§ 380.50 Statements at time of sentence.

1. At the time of pronouncing sentence, the court must accord the prosecutor an opportunity to make a statement with respect to any matter relevant to the question of sentence. The court must then accord counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant also has the right to make a statement personally in his or her own behalf, and before pronouncing sentence the court must ask the defendant whether he or she wishes to make such a statement.

2. (a) For purposes of this section "victim" shall mean:

(1) the victim as indicated in the accusatory instrument; or

(2) if such victim is unable or unwilling to express himself or herself before the court or a person so mentally or physically disabled as to make it impracticable to appear in court in person or the victim is deceased, a member of the family of such victim, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim, unless the court finds that it would be inappropriate for such person to make a statement on behalf of the victim.

(b) If the defendant is being sentenced for a felony the court, if requested at least ten days prior to the sentencing date, shall accord the victim the right to make a statement with regard to any matter relevant to the question of sentence. The court shall notify the defendant no less than seven days prior to sentencing of the victim's intent to make a statement at sentencing. If the defendant does not receive timely notice pursuant to this subdivision, the defendant may request a reasonable adjournment.

(c) Any statement by the victim must precede any statement by counsel to the defendant or the defendant made pursuant to subdivision one of this section. The defendant shall have the right to rebut any statement made by the victim.

(d) Where the people and the defendant have agreed to a disposition which includes a sentence acceptable to the court, and the court intends to impose such sentence, any rebuttal by the defendant shall be limited to an oral presentation made at the time of sentencing.

(e) Where (1) the defendant has been found guilty after trial or there is no agreement between the people and the defendant as to a proposed sentence or the court, after the statement by the victim, chooses not to impose the proposed sentence agreed to by the parties; (2) the statement by the victim includes allegations about the crime that were not fully explored during the proceedings or that materially vary from or contradict the evidence at trial; and (3) the court determines that the allegations are relevant to the issue of sentencing, then the court shall afford the defendant the following rights:

(A) a reasonable adjournment of the sentencing to allow the defendant to present information to rebut the allegations by the victim; and

(B) allow the defendant to present written questions to the court that the defendant desires the court to put to the victim. The court may, in its discretion, decline to put any or all of the questions to the victim. Where the court declines to put any or all of the questions to the victim it shall state its reasons therefor on the record.

(f) If the victim does not appear to make a statement at the time of sentencing, the right to make a statement is waived. The failure of the victim to make a statement shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.

(g) Following the acquittal after trial or the sentencing of any defendant for a felony, the district attorney, or their designee, shall provide a written summary of the disposition of such felony to any victim who was not present at the time such defendant was sentenced or acquitted after trial. Such written summary shall be provided by mail, electronically, or by any other reasonable and secure means of written communication.

3. The court may, either before or after receiving such statements, summarize the factors it considers relevant for the purpose of sentence and afford an opportunity to the defendant or his or her counsel to comment thereon.

4. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is committed to the custody of the department of corrections and community supervision

upon a sentence of imprisonment for conviction of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law, or a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law, within sixty days of the imposition of sentence the prosecutor shall provide the victim with a form, prepared and distributed by the commissioner of the department of corrections and community supervision, on which the victim may indicate a demand to be informed of the escape, absconding, discharge, parole, conditional release, release to post-release supervision, transfer to the custody of the office of mental health pursuant to article ten of the mental hygiene law, or release from confinement under article ten of the mental hygiene law of the person so imprisoned. If the victim submits a completed form to the prosecutor, it shall be the duty of the prosecutor to mail promptly such form to the department of corrections and community supervision.

5. Following the receipt of such form from the prosecutor, it shall be the duty of the department of corrections and community supervision or, where the person is committed to the custody of the office of mental health, at the time such person is discharged, paroled, conditionally released, released to post-release supervision, or released from confinement under article ten of the mental hygiene law, to notify the victim of such occurrence by certified mail or with the prior consent of the victim either by regular mail or by electronic transmission using the contact information provided by the victim. In the event such person escapes or absconds from a facility under the jurisdiction of the department of corrections and community supervision, it shall be the duty of such department to notify immediately the victim of such occurrence using the contact information provided by the victim in the most reasonable and expedient possible manner. In the event such escapee or absconder is subsequently taken into custody by the department of corrections and community supervision, it shall be the duty of such department to notify the victim of such occurrence by certified or regular mail or by electronic transmission using the contact information provided by the victim within forty-eight hours of regaining such custody. In the case of a person who escapes or absconds from confinement under article ten of the mental hygiene law, the office of

mental health shall notify the victim or victims in accordance with the procedures set forth in subdivision (g) of section 10.10 of the mental hygiene law. In no case shall the state be held liable for failure to provide any notice required by this subdivision.

6. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is sentenced for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, former section 130.40, former section 130.45, sections 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision two of section 230.30 or 230.32, the prosecutor shall, within sixty days of the imposition of sentence, provide the victim with a form, prepared and distributed by the commissioner of the division of criminal justice services, in consultation with the director of the office of victim services, on which the victim may indicate a demand to be informed of any petition to change the name of such defendant. Such forms shall be maintained by such prosecutor. Upon receipt of a notice of a petition to change the name of any such defendant, pursuant to subdivision two of section sixty-two of the civil rights law, the prosecutor shall promptly notify the victim at the most current address or telephone number provided by such victim in the most reasonable and expedient possible manner of the time and place such petition will be presented to the court.