



# Victim Statements in Sentencing Proceedings

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# Outline

## Important context on comparative law

- Background and development of the rise of victims in Taiwan's criminal proceedings
- What's it like in practice

## Should Taiwan introduce VIS to reform the current status?

- Support & opposition of VIS
  - Dilemma between individuality and fairness of sentencing, e.g., USA Gymnastics team doctor sexual assault case
  - Questions about criminal procedure as a therapeutic field for victims, e.g., Stanford University swimmer sexual assault case

## Taiwan's reform context

- Heavy caseload of court
- No separation between conviction and sentencing procedures in criminal proceedings (including trials participated by citizen judges)
- German-style victim litigation participation procedure "overtook the system"

# Rise of victims in Taiwan's criminal proceedings

- 1997: Code of Criminal Procedure § 271 II (the victim's right to be notified of the date of trial and the right to state his or her opinion); § 451-1 (the right to be consulted during the investigation)
- 2003: Code of Criminal Procedure § 271-1 (the complainant's right to appoint an agent to make statements during trial);
- 2004: Code of Criminal Procedure § 455-2 (the right to be consulted during the bargaining process);
- 2019: Part VII-III of Code of Criminal Procedure (the victim's right to participate in proceedings) -- §455-41, 42 (right to retain a lawyer, right to inspect case files); §455-43 (right to be notified of the date of preliminary proceeding, opportunity to express opinions), §455-44 (right to be notified of the trial date); § 455-46 (opportunity to express opinions on evidence), § 455-47 (opportunity to express opinions on the range of sentencing);
- 2019: Code of Criminal Procedure § 163 IV (the complainant's right to express opinions to the prosecutor regarding the investigation and the right to request investigation of evidence); § 289 II (the complainant's, victim's or their family's opportunity to express opinions regarding the scope of sentencing);
- 2023: Crime Victim Rights Protection Act §27 I (the right to express opinions on parole review).



## 司法實務就刑訴法中「被害人量刑前對於科刑範圍表示意見」實踐狀況的調查

相關規定：§ 271 II（被害人就審判期日受通知權與陳述意見之機會）、§ 271-1（告訴人委任代理人到場陳述意見）、§ 289 II（告訴人、被害人或其家屬就科刑範圍之表意機會）、§ 455-47（就科刑範圍表意機會）。  
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未共用的項目

\* 表示必填問題

問題一：在您過去處理的案件中，曾有被害人表達對於量刑的意見嗎？ \*

- ☐ 有  
☐ 沒有

問題二：倘若沒有，通常會怎樣說？

- ☐ 請法官從重量刑  
☐ 其他：

問題三：2019年修法新增§289 II 與 § 455-47，是否增加被害人表達意見的比例？

- ☐ 有  
☐ 沒有

問題四：2019年修法新增§289 II 與 § 455-47，是否改變被害人表達意見的內容？（例如：多增加對於被害影響、心情的描述）

簡答文字

問題五：2019年修法新增§289 II 與 § 455-47，是否促使您主動詢問被害者的意見？ \*

- ☐ 是  
☐ 否  
☐ 其他...

問題六：2019年修法新增§289 II 與 § 455-47，是否促使檢察官鼓勵被害人表達對於量刑的意見？ \*

- ☐ 是  
☐ 否  
☐ 其他...

問題七：被害人陳述內容會影響您的量刑嗎？

- ☐ 會  
☐ 不會  
☐ 其他...

問題八：其他關於「被害人量刑前對於科刑範圍表示意見」的觀察與意見。

詳答文字

# Survey Results

- The reform in 2019 has limited impact on the practice (the content of victims' statements, the proactiveness of courts and prosecutors).
- The victim has limited understanding of sentencing, and the Judicial Yuan did not provide a sample statement. Before and after the reform, the victims' opinions were mostly "requesting the court to decide according to law", "requesting the court to impose a heavier sentence" or "having no opinion". The victims will only ask the court to give a lighter sentence unless the two parties have reached a settlement. Victims of sexual assault cases have more ideas regarding sentencing. The statements tend to be richer if an agent is appointed.
- Some judges have observed that whether a victim states their sentencing opinions and the content of their statement have a lot to do with how the judge ask questions (whether the judge is willing to spend time and ask in detail). However, in reality, judges have a heavy caseload and it is difficult to expect them to spend more time on sentencing. The fact-finding process also reduces the time for sentencing investigations. How much influence the victim's opinions have depends on the judge's understanding and emphasis on sentencing.
- Some judges recognized how the reform of gives victims a voice in the sentencing process; however, some judges also expressed doubts about how to deal with the authenticity of the victim's statement when the truth is unclear, and what to do if the victim refuse to appear at court or for vulnerable victims to express opinions.

Should Taiwan  
introduce VIS  
to reform the  
current status?





# Support for VIS

- Enable judicial authorities to understand the actual impact of crime so that they can make appropriate decisions and facilitate victims to cooperate with judicial authorities;  
(Instrumental)
- Victims are able to sort out their emotions and express the impact on their behavior and thoughts; (Subjectivity)
- The victim can address directly to the defendant the harm caused by the crime, which will allow the defendant to understand his behavior and be beneficial for his rehabilitation.  
(Communal)
- Give the victim an opportunity to make statements in court and allow the victim to voice themselves in the process symbolizes the recognition of the victim's pain by the judicial system and society;  
(Therapeutic, Public educational)
- The judge's empathy and positive response comforts the victim and brings therapeutic effects to the victim; (Therapeutic)

# Opposition against VIS

- Testimony without cross-examination affects the right of the defendant; but if cross-examination is carried out, it may cause harm to the victim; (Procedural fairness? Therapeutic?)
- Victims have unrealistic expectations about sentencing. If the judge does not impose a sentence in accordance with their expectations, they will be disappointed with the judicial process; (Therapeutic?)
- The judge or defendant reacts indifferently, which instead causes harm to the victim;
- The judge is too sympathetic to the victim, which affects procedural fairness;
- Victims who are eloquent, belong to dominant groups, and fit stereotypes are valued and given preferential treatment, resulting in unfair sentencing and strengthening prejudice;
- Victims who are unwilling to provide VIS will be considered to have less serious harm;
- Crime occurs not only because of the defendant's evil deeds, but also because the system allows it. VIS cannot target the accomplice system. (Social educational?)



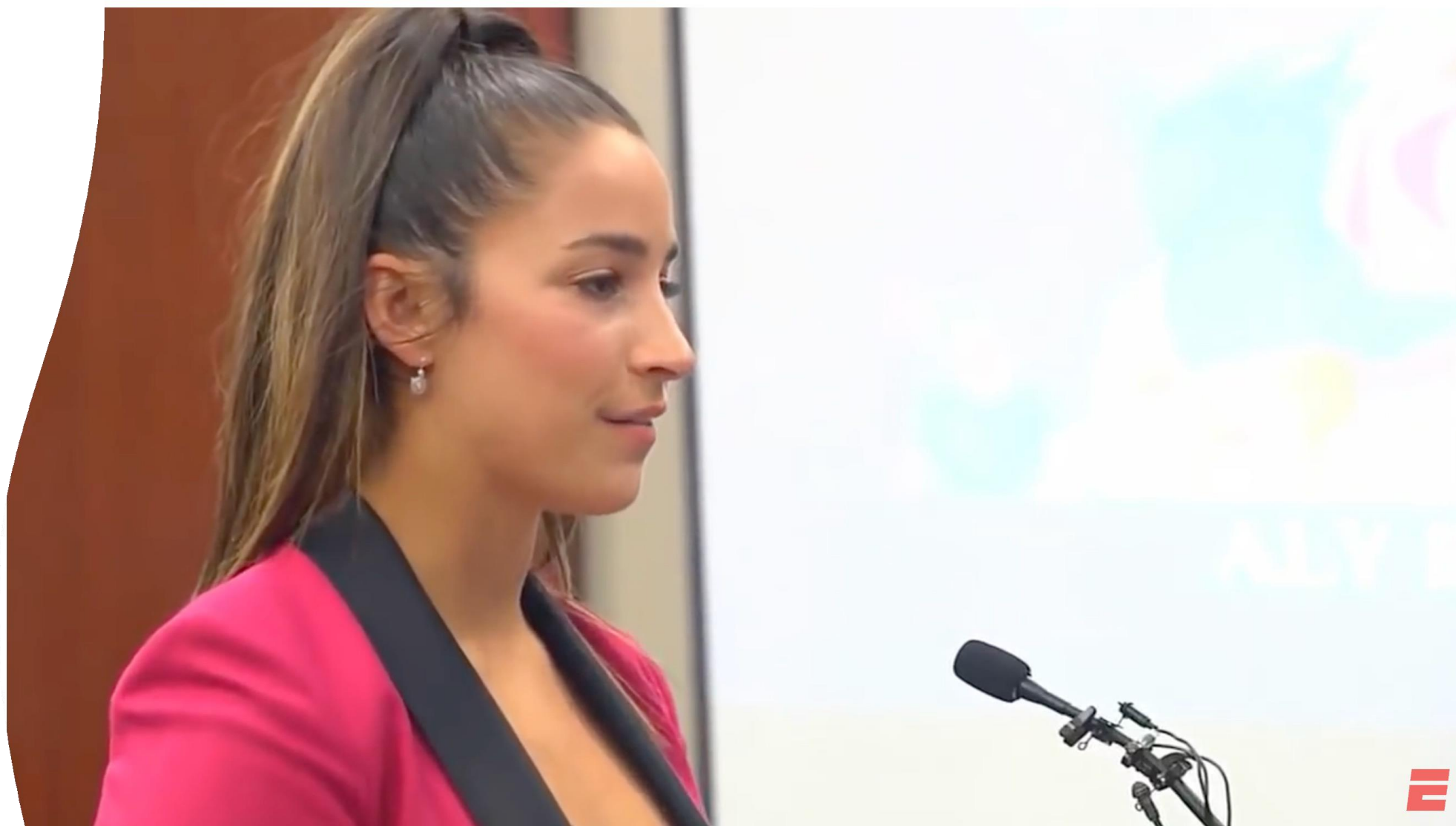


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How old are you? · How much do you weigh? · What did you eat that day? · Well what did you have for dinner? · Who made dinner? · Did you drink with dinner? · No, not even water? · When did you drink? · How much did you drink? · What container did you drink out of? · Who gave you the drink? · How much do you usually drink? · Who dropped you off at this party? · At what time? · But where exactly? · What were you wearing? · Why were you going to this party? · What'd you do when you got there? · Are you sure you did that? · But what time did you do that? · What does this text mean? · Who were you texting? · When did you urinate? · Where did you urinate? · With whom did you urinate outside? · Was your phone on silent when you were called? · Do you remember silencing it?







Larry Nassar Sentencing Hearing Day 1 Part 1 Victim Im...



稍後觀看



分享



LAW &  
CRIME

**LARRY NASSAR PLEADED GUILTY TO 10 COUNTS OF SEXUAL ASSAULT**



6:27 / 1:11:51



YouTube





# Is there no better alternative to VIS?

- Therapeutic function of VIS --- Restorative Justice
- Public educational function of VIS --- Truth Commission

## References:

謝如媛，犯罪被害人陳述制度之成效 - 從英國實證研究成果出發, 法學新論, No.30, pp.13-34., 2011

Susan A. Bandes, What Are Victim Impact Statements For?, 87 Brook. L. Rev. 1253 (2022).

# ONLINE VICTIM IMPACT PANELS

See if your area qualifies for the online panel option during **COVID19**  
The Online Victim Impact Panel Class is not eligible for those sentenced in the states of Arkansas and Oklahoma

[Go to Online VIP Class](#)

## Find an In-Person Victim Impact Panel

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Building Trust, Improving Public Safety

# Taiwan's Reform Context

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# Victim's Expression of Opinions During Trial (US vs. Taiwan)

	US	Taiwan
Subject	<ol style="list-style-type: none"> <li>1. direct victim,</li> <li>2. victim's family,</li> <li>3. indirect victims (e.g., police, firefighters).</li> </ol>	<ol style="list-style-type: none"> <li>1. victim, complainant,</li> <li>2. victim's family,</li> <li>3. local governments, Association for Victims Support.</li> </ol>
Process	<ol style="list-style-type: none"> <li>1. detention and bail process,</li> <li>2. <b>separate sentencing process,</b></li> <li>3. plea bargaining process,</li> <li>4. early release from prison, parole process.</li> </ol>	<ol style="list-style-type: none"> <li>1. investigation process,</li> <li>2. trial procedures (evidence investigation, <b>unseparated sentencing procedure</b>),</li> <li>3. parole process.</li> </ol>
Means	Oral or written	Oral or written (not regulated by law).
Content	<ol style="list-style-type: none"> <li>1. The short-term and long-term emotional, psychological, physical, social and financial impact suffered by victims and their families as a result of the crime;</li> <li>2. <b>(Partial) recommendation of form and degree of punishment (VIO).</b></li> </ol>	<ol style="list-style-type: none"> <li>1. investigation process: evidence investigation matters;</li> <li>2. trial procedures: evidence investigation, <b>scope of sentencing</b>;</li> <li>3. parole process: (not specified).</li> </ol>
Effect	Not bound by prosecutors and judges	Not bound by prosecutors and judges

# Procedural significance of the victim's right to express opinions from the perspective of comparative law

	Germany	Japan	Taiwan	US
Evidence Invest.	<ol style="list-style-type: none"> <li>1. The right to independent evidence investigation;</li> <li>2. The right to independently question the defendant and witnesses.</li> </ol>	<ol style="list-style-type: none"> <li>1. The right to express opinions on the prosecutor's exercise of authority during trial proceedings;</li> <li>2. The right to request (to the prosecutor) cross-examination of witnesses or the defendant.</li> </ol>	The complainant may generally express opinions to the prosecutor regarding the investigation of evidence.	X
Expn. of Opinion		<ol style="list-style-type: none"> <li>1. The right to state opinions on facts and applicable laws;</li> <li>2. The right of the victim to state their feelings and other opinions.</li> </ol>	The right to express opinions in preliminary procedures, evidence investigation procedures and sentencing procedures.	Deliver VIS in sentencing proceedings
	May make claims different from or conflicting with those of the prosecutor or other litigation participants.	Claims cannot conflict with the prosecutor's claims.	?	X
Appeal	Can appeal independently	The right to express opinions on the prosecutor's exercise of authority during trial proceedings.	Generally request the prosecutor to appeal	X



Comments or Questions?