

# VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

This document is based on statutes current through the Regular Session of the 85<sup>th</sup> Legislature in the *Code of Criminal Procedure Title 1, Chapter 56. Rights of Crime Victims, Subchapter A. Crime Victims' Rights.*

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](mailto:tdcj.clearinghouse@tdcj.texas.gov). If you would like to request **VIS** training, please contact the TDCJ VSD. The TDCJ VSD can also provide the **VIS** in a fillable PDF format and a **VIS** tracking form, upon request. We are here to assist you.

*The TDCJ would like to thank members of the 2017 Victim Impact Statement Revision Committee and all other agencies and individuals—including the Texas Board of Pardons and Paroles (TxBPP), law enforcement agencies, prosecutors' offices, and other participants in the criminal justice system who provided support and assistance during the revision of the **VIS** Recommended Processing Procedures.*

"Victim" means a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another. **Art. 56.01(3).**

"Close relative of a deceased victim" means 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. **Art. 56.01(1).**

"Guardian of a victim" means 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. **Art. 56.01(2).**

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

1. Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the attorney representing the state shall give to each victim of the offense a written notice containing **(art. 56.08(a))**:\*\*
  - the right to file a **VIS** with the office of the attorney representing the state and the TDCJ (**art. 56.08(a)(7)**); and
  - a statement that the **VIS** provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state 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 attorney; (and) if a **VIS** has been returned, for a **copy** of the statement (**art. 56.08(e)(2)(A-B)**).
  - **Recommendation:** The Texas Crime Victim Clearinghouse brochure titled, *It's Your Voice* can assist you with the written notifications as the brochure contains *some* of the required information that must be given to victims. This brochure is available to download at [http://www.tdcj.texas.gov/documents/Its\\_Your\\_Voice.pdf](http://www.tdcj.texas.gov/documents/Its_Your_Voice.pdf) or contact the TDCJ VSD at 1-800-848-4284 or [tdcj.clearinghouse@tdcj.texas.gov](mailto:tdcj.clearinghouse@tdcj.texas.gov) to request copies.
  
2. The victim assistance coordinator (VAC) shall send to a victim, guardian of a victim, or close relative of a deceased victim a **VIS** along with an offer to assist in completing the **VIS** on request. **Art. 56.03(c)**.
  - Available versions of the **VIS** include the **VIS** (available in English and Spanish) and the Just for Kids **VIS** (available in English and in Spanish with English subtext), and Victims of Juvenile Offenders. These **VIS** versions are available to download at: [http://www.tdcj.texas.gov/publications/pubs\\_victim\\_impact\\_statement.html](http://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 brochure or a document created by your agency that provides information regarding the **VIS**,
    - an application for Crime Victim's Compensation, and
    - additional information as required by law.
  - **Recommendation:** Complete the VAC portion of the Cover Sheet, the Victim Contact Information page, the Victim Impact Statement Form, and if applicable, the Supplemental page before providing it to the victim.
  - **Recommendation:** Provide a self-addressed, stamped envelope.

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

3. The VAC, on request, shall explain to a victim, guardian of a victim, or close relative of a deceased victim the possible use and consideration of the **VIS** at sentencing and future parole hearings of the offender. **Art. 56.03(c)**.
- Explain to a victim, guardian of a victim, or close relative of a deceased victim that the **VIS** will be considered by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and that the **VIS** will be considered by the TxBPP before an offender is released on parole. **Art. 56.02(a)(12)(A-B)**.
  - **Recommendation:** Explain that the Confidential Victim Contact Information page is confidential. Explain how the **VIS** may be seen by the defendant and defense attorney, excluding the Confidential Victim Contact Information page. Explain that a victim may choose to complete only this portion of the **VIS**.
  - **Recommendation:** Explain to the victim, guardian of a victim, or close relative of a deceased victim that by completing the Confidential Victim Contact Information portion of the **VIS**:
    - they can elect to be notified of court proceedings and the offender's status while on probation, under parole supervision or while incarcerated, as appropriate,
    - they can elect to be notified if the offender is being considered for parole or release if the defendant is incarcerated in the TDCJ,
    - they can elect to be added, if the defendant is incarcerated in the TDCJ, to the TDCJ VSD Victim Notification System (VNS), which utilizes a confidential database to provide victims with over 80 points of possible notification regarding several phases of an offender's incarceration and supervision, including but not limited to escape, bench warrants, discharge, and release on parole or mandatory supervision. This is contingent on the TDCJ receiving the **VIS** in the offender's penitentiary packet. **Art. 42.09**,
    - They can elect that communications by the offender be restricted. A victim may choose to only complete this portion of the **VIS**,
  - **Recommendation:** Explain to the victim, guardian of a victim, or close relative of a deceased victim that the **VIS** is considered by the TxBPP 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 VNS and be included in the offender's parole review file.
  - **Recommendation:** Explain to the victim, guardian of a victim, or close relative of a deceased 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 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 attorney representing the state to determine restitution amount, if requested.
  - **Recommendation:** Offer additional assistance to help the victim 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.)

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

4. If the victim completes and returns the **VICTIM IMPACT STATEMENT**, the following statements apply.
- At the request of the court, the attorney representing the state will 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 will 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) material. **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-Sentencing 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 imposition of a sentence by the court in a criminal case, the court, shall, as applicable in the case, inquire as to whether a **VIS** has been returned to the attorney representing the state, and if the **VIS** has been returned to the attorney representing the state, shall consider the information provided in the **VIS**. **Art. 56.03(e)**.
  - A victim has the right to have the **VIS** considered by the attorney representing the state and the judge before sentencing or before a plea bargain is accepted. **Art. 56.02(a)(12)(A)**.
  - The **VIS** provided by the victim, will be considered by the attorney representing the state in entering into the plea bargain agreement. The judge, before accepting the plea bargain agreement, is required under article 26.13(e) to ask whether a **VIS** has been returned to the attorney representing the state; (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 and finding a 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)**.

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

- **Recommendation:** Upon receipt of a completed **VIS**, the VAC should make one copy of the **VIS**.
    - The entire **VIS** should be sent to the prosecutor's file, either by hardcopy or electronic version.
    - 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.
  
  - **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 attorney representing the state 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 TxBPP 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 VNS 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 TxBPP 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 VNS 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 VNS. 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 TxBPP 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 as a result of the commission of the offense, the victim services office of the department (TDCJ) shall contact the court issuing the order before the offender is released from the department (TDCJ) 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.

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

- **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 attorney representing the state, submitted to the judge, sent to the Community Supervision and Corrections Department (CSCD) 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.
- **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 sent with the offender's commitment papers to the TDCJ CID, immediately forward a copy to the TDCJ VSD at:**

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

*Fax: 512.452.0825 or 512.452.1025*

*Email: [victim.svc@tdcj.texas.gov](mailto:victim.svc@tdcj.texas.gov)*

IMPORTANT

6. If the court sentences the defendant to a term of community supervision (probation), the attorney representing the state shall forward **any** **VIS** received in the case to the CSCD supervising the defendant **art. 56.03(e)**.
  - The judgment should reflect whether the **VIS** was returned to the attorney representing the state pursuant to art. 56.03(e). **Art. 42.01 (Sec. 11)**.
  - **Recommendation:** The attorney representing the state should forward the **original** **VIS** to the CSCD. *The attorney representing the state may keep a copy of the **VIS** for their records.*
7. If probation is revoked and the offender is sentenced to the TDCJ:
  - The judgment should reflect whether the **VIS** was returned to the attorney representing the state pursuant to art. 56.03(e). **Art. 42.01 (Sec. 11)**.
  - **Recommendation:** If the offender's probation is revoked, the CSCD should forward the **VIS** to the district attorney's office. The district attorney should make a **copy** of the original **VIS** and give this copy to the court to attach to the offender's commitment papers. Refer to #5 of this document.

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

**8.** 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 CSCD. The TDCJ CJAD will coordinate with the CSCD and/or the attorney representing the state's office.

**9.** If the defendant is sentenced to county jail:

- The judgment should reflect whether the **VIS** was returned to the attorney representing the state 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.

**10.** 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.

**11.** If the defendant is acquitted by reason of insanity:

- When the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care, the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under art. 56.03 or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding **art. 56.03(f)**, the clerk of the court may inspect the **VIS** for the purpose of notification under this article. **Art. 46C.003**. Upon request by the clerk of the court, a VAC may provide the clerk with information or other assistance necessary for the clerk to comply with this article.

**12.** 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; place a **VIS** reminder sticker on all mailings to the victim;
  - if the **VIS** is not returned within 30 days send a letter offering another **VIS**;
  - if the **VIS** comes back non-deliverable due to a move and no forwarding address is known, contact the victim by phone and/or email;

## VICTIM IMPACT STATEMENT RECOMMENDED PROCESSING PROCEDURES

- 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 portion of the **VIS**, which will be used to provide notifications by the attorney representing the state's office and either probation and/or the TDCJ VSD (depending on the conviction and sentence of the offender).
  - With that information, if the victim states he or she 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 Victim Services Division.
  - Explain to the victim that, if the offender is convicted and sentenced to the TDCJ, 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 TxBPP; 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.

### 13. VICTIM IMPACT STATEMENT 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** 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)**. The **VIS** Activity Report is emailed or mailed to the agencies prior to the due date. The **VIS** Activity Report is available to download at [www.tdcj.texas.gov/publications/pubs\\_victim\\_impact\\_statement.html](http://www.tdcj.texas.gov/publications/pubs_victim_impact_statement.html) or contact the TDCJ VSD at 1-800-848-4284 or [tdcj.clearinghouse@tdcj.texas.gov](mailto:tdcj.clearinghouse@tdcj.texas.gov) to request a copy.
- **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 to whom, and how many were returned.