim beyond a reasonable doubt, prosecutors need to prosecute the case while the evidence is still fresh and the witnesses are still available with a clear recollection of detail regarding the crime. While advocates for defendants' right to a speedy trial point to delayed trials impeding helpful witnesses for the defense from testifying, the same may be said about delays increasing the possibility that witnesses for the prosecution will no longer be available.

#### IV. CONCLUSION

Despite the imperfections of a victims' bill of rights and a right to speedy trial statute, more states should adopt the bill of rights to their state constitutions or enact legislation acknowledging the interest victims have in the speedy disposition of the trial. As studies indicate,<sup>142</sup> the entire judicial process is extremely grueling on a victim and a victim's family, thus hindering the judicial process and creating greater costs to society. The Arizona victims' bill of rights is a great state-level model because it is extensive, the legislative intent

---

142. See *supra* notes 97–104 and accompanying text.

is clear, and there are several cases interpreting the meaning and scope of victims' rights.<sup>143</sup> The *Dixon* case is a great demonstration of the need for awareness of the victim's right to a speedy trial; not only was the defendant arraigned twenty-nine years after the victim was murdered, but it was also four years until the defendant was convicted after arraignment and then nine years after arraignment when the defendant's conviction was affirmed by the Arizona Supreme Court.<sup>144</sup> Despite the problems with this victims' rights legislation, at the very least it is an acknowledgement of the pain and trauma the victims have endured, and this acknowledgement, if recognized by the victim, can be very significant to the victim.

---

143. See *supra* notes 60 and 96 and accompanying text.

144. See *supra* notes 106–12 and accompanying text.