State Victims' Rights Amendments: A Theoretical and Empirical Analysis

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I. Introduction

This paper will present a model of victim involvement in the criminal justice system and then empirically estimate the effects of victims' rights legislation using logistic regressions. Victim involvement will be represented by two provisions common in state victims' rights amendments (VRAs): the right to be heard and the right to confer. Presence of the right to be heard – that is, to make a victim impact statement (VIS) at sentencing – is found to increase the average sentence length by more than five months and decrease the likelihood that a defendant will plead guilty. Presence of the right to confer with prosecution before charges are filed is found to significantly lower average sentence lengths and increase the likelihood that a defendant will be charged with a felony and the probability that a defendant pleads guilty. Such a finding is important. It challenges the commonly made assumption that criminal sanctions are public, stable, predictable and determined by legislators. The results of this paper are also important for predicting and understanding what the possible effects would be of adding a federal victims' rights amendment to the United States Constitution.

II. Previous Literature

There has not been many direct studies of VRAs, but there has been at least one; and this paper also shares its goals and interests with other types of research. These include research concerning the human tendency to consider a crime's impact on the victim when

making judgments about sentencing and exploration into the discretion that legal actors exercise when legal mandates are placed on them. The three articles in my literature review are taken from these areas.

Direct Estimates of the Effects of a Victims' Rights Amendment

Candace McCoy studied the effects of the nation's first victims' rights amendment (VRA), California's Proposition 8, which was passed in 1982 (McCoy, 1993). Proposition 8 placed severe limits on plea bargaining; it banned the practice from Superior Court, where most of it took place. McCoy found a surprising result: Proposition 8 did not reduce plea bargaining at all, nor did it increase the proportion of defendants sentenced to prison. Prosecutors shifted the locus of plea bargaining shifted from Superior Court to Municipal Court, allowing the process of plea bargaining to continue unabated. McCoy's study is important to the study of VRAs for two reasons. First, it directly examines the impact of a VRA; it also shows the creativity with which legal actors find ways to continue their routine practices in the face of legal mandates which attempt to force them to abandon or alter those practices.

A key provision of Proposition 8 banned plea bargains from California Superior Court, where most plea bargains in felony cases were reached. Supporters of the Amendment expected it to curtail plea bargaining and curb what they viewed as a culture of "institutional leniency" toward defendants. They also expected a greater proportion of defendants to serve prison sentences as less plea bargaining took place. This was because more defendants would be punished for the crime they actually committed instead of the supposedly watered-down charges that resulted from plea bargaining.

McCoy used official data from the California Department of Justice to discover whether these goals were ever realized. She also gathered qualitative data, attending court once a week, observing guilty pleas and conducting interviews. She chose her sample of defendants from San Diego and Alameda counties, two urban California counties that were economically similar yet diverse in their courthouses traditions relating to plea bargaining.

McCoy next observed trends in plea bargaining and sentencing. The data showed an increase in plea bargaining in both counties that had started before Proposition 8 was passed, but continued unabated even after 1982. She also noticed that much more plea bargaining took place at Municipal Court, the lower level in the judicial system, where the practice was not forbidden. The data also showed that a greater proportion of defendants were sentenced to prison after Proposition 8; however, this trend also seemed to have started well before 1982. McCoy concluded that some of this increase may have been attributable to one of Proposition 8's provisions which was unrelated to plea bargaining, one which mandated prison for those who before would have been sentenced to youth facilities or mental institutions.

The fact that plea bargaining in California shifted from Superior Court to Municipal Court after 1982 had several important consequences for California's criminal justice system because plea bargaining in Municipal Court is conducted differently from plea bargaining in Superior Court. When a case has reached Municipal Court, the preliminary evidentiary hearing has not yet taken place, so there has less judicial scrutiny of evidence. This is ironic, considering that critics of plea bargaining in California had complained of

the shadowy nature of plea bargaining: Proposition 8 probably caused there to be less, rather than more, oversight of plea bargaining.

McCoy's study contains many valuable insights, but also several shortcomings that this paper hopes to correct. The attempt in California's Proposition 8 to restrict plea bargaining makes it an anomaly among VRAs, so any conclusions reached about California must be cautiously applied to the rest of the country. This paper uses a larger sample of states, so it will better gauge what the effect of the typical VRA is. Also, my paper will employ regression analysis, whereas McCoy's study looked at general trends in data which are apparent to the unaided eye.

Influence of Victim Testimony on Sentencing Outcomes

Adelma Hills and Donald Thompson studied whether exposure to a victim impact statement (VIS) would affect sentencing outcomes. Their study, <u>Should Victim Impact Influence Sentences? Understanding the Community's Reasoning</u> (Hills and Thompson, 1999, p.661), provides compelling evidence that judges, and perhaps also prosecutors, would likely consider the harm caused to a victim when deciding what sentence is appropriate, even when that harm was unforeseeable to the defendant, or "fortuitous." (Hills and Thompson, 1999, p. 662)

Hills and Thompson distributed vignettes to 260 participants, each describing either a rape or robbery. The reaction of the victim to the crime was also described, in one of three ways. In the "mild consequences" condition, the victim was described as having recovered well from the crime. In the "severe consequences" case, the victim was still traumatized from the attack. The third condition, "no consequences," did not describe

any consequences to the victim, either mild or severe. Participants were asked to give a sentence, in years, to the person who committed the crime in the vignette.

Hills and Thompson found that information about the victim greatly affected sentencing. Both respondents who had read the "rape" vignettes and those who had read about robberies gave the highest sentence, on average, to the "severe consequences" defendant; slightly lower was the "no consequences" sentence, with the "mild consequences" defendant receiving the lowest sentence of the three. Surprisingly, for those who had read the rape vignette, the biggest difference in sentence was between the "mild consequences" and the "no consequences" conditions; the "severe consequences" sentence was very close to the "no consequences" sentence. It appeared that people naturally assume that a victim would be traumatized by a rape, even without reading about it, and factor that assumption into their sentence.

This paper is important to the understanding of VRAs for several reasons. First, it shows that a VIS could strongly effect sentencing if judges and prosecutors use victim information in a similar manner to the people in the sample. It also raises the possibility that judges base their sentences on harm suffered by the victim, even though it is "fortuitous" and could not have been foreseen by the defendant. Second, it shows that sometimes a VIS may actually reduce sentences, if it indicates that "mild consequences" were suffered.

Still, this study suffers from several shortcomings. Its sample is small and is comprised of laypeople, not lawyers and judges. Also, the victim information is written in a vignette, not delivered in court by an actually victim as it would be in an American

courtroom. This paper aims to discover how the VIS changes sentencing in practice, not only in theory.

Prosecutorial Discretion and Three-Strike Laws

Economist David Bjerk studied how three-strike laws alter the way in which prosecutorial discretion is exercised in the paper Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion under Mandatory Minimum Sentencing (Bjerk, 2005, p.591). He found that prosecutors are more likely to engage in plea bargaining with defendants who face a felony charge that would trigger especially harsh punishment under a three-strike provision. This paper's goals are similar to Bjerk's in several respects. Both papers model the reactions of legal actors to restraints placed on them. Both show that laws which constrain legal actors can have unintended side. Most importantly, both show that the most important decisions in our criminal justice system are made by the discretion of human beings, not by strict adherence to rules.

Bjerk looked at defendants in the *State Court Processing Statistics* data, a sample of defendants from the nation's most populous counties. By examining arrest charges and conviction records, he identified defendants who could possibly have been charged with crimes that would have mandated severe punishment under a three-strike provision. He then examined whether those defendants were prosecuted for felonies or misdemeanors, and whether that depended on the presence of a three-strike law. Specifically, he used a difference-in-difference estimation of the increased likelihood of being prosecuted for a misdemeanor in a state with a three-strike law.

Bjerk found that prosecutors were significantly more likely to reduce felony charges to misdemeanors in states with a three-strike law. Prosecutors had used plea bargaining

to lower the charges of those defendants who they thought did not deserve the punishment triggered by a three-strike law. This increase in plea bargaining led to a counterintuitive effect: an increase in average sentences for both felons and misdemeanants. The increase for felons can be attributed to the three-strike law, so it was expected. But the increase for misdemeanants occurred because many defendants who would normally be prosecuted for a felony were now being prosecuted for misdemeanors. The crimes of these newly-added defendants were more serious than the average misdemeanor, so their inclusion in the misdemeanor group significantly increased the average sentence for people in that category.

Law and Economics

This paper fits into an even broader category: law and economics research which examines the workings of the criminal justice system as a whole. One of the pioneers of this field was Gary Becker, who authored the seminal economics paper on crime, Crime and Punishment: An Economic Approach (Becker, 1968, p.169). Becker's paper assumed that criminals react rationally under uncertain circumstances and that they change their behavior according to the risks and returns associated with crime. It also made a distinction between the likelihood that a defender will get caught and the length of the sentence. He found that an increase in p, the likelihood of getting punished, was a more effective deterrent to crime than a comparable increase in f, the level of punishment. He also determined that it was optimal to impose fines, rather than prison sentences, because they are less costly; and that, due to the cost of policing, it is efficient to punish only a few people very harshly. Like Becker's and Bjerk's, my paper aims to shed light

on the often shadowy inner workings of the criminal justice system by modeling the behavior of those who participate in and are subject to that system.

III. The Modern Victim Rights Movement

The notion that victims should be intimately involved in criminal proceedings is not a new one; it harkens back to an earlier time, when victims were primarily responsible for seeking redress for crimes against them (Tobolowsky, 1999, p.22). Yet the current victims' rights movement is different in that it does not intend to place the onus of prosecution on victims; rather its goal is to make victims feel more welcome by increasing their role in the criminal justice system.

In indigenous cultures, victims were actively involved in seeking redress against those who wronged them. Governed by societal norms concerning what constituted acceptable retribution, victims were allowed to mete-out punishment against those who had committed crimes against them. This victim-oriented system survived in Europe until around the eleventh century. A shift occurred at that time, and society increasingly began to view crime as an offence against the state, or "the King's peace." (Tobolowsky, 1999, p. 24) Offenders would now paid fines to the government instead of restitution to the victim. The victim's role in criminal proceedings also was substantially curtailed.

The victim oriented model survived in America until much later. Until the time of the American Revolution, victims were still responsible for investigating and prosecuting crimes against them. Only in the last few decades of the 18th century did Americans embrace the Enlightenment notion that prosecution should serve dual public motives: deterrence and retribution. This change in sensibility was driven by changes in

America's demography: America had become increasingly urban, populous and spread-out, so it was no longer feasible for victims to tracking down criminals by themselves. Police forces soon replaced privately-paid volunteers and bounty hunters. Just as had happened in Europe centuries earlier, victims were effectively sidelined from criminal proceedings.

The modern victims' rights movement in America arose during the 1960's in response to a confluence of factors, namely the including the re-emergence of feminism, seemingly pro-criminal Supreme Court jurisprudence concerning criminal procedure, a rise in violent crime and the emergence of victims' groups such as Mother Against Drunk Driving (MADD). State legislators grew increasingly receptive to the nascent victims' rights movement.

In 1982, President Reagan formed the President's Task Force on Victims of Crime, which proved a milestone in the victims' rights movement. The nine-member Task Force handed down a final report with over sixty recommendations. Two of those recommendations were widely followed and are the focus of this paper: the suggestion that victims be allowed to give impact statements at sentencing and that they be allowed to consult with prosecutors before charges are filed or a plea bargain is agreed to. These two privileges became known as the "right to be heard" and the "right to consultation," respectively. They are the two most important, yet controversial victims' rights provisions, and they are the main subject of this paper.

The Right to Consultation and the Right to Be Heard

Thirty-three states have passed VRAs (www.nvcap.org). These amendments vary widely in strength and scope, and no two grant exactly the same rights to victims. Most

contain either one or both of the following two rights: the right to be heard and the right to conferral. Not every state VRA includes both rights, though, and some contain neither. The right to consultation requires prosecutors to consult with victims of crimes before they file charges or agree to a plea bargain. The right to be heard grants victims the right to deliver a victim impact statement (VIS) at the sentencing phase of a trial, whether the conviction resulted from a trial or plea bargain. Neither of these rights creates a cause for legal action, although there is no reason to believe that they are not widely adhered to. The exercise of these two rights will now be placed in the context of criminal procedure.

Victim Involvement in the Context of Criminal Procedure

The right to confer and the right to be heard are given meaning by their enactment in a sequence known as "criminal procedure," a widely-replicated series of events which dictate how an arrestee will matriculate through the criminal justice system. A review of criminal procedure shows that neither will affect a defendant's arrest charge, but the right to consultation could impact which adjudication charge is filed and the likelihood of a plea bargain taking place. The right to be heard could increase the jail sentence that defendants receive.

Criminal procedure comprises three main stages: policing, prosecution, and the trial. The policing stage begins when the police learn of a possible crime, either through a report from private citizen or through their own investigation. The crime is now listed as "reported." The police respond to the crime report and conduct a pre-arrest investigation, which will determine whether a crime was committed, and whether there exist any suspects. Once a suspect is found and arrested, he or she is taken into police custody. The suspect then goes through booking at the police station. An arrest offence is

recorded in the police "blotter" or "log" and the offender is placed in lockup. Police will conduct a post-arrest investigation, which includes such actions as gathering more evidence at the crime scene or questioning the arrestee. Because the victim has not consulted with anyone in the legal system yet, I expect that the arrest charge will not be impacted by either right in a VRA. It is important to note, though, that the victim's decision to report the crime is an important factor in whether the defendant gets arrested.

The Prosecution Stage begins when police and prosecutors jointly decide whether to charge the arrestee and what the appropriate charge is. Usually a high-ranking police officer will review the arrestees' records and the evidence in the case, finally deciding which cases to prosecute. Police then transfer all records to a prosecutor, who typically provides a second level of screening. If the state has a right to confer, prosecutors make their decisions based on meetings with the victim. This provision would therefore impact which defendants are charged, and what they are charged with. The charge that prosecutors end up filing is called the adjudication charge. Unlike the arrest charge, it is likely affected by victim input.

An affirmative decision to charge results in the filing of a complaint in Magistrate Court, the lowest level of court. The judge conducts an *ex parte* review of the evidence, during which it will be determined if there is probable cause to try the case. If the judge finds cause, the defendant will make a first appearance at the Magistrate Court, where bail is set and a lawyer is given to any lacking defendant. Felony cases may include an additional step, a "preliminary hearing" of evidence by both sides, during which live witnesses are usually presented. The Magistrate judge could then allow the case to be

"bound over" either to a Superior Court, where a felony trial may be adjudicated, or to a grand jury for review.[1]

After these steps have taken place, the defendant is now arraigned. A judge will read the charges in Court. The defendant must enter a plea, either of guilty or of not guilty.[2] A guilty plea implies that the defendant has engaged in plea-bargaining with the prosecutor. Plea-bargaining may take place at any time from the first-appearance through arraignment, and sometimes even during the trial. If the defendant pleads guilty, the defendant will be sentenced by the judge. The judge will give great weight to the prosecutor's sentence recommendation, though victims in some states also may be heard at sentencing.

If the defendant pleads not guilty, the case will normally go to trial.[3] Juries, usually composed of twelve members, will return a verdict of guilty or not guilty after hearing evidence from both sides.[4] If the jury has determined that the defendant is guilty, the judge hands down a sentence; but the power to do so is limited in two ways. First, only juries can find so-called "aggravating facts" which are used to increase sentences. Also, legislatures often impose certain sentencing guidelines – for example, three-strike laws – which set mandatory minimum or maximum sentences. In states with a right to be heard, consider testimony from the victim of the crime. Because the victim may address the

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[1] In about one-third of states, felony prosecutions must be approved by a grand jury. A grand jury is a group of private citizens, usually twenty-three in number. A grand jury is different from a jury in many ways; notably it meets in private and hears evidence only from the prosecutor. A simple majority of the grand jury is required to approve the case as a "true bill" which sends it to Superior Court; otherwise the case is dropped.

[2] In some jurisdictions the defendant may plead *nolo contendere*, which is neither an admission of guilt nor a plea of innocence. That option aside, between 70% and 90% of defendants usually plead guilty, depending on the district.

[3] Defendants facing felony trials have a right to trial by jury, as do those defendants charged with misdemeanors who face a prison term of six months or above. Defendants may waive this right and have a "bench trial" in which the judge determines their guilt.

[4] If the jury members fail to agree on a verdict, the jury is "hung" and the case will need to be retried.

judge before sentencing, the right to be heard will probably impact what sentences are given.

The usual sentence for a felony is either prison or probation. Defendants convicted of misdemeanors can expect a fine, probation, a suspended sentence or prison. A defendant may appeal the jury's verdict on several grounds. Evidence may have been gathered in an unconstitutional manner, the judge may have given incorrect instructions to the jury or the defendant's council may have been incompetent. The defendant's sentence will begin once all appeals have been exhausted.

Rationales for the Victim Impact Statement (VIS) and Plea Bargaining

I will now discuss the rationales behind two controversial features of America's criminal justice system: the victim impact statement (VIS) and plea bargaining. Understanding the debates surrounding these two facets of the legal system will help us understand the effects of a victim's right to be heard and the right to consultation. Understanding how plea bargaining works will help explain what type of effect the right to consultation may have.

Victim Impact Statements

According to criminal theorists, a VIS may change the dynamics of the criminal justice system in several ways. It may increase sentencing accuracy by generating new information about the specific details of crimes; it may lead judges to punish for the specific harm of the crime, as opposed to imposing standard sentence of the crime category; it may increase the average sentence length, because the sample of those victims likely to give statements is biased toward those who have suffered the most harm; and it may lead to more crimes being reported because victims feel more trusting of the

criminal justice system.[5] I will now discuss the informational role of the VIS and its potential to improve sentence accuracy.

One potential benefit of the VIS is an increase in sentence accuracy. Victims can share knowledge of the specific level of harm committed against them, so they can help prosecutors and judges determine which charges and sentences are appropriate. Victim testimony could help judges distinguish between defendants who are charged with the same crime category. If judges can better distinguish between these defendants, we would expect sentences of defendants within crime categories to show more variance which reflects new victim-generated information about the differences between crimes.[6] In other words, judges would begin sentencing defendants according to the *specific* harm they caused instead of the *standard* harm of their crime category.

Selection Bias and the VIS

I will now discuss why a VIS should not change sentences without selection bias, why selection bias should appear, and what effect that will have on average sentences.

If every victim delivered an impact statement, and if judges always handed down sentences based on the specific harm of the crime, we would expect that the mean sentence would be the same as under the theory of standard punishment: suppose that half of all victims of crimes in a given category suffer above-average harm, and the other half

[5] Increasing victim input into the criminal justice system may make victims feel more comfortable reporting crimes. The "dark figure of crime," a term used by criminologists to describe the gap between those crimes that are committed and those reported, could decrease as a result of victim rights laws.[5] These law contain many provisions which make the criminal justice process more accommodating to victims, not including the two main provisions which I have described. For example, restitution funds often are set up restitution funds for victims, and victims are given a say at the parole hearings of those who harmed them.
[6] Opponents of the VIS argue that it is unfair to defendants and may violate their constitutional rights. They argue that "specific harm" depends not so much on the intention of the defendant as the "fortuitous" characteristics of the victim, making punishment more arbitrary. If punishments are based on results of a crime that the offender could not have predicted then sentencing is a riskier proposition for criminals. This risk may encourage more defendants to plead guilty because such pleas are usually more likely to reflect the standard punishment for a crime.

suffer below-average harm. Application of "specific punishment" would result in half of defendants receiving higher sentences, the other half lower. The two changes should cancel each other out, with the result that the mean sentence is the same as it was under the "standard punishment" theory.

But in practice, the group of victims who deliver impact statements is not randomly selected. Victims will, presumably, be more likely to deliver a VIS if they have suffered above-average harm, because it is the above-average-harm group that would derive the greatest cathartic benefit from testifying. Suppose that the cathartic benefit of testifying about a crime committed against oneself is small for trivial crimes and large for very harmful crimes. Suppose also that the size of the benefit increases proportionally with the harm of the crime. Assuming that there is a cost to testifying, which could include either lost time or an unspecified psychological cost, we would predict that the likelihood that a victim's cathartic benefit will exceed the cost of testifying increases as the harm of the crime increases. Therefore, the victims will be more likely to testify if the harm of the crime committed against them is large. Therefore, we could expect that a VIS would have the cumulative effect of increasing sentence lengths at trial.[7]

Plea-Bargaining

Next I will explain some of the controversy surrounding plea bargaining and apply insights from that discussion to VRAs. This section reaches several conclusions about the effect of a VRA on plea bargaining. First, the right to consult likely to affect prosecutors' judgment in "reasonable doubt as to the charge" cases, where the prosecutor is sure of the defendant's guilt but unsure whether a felony charge is warranted. Second,

[7] Of Course, if judges begin to assume that those victims who did not testify suffered below-average harm, then this effect will not occur. Another possibility is that judges will reconsider the standard punishment in response to victim testimony.

because plea bargain sentences reflect trial sentences, a VIS at trial is likely to affect not only the trial sentence, but also the plea bargain sentence.

The vast majority of convictions in America result from a process known as plea-bargaining, during which a defendant admits guilt in exchange for the prosecutor's promise of a lighter sentence or lesser charge, or both. The process of plea-bargaining is not mandated by any law; rather it is a natural outgrowth of repeated interaction between prosecutors, defense lawyers and judges. Over time, these actors develop a sense of what constitute fair sentences for given crimes, and what sentences they could expect certain defendants to receive at trial.

The normal plea-bargained sentence is a product of many forces, including the seriousness of the crime, the strength of the evidence against the criminal and the philosophies of the legal actors who negotiate the plea agreement. Generally, these forces stabilize and plea sentences become standardized. In fact, one of the main benefits that prosecutors see in plea-bargaining is standardization, which they believe promotes fairness.

Critics, who mostly reside outside of the legal system, deride plea-bargaining as "institutionalized leniency." (McCoy, 1993, p.67) and claim that it coerces defendants to give up their constitutional rights. These critics note that the criminal justice system does not have the resources to give every defendant a trial. They assume that prosecutors plea bargain out of a desperate necessity, offering lighter sentences as enticements in exchange for a defendant's right to trial. But the lighter-than-average sentences that result from plea bargaining can be partially explained by other factors. One possible cause is evidentiary weaknesses in the case. Prosecutors might view plea bargaining as

the best chance to levy some punishment against a defendant who may not be convicted at trial. Also, defendants who plead guilty are said to show remorse, a factor which lowers their sentence. Also, there is a selection issue. Prosecutors choose to take cases with the most heinous facts to trial because they want to ensure the maximum punishment. So the lighter sentences which result from plea bargaining are not entirely the result of "institutionalized leniency."

Another critique of plea bargaining is that it is conducted out of the public eye, as opposed to the public nature of trials, allowing prosecutors to shield themselves from accountability for the agreements that they reach. But legal actors do not necessarily want to disguise their actions: many question the benefits of trial. They view themselves as capable of estimating a defendant's probability of conviction, which they can consider along with the estimated trial sentence to arrive at a fair plea bargain sentence.

From an efficiency standpoint, plea bargaining is superior to trials. Unlike a trial sentence, a plea bargain can take into account both the defendant's likelihood of guilt. Suppose evidence indicates a 90% likelihood that a defendant is guilty. An optimal punishment would take into account both the sentence for the crime ad the probability of guilt. But trials either find the defendant guilty, and sentence him to the full standard punishment; or acquit him, in which case there is no punishment. Neither of these outcomes is optimal. By engaging in plea bargaining, legal actors can consider both factors – type of crime and strength of evidence. Because the optimal punishment will take into account the probability of conviction, which is always less than one, it will always be less than that which the defendant would receive at trial, but that does not mean that that the punishment is lenient.

Also, trials do not generate new information. Prosecutors and defense lawyers discuss all of the available information about a case when crafting a plea agreement. Because plea bargain sentences and trial sentences are based on the same information, and plea bargain sentences partially reflect trial sentences, any change in trial sentences will probably be reflected in plea bargain sentences.

The right to consult should impact prosecutors during plea bargaining because prosecutors will discuss a case with victims before engaging in plea bargaining. To determine the effect of this consultation, I will explain three types of cases identified by Criminologist Lynn Mather: "dead-bang guilty," "reasonable doubt as to the charge" and "reasonable doubt as to the evidence." (Mather, 1979, p.28) In a "dead band guilty" case, neither the defendant's guilt nor the appropriate charge are in question; the victim should have very little impact on prosecutors in these cases because the prosecutor should be certain of what course of action is appropriate. "Reasonable doubt as to the charge" describes cases in which the defendant's guilt is unquestioned, but the appropriate charge is uncertain; here the victim will probably affect which charge is filed. A "reasonable doubt as to the evidence" case has shaky evidence, but the appropriate charge, if filed at all, is certain. Prosecutors will probably not allow victims to influence them in these cases, as a wrong decision by prosecutors could lead to the conviction of an innocent person. I expect victims to impact prosecutors only in reasonable doubt on charge cases, and I expect victims to advocate for tougher charges to be filed. The predicted effect of victim consultation will be an increase in the percentage of defendants within each arrest charge category that are charged with a felony.

In summary, the structure of plea bargaining suggests that if sentences increase at trial then plea bargain sentences will increase. Also, victims are most likely to influence prosecutors when the appropriate charge in a case is in question, with the result that more defendants are likely to be charged with felonies.

IV. A Model of Victim Involvement in the Criminal Justice System

Now I will introduce a model of prosecutorial discretion with the right to be heard and the right to consult. I will examine the effects of these rights on four variables: the likelihood of plea bargaining, the likelihood of being charged with a felony, the likelihood of being convicted and the mean prison sentence.

The Right to Be Heard

First I will present a two-condition model of prosecutor choice with a VIS. In the first condition, prosecutors decide whether or not to engage in plea bargain depending. In the second, prosecutors are perfectly willing to plea bargain, and the choice variable is the plea bargain sentence.

First Condition

Suppose that prosecutors maximize total punishment, TP, which is the sum of two terms (equation 1). The first term is the product of the average trial sentence, S_T; the probability of conviction at trial, P_C; and the share of defendants who go to trial, α. The second term is the product of the mean plea bargain sentence, S_{PL}, and the share of defendants who plead guilty, $1-\alpha$.

(1) $$TP = S_T P_C \alpha + S_{PL}(1-\alpha)$$

Suppose that the choice variable for prosecutors is the decision to go to trial. Prosecutors will take the marginal defendant to trial when (2) hold true, that is, when expected trial sentence multiplied by the probability of conviction is greater than the plea sentence the prosecutor can bargain.

(2) $$S_T P_C > S_{PL}$$

Dividing both sides of equation 2 by S_T gives us

(3) $$P_C > \frac{S_{PL}}{S_T}.$$

S_{PL} is assumed to be fixed. P_C and S_T are inversely correlated and depend on what charges are filed against the defendant (i.e. a more severe charge will increase the trial sentence but lower the conviction rate.)

We can use this to predict the general tendency of prosecutors to go to trial in the presence of a VIS. Suppose that we add at term V to S_T which will represent the effect of a victim impact statement on sentencing at trial (equation 4).

(4) $$P_C > \frac{S_{PL}}{(S_T + V)}$$

Earlier I predicted that V would be positive because of selection bias among who testifies. Let us assume for the moment that V is positive. If S_{PL} remains constant, then prosecutors will take more cases to trial, lowering the conviction rate.

Second Condition

I will now change the choice variable for prosecutors to S_{PL}, as it would be if prosecutors are always willing to bargain. P_C is held constant in this condition.

(5) $S_{PL} = S_T P_C$

I assume that prosecutors would try to make the plea bargain sentence equal to the product of the expected trial sentence and the probability of conviction (5). A larger S_{PL} would cause more defendants to go to trial, stretching prosecutors' resources. A smaller S_{PL} would no longer be maximizing punishment. Suppose that we add V, representing the effect of a VIS, to S_T:

(6) $S_{PL} = (S_T + V)P_C$.

If prosecutors are perfectly willing to plea bargain, then changes in S_{PL} will be in the same direction as V. Acceptance of the plea bargain is entirely up to the defendant, whose expected total punishment is equal in plea bargaining and at trial. The defendants' choices will likely depend on their tolerance for risk.

The Right to Confer

Next I will present a simple model of charging and sentencing which includes the right to confer. Recall my prediction that the right to confer will cause prosecutors to charge "reasonable doubt as to the charge" defendants as felons, thus raising the proportion of defendants tried as felons.

Let us suppose that there exist three types of defendants: X_1, X_2 and X_3, in equal number, each of whom causes a different level of harm. Suppose that X_1 clearly should be charged with a misdemeanor, X_3 clearly should be charged with a felony, and X_2 is between two, so that it is ambiguous which charge is appropriate. Also, an X_2 at trial will likely get a sentence between those of X_1 and X_3 such

that $S(X_1) < S(X_2) < S(X_3)$. Suppose that X_2 defendants are charged with misdemeanors if prosecutors do not confer with victims.[8] The average misdemeanor sentence is $\frac{S(X_1)+S(X_2)}{2}$, and the average sentence for a felon is $S(X_3)$.

Now suppose that prosecutors decide to prosecute X_2 cases as felonies after consulting with victims. The new average sentence for misdemeanors is $S(X_1)$, and the average sentence for felonies is $\frac{S(X_2)+S(X_3)}{2}$. Both averages are lower than they were before. This model indicates that the right to confer will lower the average sentence for both felons and misdemeanants.

V. Description of Data

The body of data used in this paper comes from two sources: State Court Processing Statistics (SCPS), which provided information about defendants; and an appendix from a paper (Stearman, 1999, p.63) which listed the years in which states passed VRAs and whether the VRAs included the right to be heard and the right to consult.

State Court Processing Statistics

The defendants examined in my paper come from the dataset *State Court Processing Statistics, 1990-2002: Felony Defendants in Large, Urban Counties*. State Court Processing Statistics (SCPS) tracks defendants arrested on felony charges in the month of May in even-numbered years, 1990-2002. The forty counties in the SCPS survey are taken from the seventy-five largest counties in America.[9] Data were collected on

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[8] This may happen because proving a misdemeanor in court requires fewer resources.

[9] The seventy-five largest counties in America, from which the forty counties were selected, account for more than a third of the United States population and approximately half of all reported crimes in the Unites States. Ten counties were automatically chosen

demographic information, arrest charges, adjudication charges, plea bargaining and sentencing. The defendants were followed until final disposition or until one year passed from the time of filing.

The SCPS dataset breaks down defendants' arrest charges into four categories: violent, property, drug and public-order (Table 5-1). These four charges include sixteen sub-categories.

5-1 Crimes by Arrest Charge

Violent	Property	Drug	Public Order
Murder	Burglary	Drug sales	Weapons
Rape	Larceny-theft	Other drug	Driving-related
Robbery	Motor vehicle theft		Other public-order
Assault	Forgery		
Other violent	Fraud		
	Other property		

The dataset also lists the "adjudication charge," which is the charge the defendant actually gets prosecuted for. The adjudication charge is broken down into only two groups, "felony" and "misdemeanor." For those defendants who are convicted, SCPS also gives the "most serious conviction category," which describes the most serious type of crime for which the defendant was convicted. Conviction categories include the four arrest categories listed in Table 5-1, as well as "misdemeanor" for those defendants whose charges were bumped down to misdemeanor by prosecutors. SCPS also notes whether defendants pleaded guilty, went to trial or had their case dropped. If the

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from the seventy-five because of their large size. The remaining thirty counties were added to the sample based on their variance of felony court dispositions. Each of the forty counties provided filings for 5, 10 or 20 selected business days, depending on whether they had been required by the survey to provide a full month's worth of filings. Counties that had provided 5 and 10 days worth of data were re-weighted to represent the full month.

defendant went to trial, the verdict is listed and the length of the prison sentence (in months) is given.

5-2 Defendants in States Which Passed a VRA by 2002

Standard errors in parentheses
(1) Defendant was arrested when state had not yet passed a VRA (n=7,936)
(2) Defendant was arrested when state had already passed a VRA (n=69,665)

	(1)		(2)	
Characteristic:	*N*	Percent	*N*	Percent
Arrested for violent crime	1,578	.20	16,185	.23
Arrested for property crime	3,268	.41	21,741	.31
Arrested for drug crime	2,550	.32	25,562	.37
Arrested for other felony	540	.07	6,177	.09
Avg. Age, years (s.d.)	28.2 (9.0)		30.3 (9.8)	
Percent black	.65		.50	
Percent Hispanic	.09		.26	
Percent Female	.16		.18	
Avg. number of prior convictions	2.31 (3.2)		2.45 (3.1)	
Avg. number of prior felony convictions	.852 (1.7)		1.11 (1.9)	
Mean sentence, months	7.34 (11.0)		5.55 (5.8)	
Mean sentence if pleaded guilty	7.35 (10.9)		5.60 (5.8)	
Mean sentence if went to trial	7.29 (7.7)		7.63 (8.1)	
% charged who plead guilty	.92		.93	
Conviction rate	.79		.81	
Prosecuted for misdemeanor	.22		.10	

Table 5-2 lists certain characteristics of defendants arrested in the group of states that passed a VRA by the year 2002 and appear in SCPS. These states are listed in Table 5-3. Group 1 includes those defendants who were arrested before their state passed the VRA. Defendants in group 2 were arrested after their state had a VRA in its Constitution. Every state from Table 5-3 with an asterisk next to it – including the three largest states: California, Florida and Texas – passed a VRA before 1990, so defendants from those states appear exclusively in Specification 2.

Table 5-2 shows that the arrest charges differ between the two groups. Defendants in group 2 are more likely to have been arrested for a drug crime, whereas those in group 1 are more likely to be arrested for property crimes. VRAs should have no bearing on the

crimes for which defendants are arrested, so these differences are almost certainly due to states that appear only in group 2, namely California, Texas, Florida Washington and Michigan.

Demographically speaking, defendants in group 2 are less likely to be black and more likely to be Hispanic. This effect is almost certainly tied to the large Hispanic populations in California and Texas, states which have Hispanic populations nearly three times the national average.

The data on sentencing and plea bargaining is a bit confusing. Defendants in group 1 who were convicted at trial face lower sentences than those who pleaded guilty. The sample of those in group 1 who were convicted at trial includes only 74 defendants, so the average sentence length may not be good estimates for defendants as a whole. Defendants in group 2 show a decrease in jail sentence of about 2 months associated with plea bargaining, which is in-line with the popular notion of plea bargaining as leading to a lighter sentence.

State Data

The second dataset includes the 17 states (Table 5-3) examined by this study. These 17 states include only those that both passed a VRA and appear in the SCPS dataset. I could have taken data from every state which appeared in SCPS and had passed any type of victims' rights legislation, but I chose to examine only states which had passed VRAs. I did this for several reasons. First, I can assume that states which passed a VRA did not have either the right to confer or the right to be heard before the year of passage so that a change in behavior occurred when the amendment was passed. Those states which passed victims' rights legislation, but not a VRA, could have passed the two rights

separately. I attempted to figure out when every state had passed victims' rights legislation, but there is no such database containing this information. There is an abundance of information on states with VRAs, so this paper focuses on them.

5-3 States with VRAs in the SCPS Dataset

*State's VRA passed before 1990
(1) Year VRA was passed
(2) Number of observations from state in data set
(3) State's VRA contains a right to be heard
(4) State's VRA contains a right to confer

State	(1)	(2)	(3)	(4)
Alabama	1994	1,289	Yes	Yes
Arizona	1990	5,823	Yes	Yes
California*	1982	24,947	Yes	No
Connecticut	1996	238	Yes	Yes
Florida*	1988	10,954	Yes	Yes
Illinois	1992	5,444	Yes	Yes
Indiana	1996	2,453	Yes	Yes
Maryland	1994	3,250	Yes	No
Michigan*	1988	2,424	Yes	Yes
Missouri	1992	2,581	Yes	Yes
New Jersey	1991	2,055	Yes	No
Ohio	1994	1,625	Yes	Yes
Tennessee	1998	2,564	Yes	Yes
Texas*	1989	7,148	Yes	Yes
Utah	1994	955	Yes	No
Virginia	1996	984	Yes	Yes
Washington*	1989	1,324	Yes	No
Wisconsin	1993	1,542	Yes	Yes

It is important to remember that defendants in the sample were arrested in May, but VRAs were ratified later in the year – frequently in November. The result of this discrepancy is that a VRA passed in a given year will not be in effect for defendants in that year's SCPS data. For example, if a VRA was passed in 1994 it would first affect

defendants in the 1996 data; a VRA passed in 1993 would first affect defendants arrested in 1994.

This discrepancy in time helps to mitigate the possibility that certain effects associated with VRAs, such as those resulting from political pressure, will be wrongly included as part of the effect of the VRA. It is reasonable to assume that by May of a given year that a state passes VRA, political pressure and other effects of whatever forces caused the VRA to be passed have built up substantially. But defendants who are arrested that May will not be listed as being arrested when a VRA has been passed, so any effects, including other effects of popular anti-crime sentiment, will not be wrongfully attributed to the VRA.

VI. Empirical Study

Next I will examine the impact of VRAs on four variables: the probability of pleading guilty, the probability of being charged with a felony, the probability of conviction and the average jail sentence in months. I will examine the first three, all binary variables, by calculating the marginal effect on the value of a logistic regression of changing the dummy variables I am interested in from 0 to 1.

Logistic Marginal Effects

The method that I use to estimate for the first three regressions is to find the marginal effect on the value of a logistic regression of changing a dummy variable from 0 to 1, while holding other variables constant. I will briefly explain the reason why I do this.

The first three variables I am measuring – plea bargaining, felony charges and convictions – are binary. Variance tests of linear regressions for binary variables are not

valid, but this problem can be solved by running logistic regressions. The equation for a logistic regression is:

$$Logit(p) = \ln(\frac{P}{1-P}) = \alpha + \beta_1 X_1 + \ldots + \beta_K X_K$$

Normally the reported coefficient for an independent variable in a logistic regression is the slope of the logistic curve at the median value of the variable. But this coefficient is not very useful for me, because the dummy variables I am interested in are binary.

My solution is to measure the change in the value of the logistic regression when I changed the dummy variable I am interested in from 0 to 1, holding all other variables constant. The change in probability of some event occurring ($Y = 1$) that results from changing a dummy variable X_K from 0 to 1, holding all other variables at some fixed level denoted by X_C, is denoted by: $P(Y = 1 | X_K = 1, X_C) - P(Y = 1 | X_K = 0, X_C)$. I use this method of estimation for estimating the increase in likelihood of plea bargaining, being charged with a felony and being convicted at trial.

Likelihood of Plea Bargaining

First I will examine how the likelihood of plea bargaining changes in the presence of the right to be heard and the right to confer (Table 6-1). The independent variable in this logistic regression is a binary dummy variable whose value depends on whether the defendant pleads guilty (equation 1). Dummy variables are also included for whether the defendant's state has the right to be heard and the right to confer with the prosecution, and dummy variables control for year and state effects (except for specification 1, which is not controlled for state and year effects).

The sample of defendants in this regression all either pleaded guilty or went to trial. I included that constraint in order to make the sample represent those defendants who could have either gone to trial or pleaded guilty. The first two specifications include defendants of all arrest charges. Specification 3 is limited to those defendants who were arrested on a violent. Specifications 4 and 5, like specification 3, are divided by arrest charge and show those arrested on drug and property charges.

$$(1)\quad PleadGuilty(0/1) = \beta_0 + \beta_1 Heard + \beta_2 Confer + \beta_3 Year + \beta_4 State + e$$

6-1 Marginal Effect of VRA Rights on Pleading Guilty Using a Logistic Regression

Standard errors in parentheses
* significant at 90% level **significant at 95% level
(1) all defendants does not include state and year dummies
(2)all defendants, includes state and year dummies
(3)defendants arrested for violent crimes, includes state and year dummies
(4)defendants arrested for drug crimes, includes state and year dummies
(5)defendants arrested for property crimes, includes state and year dummies

	(1)	**(2)**	**(3)**	**(4)**	**(5)**
Heard Coefficient	.04** (.004)	-.02** (.006)	-.06** (.014)	-.03** (.008)	-.0008 (.005)
Confer Coefficient	-.10** (.007)	.01** (.003)	.018** (.006)	.007* (.004)	.0002 (.006)
State/Year	No	Yes	Yes	Yes	Yes
Charge	All	All	Violent	Drug	Property

Table 6-1 shows that, once state and year effects are controlled for, the right to be heard decreases the likelihood of plea bargaining and the right to confer increases that likelihood. This effect was much stronger for those defendants charged with violent crimes than for the average defendant.

The significance positive value of the marginal effect of the right to confer is something of a surprise. One would expect that victims would urge prosecutors to seek

the greater punishment associated with trial against those who harmed them. This result could be due to the influence of judges on the plea bargaining process. Conferral with the victim may reassure judges that the victim approves of a plea bargain. This would make the judge more likely to approve of the plea bargain, raising the likelihood of a defendant plea bargaining (Verdun-Jones and Tijerino, 2004, p.485).

The finding that the right to be heard decreases plea bargaining is in line with my expectations. In my model where prosecutors choose whether to go trial, a positive *V* leads to less plea bargaining and a lower conviction rate for the marginal defendant.

Likelihood of Prosecutors to Pursue Felony Charges

Next I will examine the effect of VRA provisions on the likelihood that prosecutors will bring felony charges against a defendant. The sample of defendants is the group of those arrestees who were eventually charged by prosecutors with either a felony or a misdemeanor. This is the groups against which prosecutors could have chosen to bring felony charges. The dependant variable in the regression is a binary variable whose value depends on whether the defendant was charged with a felony (equation 2). I include dummy variables for the right to be heard and the right to be heard, and to control for state and year effects in specifications 2, 3, 4 and 5. Defendants were divided by arrest charge in specifications 3, 4 and 5.

$$(2) \qquad FelonyCh\arg e(0/1) = \beta_0 + \beta_1 Confer + \beta_2 Heard + \beta_3 Year + \beta_4 State + e$$

Table 6-2 shows that the right to be heard decreases the likelihood of pleading guilty by a small but significant margin; yet the effect of the right to be heard is not significant for any of the arrest charges by themselves.

6-2 Marginal Effect of VRA Provisions on Felony Charges Using a Logistic Regression
Standard errors in parentheses
* significant at 90% level **significant at 95% level
(1) all defendants, includes state and year dummies
(2) does not include dummies
(3)defendants arrested on a violent charge, includes state and year dummies
(4)defendants arrested on a drug charge, includes state and year dummies
(5)defendants arrested on a property charge, includes state and year dummies

	(1)	**(2)**	**(3)**	**(4)**	**(5)**
Heard Coefficient	.10** (.006)	-.001** (.006)	-.01 (.016)	-.01 (.009)	.005 (.008)
Confer Coefficient	.06** (.004)	.026** (.004)	.034** (.01)	.026** (.006)	.018** (.005)
State/Year	No	Yes	Yes	Yes	Yes
Charge	All	All	Violent	Drug	Property

Controlling for state effects, the right to confer with the prosecution significantly increases the likelihood that a defendant be charged with a felony. The significant positive coefficient of the right to confer is confirmation of my model's prediction, that "reasonable doubt as to the charge" defendants are now being prosecuted for felonies, as opposed to misdemeanors. If this is the case, we can expect see the right to confer lower the average jail sentence for both felonies and misdemeanors. The especially strong coefficient for the right to confer for violent criminals indicates that victims may be especially passionate about persuading prosecutors to try violent criminals on felony charges.

Conviction Rate

Next I examined the effect of VRAs on the conviction rate at trial. All of the defendants in this sample went to trial. The dependant variable is a binary, according to whether the defendant was convicted. I included dummy variables for the right to be heard and the right to confer, and to control for state and year effects in specifications 2

through 5. I have also divided the sample of defendants by their arrest charge in specifications 3, 4 and 5. Specification includes those defendants whose adjudication charges was for a felony.

$$S_M = \beta_0 + \beta_1 Heard + \beta_2 Confer + \beta_3 Year + \beta_4 State + e \quad (3)$$

6-3 Marginal Impact of VRA Provisions on Conviction Rate Using a Logistic Regression

Standard errors in parentheses

*significant at the 90% level **significant at the 95% level

(1) All defendants, includes state and year dummies
(2) All defendants, does not include state and year dummies
(3) Defendants with violent arrest charges, includes state and year dummies
(4) Defendants with drug arrest charges, includes state and year dummies
(5) Defendants with property arrest charges, includes state and year dummies
(6) Defendants with felony adjudication charges, includes state and year dummies

	(1)	(2)	(3)	(4)	(5)	(6)
Heard Coefficient	.025 (.03)	.008 (.05)	.37** (.17)	-.04 (.03)	-.018 (.03)	-.011 (.05)
Confer Coefficient	-.015 (.02)	-.006 (.06)	-.22** (.09)	.013 (.01)	.001 (.035)	.017 (.05)
State/Year	No	Yes	Yes	Yes	Yes	Yes
Charge	All	All	Violent	Drug	Property	Felony

Table 6-3 shows a very strong and significant relationship between both VRA provisions and likelihood of conviction for violent offenders, but not for defendants in other arrest categories.

It is surprising hat the marginal effect of the right to be heard on the likelihood of conviction is positive, and by a significant margin at that. The right to be heard should not be affecting conviction rates directly, as the victim does not speak to the jury before it has found the defendant guilty. This result also runs counter to the expectation in my model. I had predicted that a VIS would cause less plea bargaining and lower the conviction rate.

There are several possible explanations for this result. First, the sample on the regression is fairly small, as less than 10% of defendants go to trial overall. Second, perhaps the decrease in plea bargaining caused by the right to be heard is among those defendants who are highly likely to be guilty. There also may be some factor outside of my model which is driving the results. For example, anti-criminal sentiment could be causing violent criminals to fare worse at trial. Perhaps other VRA provisions, for which the right to be heard would be a proxy, perhaps increase the conviction rate.

It is expected that the right to confer will lower conviction rates marginally, because of the tradeoff between charge level and conviction rate. As the "reasonable doubt as to the charge" defendants are tried on higher charges, I would expect the overall conviction rate to drop. However, the magnitude of the effect was surprising and unexpected. This might also be due to the small sample.

Sentence Length

Next I examine the effect of the VRA provisions on the average prison sentence, measured in months. I ran a linear regression with the prison length as the dependant variable. I included dummy variables for the right to be heard and the right to confer; also included were year and state dummies, except for in specification 1. The defendants in specifications 3 through 12 are divided the according to the most serious conviction charge against (violent or property), the adjudication charge (felony or misdemeanor) and by whether the defendant pleaded guilty or was sentenced at trial. All of the defendants in the sample were convicted, either through plea bargaining or by being sentenced after a trial.

(4) $$G_C = \beta_0 + \beta_1 Heard + \beta_2 Confer + \beta_3 Year + \beta_4 State + e$$

Table 6-4 shows that the right to be heard and to confer both profoundly affect sentencing, albeit in opposite directions. The right to be heard increased the average sentence by approximately 5.8 months. The significance of this effect depended almost entirely on whether the defendant went to trial or pleaded guilty. Those defendants who went to trial were not likely to see a significant increase in their sentences, except for those arrested on a property charge. Every category of defendant who pleaded guilty saw an increase in average sentence caused by the right to be heard.

6-4 Effect of VRA Provisions on Mean Sentence, in Months, Using a Linear Regression

Standard errors in parentheses

* significant at 90% level **significant at 95% level

(1) All defendants, does not include state and year dummies
(2) All defendants, includes state and year dummies
(3) Defendants who pleaded guilty, includes state and year dummies
(4) Defendants who pleaded guilty to felony charges, includes state and year dummies
(5) Defendants who pleaded guilty to misdemeanor charges, includes state and year dummies
(6) Defendants who were arrested on a violent charge and pleaded guilty, includes state and year dummies
(7) Defendants who were arrested on a property charge and pleaded guilty, includes state and year dummies
(8) Defendants who were convicted at trial, includes state and year dummies
(9) Defendants who were convicted at trial of a felony, includes state and year dummies
(10) Defendants who were convicted at trial of a misdemeanor, includes state and year dummies
(11) Defendants who were arrested on a violent charge and convicted at trial, includes state and year dummies
(12) Defendants who were arrested on a property charge and convicted at trial, includes state and year dummies

	Heard		Confer		State/Year	PG/Trial	Charge
(1)	-1.67**	(.19)	-.356**	(.10)	No	ALL	ALL
(2)	5.82**	(.51)	-5.34**	(.57)	Yes	ALL	ALL
(3)	6.14**	(.56)	-6.06**	(.61)	Yes	PG	ALL
(4)	7.3**	(.77)	-7.79**	(.84)	Yes	PG	Felony
(5)	5.55**	(.71)	-2.78**	(.75)	Yes	PG	Mis.
(6)	7.72**	(1.7)	-8.51**	(1.8)	Yes	PG	Violent
(7)	5.91**	(.88)	-5.19**	(.95)	Yes	PG	Property
(8)	1.17	(1.9)	.945	(2.5)	Yes	Trial	ALL
(9)	2.71	(2.2)	-1.17	(3.1)	Yes	Trial	Felony
(10)	-1.52	(4.0)	5.83	(4.7)	Yes	Trial	Mis.
(11)	2.51	(3.9)	-.383	(4.5)	Yes	Trial	Violent
(12)	6.29*	(3.5)	-5.80	(5.1)	Yes	Trial	Property

The right to confer caused a dramatic decrease in prison length for defendants, but only for those defendants who pleaded guilty. My model predicts that the right to confer will

cause both felony and misdemeanor sentences to drop as "reasonable doubt as to the charge" defendants are prosecuted for felonies, so the direction of this result is expected. However, it is unexpected that the effects of both the VRA provisions are so large and so significant. For example, it is unlikely that the right to be heard can increase the average sentence by over five months when the average sentence is somewhere between 5 and 7 months.

Some of the strength of these numbers perhaps can be explained by factors unrelated to the VRA itself. Many of the states that passed VRAs also passed other measure that effect how defendants are sentenced, measures like mandatory minimum sentencing laws. These laws were unaccounted for in my regression, so they could be inflating the coefficients for the right to be heard.

Possible Problems

One potential problem with my results is multi-collinearity between the right to confer and the right to be heard. The right to consult only added by a state in conjunction with the right to be heard, which raises the question of whether there is sufficient variance between these two variables.

A second problem is that the group of states which pass victims' rights amendments is not random. It is likely that these states have a high anti-criminal sentiment, or that legislators in those states are especially willing to tinker with criminal procedure. Part of this problem is solved by the fact that defendants in the sample are arrested in May, which is before the VRAs were passed. The data for that year will contain many of the effects of the political fervor surrounding VRAs, but those effects will not be attributed to the VRAs themselves, which have not been passed yet.

A third problem is the possibility that a VRA does not sufficiently change the behavior of legal actors. Neither of the two rights create a legal action for victims if those rights are ignored, so perhaps some prosecutors do not abide by the mandates. The opposite problem could also be true: that the legal system granted the right to be heard and the right to confer even before the VRA was passed, and the VRA merely codified existing behavior. If this is the case then the effects of VRAs are larger than my analysis would indicate.

Conclusion

This paper proposes a model of prosecution which includes a victim's right to be heard and right to consult with the prosecution. It was predicted that the right to be heard would raise the average sentence at trial, causing prosecutors to plea bargain less and lowering the conviction rate. The right to confer was expected to increase the number of so-called "reasonable doubt as to the charge" defendants who were charged with felonies, thus lowering average sentences for both felonies and misdemeanors. The effect of the VRA provisions on plea bargaining, felony-charge likelihood and conviction rates was estimated by finding the marginal effect on the value of a logistic regression of changing a dummy variable representing the VRA provision form 0 to 1 , holding other variables constant. The effect of the VRA on sentencing was calculated using a linear regression.

Empirical analysis shows that the effects of VRAs are highly significant for all of the variables measured, except for the conviction rate. The right to be heard is shown to decrease the likelihood that a defendant plea bargains, with its strongest effect on those defendants who were arrested on a violent charge. It was also shown to significantly decrease the likelihood that a defendant was charged with a felony, although this effect

was not significant for any group of defendants categorized by their arrest charge. The right to be heard significantly increased the conviction rate for those defendants who were arrested for a violent charge, but not for any other subset of defendants or for defendants overall.

The right to confer is shown to increase the likelihood of plea bargaining, perhaps because judges are more likely to approve plea bargains that have been discussed with victims. It also increased the likelihood that defendants would be charged with felonies, consistent with the theory that more "reasonable doubt as to the charge" defendants were charged with felonies. Also consistent with that theory was the sentencing result, which showed that the right to confer decreases the average prison sentence. Like the right to be heard, the right to confer significantly impacted the conviction rate, but only for those arrested for a violent crime, significantly lowering the rate for that group.

The significance of my results, if correct, poses many important questions for the criminal justice system. First, the strong and significant impact of both VRA provisions on sentencing raises the possibility that defendants are increasingly being sentenced according to the wishes of their victim, as opposed to traditional, standardized notions of what punishments are appropriate. If sentencing takes into account certain victim traits that cannot be anticipated by the criminal, then the criminal justice system's notion of fairness should be examined to ensure that we are comfortable with, or at least aware of, this shift. Sentencing based on random victim characteristics will necessarily increase the risk associated with crime, and perhaps change the sample of those who choose to engage in crime.

Finally, it is important to understand the consequences of victim involvement in light of the fact that a federal victim's rights amendment has been introduced several times in Congress. Such an amendment would permanently alter the way that criminal proceedings are conducted and could alter the way plea bargaining and sentencing takes place across the country, and would be very difficult to change. Legislators and citizens should understanding the impact VRAs have had at the state level before they consent to change the U.S. Constitution in such a profound way.

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