



Victim Impact Statement

RECOMMENDED PROCESSING PROCEDURES

This document is based on statutes current through the Regular Session of the 86th Legislature in the Code of Criminal Procedure Title 1, Chapter 56. Rights of Crime Victims, Subchapter A. Crime Victims' Rights.

"Victim" is the 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.

"Close relative of a deceased victim" is a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

"Guardian of a victim" is a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim.

Throughout this document, these defined persons are referred to as "victim."

In accordance with state law, the Texas Crime Victim Clearinghouse along with other state agencies developed the Victim Impact Statement (VIS) to be used by law enforcement agencies, attorneys representing the state, and other participants in the criminal justice system to record the impact of an offense on a victim of the offense, guardian of a victim, or a close relative of a deceased victim and to provide the agencies, attorneys representing the state, and participants with information needed to contact the victim, guardian, or relative if needed at any stage of a prosecution of a person charged with the offense. **Art. 56.03(a)**.

The VIS Recommended Processing Procedures are developed to ensure that completed VISs are submitted to the appropriate agency. **Art. 56.04(d-1)**. These procedures can be implemented in whole or in part in any district or county attorney's office.

If at any time you need assistance with these VIS Recommended Processing Procedures, please contact the Texas Department of Criminal Justice (TDCJ) Victim Services Division (VSD) at 1-800-848-4284 or tdcj.clearinghouse@tdcj.texas.gov.

If you would like to request VIS training, please contact TDCJ VSD. TDCJ VSD provides the VIS in a fillable PDF format and an e-version on the Integrated Victim Services System (IVSS) at <https://ivss.tdcj.texas.gov>, as well as the TDCJ VSD website at https://www.tdcj.texas.gov/publications/victim_impact_statement.html#vis. A VIS tracking form is also available upon request. We are here to assist you.

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Not later than the 10 days following a felony indictment returned against a defendant or information is filed in a misdemeanor case, the attorney representing the state (prosecutor) shall give to each victim of the offense a written notice containing (Art. 56.08(a)):

the right to file a VIS with the prosecutor's office and TDCJ VSD (Art. 56.08(a)(7)); and

a statement that the VIS provided by the victim will be considered by the prosecutor in entering into the plea bargain agreement (Art. 56.08(e)(1)); and

a statement that the judge, before accepting the plea bargain agreement, is required under Art. 26.13(e) to ask whether a VIS has been returned to the prosecutor; (and) if a VIS has been returned, for the VIS (Art. 56.08(e)(2)(A-B)).

Recommendation: The Texas Crime Victim Clearinghouse brochure titled, "It's Your Voice," contains some of the required information and can assist you with the written notifications that must be given to victims. This brochure is available to download from the IVSS portal at <https://ivss.tdcj.texas.gov> or contact the TDCJ VSD at 800- 848-4284 or tdcj.clearinghouse@tdcj.texas.gov to request copies.

The victim assistance coordinator (VAC) shall send a VIS to the victim along with an offer to assist in completing the document on request. **Art. 56.03(c)**.

The VIS, "Just for Kids" VIS, and Juvenile Offenders VIS are available in English and Spanish and can be downloaded at: www.tdcj.texas.gov/publications/pubs_victim_impact_statement.html.

Recommendation: Have packets prepared and ready to mail to victims. Include in the packets:

- the VIS,
- a letter offering to assist the victim in completing the VIS,
- the "It's Your Voice" brochure or a brochure/document created by your agency that provides information regarding the VIS,
- an application for or information about Crime Victim's Compensation, and
- additional information as defined by **art. 56.08**.

Recommendation: Complete the VAC sections of all VIS documents in your packet before sending it to the victim.

Recommendation: Provide a self-addressed, stamped envelope.

The VAC, on request, shall explain to a victim the possible use and consideration of the VIS at sentencing and future parole hearings of the offender. **art. 56.03(c)**.

- Explain that the VIS is considered by the prosecutor and the judge before sentencing or before a plea agreement is accepted; and that the VIS will be considered by the Board of Pardons and Paroles (BPP) before an offender is released on parole. **art. 56.02(a)(12)(A-B)**.

Recommendation: Explain that the Confidential Victim Contact Information page will never be seen by a defense attorney and that the victim may choose to complete only this portion of the VIS.

Recommendation: Explain to the victim that by completing the Confidential Victim Contact Information portion of the VIS, s/he may elect:

- to be notified of court proceedings and the offender's status while on probation, under parole supervision or while incarcerated, as appropriate,
- to be notified if the offender is being considered for parole or release if the defendant is incarcerated in the TDCJ, and
- to be added, if the defendant is incarcerated in the TDCJ, to IVSS, which uses a confidential database to provide registrants with notifications regarding offenders in the TDCJ Correctional Institutions Division (CID) or under the supervision of the TDCJ Parole Division (PD). Notifications are available via e-mail, letter, text, phone call, or any combination of your choosing. The IVSS provides notifications concerning phases of the criminal justice system, post-conviction. This includes the parole review process, release to supervision or discharge, and warrant actions during periods of supervision.

Recommendation: Explain to the victim that the VIS is considered by the BPP before an offender is released on parole or mandatory supervision. This is contingent on the TDCJ receiving the VIS in the offender's penitentiary packet (**Art. 42.09**), which will be processed to add the victim, if requested, to the TDCJ VSD IVSS and be included in the offender's parole review file.

Recommendation: Explain to the victim that by completing the Supplemental page of the VIS they can provide important information to be used by the TDCJ VSD if the defendant in the case is incarcerated on the offense involving a child victim. If the offender has a court order that grants her/him possession or access to the minor child, the TDCJ VSD will notify the appropriate court prior to the offender's release on parole or mandatory supervision (**Art. 56.03(i)**).

Recommendation: Explain to the victim that the VIS is considered by the prosecutor to determine restitution amount, if requested.

Recommendation: Offer additional assistance to help the victim to complete the VIS, if necessary. (This could include assistance at (1) the initial meeting; (2) within 30 days; or (3) prior to a plea bargain agreement or trial.)

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4. If the victim completes and returns the VIS, the following statements apply:

- At the request of the court, the prosecutor may make a copy of the VIS available to the court sentencing the defendant. **Art. 56.04(e).**
- To the extent possible, the address of the victim will not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be a part of the court file. **Art. 56.09.**
- A VIS is subject to discovery under **Art. 39.14** of the Code of Criminal Procedure before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material (evidence that could cast doubt on the guilt of the defendant). **Art. 56.03(g).**
- The court may not view a VIS until after a finding of guilt or until deferred adjudication is ordered and the contents of the statement may not be disclosed to any person unless the defendant pleads guilty or nolo contendere or is convicted of the offense; or the defendant in writing authorizes the court to inspect the VIS. **Art. 56.03(f)(1-2).**
- The victim has the right to provide pertinent information to a probation department conducting a Pre-Sentence Investigation concerning the impact of the offense on the victim and their family by testimony, written statement, or any other manner prior to any sentencing of the defendant. **Art. 56.02(a)(5).**
- Prior to the judge sentencing the defendant, s/he must ask the prosecutor whether or not a VIS has been returned, and if so, consider the information provided in the VIS. **Art. 56.03(e).**
- The VIS provided by the victim, will be considered by the prosecutor in entering into the plea bargain agreement. The judge, before accepting the plea bargain agreement, is required under art. 26.13(e) to ask whether a VIS has been returned to the prosecutor; (and) if a VIS has been returned, for a copy of the statement. **Art. 56.08(e)(1)(2)(A-B).**
- The judge will consider the VIS before sentencing or before a plea bargain agreement is accepted. **Art. 56.02(a)(12)(A).**
- After a finding of guilt and before sentencing the defendant, the court shall permit the defendant or the defendant's counsel a reasonable time to read the statement, excluding the victim's name, address, and telephone number, comment on the statement, and with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the VIS. **Art. 56.03(e).**

Recommendation: Upon receipt of a completed VIS, the VAC should make at least one copy of the VIS.

- The entire VIS should be sent to the prosecutor's file, either by hardcopy or electronic version marked "Work Product" for prosecutor use only.
- The copy of the VIS will be provided to the court. In the court copy the Confidential Victim Contact Information MUST remain confidential. Separate the Confidential Victim Contact Information page from the VIS and place it in a sealed envelope stamped "CONFIDENTIAL." Attach the envelope to the remainder of the VIS and designate it as the court's copy. This should be routed to the prosecutor file for presentation to the judge at the appropriate time. It would be helpful to mark this copy as "Court Copy."

Recommendation: Remember, ONLY the VIS, minus the Confidential Victim Contact Information page should be available for the defendant and their attorney to review, if applicable. The "CONFIDENTIAL" envelope should never be provided to the defense and should remain sealed throughout the court proceedings.

5. If the court sentences the defendant to imprisonment in the TDCJ, the court shall attach the copy of the VIS to the commitment papers. **Art. 56.04(e).**

- The judgment should reflect whether the VIS was returned to the prosecutor pursuant to art. 56.03(e). **Art. 42.01 (Sec. 11).**
- A county that transfers a defendant to the TDCJ under article 42 shall deliver to an officer designated by the department a copy of the VIS, if one has been prepared in the case under art. 56.03. **Art. 42.09.**
- Explain to a victim that the VIS will be considered by the BPP before an offender is released on parole as long as the VIS is received in the penitentiary packet (**Art. 56.02(a)(12)(B)**). This will be processed to add the victim, if requested, to the TDCJ VSD IVSS for notifications and included in the offender's parole review file.
- If the victim states on the VIS that they wish to be notified of parole proceedings, the victim is responsible for notifying the BPP of any change of address (**Art. 56.03(d)**). This is contingent on the TDCJ receiving the VIS in the offender's penitentiary packet (**Art. 42.09**), which will be processed to add the adult victim, if requested, to the TDCJ VSD IVSS and be included in the offender's parole review file.
- Inform the victim that they can contact the TDCJ VSD to determine if the VIS was received and request to be registered on the TDCJ VSD IVSS. Inform the victim that if they do not provide notification regarding a change in their contact information, they will not be notified when the offender is in the parole review process, is released to supervision or direct discharge, escapes, or dies while in TDCJ custody. They will also not be notified of when and how to submit protest materials for the BPP to consider prior to releasing the offender on parole or mandatory supervision.
- The Supplemental page of the VIS is designed to collect information, if the victim is a child, regarding whether there is an existing court order granting the defendant possession of or access to the victim. If information collected indicates the defendant is granted access or possession under court order and the defendant is subsequently confined by the TDCJ the victim services office of the department (TDCJ) shall contact the court issuing the order before the offender is released from prison on parole or mandatory supervision. **Art. 56.03(i)**. It is important that the victim fill out the custody court information completely in addition to the victim information and provide a copy of the court order, if available.

Recommendation: The district clerk or designated person responsible for compiling the penitentiary packet should take the VIS Form and reattach it to the Confidential Victim Contact Information page and attach the stapled documents to the offender's commitment papers to be included in the penitentiary packet that is sent to TDCJ.

Recommendation: It is important for those who process the VIS to understand who is responsible for which steps and how the VIS is processed in their county. These individuals should review and operationalize the process to ensure the VIS is processed correctly.

Recommendation: It can be beneficial to track the dates that the persons responsible for VIS processing sent or received the VIS. Tracking points may include when the VIS is sent to and received from the victim, when the VIS is given to the prosecutor, submitted to the judge, sent to the Community Supervision and Corrections Department (probation) or when a copy of the VIS is attached to the commitment papers to be sent to the TDCJ. If the victim does not return the VIS, follow up attempts to encourage the victim to complete the VIS could be tracked as well. TDCJ VSD provides a VIS tracking form at www.tdcj.texas.gov/publications/pubs_victim_impact_statement.html.

Recommendation: If the judgment and sentence form indicates a victim returned a VIS to the county but the VIS is not in the court file, contact the VAC to obtain a copy of the VIS.

***** IMPORTANT *****

If at any time it becomes apparent that a VIS has not been included with the offender's commitment papers, immediately forward a copy to the TDCJ VSD at:

Mail: 8712 Shoal Creek Blvd. Suite 265 Austin, TX 78757-6899

Email: victim.svc@tdcj.texas.gov

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If the court sentences the defendant to a term of community supervision (probation), the prosecutor must forward any VIS received in the case to the probation office supervising the defendant **Art. 56.03(e)**.

- The judgment should reflect whether the VIS was returned to the prosecutor pursuant to art. 56.03(e). **Art. 42.01 (Sec. 11)**.

Recommendation: The prosecutor should forward the VIS to the probation department. The prosecutor may keep a copy of the VIS for her/his records.

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If probation is revoked and the offender is sentenced to the TDCJ:

The judgment should reflect whether the VIS was returned to the prosecutor pursuant to art. 56.03(e). **Art. 42.01 (Sec. 11)**.

Recommendation: If the offender's probation is revoked, either the prosecutor or the probation office should forward the VIS to the court to be attached to the offender's commitment papers. Refer to #5 of this document.

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If the defendant receives shock probation:

Recommendation: Refer to #5 of this document. The VIS should follow steps for an offender sentenced to the TDCJ;

Recommendation: If the TDCJ VSD is notified that an offender is sent back to the county for a shock probation case, the TDCJ VSD should collaborate with the TDCJ Community Justice Assistance Division (CJAD) to ensure a copy of the VIS is available to the appropriate probation office. The TDCJ CJAD will coordinate with the probation office or the prosecutor's office.

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If the defendant is sentenced to county jail:

The judgment should reflect whether the VIS was returned to the prosecutor pursuant to art. 56.03(e). **Art. 42.01 (Sec. 11)**.

Recommendation: If the defendant is sentenced to county jail, the VIS should remain in the state's file; follow office procedure regarding records retention.

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If the defendant is acquitted:

Recommendation: If the defendant is acquitted, the VIS should remain in the state's file; follow office procedure regarding records retention.

If the defendant is acquitted by reason of insanity:

When the court issues an order that requires the release of an acquitted person discharged or on a regimen of outpatient care, the clerk of the court shall use the VIS to notify the victim of the release. The court clerk may request assistance from the prosecutor's office in contacting the victim.

If the victim does NOT return the Victim Impact Statement:

Recommendation: Follow up with the victim to explain the purpose of the VIS.

- Follow up with the victim regarding their right to complete the VIS throughout the prosecution by contacting the victim by phone, email, mail, or in person at regular intervals;
- If the VIS is not returned within 30 days send a notification offering another VIS;
- If the VIS comes back nondeliverable due to a move and no forwarding address is known, contact the victim by phone or email;
- If the victim states they do not wish to fill out a VIS:
 - Explain to the victim that, if they wish, they can complete the Confidential Victim Contact Information section of the VIS, which will be used to provide notifications by the prosecutor's office and either probation or the TDCJ VSD (depending on the conviction and sentence of the offender).
 - With that information, if the victim states s/he does not want to complete the form, make a notation in the file;
 - Inform the victim that they can submit the VIS form at any time, by contacting the Victim Assistance Coordinator or the TDCJ VSD.
 - Explain to the victim that, if the offender is convicted and sentenced to prison, the victim still has the right to contact the TDCJ VSD office if he or she would like to request notifications regarding the offender. (Notifications include, but are not limited to: when the offender is in the parole review process; when and how to submit protest materials for consideration by the BPP; if the offender escapes; when the offender is recaptured; when an offender is transferred from the custody of the TDCJ to the custody of a peace officer under a writ of attachment or a bench warrant; and if and when the offender is released to supervision or direct discharge.)

VIS Reporting

- At quarterly intervals, state and local agencies are required to complete and submit the TDCJ VIS Activity Report. This report includes sections to collect statistics on the number of VISs provided to victims, as well as the number of VISs completed and returned. The report also requires that the number of VISs provided be broken down into the types of offenses applicable. These forms are collected to determine whether an agency or office is making a good faith effort to protect the rights of the persons served. **Art. 56.05(a-b)**. Quarterly Activity Reports shall be submitted through IVSS. You may register as an IVSS user and request justice official access here: <https://ivss.tdcj.texas.gov>.

Recommendation: A VIS tracking system may be created and maintained to assist with compiling the statistics required to complete the VIS Activity Reports. The VIS Activity Report includes sections to collect how many VISs were provided each month, and how many were returned.