U.S. Department of Justice

The Attorney General Guidelines for Victim and Witness Assistance

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Community Oriented Policing Services
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for Immigration Review
Executive Office for United States Attorneys
Executive Office for United States Trustees
Federal Bureau of Investigation
Federal Bureau of Prisons
Justice Management Division
National Fraud Enforcement Division
National Security Division
Office of the Associate Attorney General
Office of the Deputy Attorney General
Office of Justice Programs
Office of Legal Policy
Office of the Pardon Attorney
Office of Privacy and Civil Liberties
Office of Professional Responsibility
Office of Tribal Justice
Office on Violence Against Women
Professional Responsibility Advisory Office
United States Marshals Service

Foreword

The Justice Department's mission is to uphold the rule of law, to keep our country safe, and to protect civil rights. In service of this mission, the Justice Department regularly works with victims and witnesses of crime. Working with these individuals requires a unique approach that recognizes the harm they have endured and minimizes the risk of additional harm. I am therefore pleased to issue this updated edition of the Attorney General Guidelines for Victim and Witness Assistance. The new Guidelines include statutory and case law updates, discussion of relevant technological developments, and reflection of our continued commitment to supporting victims and witnesses.

While we cannot reverse the damage many victims have suffered as a result of their experiences, the Justice Department has a central role to play in victims' recovery. We are committed to empowering survivors and fulfilling our responsibilities to them as they navigate the federal criminal justice system. I am honored to lead the Justice Department in service of such a worthy duty.



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Article I: General Considerations

A. Statement of Purpose

The purpose of this document, the Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines), is to establish guidelines to be followed by officers and employees of the U.S. Department of Justice's (Department) investigative, prosecutorial, correctional, and parole components in the treatment of victims and witnesses to crime. In 1982, Congress directed the Attorney General to promulgate the first AG Guidelines, which have been revised periodically to reflect changes in the law. *See* 18 U.S.C. § 1512 note (Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System).

These AG Guidelines supersede the Attorney General Guidelines for Victim and Witness Assistance (2022 ed., effective March 2023).

B. How to Apply These Guidelines

1. Underlying Authorities

Federal victims' services and rights laws are the foundation for the AG Guidelines. The core statutes are the Victims' Rights and Restitution Act (VRRA), 34 U.S.C. § 20141 (containing mandatory services), and the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771 (containing court enforceable rights), but additional rights and requirements exist in other statutes and rules of criminal procedure. In the text of the AG Guidelines, all statutory requirements or rules of criminal procedure are followed by a direct citation to the applicable statute or rule. Guidelines that are purely Department policy, as opposed to statutory law, will not be followed by a citation. Guidelines that are policy intended to implement a statutory right, provision, or procedural rule will be followed by a citation referring to the statute or rule.

2. Obligation Definitions

The AG Guidelines use the word "shall" where "shall" appears in a statute or when the policy is mandatory. The use of the term "shall" means that the relevant guideline is mandatory, though room may remain for individual judgment in determining how best to comply with the guideline. When the AG Guidelines use the word "should," personnel are expected to take the action or provide the service described unless there is an appropriate, articulable reason not to do so. When the AG Guidelines use the word "may," personnel are permitted to use their discretion about whether and how to provide assistance. Other language may be used in the AG Guidelines to describe the obligations of personnel; phrases such as "are encouraged" or "make reasonable efforts" are intended to have their usual and customary meaning.

3. Coverage

The AG Guidelines apply to all personnel in the Department who are engaged in or support investigative, prosecutorial, correctional, or parole functions within the criminal justice system. They apply to staff regardless of title, grade, or job description who have contact with victims or take actions that impact

victims. Department managers should require all contractors whose employees come into contact with crime victims to provide employee training on AG Guidelines compliance. Department components should encourage non-Department personnel specially assigned or deputized to work with Department components to learn and comply with federal victims' services and rights laws and the AG Guidelines.

The AG Guidelines are intended to serve as a model for guidelines on the fair treatment of crime victims and witnesses for other state and federal law enforcement agencies.

4. Organization

The AG Guidelines are organized around the two primary crime victims' services and rights laws. Articles I and II deal with general policies affecting all components and victims. Article III contains the basic definitions of victim under both of the key laws, as well as sections on unique victim populations. Article IV covers the government's mandatory obligations to provide services to victims of a crime under the VRRA. Article V covers the rights afforded to victims under the CVRA. Article VI addresses witnesses only. Article VII consists of the Department's statement on nonlitigability.

Article II: Guidelines Applicable to All Components

A. Encouragement to Provide Services and Assistance

A strong presumption exists in favor of providing, rather than withholding, assistance and services, including assistance from Department personnel, to victims of crime. Federal statutes define mandatory services and court-enforceable rights for federal crime victims that establish a minimum baseline for the Department's obligation to crime victims. Department personnel are encouraged to provide additional assistance to crime victims where appropriate and within available resources, as situations warrant.

B. Protecting the Integrity of Investigations, Ensuring Security of Persons, and Providing for Prosecutorial Discretion

Protecting the integrity of an investigation, ensuring security of persons, and providing for prosecutorial discretion are of essential importance to the Department's ability to pursue justice. Therefore, when taking action in accordance with these guidelines, Department personnel are advised that:

(1) Nothing in these guidelines shall be construed to require Department personnel to take any action that would interfere with or compromise an investigation. *See* 34 U.S.C. § 20141(b) and (c)(3)(A).

(2) Nothing in these guidelines shall be construed to require Department personnel to take any action that would endanger the security of any person. *See* 34 U.S.C. § 20141(c)(2); 18 U.S.C. § 3771(a)(1).

(3) Nothing in these guidelines shall be construed to impair prosecutorial discretion. *See* 18 U.S.C. § 3771(d)(6).

C. Victim Declinations of Services and Exercise of Rights

Department personnel are required by law and under the AG Guidelines to identify victims of a crime, notify them of their rights, and offer them services as described in the AG Guidelines. Victims, however, are not required to exercise their rights or to accept these services and may choose at any point in the criminal justice process to decline to receive further services or to decline to exercise their rights. Department personnel need not provide services or support the exercise of rights that victims have made an informed decision to decline. Department personnel should attempt to ascertain whether the victim wants to decline all future services and the exercise of all rights or only specific services or rights. If the victim declines specific services or rights, Department personnel should continue to provide any other services and support the exercise of any other rights that have not been declined. Department personnel should consider documenting the victim's informed declination of services and the exercise of rights.

Department personnel should be aware that victims may initially decline services and rights for many reasons, including but not limited to: the impact of trauma; the existence or development of a bond with the perpetrator of the crime, including a "trauma bond"; actual or perceived threats by the perpetrator; accessibility of services; or other concerns about interacting with Department personnel. The extent of the injuries or trauma resulting from a crime may not be fully known when victims are initially presented with the option to exercise their rights or receive mandatory services. These underlying injuries or trauma could impact a victim's decision whether to accept services or exercise their rights. As appropriate throughout the criminal justice process, Department personnel should periodically consult with victims who previously declined to receive services or exercise their rights to ascertain whether they may now wish to accept services or exercise rights.

D. Privacy Considerations for Victims and Witnesses

Department personnel have a responsibility to protect the privacy of victims and witnesses, including their personally identifiable information (PII) and other sensitive information. This responsibility aligns with a victim's right to be treated with fairness and with respect for the victim's dignity and privacy, which is a broad-based right that should be applied in all contacts with victims. *See* 18 U.S.C. § 3771(a)(8). For further guidance regarding the Department's obligations related to victim privacy, *see* Article V.J.

1. Personally Identifiable Information and Other Sensitive Information

Department personnel engaged in the investigation or prosecution of a crime shall be mindful of the privacy concerns of victims and witnesses throughout the criminal justice process, including detention proceedings, pretrial hearings, trial, sentencing hearings, appeals, and parole, probation, and supervised release proceedings. Department personnel should use their best efforts to protect PII and other sensitive information of victims and witnesses.

PII is information that can be used to distinguish or trace an individual victim's or witness's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific victim or witness, such as name, Social Security Number, date of birth, biometric records, or mother's maiden name. PII may also include bank account information or medical information, and in some circumstances, may include address, contact information, location, or place of employment. Department personnel should be aware that information in multiple sources can be put together to trace the identity of victims or witnesses.

Sensitive information may include private information, the disclosure or use of which could cause harm, embarrassment, inconvenience, or unfairness to the victim or witness, and other information, including confidential business information, subject to protection under other statutes (*e.g.*, Trade Secrets Act, 18 U.S.C. § 1905), regulations, or Department policies.

Best efforts to protect the PII and other sensitive information of victims and witnesses should generally include omission of their PII and other sensitive information from documents that will be placed in the public record, and, where records or documents containing such information are placed in the public record, they should be redacted consistent with court rules and procedure. *See*, *e.g.*, Fed. R. Crim. P. 49.1. When necessary, Department personnel should also seek protective orders or employ other means to safeguard the PII and other sensitive information of victims and witnesses from becoming public or from being used in court proceedings. If this information must be disclosed in the course of discovery or in court proceedings, Department personnel should seek protective orders to prevent dissemination of this information outside of those proceedings.

In order to protect the dignity and privacy interests of victims, Department personnel should exercise particular care to safeguard victim impact statements. To the extent appropriate and legally permissible, Department personnel should use redaction or other options to avoid public filing of PII and other sensitive information contained in those statements. For more information about victim impact statements in light of victims' CVRA right to be treated with fairness and with respect for their dignity and privacy, *see* Article V.J.

In addition, Department personnel receiving requests for information about a case or matter should be mindful that information generally subject to release under other laws should be considered in light of the CVRA's intent to protect the dignity and privacy of victims. For further guidance regarding the release of victims' sensitive information in light of their CVRA right to be treated with fairness and with respect for their dignity and privacy, *see* Article V.J.

Nothing in these Guidelines shall be construed to supersede a prosecutor's disclosure and discovery obligations under the Constitution, case law, federal statutes, federal and court rules, or rules of professional conduct.

COMMENTARY

Victims are "persons," which are defined as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U.S.C. § 1. However, only individual victims have PII and statutory privacy interests. Other victims may have confidentiality protections for sensitive information under other statutes (*e.g.*, Trade Secrets Act, 18 U.S.C. § 1905), regulations, or Department policies. Department personnel should be aware of which protections apply to any particular victim and be familiar with the relevant statutes, regulations, or Department policies. The Office of Privacy and Civil Liberties website contains additional information on Department privacy policies and regulations.

2. Sharing of Information for Law Enforcement Purposes

Although Department personnel should employ their best efforts to safeguard PII and other sensitive information from public disclosure, there are circumstances in which it is lawful and appropriate to share with, among others, investigative, prosecutorial, corrections, parole, and other government agencies, the court or defense, and private sector entities.

Department personnel directly involved with providing victim and witness assistance should therefore inform victims and witnesses of the possibility of necessary disclosures. For example, in those cases in which the Department returns forfeited funds through the Department's Asset Forfeiture Program to victims who have suffered a pecuniary loss as a result of fraud or financial crime, PII may also be shared among Asset Forfeiture Program participants, trustees, receivers, or other entities, as appropriate, to coordinate distributions to victims. Additionally, it may be necessary to share PII and other sensitive information with private sector entities or international partners, such as cyber threat information concerning victims and targeted or affected entities to assist with mitigation of the threat. For example, Department personnel may share internet protocol (IP) addresses related to cyber threats with law enforcement and private sector entities for cybersecurity purposes or to facilitate threat mitigation, and by doing so, protect individuals from malicious cyber actors. *See*, *e.g.*, 6 U.S.C. § 1502; Department of Homeland Security & Department of Justice, Privacy and Civil Liberties Final Guidelines: Cybersecurity Information Sharing Act of 2015 (2018).

3. Dissemination of PII and Other Sensitive Information to the Media or Public

Department personnel should use their best efforts to refrain from releasing PII and other sensitive information of victims and witnesses to the press or public. In this context, PII may include information that does not directly identify, but indirectly identifies or may be used to distinguish or trace the identity of the victim or witness, such as the defendant's relationship to the victim (*e.g.*, the name of a family member or neighbor), the defendant or victim's affiliation with a tribe or group, residence in a community, relationship to the victim or their family, or, in some circumstances, the defendant's name.

Department personnel should refrain from making any public statements that concern the identity, testimony, or credibility of any prospective victim or witness. (Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, 28 C.F.R. § 50.2(b)(6)(iv) (2010).) Public Information Officers are strongly encouraged to work with victim assistance personnel and Department attorneys or agents prior to the publication of press releases involving information about victims and witnesses.

E. Mandatory Training

All Department personnel whose primary job responsibilities affect crime victims and witnesses, or who in the course of their duties are expected to come into contact with victims and witnesses, shall complete basic training about the AG Guidelines, the CVRA, and the VRRA, within a reasonable time after the AG Guidelines 2026 edition goes into effect. Thereafter, all such personnel shall complete a yearly training on the AG Guidelines, the CVRA, and the VRRA. If practicable, new and newly assigned personnel whose primary job responsibilities affect crime victims and witnesses, or who in the course of their duties are expected to come into contact with victims and witnesses, should not assume such duties until after they complete the required training described above. If the required training cannot be completed before assuming such duties, the training must be completed within a reasonable amount of time thereafter. Additionally, components should provide regular training on victim-related topics as necessary and are encouraged to develop and offer relevant training in addition to the mandatory training required by these AG Guidelines, such as on how to implement a victim-centered and trauma-informed response to victims of crime.

For a discussion of training requirements in connection with Department personnel's obligation to report child abuse, refer to Article III.L.1.c.

COMMENTARY

Components are encouraged to develop and offer relevant training in addition to the mandatory training required by this guideline. Such training can be more frequent or can be tailored to specific job responsibilities or frequency of victim and witness contact.

At the discretion of the component, Department personnel whose primary responsibilities are for civil cases and litigation may be exempted from this training requirement. If exempting personnel from the training, components should be mindful that some civil cases may directly or indirectly affect victims of and witnesses to a crime, and personnel assigned to such cases should have a fundamental understanding of the Department's obligations.

F. Mandatory Reporting of AG Guidelines Compliance

The Director of the Office for Victims of Crime (OVC) has the statutory responsibility for monitoring Department compliance with the AG Guidelines. *See* 34 U.S.C. § 20103(c)(3)(A). Components shall report to the Attorney General, through the OVC Director, about their compliance by means of an Annual Compliance Report containing the relevant data (including the numbers of crime victims offered services) requested by the OVC Director. Unless directed otherwise by OVC, a component's Annual Compliance Report shall be submitted to OVC no later than April 20 of the fiscal year following the fiscal year that is the subject of the report.

G. AG Guidelines Compliance Measures

Each component shall devise and implement performance measures that will ensure component compliance with the AG Guidelines and the statutes upon which they are based. Implementation of compliance measures should be included in the component's Annual Compliance Report. *See* Art. II.I.

H. Professional Responsibility Considerations

Department attorneys should consider the applicable rules of professional conduct when handling victim-related issues. Interactions with victims can be nuanced and complex, and there is some variance in the applicable rules of professional conduct from jurisdiction to jurisdiction; thus, Department attorneys should consult with their Professional Responsibility Officer (PRO) or the Professional Responsibility Advisory Office (PRAO) for case-specific advice. Department attorneys may contact the PRAO duty attorneys for advice via phone or email, and through the Justice Command Center for after-hours emergencies. Some common issues that might be encountered are set forth below.

1. The United States Is the Department Attorney's Only Client

Generally, a Department attorney's client is the United States. 6 Op. Off. Legal Counsel at 61-62 (discussing the "broad plenary authority" conferred upon the Attorney General under substantive law to act in the best interests of the United States "in litigation in which the United States, its federal agencies or departments are involved").

Notwithstanding the duties that Department attorneys have to crime victims under Department policy and federal victims' services and rights laws, victims, witnesses, law enforcement officers, and other government officials are not a Department attorney's clients and are not owed the same professional responsibility duties as clients, such as the duty of confidentiality (discussed further below). However, Department policy and federal victims' rights laws require Department lawyers to inform crime victims of their rights and the statutory basis for those rights; provide information about the legal process, consistent with federal statutes and Department policy; and meaningfully consult with them at critical junctures of the case.

2. **Interactions with Unrepresented and Represented Victims**

   a. **Interactions with Unrepresented Victims**

   When dealing with unrepresented victims, Department attorneys should inform victims that Department attorneys are not the victims' attorney and that the Department attorneys do not have an attorney-client relationship with the victims. Department attorneys should not give victims legal advice and should instead advise victims of their right to seek legal counsel as set forth in the CVRA. *See* Art. V.B.2; 18 U.S.C. § 3771(c)(2). In the course of informing crime victims of their statutory rights, explaining court process, preparing them to testify, and obtaining information for an award of restitution or other compensation, among other duties, Department attorneys must remain mindful that victims may misunderstand the Department attorney's role, and thus, must swiftly correct any misunderstandings that might arise. *See* Model Rules of Prof'l Conduct R. 4.3.

   b. **Interactions with Represented Victims**

   The rules of professional conduct generally prohibit *ex parte* contact with represented persons on the subject on which they are represented. However, depending on the facts of a specific situation, a Department attorney may be permitted to have *ex parte* contact with a represented victim for a valid investigative purpose or to comply with statutory duties. *See* Model Rules of Prof'l Conduct R. 4.2. Notwithstanding the permissibility of the contact, Department attorneys are prohibited from seeking any privileged or legally protected information from victims concerning their communications with their attorney. *Id*. R. 4.4(a).

3. **Other Duties**

   a. **Duty of Confidentiality**

   A Department attorney may not reveal confidential information (see definition below) related to the representation of the United

States, unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or the disclosure is permitted by an exception to the rule. See Model Rules of Prof'l Conduct R. 1.6 and the Commentary on Determining Authorized Disclosures. Departmental rules, regulations, standards of conduct, policies, and guidelines permit Department attorneys to disclose confidential information related to crime victims to the extent required to comply with these AG Guidelines, the VRRA, or the CVRA. Department attorneys should limit the nature and scope of the disclosure of confidential information to information that is needed to effectuate the Department attorneys' representation of the United States.

COMMENTARY

The rules of professional conduct define confidential information broadly to include "all information relating to the representation, whatever its source." *Id*. R. 1.6, cmt. [3]. The term "confidential information" in the rules of professional conduct is distinct from the term "confidential" information in Executive Order 13526, which categorizes different types of classified information. Certain disclosures of confidential information are impliedly authorized to carry out the representation under the rules of professional conduct. For example, notifying a victim of the date and time of a defendant's detention hearing—which is required by statutes, Department policy, and court rules—would be authorized. By contrast, informing a victim that a fugitive-defendant has been located and is expected to be arrested shortly is not necessary to carry out the representation and would not be impliedly authorized.

b. Fairness to Opposing Party and Counsel and Access to Victims

In criminal cases, professional responsibility rules prohibit Department attorneys from instructing victims or witnesses not to communicate with members of the criminal defense team. When victims inquire about their obligation to speak to the defense team, Department attorneys should advise victims and witnesses that they may speak to the defense team, may decline to speak to the defense team, or may request that Department personnel, or the victim's own attorney, be present with them when speaking to the defense team. *See* Model Rules of Prof'l Conduct R. 3.4(f).

c. Supervision of Non-Attorney Assistants

There are circumstances in which Department attorneys may be held accountable under the rules of professional conduct for the actions of non-attorneys with whom they work. Accordingly, when working with non-attorneys, Department attorneys should make reasonable efforts to ensure that the conduct of non-

attorneys is compatible with a Department attorney's professional obligations. See Model Rules of Prof'l Conduct R. 5.3.

d. Conflicts of Interest

Department attorneys should be aware that their personal feelings towards a crime victim may limit their ability to exercise their normal professional judgment on behalf of the United States, which could give rise to a conflict of interest. *See* Model Rules of Prof'l Conduct R. 1.7(a)(2). For example, a crime victim who has been severely traumatized or who is particularly vulnerable may elicit extraordinary sympathy, which may cause a prosecutor not to perceive legitimate credibility issues or other weakness in the government's proof. On the other hand, a prosecutor may lack sympathy towards a victim who was impaired due to voluntary consumption of alcohol or drugs or who demands that the prosecutor's case be handled in a way prescribed by the victim. Department attorneys should remain mindful that a conflict of interest may arise if their personal feelings towards a victim interfere with their professional judgment on behalf of the United States.

e. Department Attorneys' Safe Harbor

When Department attorneys are uncertain about the professional responsibility implications of their conduct, they should consult their supervisor. A subordinate attorney does not violate the rules of professional conduct when that attorney acts in accordance with a supervisory attorney's reasonable resolution of an arguable question of professional duty. See Model Rules of Prof'l Conduct R. 5.2(b). A supervisory attorney will often be more experienced and provide an objective view of professional responsibility issues and should be relied upon to make the close calls. If desired, the attorney or the supervising attorney may also contact the Professional Responsibility Advisory Office for information or advice.

I. Performance Appraisal

The annual work plans and performance appraisals of each appropriate federal law enforcement officer, supervisor, investigator, prosecutor, corrections officer, and parole official (and appropriate staff of those agencies) shall encompass, as a required activity, implementation and evaluation of adherence or nonadherence with the victims' rights and victims' and witnesses' services provisions set forth in the AG Guidelines. All investigative, prosecutorial, correctional, and post-correctional components with responsibilities for providing rights and services to victims should include the discharge of such responsibilities among those components' criteria for reviews and evaluations. Verification of the institution of this recommendation must be included in the Annual Compliance Report. *See* Art. II.G.

Article III: Who Is A Victim

A. Introduction

Determining who qualifies as a victim may be one of the most difficult aspects of providing victim assistance. Federal statutes typically contain victim definitions applicable only to a particular statute's provisions. Two statutes describe the majority of the Department's responsibilities to crime victims. The VRRA, mandates services to those directly harmed by a crime, whereas the CVRA establishes court-enforceable rights for those who are directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

B. Victims' Rights and Restitution Act (VRRA) Definition

1. **Basic Definition:** For purposes of providing the services described in Article IV of these AG Guidelines, a victim is "a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime." *See* 34 U.S.C. § 20141(e)(2).

2. **Institutional Victims:** If a victim is an institutional entity (hereinafter, "entity"), services should be provided through an authorized representative of the entity. *See* 34 U.S.C. § 20141(e)(2)(A).

3. **Representative Victims:** If a victim is under 18 years of age, incompetent, incapacitated, or deceased, services should be provided to one of the following (in order of preference): a spouse, legal guardian, parent, child, sibling, another family member, or another person designated by the court. *See* 34 U.S.C. § 20141(e)(2)(B). An incapacitated victim is any victim who is unable to interact with Department personnel for the purpose of receiving services as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance. More than one representative victim can be identified and provided with services depending upon the circumstances. It is Department policy that under no circumstances shall a person culpable for the crime be treated as a representative victim.

4. **Timing:** Department responsibilities to crime victims begin as soon as possible after the detection of a crime at which they may be undertaken without interfering in the investigation. *See* 34 U.S.C. § 20141(b). Generally, this point in time is defined by the opening of a criminal investigation.

   In some situations, an investigation may be initiated at a point in time when it is still unclear whether a crime was committed. In those situations, personnel should follow the guidance of Article II.A.

   The end point for Department services obligations may be difficult to determine, and personnel should use their discretion and sound judgment to assess whether an investigation or prosecution is finally concluded. At that point, Department personnel may continue to provide services to the extent permitted by law and by available resources.

C. Crime Victims' Rights Act (CVRA) Definition

1. **Basic Definition:** The CVRA defines a victim as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia." 18 U.S.C. § 3771(e)(2)(A).

2. **Institutional Victims:** A victim may be a corporation, company, association, firm, partnership, society, or joint stock company (hereinafter, "entity"). *See* 1 U.S.C. § 1.

3. **Representative Victims:** If a victim is under 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim, a representative of the victim's estate or any other person so appointed by the court may exercise the victim's rights, but in no event shall the defendant serve as a guardian or representative for this purpose. *See* 18 U.S.C. § 3771(e). An incapacitated victim is any victim who is unable to interact with Department personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance.

4. **Timing:** Consistent with the considerations addressed in Articles II.B, V.G.2, and V.K, Department personnel shall make their best efforts to accord to victims the rights set forth in the Crime Victims' Rights Act, 18 U.S.C. § 3771(a), as early in the criminal justice process as is feasible and appropriate, including when the matter is resolved by a non-prosecution agreement, deferred prosecution agreement, pretrial diversion agreement, or plea agreement. Consistent with the considerations addressed in Articles II.B, V.G.2, and V.K, in those limited instances when it is not feasible or appropriate to accord rights earlier, Department personnel shall commence their best efforts to accord rights when charges are initiated by complaint, information, or indictment.

   The obligation of Department personnel to make their best efforts to accord crime victims their rights under Section 3771(a) continues throughout federal or District of Columbia court proceedings, including any appeals and post-conviction court proceedings, and through any period of incarceration and any term of supervised release, probation, community correction, alternatives to incarceration, or parole. This obligation ends when: (1) the defendant's sentence or pretrial diversion is complete; (2) the defendant's obligations under a deferred prosecution agreement or non-prosecution agreement cease; (3) there are no further criminal proceedings pertaining to that victim, including a pending appeal; or (4) the government declines to bring charges pertaining to that victim.

   If the obligation to accord CVRA rights to a specific victim ends, but the case nevertheless continues, Department personnel should consult Article III.E for guidance as to what assistance, if any, they should offer to that person.

COMMENTARY

As stated in Article II.B., nothing in these guidelines shall be construed to require Department personnel to take any action that would interfere with or compromise an investigation, endanger the security of any person, or impair prosecutorial discretion. *See* Art. II.B. (Protecting the Integrity of Investigations, Ensuring Security of Persons, and Providing for Prosecutorial Discretion).

The Department includes a few districts that, for jurisdictional reasons, handle a disproportionate number of matters that would, in other districts, be state or local crimes, such as the U.S. Attorney's Office for the District of Columbia. Such districts may seek written approval from the Deputy Attorney General of an alternative policy under this subsection. Any such policy should explain the structural challenge(s) and clearly delineate how the office will accord rights promptly in different types of cases, in alignment with the Department's general policy expressed above and consistent with best practices for state and local prosecutors handling similar types of cases in comparable jurisdictions.

When a person or entity is a victim of a charged offense, but that offense is not among the charges to which the defendant pleads guilty pursuant to a plea agreement, when appropriate and feasible, prosecutors should advocate for, or incorporate into the plea agreement, the opportunity for that victim to speak at sentencing. *See also* 18 U.S.C. § 3661. Prosecutors should also seek restitution for that victim as part of the plea agreement when appropriate and feasible and to extent that it does not compromise the rights of victims of the offenses of conviction. *See also* Art. III.E, V.H.1.d.

5. **Scope of the Offense:** Prosecutors should carefully consider the scope of the charged offense when crafting the charging document, which will affect who qualifies as a CVRA victim from charging onward. Charging decisions are within the discretion of the prosecution, and an individual can qualify as a CVRA victim regardless of whether they are named in the indictment. In cases with CVRA victims, prosecutors should give consideration to CVRA compliance from the outset of the investigation or prosecution through its conclusion.

D. Harm

1. Direct and Proximate Harm

Determining whether a person or entity meets the harm element of the legal definition of victim under the VRRA or CVRA requires a fact-specific analysis of both the nature of the harm allegedly suffered by the person or entity and the crime that is alleged to have caused the harm. To qualify as a victim, both statutes require the alleged harm must be a direct consequence of the crime; that is, the harm must generally be a "but for" consequence of the conduct that constitutes the crime or offense, specifically the crime or offense under investigation, that has been charged, or for which there has been a conviction, depending on the stage

of the criminal justice process. Intervening or contributing actions of the person or entity suffering harm, or of a third party, may preclude a determination that the crime or offense charged directly caused the harm.

The CVRA requires an additional showing that the alleged harm must have been proximately caused by the offense. This showing ordinarily requires that the alleged harm must have been a reasonably foreseeable result of the crime or offense under investigation, charged, or for which there has been a conviction. If both conditions are met, the person or entity at issue meets the CVRA harm element.

COMMENTARY

Case law regarding issues of direct and proximate harm should guide prosecutors' analysis of who is a victim in certain cases.

For example, children who are depicted in child sexual abuse material (referred to in federal law as "child pornography") that has been advertised, transported, distributed, received, accessed, or possessed are presumed to have been directly and proximately harmed as an aggregate result of those crimes for purposes of determining whether they are victims under the VRRA or CVRA. *See Paroline v. United States*, 572 U.S. 434 (2014).

Antitrust jurisprudence concerning direct versus indirect purchasers is relevant to the issue of when a person injured by an antitrust violation has suffered the requisite harm under the VRRA and the CVRA.

There may also be cases in which a person suffers harm due in part to their own willful participation in a scheme or transaction, such as criminal tax offenses or certain other financial crimes. A person's knowing and willful participation in a fraudulent or otherwise criminal scheme or transaction, whether or not the person is charged with an offense, generally negates a determination of direct harm from the crimes being investigated or offenses charged.

2. Types of Harm

Victims may experience physical, emotional, psychological, and/or pecuniary harm from crimes. Multiple types of harm may result from the same crime. Emotional harm can be present in a variety of crimes, including those that do not involve violence. Department personnel should assess the existence of all possible types of harm on a factual, case-by-case basis. Department personnel should presume that individuals suffer emotional harm when they are a victim of or witness to a crime of violence or when they learn that they were the target of an attempted crime of violence. This presumption of emotional harm also applies to human trafficking and child sexual exploitation offenses. The impact of experiencing or witnessing a traumatic event cannot be overstated.

When implementing these AG Guidelines, Department personnel should use their best efforts to follow a victim-centered, trauma-informed

approach in order to recognize that victims may have experienced multiple forms of trauma, including trauma from the crime itself, trauma from their injuries or losses, trauma from their involvement in the criminal justice process, and other forms of pre-existing trauma that may affect their experience in the criminal justice process. A victim-centered approach includes the following factors:

- placing the crime victim's priorities, needs, and interests at the center of the work with the victim;
- providing nonjudgmental assistance and helping victims make informed choices;
- striving to restore victims' sense of safety and security and safeguarding against policies and practices that may inadvertently re-traumatize victims; and
- endeavoring to ensure victims' rights, voices, and perspectives are incorporated when developing and implementing protocols that impact crime victims.

A trauma-informed approach involves an understanding of the vulnerabilities and experiences of trauma survivors, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach recognizes signs of trauma in victims and witnesses and responds by integrating knowledge about trauma into policies, procedures, practices, and settings. Trauma-informed approaches seek to empower the survivor's feelings of safety, choice, and control.

COMMENTARY

Emotional harm may result in a range of physiological and psychological reactions, from temporary impairment in the ability to cope and function to acute stress reactions and post-traumatic stress disorder. Visual imagery related to the event and the emotional and physical reactions associated with reliving the experience may remain with a victim for many years. Victims who have experienced violence, threats of violence, intimidation, exploitation, or harassment over an extended period of time may suffer additionally from complex trauma, which can entail severe emotional injury.

The role of victim assistance personnel in investigative agencies is particularly critical to ensuring victims who suffer emotional injury receive timely intervention, information, and referrals. Later, criminal justice proceedings may reopen emotional wounds, and timely and appropriate assistance from prosecution-based victim assistance personnel can help meet victims' needs at this critical stage. In situations involving victims under 18 years of age who may have suffered emotional injury, victim assistance personnel will need to involve a non-offending parent or guardian in the provision of appropriate services.

In cyber intrusion crimes, the nature and extent of harm caused can take a variety of forms. For example, damage to computer networks or internet-connected devices or remediation necessary to restore or replace such systems may result in pecuniary harm. In other cases, a computer intrusion or other similar crimes may cause embarrassment, humiliation, or exploitation of a person or entity, such as in sextortion or ransomware cases.

In cases involving tax administration, such as a tax shelter investigation, Department personnel should not presume harm merely because participants paid a fee to the promoter for participation or for some fraudulent benefit promised but not received. A determination that a participant suffered harm should be based on all of the facts and circumstances. For additional guidance, contact the National Fraud Enforcement Division.

3. Harm in Cases Involving Theft, Improper Access, or Misuse of PII and Other Sensitive Information

Determining harm in cases involving the theft, improper access, or misuse of PII and other sensitive information, as defined in Article II.D.1, above, can be particularly difficult.

A person or entity that legitimately holds information suffers direct harm if that information is stolen, improperly accessed, or misused. Direct harm may include out-of-pocket expenses as well as time spent to remediate actual or intended harm. It may also include emotional harm, such as harm resulting from the theft of photographs or videos, or the theft of sensitive medical information.

A person or entity may also be harmed if information belonging to the person or the entity is stolen from or improperly accessed through a third

party and used to commit another crime. If there is no indication from the facts known at the time and any reasonable additional investigation that the information has been used or is reasonably likely to be used in the future, then the direct harm may only be to the person or entity that legitimately held the information.

Even in the absence of direct harm, Department personnel should, if feasible and appropriate, notify such persons and entities that their information was compromised to allow those affected to take appropriate defensive measures, such as freezing their credit reports or seeking removal of publicly posted information. In addition, the entity that legitimately held the third-party information may be obligated by state statutes or civil court orders to inform the persons or entities whose information was compromised, so that they may take appropriate defensive measures. In the absence of a legal obligation, Department personnel should also encourage those entities to notify persons and other entities that their information was compromised.

E. Other Persons or Entities Significantly Harmed by a Crime

In some cases, there may be persons or entities who do not fall under a statutory definition of a crime victim but who nevertheless were significantly, even if indirectly, harmed by the criminal conduct underlying the offense under investigation, ultimately charged, or addressed in a non-prosecution agreement, deferred prosecution agreement, pretrial diversion agreement, or plea agreement. In determining who may be in this category, Department personnel shall consider the full range of an offender's relevant criminal conduct, including any scheme, conspiracy, or pattern of criminal activity, as well as the full course of conduct related to the offense. *See generally* 18 U.S.C. § 3663A(a)(2); U.S.S.G. §§ 1B1.3(a)(1)-(3).

Department personnel should make their best efforts to provide these significantly harmed persons or entities, when known to the government, with assistance within available resources, to the extent reasonable, feasible, and appropriate. This assistance may include: (1) information about the status of an investigation; (2) the opportunity to communicate with the Department personnel responsible for the prosecution, including prior to the execution of a non-prosecution agreement, deferred prosecution agreement, pretrial diversion agreement, or plea agreement; (3) information about public court proceedings and potential opportunities for participation; and (4) consultation with prosecutors regarding any agreement that would require an offender to pay restitution or other compensation to, or for the benefit of, the significantly harmed persons or entities.

When complying with this subsection, Department personnel shall act consistently with: all applicable laws and rules of procedure; Article II.B (Protecting the Integrity of Investigations, Ensuring Security of Persons, and Providing for Prosecutorial Discretion); and the principles and factors articulated in the provisions of these Guidelines that govern similar assistance to statutory

victims, *e.g.*, Art. V.G. Nothing in this subsection shall be construed to interfere with or delay the provision of rights and services required by the VRRA and CVRA to statutory victims or to require or encourage Department personnel to act adversely to statutory victims' interests.

COMMENTARY

In this subsection, "course of conduct" means acts that are part of a single episode, spree, or ongoing series of offenses or that are otherwise substantially connected to each other by at least one common factor, such as targets, accomplices, motivations, or means. *See* U.S.S.G. § 1B1.3 cmt. 5(B) (2021).

Examples of when prosecutors should consider whether and to what extent this subsection applies include the following:

In a prosecution of a cyber intrusion, a person, such as a user of a free internet-based email service, or an entity, such as a company that contracts for cloud-based storage, may be harmed in a way that warrants receiving information, even if that person or entity does not meet the statutory definition of a victim. *Cf.* Art. III.D.3.

In a prosecution of a defendant for unlawful possession of a firearm, there may be a domestic violence victim known to Department personnel to have a credible reason to fear the defendant's gun possession. Department personnel may provide assistance in connection with the possessory crime prosecution.

In a prosecution for (1) making a false statement to any government entity, (2) perjury, or (3) obstruction of justice, including witness tampering, related to an investigation or prosecution of a federal offense, persons or entities who are victims of the underlying offense under investigation or significantly harmed by the defendant's lie or any criminal conduct underlying that lie may be provided with assistance in connection with the false statement, perjury, or obstruction prosecution.

In a prosecution in which the offense is statutorily predicated on another offense, including non-federal offenses, persons or entities who are victims of the predicate offense may be provided with assistance in connection with the prosecution irrespective of whether the predicate is charged.

In a hate crime prosecution, members of the targeted group may feel intimidated or threatened by criminal conduct even though they do not fall under the statutory definition of a crime victim. For example, violence at a house of worship may affect worshippers who were absent the day of the violence. A cross burning at the home of an inter-racial couple might intimidate others in the neighborhood, particularly people of color. These, and similar circumstances, may warrant providing the affected individuals with the assistance set forth above.

Department personnel may also support the submission of a Community Impact Statement (CIS) by a representative of a community affected by the crime of which the defendant has been convicted. A CIS is different from a Victim Impact Statement (VIS), which is a recognized mechanism by which a statutory victim exercises their Right to Be Reasonably Heard. *See* Article V.F. If members of the affected community fall under the CVRA definition of crime victim, then they have a right to be reasonably

heard and may submit a VIS, regardless of whether the affected community also submits a CIS.

As noted throughout these Guidelines, some cases—including those with large numbers of victims, international victims, or unknown or only partially identified victims—can present unique challenges and may require innovative or alternative approaches. *See, e.g.*, Art. III.H, III.K, V.D.2, V.E.4. Similar challenges can also occur in cases with similar groups of significantly harmed persons, including cases involving regulatory violations or schemes affecting a large number of consumers. In such cases, Department personnel should offer assistance under this subsection to the extent possible in light of the circumstances in the case and currently available resources, recognizing that there may be cases in which it is unreasonable, infeasible, or inappropriate to provide assistance or in which the scope of such assistance may need to be limited. In addition, as noted in Article I.B.3, although these Guidelines are intended to serve as a model for other law enforcement or prosecutorial agencies, they apply only to Department personnel. Accordingly, this subsection, as with other provisions of the Guidelines, may apply or be implemented differently in cases investigated or handled by law enforcement outside the Department, depending on the facts and circumstances of the case, the agency's policies and resources, and other relevant factors.

F. Culpability

A person or entity who is culpable for or accused of the crime being investigated or prosecuted should not be considered a victim for purposes of the rights and services described in the AG Guidelines. Department personnel should determine whether a person or entity is culpable based on the facts and circumstances known at the time of investigation, prosecution, or post-conviction. Department personnel should reevaluate that determination, however, as they learn additional facts and information.

Department personnel should be mindful that a person or entity who is a victim under the VRRA or CVRA may be culpable for violations or crimes other than the crime for which they are a victim. For example, a witness who is threatened or injured by another person to prevent the witness from cooperating with law enforcement or testifying should be treated as a victim of the intimidation crime even though the witness may have some culpability in the underlying criminal matter. In such situations, Department personnel should determine whether a person or entity is a victim with respect to certain other violations or crimes based on the facts and circumstances of the investigation or case and should reevaluate that determination as needed.

Inmates who are victims of crime during their incarceration for other offenses may be considered victims. An inmate’s detention, however, may prevent the inmate from exercising the rights and receiving the services normally afforded to victims. For example, Department personnel are not required by the AG Guidelines to transport inmates to court to attend hearings relating to crimes against those inmates. Department personnel should endeavor to assist incarcerated victims in exercising their rights and accessing services to the extent possible.

COMMENTARY

Victims of human trafficking may be considered victims for purposes of the prosecutions of such crimes despite any legal culpability that the victims may have for ancillary offenses.

Department personnel should be aware that the rights of human trafficking victims may conflict with the rights of any victim of their crimes and shall use best efforts to afford all victims their rights as permissible and appropriate under the facts and circumstances.

A person or entity that is the victim of a cyber intrusion remains a victim for purposes of the rights and services described in these Guidelines even if the person or entity may ultimately be subject to civil liability for failing to adequately protect data or to mitigate the harm caused by an intrusion.

Persons who are knowing and willful participants in an illegal tax scheme or other financial fraud are generally not considered victims of the crimes charged against the scheme or fraud promoters, even when the persons are not criminally culpable for the charged crimes or any of the crimes under investigation. *See* Article III.F commentary (discussing willful participation in a fraudulent scheme).

G. Government Entities

Neither the federal government nor any state, local, tribal, or foreign government or agency thereof fall under the definition of crime victim for either mandatory services or court-enforceable rights; however, they may qualify for restitution under federal restitution statutes. *See* 18 U.S.C. § 3664(i). If appropriate and feasible, Department personnel may notify government entities if they are impacted by a crime and may provide assistance to these entities pursuant to the policy contained in section E of this Article. Nothing herein is intended to prevent a government employee from asserting rights or receiving services as a victim of crime, even if such crime against the employee arose out of that employee's duties.

H. Victims in a Foreign Country and Foreign National Victims

The victims' services and rights laws apply to foreign nationals meeting the definitions of victim under the VRRA and CVRA, regardless of whether they reside in the United States. Each country has its own procedures and requirements for contacting persons located in its territory. Due to sovereignty concerns, many countries limit or prohibit foreign government officials from directly contacting persons within that country's borders. Therefore, contact with victims and witnesses residing in other countries, for any purpose, needs to be coordinated with the appropriate officials of the host government through either the Department's Office of International Affairs (OIA) or the United States investigative attaché in the country where the victim resides. If victims in other countries do not have the ability to speak or read English, Department personnel should arrange for written communications to be translated. Because the coordination process can take several weeks, Department

personnel should allow for extra time to notify victims in foreign countries. In cases with large numbers of victims, where Department personnel are using alternate means of notification, such as publication notice through media outlets or on a public website, coordination with an investigative attaché or OIA might not be necessary unless using a foreign media outlet or entity.

In certain circumstances, immigration benefits or special status may be available to victims or witnesses who are likely to be helpful to law enforcement or government officials or assist in the investigation or prosecution of certain criminal activity. Some forms of immigration benefits may also be available to family members of victims. Department personnel shall not offer victims or witnesses legal advice about immigration issues, but may, as appropriate and permissible, refer the victim or witness to a legal service provider. *See* Art. IV.H (Service Referrals). Department personnel shall not offer victims or witnesses legal advice about immigration issues, but may, as appropriate and permissible, refer the victim or witness to a legal service provider. *See* Art. IV.H (Service Referrals). Department personnel should inform the prosecutor immediately about any immigration issues in the case.

COMMENTARY

Department personnel seeking to fulfill victim notification responsibilities should consult the OIA attorney responsible for handling matters in the country where the victim resides to obtain guidance and approval for appropriate victim notification procedures. In addition, the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), or other investigative agency attaché stationed abroad, and assigned to United States embassies in countries with which the United States has diplomatic relations, may have information regarding appropriate notification procedures for victims residing in those countries. Special status or potential immigration benefits for victims or witnesses exists in many forms. The most updated sources of information on availability of and eligibility for various humanitarian programs is available from U.S. Citizenship and Immigration Services. Several forms of immigration benefits also result in U.S. employment authorization. Department personnel should be aware that immigration benefits offered to the victim or witness must be disclosed prior to the victim or witness testifying at trial.

I. Foreign Proceedings

Some crimes perpetrated in foreign countries or by persons located in foreign countries are also subject to United States jurisdiction. When a crime being investigated or prosecuted in the United States is also the subject of a foreign investigation or prosecution, victims in the United States investigation/ prosecution may need assistance in obtaining information about and participating in the foreign prosecution. Department personnel may assist victims in the United States investigation/prosecution with information about foreign prosecutions and facilitate participation therein when appropriate and feasible with available resources.

J. Victims of Juvenile Offenders

Generally, victims of juvenile offenders are victims for purposes of the VRRA, CVRA, and the AG Guidelines, but the Federal Juvenile Delinquency Act (FJDA) (18 U.S.C. §§ 5031-5042) restricts the type of information that may be disclosed to victims about investigations and proceedings regarding juvenile offenders unless the juvenile waives the restrictions or has been transferred for criminal prosecution as an adult. As outlined below, this law affects how the statutory CVRA rights can be provided to victims.

a. Victim Services

During the investigative stage, a crime victim should receive the services to which the victim would normally be entitled, but only a general statement about the progress of an investigation into the role of a juvenile suspect may be disclosed. Investigators and other Department personnel are cautioned that the name and other identifying data about a suspect who is known or believed to have been younger than 18 when the crime occurred should not be disclosed.

b. Victim Rights

In federal juvenile delinquency proceedings, the FJDA nondisclosure provisions circumscribe victims' ability to exercise many CVRA rights. *Compare* 18 U.S.C. § 3771(a) (2)-(4) *with* 18 U.S.C. § 5038(a). Nonetheless, victims can, as in other criminal cases, be offered reasonable protection when needed (*see* 18 U.S.C. § 3771(a)(1)); confer with the attorney for the government (*see* 18 U.S.C. § 3771(a)(5)); and make known their injuries and views on appropriate disposition including whether the prosecutor should move to detain, dismiss, defer prosecution, move to transfer to adult status or accept a plea, and how severe a sentence is warranted. Prosecutors should inform victims that presentence investigation reports and victim impact statements are not mandated at dispositional hearings but that a victim may prepare such a statement for the prosecutor to offer to the court. The prosecutor may also request that the court order the probation office to include a victim impact statement. Courts may order restitution in federal juvenile delinquency proceedings (18 U.S.C. § 5037(a); *see* 18 U.S.C. § 3771(a)(6)), and victims have the right to be treated with fairness and respect for their dignity and privacy (*see* 18 U.S.C. § 3771(a)(8)). Prosecutors shall advise victims that they can seek the advice of a private attorney. *See* 18 U.S.C. § 3771(c)(2). Department personnel are not permitted to convey to the victim any prosecutorial information about the progress of a juvenile proceeding unless the court makes a delinquency finding.

After a finding of delinquency, federal law explicitly permits disclosure, on request, of information about the final disposition to the victim or, if the victim is deceased, to the victim's immediate family. *See* 18 U.S.C. § 5038(a)(6). Upon request, a victim should be apprised of the final disposition of the case and the sentence imposed on the offender, but not

the date when the juvenile offender in their case will be released from custody, unless the victim has requested such notification at that time.

K. Large Numbers of Victims

Cases with a large number of victims present unique challenges in affording victims' rights and services. While individual contact with victims is preferred, such contact may not be feasible in cases involving hundreds or thousands of victims—for example, data breach cases and cases involving compromises of multiple computers, such as botnets. Department personnel should use technology and be creative, with the goal of providing rights and services to the greatest extent possible given the circumstances and resources available. See specific discussions in Articles IV.E (victim identification), V.D.2 (right to notice), V.E.4 (right not to be excluded from court), V.F (right to be reasonably heard), and V.G.2 (right to confer). In addition, Department personnel should coordinate between victim assistance personnel at the investigating agency and the prosecuting office in cases with large numbers of victims to maximize resources and effectively communicate with victims.

L. Specific Victim Populations

This subsection of the Guidelines addresses the unique needs of the following types of victims: child victims; victims of domestic violence, sexual assault, stalking, and human trafficking; American Indian or Alaska Native victims; older victims and persons living with disabilities; financially vulnerable victims; and victims with limited or no proficiency in English. As appropriate, this subsection describes practical and legal considerations when working with these types of victims. Department personnel should be mindful that a victim may fall into more than one of these categories and should be sensitive and accommodating to a victim's vulnerabilities.

Victims in each of these categories are considered to be vulnerable victims. However, victims can be considered vulnerable for different reasons or due to other circumstances. Vulnerable populations may be at higher risk of becoming victims of crime and may have a more difficult time participating in the justice system. When working with victims from any vulnerable population, it is important to assess and identify any barriers that might limit their ability, capacity or willingness to cooperate with investigators, prosecutors, and victim-witness staff, and to identify resources, procedures, and other actions that can support them in overcoming these challenges.

Certain accommodations may benefit many different types of vulnerable victims. For example, Department personnel can support arrangements for victims and witnesses to participate in court proceedings via teleconference or video-conference when appropriate and legally permissible. In addition, Department personnel should use best efforts to implement an approach that considers the individualized needs of victims and witnesses during the investigation and prosecution of crimes. *See*, *e.g.*, Art. III.H (Victims in a Foreign Country and Foreign National Victims), Art. III.L.3 (American Indian and Alaska Native Victims of Crime).

When declining prosecution of a matter that involves an ongoing threat or relates to acts of violence or abuse against vulnerable victims, including minors, or reviewing whether federal prosecution should be initiated for such a matter, prosecutors should be mindful of the directive in the Justice Manual concerning coordination with state, local, and tribal law enforcement authorities. *See* Justice Manual 9-27.240.

Department personnel should comply with legal requirements and the following practices when working with these vulnerable victim populations.

1. **Child Victims**

   a. **Department Obligations**

      Department personnel should be aware of the trauma that child victims and witnesses may experience when they are asked to recount the crime during the investigation and prosecution of a criminal case, particularly when testifying in court. A primary goal of Department personnel, therefore, shall be to reduce the potential trauma to child victims and witnesses that may result from their contact with the criminal justice system. To that end, Department personnel should provide age-appropriate support services to these victims, and referrals for community-based services to parents and guardians as indicated. *See* Art. IV.H (Services Referrals).

   b. **Definitions**

      i. Child: For purposes of the AG Guidelines, a child is a person under the age of 18 years. For guidance on notifying child victims after they reach the age of majority, see Article IV.I.5 (Victim's Age).

      ii. Child Abuse: For the purposes of this section, "child abuse" means the physical or mental injury, sexual abuse or sexual exploitation, or negligent treatment of a child. "Sexual abuse" includes rape, molestation, or incest with children. "Sexual exploitation" includes the production, distribution, receipt, possession, or access of child sexual abuse material (referred to in federal law as "child pornography"), as well as the commercial sexual exploitation of children (child sex trafficking), and the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexual abuse or sexual exploitation of children. The term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child. "The term 'child abuse' does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree

and otherwise does not constitute cruelty." *See* 34 U.S.C. § 20341(c)(8).

c. Child Abuse Reporting Requirements

i. Requirement to Report Suspected Child Abuse

Whenever Department personnel are required to report suspected child abuse, whether pursuant to these Guidelines or as required by any law, they shall do so expeditiously and with a sense of urgency. Department personnel who, in the course of official business, learn of facts that give reason to suspect child abuse shall promptly report the suspected child abuse to the appropriate law enforcement or Child Protective Services agency, and should also notify the Department personnel designated to receive such reports in their agency, component, or office. In addition, certain Department personnel may be legally required to report suspected child abuse under state, tribal, and/or federal law. These mandatory reporting requirements and related reporting procedures are discussed below.

ii. Child Abuse Discovered from a Grand Jury, an Investigation, or a Confidential Source

Information learned during a grand jury investigation could implicate Federal Rule of Criminal Procedure 6(e). Grand jury secrecy rules generally prohibit the disclosure of "matters occurring before the grand jury." Fed. R. Crim. P. 6(e). When Department personnel suspect that a child is being abused based on information learned in connection with grand jury testimony or a matter within the grand jury, Department personnel shall immediately consult with the Department attorney handling the grand jury investigation. The Department attorney shall also immediately consult with a supervisor, and if needed, a professional responsibility officer, to determine how to properly report the suspected abuse. Circumstances may allow Department personnel to report child abuse without revealing grand jury information. If reporting the suspected child abuse would require the disclosure of grand jury information, the Department attorney handling the grand jury investigation may need to obtain court authorization to disclose the information. *See* Fed. R. Crim. P. 6(e)(3)(E)(iv).

When Department personnel suspect that a child is being abused based on information gathered during an investigation or from a confidential source, they should make every effort to report the abuse to the appropriate authorities in order to protect the safety of the child. If it is not possible

to report the suspected child abuse without compromising an investigation, compromising a confidential source, disclosing protected information (*e.g.*, classified information, law enforcement sensitive information, or information that could compromise investigative sources or methods), or endangering public safety, Department personnel shall, without delay, obtain guidance from the designated component responsible official. *See* Art. IV.B (Responsible Officials) for a listing of component responsible officials. The component responsible official shall not delegate this responsibility. Component responsible officials are encouraged to consult personnel with expertise in the subject matter of child abuse and should be aware of the penalties, some of them criminal, which could result from a decision to delay reporting or not to report. *See* Art. III.L.1.c.iv.b (Sanctions for Failure to Report).

iii. State Mandatory Reporting Laws

All Department personnel should refer to their state child abuse reporting laws to determine the scope of their obligations in cases of suspected child abuse. State laws vary substantially. Some states require mandatory reporting of child abuse or neglect by all persons within their boundaries; others require such reporting only from persons engaged in expressly listed occupations. A report should be made even if the information inadvertently comes to the Department personnel's attention, but not if the suspected child abuse has already been reported and is the subject of an existing report or investigation. Reports of child abuse required by state or local law shall be made to the agency or entity identified in accordance with that law.

All 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes specifying procedures that state agencies must follow in handling reports of suspected child abuse or neglect. In most states, these procedures include requirements for cross-system reporting (simultaneous reporting to different authorities, such as law enforcement and Child Protective Services) and/or information sharing among professional entities.

Whether or not required by state law, Department personnel are encouraged to cross-report because it ensures that the appropriate information gets to the agency that must conduct the investigation or family assessment. Cross-reporting is in the best interests of the child because it creates a holistic response by engaging both law enforcement, which can

investigate the crime, and Child Protective Services, which can provide services and take measures to address the health and safety of the child.

iv. Federal Reporting Requirement

(a) Mandated Reporters

The federal child abuse reporting law requires certain professionals (including law enforcement personnel, probation officers, criminal prosecutors, juvenile rehabilitation or detention facility employees, and social workers) who learn of facts that give reason to suspect child abuse while working on federal land or in a federally operated (or contracted) facility, to report suspected child abuse, as defined in 34 U.S.C. § 20341 (regardless of where the child is cared for or resides), to an investigative agency designated by the Attorney General to receive and investigate such reports. *See* 28 C.F.R. Part 81. This statutory requirement to report suspected child abuse applies regardless of whether the suspected abuse occurred on federal land or in a federally operated facility. If the Department employee is a mandated reporter pursuant to 34 U.S.C. § 20341(a) and learns of the suspected abuse while working on federal land or in a federally operated facility, then it must be reported.

(b) Sanctions for Failure to Report

A covered professional who, while working on federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse (regardless of where the child is cared for or resides) and fails to timely report shall be fined or imprisoned not more than one year or both. *See* 18 U.S.C. § 2258.

(c) Reporting Suspected Child Abuse

As described in section (iv)(a) above, if a Department employee is a mandated reporter pursuant to 34 U.S.C. § 20341, that employee must report suspected child abuse regardless of where the abuse occurred. However, the procedures for reporting may differ depending on where the abuse occurred. Although not required under federal law, Department personnel should consider simultaneously reporting the matter to law enforcement and the appropriate Child Protective Services authority (as noted above, some states require simultaneous reporting).

i. Suspected Child Abuse Occurring Outside Federal Land or a Federal Facility

Department personnel shall report suspected child abuse that occurred anywhere other than on federal land or in a federal facility to the local Child Protective Services agency or local law enforcement agency where the abuse occurred.

ii. Suspected Child Abuse Occurring on Federal Land or in a Federal Facility

If the suspected abuse occurred on federal land or in a federal facility, then Department personnel should report it the local law enforcement agency or local Child Protective Services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the area or facility in question. When no such agency has entered into a formal written agreement with the Attorney General to investigate such reports, the FBI shall receive and investigate such reports. *See* 28 C.F.R. § 81.3.

iii. Suspected Child Abuse in Indian Country

Reporting child abuse in Indian country is governed by 18 U.S.C. § 1169 and 25 U.S.C. § 3203. (The Department uses the term "Indian country" because it is a legal term that is defined in federal law to include land within reservations, "dependent Indian communities," and allotments. *See* 18 U.S.C. § 1151.) Covered professionals shall report suspected cases of child abuse to the federal, state, or tribal agency with primary responsibility for child protection or investigation of child abuse within the portion of Indian country involved. If the report involves a potential crime and either involves an Indian child or an Indian suspect, the local law enforcement agency is required to make an immediate report to the FBI. *See* 25 U.S.C. § 3203(b)(2).

iv. Immediate Reports

Department personnel should report suspected child abuse by a method best suited to giving immediate notice. According to 34 U.S.C. §

20341(f), Department personnel are encouraged to use a standardized form, but such use shall not take the place of the immediate making of reports by other means when circumstances dictate. Reports may be made anonymously. Reports are presumed to have been made in good faith and reporters are immune from civil and criminal liability arising from the report unless they act in bad faith. *See* 34 U.S.C. § 20341(g). Reporters should document their report in the same manner that they document other important work-related actions.

v. Mandatory Training

Mandated reporters, as defined in 34 U.S.C. § 20341, shall complete a yearly basic training on the reporting requirements. Initial training must be completed within a reasonable time upon hire and/or upon assuming job responsibilities that require the employee to be a mandated reporter.

d. Privacy Protections for Child Victims and Witnesses

Department personnel should scrupulously protect children's privacy in accordance with 18 U.S.C. § 3509(d), the AG Guidelines, and other Department policies. A child's name or other identifying information (other than a pseudonym) should not be reflected in court documents or other public records unless otherwise required by law.

i. Motion to Render Nonphysical Identifying Information Inadmissible

Federal prosecutors may move in any prosecution under Chapter 110 or section 1466A of title 18 for an order that the name, address, Social Security Number, and other nonphysical identifying information (other than the age or approximate age) of any minor who is depicted in any child sexual abuse material (referred to in federal law as "child pornography") shall not be admissible and may be redacted from otherwise admissible evidence. *See* 18 U.S.C. § 2252A(e).

ii. Sanctions for Violating the Disclosure Rules

A knowing or intentional violation of the privacy protection accorded children in 18 U.S.C. § 3509(d) is a criminal

contempt punishable by not more than one year's imprisonment, or fine, or both. *See* 18 U.S.C. § 403.

e. Child Protections During Criminal Investigations

i. Multidisciplinary Child Abuse Teams

A multidisciplinary child abuse team is a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse. *See* 18 U.S.C. § 3509(a)(7). The goals of the multidisciplinary team are (1) to minimize the number of interviews to which the child is subjected to reduce the risk of suggestibility in the interviewing process, (2) to provide needed services to the child, and (3) to monitor the child's safety and well-being.

A multidisciplinary child abuse team shall be used when feasible. *See* 18 U.S.C. § 3509(g)(1). Department personnel should use existing multidisciplinary teams, including Child Advocacy Centers, in their local communities. Law enforcement personnel are encouraged to bring other professionals onto the teams. Local laws and guidelines concerning the teams may vary, and federal personnel should become familiar with the local provisions. If no multidisciplinary team is in place in a particular community, Department personnel should coordinate with the local Child Protective Services or Child Advocacy Center and other agencies and experts to assemble the expertise necessary to ensure the most effective response to the crime and victim.

ii. Investigation and Forensic Interviewing of Child Victims and Witnesses

The first investigator responding to a report of child abuse or sexual abuse shall refer the child victim for a medical examination. Whenever possible, interviews of child victims and witnesses should be conducted by personnel properly trained in child interviewing techniques. Child and Adolescent Forensic Interviewers with the FBI or United States Attorneys' Offices (and other professional forensic interviewers employed by other law enforcement agencies or Child Advocacy Centers) use an evidence-based, legally sound, developmentally appropriate, and child-sensitive methodology that is designed to obtain accurate information while minimizing trauma experienced by a minor victim or witness. Although forensic interviews are primarily used as an investigative tool, they may also yield information useful

to the Child Protective Services (or other agencies) for decisions concerning custodial placement and mental health treatment. Before disclosing the substance of a forensic interview to other agencies, Department personnel should confirm that such disclosure is permissible and appropriate.

COMMENTARY

Evidence from medical examinations and forensic interviews of children may provide the only corroboration for a successful prosecution of the case, particularly in cases of child abuse. Medical examinations provide documentation of the event and injuries, and forensic interviews gather factual information from a child to determine if the child was the victim of a crime or witnessed a crime against another person. The forensic interview should be appropriate for the child's age and developmental level, but it should not be confused with a therapeutic interview that is conducted for the purpose of designing treatment for and providing treatment to a child.

iii. Addressing Child Well-Being

Investigators should try to determine whether children will be on the scene of an arrest, search warrant, or other enforcement action. If children are reasonably anticipated to be present, investigators should take appropriate actions to address the safety and well-being of children and reduce the potential for the infliction of traumatic stress on any children present. Such actions may include having victim specialists, local child protection agencies, and/or multidisciplinary response teams present at the scene before and during the law enforcement action as appropriate under the circumstances. Such specialists likely have appropriate training on or expertise with working with children and developmentally appropriate responses to trauma and should assess the child's well-being and make appropriate recommendations for care or services.

COMMENTARY

When assessing a child's well-being, Department personnel should consider whether the child lives in or is exposed to an environment where drugs, including pharmaceuticals, are abused, or used, possessed, trafficked, diverted, or manufactured illegally. In such environments, children may experience or be at risk of experiencing physical, sexual, or emotional abuse; medical, educational, emotional, or physical harm; or neglect, including harm resulting or possibly resulting from the inhalation, ingestion, or absorption of drugs. Department personnel shall consult with appropriate experts, including medical personnel and Child Protective Services, to determine the appropriate care and services for children in such situations. Further, such environments may foster other crimes involving children. For example, children may be caused or forced to engage in criminal conduct or may participate in illegal or sexual activity in exchange for drugs or money. When a child is forced, compelled, or coerced to engage in criminal activity, is caused to engage in sexual activity in exchange for drugs or money, or is caused to engage in any sexual activity on account of which there is an exchange of anything of value by any person, that constitutes human trafficking.

f. Child Protections During Judicial Proceedings

i. Child Witnesses

Section 3509 of Title 18 provides mechanisms for the protection of child witnesses during judicial proceedings, including closing the courtroom during a child's testimony or allowing the child to testify via alternative means, allowing the use of adult attendants or testimonial aids, and expediting proceedings. Department personnel prosecuting cases involving children should review and are urged to become familiar with the accommodations and protections under applicable law and use them as necessary to protect the interests of child witnesses.

For purposes of testifying, a child is presumed to be competent. *See* 18 U.S.C. § 3509(c)(2). If competency is challenged, the court may permit an attorney, but not a party appearing *pro se*, to examine a child directly on competency, if the court is satisfied that the child will not suffer emotional trauma as a result of the examination. Federal prosecutors should consider making this request of the court because in many instances questioning by a familiar person may be less traumatic for the child. Prosecutors should, however, be aware that defense attorneys likewise may make such a request. *See* 18 U.S.C. § 3509(c)(7).

ii. Guardian ad Litem

To protect the best interests of the child, the court may appoint a guardian ad litem for a child who was a victim of,

or a witness to, a crime involving abuse or exploitation. *See* 18 U.S.C. § 3509(h)(1). Prosecutors shall request that the court appoint a guardian ad litem for a child who was a victim of a crime committed by a legal guardian, parent, someone who has custody over the child, or by someone who resides with the child. Although 18 U.S.C. § 3509(h) by its terms applies only to cases in which a child is a victim of or witness to abuse or exploitation, prosecutors are strongly encouraged to move for the appointment of a guardian ad litem in any case in which a child is a victim of or witness to a crime.

iii. Victim Impact Statements

Department personnel should obtain and report to the probation officer accurate information concerning a child's victimization. Children may prepare victim impact statements. Child victim impact statements should be in an age-appropriate format that permits the child to express their views concerning the personal consequences of their victimization at a level and in a form of communication commensurate with their age and ability.

Department personnel should request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected, in order to provide the probation officer with the most useful and accurate information possible.

As stated in Article II.D, in order to protect the dignity and privacy interests of victims, Department personnel should exercise particular care to safeguard victim impact statements. *See* Art. II.D.1.

2. Victims of Domestic Violence, Sexual Assault, Stalking, and Human Trafficking

a. Statement of Purpose

Victims' rights laws and policies are of particular importance to victims of domestic violence, sexual assault, stalking, and human trafficking. These crimes often cause emotional trauma in addition to physical injury, which may make it more difficult for victims to report these crimes. These victims often are in great danger of future violence after reporting a crime, during the investigation and prosecution of cases, and after defendants are released from prison. Appropriate responses in these cases can save lives, prevent future violence, and promote victim recovery.

Department personnel who work with victims of domestic violence, sexual assault, stalking, and human trafficking should recognize the particular vulnerability of these victims, use their best efforts to respect the privacy and dignity of these victims, and make victim safety a high priority. These personnel should have received training on or have experience with working with victims of these crimes or should consult with Department personnel who have such training or experience.

b. Specific Guidelines

i. Evidence of Past Sexual Behavior

Evidence about a victim's past sexual behavior or alleged sexual predisposition is generally inadmissible in court. Prosecutors should be aware of this evidentiary rule and use it when appropriate. *See* Fed. R. Evid. 412.

ii. Referrals for Assistance in Developing a Safety Plan for Domestic Violence, Stalking, and Human Trafficking Victims

A safety plan is an individualized plan developed by domestic violence, stalking, and human trafficking victims to reduce the threats of harm they and their family members face. Safety plans include strategies to get to safety in the face of potential physical violence and physical or psychological harm (*e.g.*, obtaining a protective order) and strategies to maintain basic human needs (*e.g.*, housing and income) in spite of the disruptions caused by the victimization, which may include relocation, loss of employment, and physical injury. Victims may need assistance in identifying potential risks to safety and well-being, options for addressing those risks, and information about the types of services and support that may be required from the criminal justice system and community-based providers. Department victim assistance personnel should consider providing referrals to community-based victim assistance programs (including Child Advocacy Centers, Family Justice Centers, and organizations focused on particular crime victimizations or communities) with expertise to address those needs. Victim assistance personnel should also be familiar with any programs that exist in the jurisdiction that allow for confidentiality of the victim's address and the requirements for enrollment in those programs.

iii. Limited Testing of Defendants in Sexual Assault Cases

The responsible official shall advise a victim of a sexual assault that poses a "risk of transmission" of the Human Immunodeficiency Virus of the circumstances under which the victim may obtain an order that the defendant be tested

for this condition and that the results be shared with the victim. *See* 34 U.S.C. § 12391(b)(1).

iv. Payment for and Preservation of Medical Forensic Examinations of Sexual Assault Victims

A victim of sexual assault under federal law, including cases of sexual assault in Indian country, has the right not to be prevented from, or charged for, receiving a medical forensic examination. 18 U.S.C. § 3772(a)(1). Generally, a sexual assault medical forensic examination (sometimes also called a "forensic medical examination") is an examination provided to a victim of sexual assault by medical personnel to gather evidence of a sexual assault in a manner suitable for use in a court of law (*see*, *e.g.*, 28 C.F.R. § 90.2(c)), as well as to diagnose and treat the victim for possible injuries. Such an examination should include, at a minimum: (i) gathering information from the patient for the forensic medical history; (ii) head-to-toe examination of the patient; (iii) documentation of biological and physical findings; and (iv) collection of evidence from the patient. *See* 28 C.F.R. § 90.2(c)(1).

It is critically important that the investigative agency fulfill its responsibility to pay for medical forensic sexual assault examinations as other resources may not be available, and the absence of a medical forensic examination may hinder the ability of prosecutors to proceed with a criminal case.

The responsible official or the head of another department or agency that conducts an investigation into a sexual assault shall pay, either directly or by reimbursement to the victim, the cost of a physical examination of the victim and the costs of materials used to obtain evidence as well as for testing for sexually transmitted infections. *See* 34 U.S.C. § 20141(c)(7). Department components with responsibility to investigate sexual assault should develop policies and protocols that govern how the component will pay for or arrange payment for medical forensic examinations, train relevant staff on those policies and protocols, and coordinate with medical facilities that provide medical forensic examinations to ensure timely and uniform payment for exams. It is a best practice for the department or agency to pay the cost of the examination directly to the health care provider rather than to reimburse a victim who has paid for the examination. In no case shall the victim be held responsible for payment for the examination or be required to seek reimbursement for the examination from their insurer. Moreover, in no case shall a victim of sexual assault be required to participate in any

investigation or prosecution in order to be provided with a forensic medical examination free of charge.

A sexual assault victim has the right to: (i) have a sexual assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter; (ii) be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation; and (iii) be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit. Further, a sexual assault victim has the right, upon written request, to receive written notification from the appropriate official with custody of the sexual assault evidence collection kit not later than 60 days before the date of the intended destruction or disposal of the kit; and upon written request, be granted further preservation of the kit or its probative contents. A sexual assault victim has the right to be informed of the rights listed in this paragraph. *See* 18 U.S.C. § 3772(a)(2)-(4).

At the time of an assault, the victim may not be prepared to make a decision to participate in the investigation and/or prosecution of a sexual assault case. Provision of the free medical examination ensures the evidence is collected and will be available: (i) should the victim decide to participate, (ii) if the government decides to prosecute without the victim's participation, or (iii) if the evidence is needed at a later date.

Although the Violence Against Women Act of 1994 (VAWA), Pub. L. No. 103-322, 108 Stat. 1796, certification requires only that states or other governmental entities incur the full out-of-pocket costs of the elements of a sexual assault medical forensic exam listed in 28 C.F.R. § 90.2(c)(1), best practice in the field considers such an exam to include both forensic elements and medical elements, such as information, treatment, and referrals, for sexually transmissible infections, pregnancy, suicidal ideation, alcohol and substance abuse, and other nonacute medical concerns, and follow-up as needed to provide additional healing and treatment. Department policies governing medical forensic sexual assault examinations should address the payment of these related medical services that may be medically necessary, have evidentiary value, or

otherwise be deemed appropriate. Department personnel should be mindful that victims may incur expenses for medical care beyond what is minimally related to the initial collection of evidence, and help victims identify appropriate financial resources. This might include helping victims apply for victim compensation funds or medical benefits, or arranging payment from departmental funds where authorized.

v. Availability of Payment for Testing and Counseling in Cases of Sexual Assault

The responsible official of the investigative agency shall inform victims of the Attorney General's obligation to pay the costs for up to two anonymous and confidential tests of the victim for sexually transmitted diseases during the 12 months following the assault, and to pay the cost of a counseling session by a medically trained professional regarding the accuracy of such tests and the risk of transmission of sexually transmitted disease to the victim as a result of the assault. *See* 34 U.S.C. § 20141(c)(7).

vi. Right to Make a Statement About Pretrial Release

The responsible official shall reasonably, and in a timely manner, inform a victim of an interstate domestic violence, violation of a protection order, or stalking offense that they have the right to make a statement regarding the danger posed by the defendant for the purpose of determining pretrial release of the defendant or the conditions of such release. *See* 18 U.S.C. § 2263.

vii. Mandatory Restitution

VAWA requires courts to order full restitution in cases of sexual abuse (*see* 18 U.S.C. § 2248) and interstate domestic violence, violation of a protection order, and stalking (*see* 18 U.S.C. § 2264). The Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, 114 Stat. 1488, requires courts to order restitution in cases of trafficking in persons prosecuted under Chapter 77. Restitution under the TVPA shall include "the full amount of the victim's losses" including "the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act." *See* 18 U.S.C. § 1593 as amended.

viii. VAWA Self-Petitioning

VAWA allows certain foreign nationals who are victims of physical abuse to file for immigration benefits without their abusers' assistance or knowledge. This benefit is available only for the spouses and children of U.S. citizens or aliens lawfully admitted for permanent residence. See 8 U.S.C. § 1154 and Article III.H (Victims in a Foreign Country and Foreign National Victims) for additional guidance on immigration issues.

3. American Indian and Alaska Native Victims of Crime

a. Background

American Indians and Alaska Natives (AI/AN) are impacted by crime at rates far higher than most other populations in the United States. Extreme poverty, a lack of local resources, geographic isolation and other factors often compound the impact crime has on these individuals, families, and communities. Because of these factors, defending the rights of and providing services to AI/AN victims of crime in Indian country are often especially challenging. However, the Federal government has a trust responsibility to tribes, requiring Department personnel who investigate, prosecute, and respond to crimes in Indian country to make their best efforts to afford AI/AN victims the rights and services provided by law.

In addition, Department personnel should be aware that they may encounter AI/AN victims who are victims of federal crimes outside Indian country. Department personnel should be aware that those victims may share similar vulnerabilities and traditions as those who live in Indian country and should treat them in accordance with this section.

Finally, because of the complicated jurisdictional structure that applies to many parts of Indian country, Department personnel should explain to victims how responsibility for their cases will be handled and ensure that any jurisdictional questions are resolved as quickly and transparently as possible so that victims are not without support from responsible officials.

b. The Government-to-Government Relationship

The Department's Principles for Working with Federally Recognized Indian Tribes reflect the deep commitment to working closely with tribes, respecting their tribal sovereignty, and effectively responding to victims. Department personnel working in Indian country should be trained on the principle of tribal sovereignty and the unique cultural history and traditions of the tribe or tribes with which such personnel work. To achieve this goal, Department personnel working on Indian country cases must receive training on how to work effectively with tribal governments.

c. Outreach and Coordination with Tribes

In keeping with the Department's government-to-government relationship with federally recognized tribes, and consistent with federal law and Department policies and directives, appropriate officials in Department components working in Indian country are required to proactively reach out to tribal leadership to discuss how to partner on public safety issues and to address the needs of victims when cases arise. *See, e.g.*, The Tribal Law and Order Act. In conducting this outreach, federal prosecutors working Indian country cases should coordinate with other federal prosecutors with relevant expertise, particularly those who prosecute child sexual exploitation and human trafficking offenses, along with members of multidisciplinary child abuse teams. Proactive outreach will better inform Department personnel of these practices up front, which will inform their discussions with victims after a crime occurs.

Each tribe has unique cultural, spiritual, or language considerations that may impact investigatory or prosecutorial procedures. Department personnel working Indian country cases should learn about the tribes in their district and shall consult with those tribes in designing appropriate processes for both investigations and prosecutions, including preferred terminology to reference the tribe. Department personnel should also be mindful that individual AI/AN victims may or may not share the same cultural practices as other tribal members. Department personnel should discuss with victims their individual needs.

Department personnel should offer to meet tribal members in their own communities. Department personnel should endeavor to be partners not only when crimes occur but also are encouraged to participate in tribal community and cultural events to establish trust and rapport with the tribe and its members. Department personnel working in Indian country are encouraged to lead, or participate in, efforts to build collaborative partnerships between federal, tribal, and state or local law enforcement agencies to foster cooperation and information-sharing in criminal cases that may have cross-jurisdictional implications.

d. Case-Specific Communications

i. Resources

Personnel should use a victim-centered and trauma-informed approach that accounts for AI/AN victim's and witnesses' cultural traditions during the investigation and prosecution of crimes committed in Indian country. This approach includes establishing a communications plan with all relevant personnel early in a case and traveling to meet with victims in their own community whenever possible.

Participating in the court process is often financially and logistically difficult for tribal victims. Department personnel should seek to mitigate the effects of financial burdens whenever permissible under Department policy regarding advance witness fees, travel assistance, and reimbursement of court-related travel expenses for fact witnesses subpoenaed to testify at a scheduled federal judicial proceeding. *See* Art. VI (Witnesses)

ii. Privacy

Many tribal communities are close-knit and Department personnel must address victim confidentiality and privacy concerns. This obligation aligns with a victim's right to be treated with fairness and with respect for the victim's dignity and privacy as further discussed in Article V.J (CVRA Right Eight). Refer to Article II.D (Privacy Considerations for Victims and Witnesses) for a discussion regarding privacy considerations of victims. Immediate and extended family members often play a significant role in AI/AN victims' lives. Department personnel should provide opportunities for these victims to have the support of family throughout the criminal justice process, to the extent the victim desires. Sometimes, the absence of family support for a victim may indicate that the victim could be a target for retaliation for cooperating with the investigation and prosecution of the offender. Federal personnel should be aware of the potential for retaliation against the victim if they observe that the victim's family members do not appear to support the victim's desire to cooperate with the investigation or prosecution of their offender. Department personnel must promptly address any security concerns, as discussed in Article IV.F (VRRA) and Article V.C (CVRA). When victim assistance personnel discuss community resources, they should also discuss resources outside the community that may allow the victim more privacy.

iii. Media and Publicity

When issuing press releases, it is imperative that offices refrain from including information that could potentially identify the victim, embarrass the victim, or invade the victim's privacy. In a small tribal community, even the use of initials or descriptions of family relationships may be enough to identify a victim. Refer to Article II.D.2 (Sharing of Information for Law Enforcement Purposes) for a discussion of victim privacy considerations in the context of press releases, along with Article V.J (CVRA Right Eight), which discusses the issuance of press releases in accordance with

victims' right to be treated with fairness and with respect for their dignity and privacy.

e. Cultural Practices and Evidence Collection

Consistent with the right to be treated with fairness and respect, Department personnel should be aware of a particular tribe's preferred practices and take all reasonable steps to conduct investigations in ways respectful of cultural traditions to the extent that they do not create an unreasonable risk of interfering with the investigation, leading to the possible destruction of evidence, or otherwise being inappropriate or detrimental to the victims' interests. *See* Art. V.J (CVRA Right Eight). Department personnel should also afford opportunities for culturally based services wherever appropriate.

In many tribes, spiritual and cultural practices around death and burial are particularly sacred. Department personnel should be mindful of those practices when collecting evidence or collecting personal effects from the bodies of crime victims so that the body of the decedent and their personal effects can be returned to the family to observe traditional or cultural burial rites as soon as they are no longer needed for evidentiary purposes. Similarly, investigators collecting evidence shall make their best efforts to ensure the maintenance and return of that property in a manner that is consistent with the traditional or cultural practices of a victim. *See generally* 34 U.S.C. § 20141(c)(6) (requiring responsible officials to ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes). *See also* Art. IV.K (Return of Property). Burial costs or the cost of repatriating the body of a homicide victim for burial, as well as costs associated with a victim participating in traditional cultural practices as part of recovering from a crime, may be compensable through restitution, or through a state's crime victim compensation program. Department personnel should assist AI/AN victims with accessing these financial resources where appropriate.

f. Sexual Violence Crimes

Some crimes—such as sexual violence—disproportionately affect AI/AN adults and children. Due to the prevalence of these crimes in Indian country, Department personnel should be aware of how the trauma caused by these crimes may impact primary and secondary victims, specific cultural practices that may facilitate a victim's healing, and how to observe trauma-informed practices when communicating with victims in the aftermath of such crimes. A prompt and respectful response to the disclosure of sexual violence may be essential to the development of trust necessary for a viable

prosecution. *See* Art. III.L.2 (Victims of Domestic Violence, Sexual Assault, Stalking, and Human Trafficking).

In cases involving sexual violence, a victim may desire to participate in a spiritual or healing practice that could interfere with documentation of any injuries or the collection of biological evidence. For example, participation in a sweat lodge by a victim of sexual assault could hinder the collection of evidence such as semen, skin, or hair. As early as possible, Department personnel should provide information to victims of sexual violence about the potential impact on a case if biological evidence is compromised, but also respect the wishes and choices of these victims to engage in those practices, in accordance with the victims' right to be treated with fairness and with respect for their dignity and privacy. *See* Art. V.J (CVRA Right Eight).

4. Older Victims and Persons Living with Disabilities

Older adults, persons with physical and mental disabilities including emotional and behavioral disabilities, as well as persons with developmental and intellectual differences, are distinctly different groups. However, Department personnel should be aware that these groups sometimes experience similar vulnerabilities that may present unique challenges when working with these populations. These vulnerable victims and witnesses may have difficulty walking, hearing, or seeing, or be on significant medications or in chronic pain. Some may have an impaired level of cognitive function, dementia, depression, post-traumatic stress, ambivalence, or fear, which could cause them to be particularly vulnerable and anxious about the criminal justice system. Some older victims may lack familiarity or confidence with technology and internet use, making them more vulnerable to victimization and less aware of their victim status. Department personnel should take time to identify the specific needs and requirements of these populations, and address those needs and requirements in a victim-centered way.

To the extent possible (and whenever required by Section 504 referenced below), Department personnel should consider the physical limitations of vulnerable victims and witnesses when scheduling matters with the court and should make arrangements with the court in advance to accommodate any such limitations, if necessary. For example, whenever permissible under Department policy regarding reimbursement of court-related travel expenses for witnesses subpoenaed to testify, Department personnel should consider helping to make transportation arrangements to and from court for victims and witnesses who do not drive, have difficulty walking, or have other physical limitations that make it challenging to attend court proceedings. Department personnel should consider arranging for the victim or witness to attend court proceedings via video conference when permissible and appropriate. For victims and witnesses with mobility issues, including persons with disabilities who are

homebound, prosecutors should consider the use of video depositions. Arrangements should be made for wheelchairs and assistive listening devices, if needed.

For those vulnerable victims and witnesses living with intellectual disabilities or with substance use disorders, Department personnel should consider personal assistants or aides during court proceedings to ensure appropriate access to support and medical assistance as needed. The Department will provide training to recognize the symptoms of acute crisis, such as a severe mental health crisis. Department personnel should provide referrals, when appropriate, to organizations that can provide wrap-around support and services.

Department personnel should be mindful of the mandates of Section 504 of the Rehabilitation Act and other relevant statutes. Department personnel should account for a victim's or witness's disability when providing rights and services. For example, Department personnel should ensure that court-certified American Sign Language interpreters are requested, where appropriate. In addition, victims with cognitive disabilities can benefit when investigative interviews are conducted by specially trained interviewers. Whenever possible, Department personnel should ensure that interviewers are appropriate for a victim's specific needs.

Some older adult victims or victims with disabilities are also particularly vulnerable to potentially exploitive familial or caretaker relationships. Prosecutors should not share private information regarding adult victims with any person except at the direction of the victim or, in the event of death, incapacity, or incompetence, at the direction of a person described in Articles III.B.3 and III.C.3 (Representative Victims).

Whenever Department personnel suspect that an older or otherwise vulnerable adult victim or witness may be suffering from neglect, abuse, exploitation, or threatened retaliation (whether or not the person is a victim or witness in the matter being investigated or prosecuted), Department personnel should promptly contact the local Adult Protective Services agency and/or local law enforcement agency to report the concerns. Department personnel should also be aware of any applicable obligations to report such abuse and to work with Adult Protective Services pursuant to state law. The grounds for reporting such abuse may include physical evidence of abuse, sudden personality changes, disinterest in old habits, and signs of caregiver neglect. Prior to making a report to Adult Protective Services, Department personnel should inform the victim that such report will be made, unless doing so is not feasible or practical, or would endanger the victim. Department personnel should consider the effects that reporting may have on the victim's immediate safety, and make best efforts, including consult with appropriate experts, to mitigate any risk to the victim's safety that may arise from the reporting process.

In addition, Department personnel should provide referrals, where appropriate, for any available services, including to local social service agencies best able to meet the victim's needs. Department personnel should also be aware of possible nursing home abuse and report potential abuse to Adult Protective Services, law enforcement, and/or the state Attorney General's office, as appropriate. Adult Protective Services may be able to assist in identifying resources and support.

Department personnel should also seek to mitigate the effects of financial vulnerability whenever permissible under Department policy regarding reimbursement of court-related travel expenses for fact witnesses subpoenaed to testify. *See* Art. VI (Witnesses).

5. Financially Vulnerable Victims

Department personnel should seek to mitigate the effects of financial vulnerability whenever permissible under Department policy regarding reimbursement of court-related travel expenses for fact witnesses subpoenaed to testify. *See* Art. VI (Witnesses). Department personnel should coordinate these efforts with sufficient time to make arrangements. Prosecutors shall undertake best efforts to maximize restitution awarded, collected, and distributed for financially vulnerable victims. *See* Art. V.H (CVRA Right Six).

Department personnel should also be aware of possible economic consequences, retaliation, or intimidation to victims and witnesses who have a direct or indirect financial relationship with the accused. For instance, victims may be financially vulnerable because they are residing in locations that are leased, owned, or paid for by the perpetrators, such that the victims may be left without shelter as a result of reporting the crime or cooperating with the prosecution. This form of consequence, intimidation, or retaliation can be just as harmful to victims or witnesses as physical threats.

Department personnel may need to take additional measures to protect the identity of any victims or witnesses when there is an employer-employee type of relationship or other form of financially dependent relationship. Economic retaliation or intimidation can be used to prevent victims or witnesses from participating in the criminal justice process. Department personnel should be aware that there may be laws and resources to protect victims and witnesses in these circumstances such as whistleblower protection statutes, resources for emergency subsistence, court orders of protection, and conditions of bond or release.

6. Victims with Limited or No Proficiency in English

Limited English Proficient (LEP) individuals are individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. Language proficiency may be contextual. Individuals who possess English language proficiency in certain types of interactions may find that their English language skills

falter when faced with a stressful or unfamiliar situation (such as a law enforcement encounter, legal proceeding, or medical encounter).

When required, Department personnel are responsible for providing competent, quality-tested language assistance to LEP individuals in investigations, cases, and matters. Such assistance may involve interpretation (oral language assistance) and/or a translation (written language assistance or assistance relating to documents). Federal statutes (*see*, *e.g.*, 28 U.S.C. § 1827, the Court Interpreters Act), the Federal Rules of Evidence, and the Federal Rules of Criminal Procedure are among the authorities that apply to interactions with LEP victims, witnesses, and others.

In addition to language proficiency and the ability to communicate accurately, it is also important that the interpreter have no association with the victim or perpetrator, and not be another victim, family member, or minor.

Qualified interpreters may be unavailable, particularly in less populated or rural areas of the United States and its territories, or on short notice. In those circumstances, Department personnel may consider using video remote interpreters, or, if needed, toll-free telephonic interpreters. However, before doing so Department personnel should consider that it is more difficult to establish rapport with a victim remotely, and particularly over the phone, where an interpreter cannot observe body language and non-verbal cues.

M. Policies Concerning Polygraph Examinations of Victims and Child Witnesses

1. Child Victims and Witnesses

Under no circumstances may Department personnel request or administer a polygraph examination of a victim or witness who is under the age of 18. This policy does not apply to individuals under the age of 18 who are the subject of the investigation for which the examination is requested or administered.

2. Victims Who Are Adults at the Time of the Investigation

Where the victim is an adult at the time of the investigation, the following policies apply:

Department personnel are strongly discouraged from asking crime victims to take polygraph examinations. Department personnel shall consider any potential adverse impact on the victim that could be caused by even a request to administer the examination. If requesting or administering a polygraph examination on any crime victim, Department personnel shall ensure that the victim freely, knowingly, and voluntarily consents to the administration of the polygraph, and that the victim is told that administration of the polygraph is not a condition of continuing the investigation.

In addition to the conditions noted above, in the course of investigating sexual assault, domestic violence, stalking, human trafficking, or child sexual exploitation, the investigating agent may not ask the victim to take a polygraph examination in furtherance of such investigation except in extraordinary circumstances and only with the approval of both the appropriate senior supervisory Assistant U.S. Attorney (*i.e.*, section/unit chief or higher) with oversight of the investigation and/or with responsibility for approving such requests, or their equivalent in a Department litigating division, and the Special Agent in Charge of the investigating field office. Such approval shall only be provided after all other reasonable investigative methods have been exhausted.

Article IV: Mandatory Services to be Provided Under the VRRA

A. Background

The VRRA mandates that Department personnel provide certain services to "crime victims" starting from the initiation of an investigation. The VRRA provisions are referred to as "services" to be distinguished from victims' "rights," which are contained in the CVRA and are covered in Article V. There is some overlap between rights and services; for example, "reasonable protection" is considered both a right and a service. Each statute, however, has its own definition of crime victim. See Article III for the definitions under each statute.

Accordingly, there may be some victims who qualify to receive services who will not be able to enforce crime victims' rights under the CVRA. This Article primarily addresses the VRRA victim services provisions.

B. Responsible Officials

The VRRA requires the Attorney General to designate persons in the Department of Justice who will be responsible for identifying the victims of a crime and performing the services described in that section at each stage of a criminal case. These persons are referred to as "responsible officials" in the statute and the AG Guidelines. *See* 34 U.S.C. § 20141(a). Responsible officials may delegate their responsibilities under the AG Guidelines to subordinates in appropriate circumstances, but responsible officials remain obligated to ensure that delegated responsibilities are discharged.

The Attorney General designates the following responsible officials:

1. Investigations

a. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI) – the Special Agent in Charge (SAC) of the division having primary responsibility for conducting the investigation;

b. Office of the Inspector General (OIG) – the Inspector General; and

c. United States Marshals Service (USMS) – the United States Marshal in whose district the case is being conducted.

2. Once Charges Are Filed

The United States Attorney in whose district the prosecution is pending, unless a Department litigating division is solely litigating the case in which situation the responsible official is the section chief to whom the lead prosecutor reports. By mutual agreement, the United States Attorney and any Department litigating division can transfer responsible official status to the other entity. Agreements should be in writing and detail how victim obligations are to be fulfilled (*see*, *e.g.*, Memorandum from the Acting Assistant Attorney General, Criminal Division, on implementing the Attorney General Guidelines for Victim and Witness Assistance to the Director, Executive Office for United States Attorneys (June 17, 1993)).

3. Corrections

For cases in which the Bureau of Prisons (BOP) has become involved – the Director or Warden of each BOP facility where the defendant/offender is incarcerated.

4. Parole

For proceedings relating to parole, parole revocation, release to supervision for all parole-eligible offenders, and supervised-release revocation for District of Columbia offenders – the Chairman of the United States Parole Commission.

The responsible official shall designate the personnel who will carry out victim services in each Department of Justice investigating field office, United States Attorney's Office, litigating division, corrections facility, and parole office. The responsible official shall instruct designated personnel to comply with the AG Guidelines and shall delegate to such personnel the authority to carry out the activities thereby required.

C. Timing of Services

Department responsibilities to crime victims begin as soon as possible after the detection of a crime at which they may be undertaken without interfering with the investigation. *See* 34 U.S.C. § 20141(b). Generally, this point in time is defined by the opening of a criminal investigation. See Article III.B.4 for additional guidance on the time parameters for Department obligations.

D. Coordination of Services

Department personnel should coordinate with each other in providing victims with the services required by federal law and the AG Guidelines. Subject to available resources, victim witness personnel of the United States Attorneys' Offices are strongly encouraged to assist Department components with victim matters in criminal cases charged in their district.

The nature and extent of services provided may vary with the type of harm experienced by the victim and other surrounding circumstances. When victims require services provided by personnel from another Department component or other agency, Department personnel should appropriately coordinate with and

introduce victims to other components' and agencies' victim assistance personnel. Introductions should include an explanation of each component's role. Department personnel should support each other as members of a team, coordinating services to the greatest possible extent, with a goal of providing consistent services to meet victims' needs.

E. Victim Identification

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, the responsible official of the investigative agency shall identify the victims of the crime. *See* 34 U.S.C. § 20141(b)(1). Victim identification means identifying the names and contact information for victims. The responsibility for identifying victims continues with the investigative agency throughout the criminal justice process. Other Department components or other investigative agencies may also identify victims, but all identifications should be coordinated with the lead case agent.

For those components having access to the automated Victim Notification System (VNS), identified victims' names and contact information should be entered into VNS as soon as practicable, but no later than at criminal charging. In cases where the identified victim is less than 18 years old, Department personnel should enter the child's date of birth into VNS to facilitate notification when children (who may receive notification through parents or guardians) become adults and are entitled to direct notification. Non-VNS participating components should maintain victims' names and contact information in a format that can be easily converted to the VNS system should the investigation result in a prosecution.

Some specialized types of cases are not entered into VNS during the investigative stage. These include national security investigation/counterterrorism cases. In those cases, responsible officials from the investigative agency should record identified victims' names and contact information in another secure manner.

Identifying and locating victims can be one of the most difficult tasks in a case with a large number of victims. Both technology and traditional law enforcement methods can be utilized to identify victims. For example, officials may use notices on official websites, social media, or in print or broadcast media to ask victims to contact the agency. Access to a toll-free number or email address can be arranged so that victims can both provide identification information and receive information about available assistance and services. Department personnel, consistent with applicable law, may also work with banks, internet service providers, private sector entities, hospitals, schools, employers, nonprofit organizations, faith-based organizations, and disaster-assistance centers, where appropriate, to reach out to victims and to secure identification and contact information. In large white-collar crime cases, names and addresses of victims may be obtainable from the defendants' records, while in cyber intrusion or other similar cases, it may be necessary to seek the assistance of an intrusion victim or other entities to fully identify victims as well as other persons who may not be statutory victims but nonetheless may wish to take defensive measures. For

crimes involving aviation disasters, the FBI is the lead investigative agency and has specialized protocols for collecting passenger- and ground-casualty victim information.

F. Reasonable Protection

The responsible official of the investigative agency shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender. *See* 34 U.S.C. § 20141(c)(2).

When a victim has been identified, the responsibility of arranging for reasonable victim protection remains with the responsible official of the investigative agency throughout the criminal justice process. Department personnel should consider victims' legitimate security concerns at every point during the criminal justice process—to include the investigation, prosecution, incarceration, and post-incarceration supervision stages—and should coordinate with the responsible official of the investigative agency to promptly assess victim security concerns and take reasonable measures.

Department prosecutors should seek reasonable legal protections for identified victims. These measures may include requests for detention of the defendant or appropriate conditions of release such as stay-away/no-contact orders, heightened supervision, or drug and alcohol testing. When feasible, prosecutors should coordinate with victim assistance personnel when addressing victim security concerns, particularly regarding safety-planning, the provision of information about civil protective orders, and referrals to crime victim compensation programs that may have options available for emergency housing. Prosecutors should, in their discretion, consider using available resources to address victim security concerns, pursuant to existing rules and regulations governing such resources. See Article VI.B for a discussion regarding witness security and the federal witness security program.

Responsible officials shall take reasonable measures to address victims' legitimate security concerns. Considerations set forth in Article II.B should inform whether protection measures are reasonable. Moreover, determining the nature and scope of such measures requires an evaluation of the threat level and identification of reasonable options to address that threat within available agency resources as well as the risk to the security of other individuals.

COMMENTARY

The right to reasonable protection does not guarantee victims physical protection. For example, neither the CVRA nor the VRRA requires the Department to provide victims with a security detail or bodyguards to ensure their physical security.

Department personnel should use their discretion and sound judgment when discussing possible threats and protective measures with victims. Trained personnel should make victims aware of the resources that may be available to

promote their security. As with other rights and services, victims may choose to accept or decline any option or options offered by the Department. *See* Art. II.C.

Prosecutors are expected to coordinate with designated responsible officials from investigative components to develop collaborative procedures to address the security concerns of victims in their districts. Department personnel should immediately report articulable concerns about victim safety and reports of threats to the lead case agent.

COMMENTARY

Investigations may involve multiple law enforcement agencies with differing investigative authorities and resources. In multi-agency investigations, the responsible officials of the agencies should coordinate to ensure that victims receive reasonable protection from a suspected offender or persons acting in concert with or at the behest of the suspected offender. *See* Art. V.C.

G. General Information

After the investigative agency opens a case, a responsible official should provide victims with the following general information as needed:

1. Information About VNS: Victims should be informed that they generally will receive notification of case developments through VNS. In some circumstances, however, either alternative or additional means of victim notification may be necessary or appropriate. Victims may decide at any time to opt out of receiving VNS or other types of notifications. Department personnel may direct victims to websites, or provide brochures, to provide additional information about VNS.
2. Logistical Information: Victims should be informed of available assistance with respect to transportation, parking, childcare, translator services, and other investigation-related services. Once the prosecution agency files charges, the responsible official of the prosecution agency is responsible for informing and assisting victims with such information in connection with prosecution-related services. Even before the prosecution files charges, the responsible prosecution official should assist victims with logistical information in connection with pre-charging court proceedings such as grand jury appearances. The responsible official of the Parole Commission is responsible for informing and assisting victims with similar services in connection with parole hearings.
3. Department Personnel Who Are Victims of Crime: The responsible officials of each agency should inform Department personnel that they can access an Employee Assistance Program as well as generally available victim assistance programs. Responsible officials should assist personnel in accessing appropriate victim services.
4. Information About the Criminal Justice System: During all stages of the process, a responsible official should provide statutory victims with

general information about the criminal justice process, specifically including:

a. Role: The role of the victim, prosecutor, defense attorney, defendant, court, and other participants in the criminal justice process and what the victim can expect, including what requests may be made of the victim during the criminal justice process.

b. Stages: The stages in the criminal justice process that are significant to a crime victim and the manner in which information about such stages can be obtained.

See 18 U.S.C. § 1512 note (Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System); *cf*. Pub. L. No. 97-291, § 6(a)(1)(C), (D).

5. Custodial Release Eligibility Information: A responsible official of the custodial agency shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each. *See* 34 U.S.C. § 20141(c)(8).

H. Services Referrals

At the earliest opportunity after detection of a crime at which it may be done without interfering with an investigation, a responsible official shall provide identified victims with information about services available to them. *See* 34 U.S.C. § 20141(b)(2). The information shall include the name, title, business address, and telephone number of the responsible official to whom services requests should be addressed (*see* 34 U.S.C. § 20141(b)(3)), and the types of services available, including, as appropriate:

1. The place where the victim may receive emergency medical or social services. *See* 34 U.S.C. § 20141(c)(1)(A).
2. The availability of any restitution or other relief (including crime victim compensation programs) to which the victim may be entitled under this or any other applicable law and the manner in which such relief may be obtained. *See* 34 U.S.C. § 20141(c)(1)(B).
3. Public and private programs that are available to provide counseling, treatment, and other support to the victim. *See* 34 U.S.C. § 20141(c)(1)(C).

The responsibility for providing a victim with referrals for services during the investigation lies with the responsible official for the investigative agency. Once an investigation has transferred to the prosecutorial entity or charges are filed, responsible officials from the prosecutorial entity are responsible for ensuring referrals for services are made as appropriate. If a victim has already received referrals for services from the investigative agency, the prosecutorial entity and investigative agency shall employ their best efforts to coordinate any existing and new referrals to ensure consistency, avoid duplication of services, and meet the best interests of the victim and the case.

Under the CVRA, the prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to their CVRA rights. *See* Art. V.B.2; 18 U.S.C. § 3771(c)(2). In accordance with the VRRA (*see* 34 U.S.C. § 20141(c)), Department personnel are encouraged to provide victims with general information on how to seek legal representation through non-profit organizations, legal aid organizations, state bar associations, and law-school affiliated clinics. Such general information must be provided in a manner consistent with the Standards of Ethical Conduct for Employees of the Executive Branch. *See* 5 C.F.R. § 2635. Department personnel should consult with their ethics officials for additional guidance.

I. Notice of Case Events

1. During the Investigation

During the investigation of a crime, unless prohibited by a specific statute, regulation, or Department policy, a responsible official for the investigative agency shall use their best efforts to provide persons meeting the VRRA victim definition (*see* Art. III.B (VRRA Definition)) with the earliest possible notice concerning:

a. The status of the investigation of the crime, to the extent that it is appropriate and feasible to inform the victim and to the extent that it will not interfere with the investigation. *See* 34 U.S.C. § 20141(c)(3)(A).

b. The arrest of a suspected offender to the extent that it is appropriate and feasible to inform the victim and to the extent that it will not interfere with the investigation. *See* 34 U.S.C. § 20141(c)(3)(B).

COMMENTARY

Prosecutors and investigators often work collaboratively prior to formal charges being filed. If providing notice of a declination, where appropriate and if resources permit, prosecutors and investigators should coordinate and collaborate to the extent that it is practicable and will not interfere with the investigation, in an effort to facilitate the victim's understanding of the declination. In those instances, a determination of the appropriate responsible official (prosecutor's office and/or investigative agency) to provide such notice may vary depending on the circumstances and context of the particular situation. *See also* Justice Manual 9-27.240 (Initiating and Declining Charges – Prosecution in Another Jurisdiction).

2. During the Prosecution

Responsible officials from the prosecutor's office shall provide notice of court-related case events to victims meeting the VRRA victim definition to the extent that it is appropriate and feasible to inform the victim and to the extent that it will not interfere with the investigation. *See* Art. III.B (VRRA Definition). Responsible officials from the prosecutor's office shall provide

the following notices unless prohibited by specific statute, regulation, or Department policy:

a. The filing of charges against a suspected offender. *See* 34 U.S.C. § 20141(c)(3)(C).

b. The release or detention status of an offender or suspected offender. *See* 34 U.S.C. § 20141(c)(3)(E).

c. The "scheduling of each court proceeding that the witness is either required to attend or . . . is entitled to attend." *See* 34 U.S.C. § 20141(c)(3)(D).

d. The acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial. *See* 34 U.S.C. § 20141(c)(3)(F).

e. If the offender is convicted, the sentence including the date on which the offender will be eligible for parole, if any. *See* 34 U.S.C. § 20141(c)(3)(G).

COMMENTARY

Persons meeting the VRRA victim definition receiving investigative notices should continue to receive prosecution notification either through VNS or other means if VNS is not used. *See generally* Art. V.D.1 (CVRA Right Two; discussing VNS coverage). Notices should explain that only victims meeting the CVRA crime victim definition will be able to assert CVRA rights.

3. During the Corrections Process

a. Custodial Release Notification

i. After trial, a responsible official from the BOP shall provide a crime victim as defined under the VRRA (*see* Art. III.B) the earliest possible notice of:

- The escape, work release, furlough, or any other form of release from custody of the offender. *See* 34 U.S.C. § 20141(c)(5)(B).
- The death of the offender, if the offender dies while in custody. *See* 34 U.S.C. § 20141(c)(5)(C).

ii. Inmate Victims

When the victim is an inmate, the responsible official may take into consideration, in determining when notice is provided, the security of the offender inmate. If there is a serious security risk in informing an inmate victim of an offender's status, the corrections agency may time the notice to minimize that risk, even if the notification takes place after the event. This determination should be made on a case-by-case basis by the BOP responsible official and should not be interpreted to prevent an inmate victim from providing written input in any parole proceeding. The notice requirement in

this guideline applies even in cases in which a Department component is holding a defendant (such as a deportable alien) after time served.

b. Offender Reentry

In anticipation of an offender's release from custody, the BOP responsible official should take the following actions:

i. Victim Impact Statement: If the offender is subject to supervised release in a district other than the district in which the offender was sentenced, the responsible official should transmit the victim impact statement portion of the presentence investigation report to the United States Probation Office in the supervising district when the BOP responsible official submits a relocation request to the supervision district.

ii. Notification Contents: The responsible official should provide a victim with notice of the offender's release date no later than 30 days prior to the offender's release, unless impracticable because of unexpected action by a court or grant of executive clemency. The notice should also include the city and state in which the offender will be released and, if the offender is subject to supervised release, the supervising United States Probation Office contact information. This notice should also advise the victim to contact the supervising United States Probation Office if the victim receives any threatening communications from the offender. This renewed notification should not be shared with the offender or his counsel, except as otherwise required by law.

4. During the Parole Process

After conviction, the responsible official from the Parole Commission shall provide a crime victim as defined under the VRRA (*see* Art. III.B) with the earliest possible notice of the date on which an offender will be eligible for parole and the scheduling of a parole hearing, if any, for the offender. *See* 34 U.S.C. § 20141(c)(3)(G), (c)(5)(A).

The Parole Commission responsible official should notify identified victims in advance of an offender's release to supervision.

When an offender violates the conditions of release and a revocation hearing is scheduled, the responsible official from the Parole Commission shall notify the victims of the crime for which parole was granted or supervised release was imposed of the date and time of the revocation proceeding. If the alleged violation is the commission of a new crime, whether or not the offender has been convicted of the crime, the Parole

Commission responsible official should also notify the victims of the new crime.

5. **Victim's Age**

   Once a child victim reaches 18 years of age, the Department is obligated to provide that victim with notification in cases in which the crime occurred when the victim was a minor. It is also the victim's option to determine who else may receive notification on their behalf. Department personnel should take care when initiating the direct notifications, being mindful of the impact on the victim. Department personnel are encouraged to develop specialized procedures to deal with these sensitive situations. In general, Department personnel are encouraged to contact a non-offending parent or guardian before the victim's 18th birthday to determine whether the victim is aware of the crime and any special considerations that may be helpful in providing notification. The FBI has developed specialized victim notification procedures for cases involving child sexual abuse material (referred to in federal law as "child pornography"). Any Department personnel making notifications in such cases are encouraged to coordinate with the FBI.

J. Separate Waiting Area

During court proceedings, the responsible official shall ensure that a victim is provided with a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses. *See* 34 U.S.C. § 20141(c)(4).

During parole hearings, the responsible official should coordinate with the USMS, BOP, or other entity responsible for the relevant facilities to ensure that a victim is provided with a waiting area that is removed from and out of the sight and hearing of the inmate and the inmate's witnesses. *See* 34 U.S.C. § 20141(c)(4).

K. Return of Property

A responsible official from the investigative agency shall ensure that any property of a victim that is being held for evidentiary purposes is maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes. *See* 34 U.S.C. § 20141(c)(6). The responsible official from the investigative agency should also, where it does not interfere with the investigation, notify victims that the agency is holding property belonging to the victim. There may be circumstances, however, in which a victim's property will inevitably deteriorate or will be damaged through its utilization in the law enforcement process. Responsible officials may consider advising victims of such circumstances when they arise. Contraband should not be returned to victims.

L. Employer/Debt Notification

Upon request by a victim, the responsible official should assist in notifying:

1. The employer of the victim or witness if cooperation in the investigation/prosecution of the crime causes their absence from work.

2. The creditors of the victim or witness, when appropriate, if the crime or cooperation in the investigation/prosecution affects their ability to make timely payments.

Upon filing of charges by the prosecutor, this responsibility transfers to the responsible official of the prosecutor's office. *See* 18 U.S.C. § 1512 note (Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System).

Article V: Victims' Rights Under the CVRA

A. Background

The CVRA affords victims in criminal cases ten rights that are enforceable in federal courts. The CVRA "rights" should be distinguished from crime victim "services" contained in VRRA, which mandates Department personnel provide certain services to crime victims starting from the initiation of an investigation. *See* Art. IV. There is some overlap between the rights and services. For example, "reasonable protection" is considered both a right and a service. Each statute, however, has its own definition of "crime victim." See Article III for the definitions under each statute. Accordingly, there may be some victims who qualify to receive services, but who will not have court enforceable rights under the CVRA. This Article primarily addresses the victims' rights provisions contained in the CVRA.

B. Responsibilities of Department Personnel

1. Best Efforts

Department personnel engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims (as defined in Article III.C) are accorded the rights provided in 18 U.S.C. § 3771(a). *See* 18 U.S.C. § 3771(c)(1). See Article III.C.4 for a further discussion of the timing and duration of these rights.

2. Advice of Attorney

The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the CVRA rights. *See* 18 U.S.C. § 3771(c)(2). The prosecutor should provide this information as early in the criminal justice process as is feasible and appropriate. *See* Art. II.H.2.a. and Art. IV.H.

3. Complaint Process and Sanctions

The Department established the Office of the Victims' Rights Ombudsman (VRO), within the Executive Office for United States Attorneys, to receive and investigate administrative complaints filed by crime victims against Department employees, and has implemented procedures in compliance with the CVRA. *See* Procedures to Promote Compliance With Crime Victims' Rights Obligations, 28 C.F.R. § 45.10(b). The complaint process is not designed for the correction of an individual victim's rights violation, but instead is used to request corrective or disciplinary action against

Department personnel who may have failed to provide crime victims with one or more of the CVRA rights. A crime victim may file an administrative complaint against Department personnel. All of the following offices have identified Victims' Rights Points of Contact, who are responsible for reviewing and investigating victims' complaints and reporting their findings to the VRO for final determination: United States Attorneys' Offices, the Antitrust Division, ATF, BOP, Civil Division's Office of Consumer Litigation, Civil Rights Division, Criminal Division, DEA, Environment and Natural Resources Division, FBI, National Fraud Enforcement Division, National Security Division, , Parole Commission, and the USMS. The VRO may recommend disciplinary sanctions for Department personnel who "wantonly or willfully" fail to provide CVRA rights. *See* 28 C.F.R. § 45.10(e).

C. CVRA Right One: Right to Reasonable Protection

A crime victim has the right to be reasonably protected from the accused. *See* 18 U.S.C. § 3771(a)(1).

When a victim has been identified, the responsibility of arranging for reasonable victim protection remains with the responsible official of the investigative agency throughout the criminal justice process. Department personnel should consider victims' legitimate security concerns at every point during the criminal justice process—to include the investigation, prosecution, incarceration, and post-incarceration supervision stages—and should coordinate with the responsible official of the investigative agency to promptly assess victim security concerns and take reasonable measures.

Department prosecutors should seek reasonable legal protections for identified victims. These measures may include requests for detention or appropriate conditions of release such as stay-away/no-contact orders, heightened supervision, or drug and alcohol testing. When feasible, prosecutors should coordinate with victim assistance personnel when addressing victim security concerns, particularly regarding safety-planning, the provision of information about civil protective orders, and referrals to crime victim compensation programs that may have options available for emergency housing. Prosecutors should, in their discretion, consider using available resources to address victim security concerns, pursuant to existing rules and regulations governing such resources. See Article VI.B for a discussion regarding witness security and the federal witness security program.

Responsible officials shall take reasonable measures to address victims' legitimate security concerns. Considerations set forth in Article II.B should inform whether protection measures are reasonable. Moreover, determining the nature and scope of such measures requires an evaluation of the threat level and identification of reasonable options to address that threat within available agency resources as well as the risk to the security of other individuals.

COMMENTARY

The right to reasonable protection does not guarantee victims physical protection. For example, neither the CVRA nor the VRRA requires the Department to provide victims with a security detail or bodyguards to ensure their physical security.

Department personnel should use their discretion and sound judgment when discussing possible threats and protective measures with victims. Trained personnel should make victims aware of the resources that may be available to promote their security. As with other rights and services, victims may choose to accept or decline any option or options offered by the Department. *See* Art. II.C.

Prosecutors are expected to coordinate with the designated responsible officials from investigative components to develop collaborative procedures to address the security concerns victims in their districts. Department personnel should immediately report articulable concerns about victim safety and reports of threats to the lead case agent.

COMMENTARY

Investigations may involve multiple law enforcement agencies with differing investigative authorities and resources. In multi-agency investigations, the responsible officials of the agencies should coordinate to ensure that victims receive reasonable protection from a suspected offender or persons acting in concert with or at the behest of the suspected offender. *See* Art. IV.F.

D. CVRA Right Two: Right to Reasonable, Accurate, and Timely Notice

A crime victim has the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused. *See* 18 U.S.C. § 3771(a)(2); *see also* Fed. R. Crim. P. 60(a)(1).

1. Automated Victim Notification System (VNS)

For components participating in VNS, victim contact information and notice to victims should be maintained and conducted using VNS. In some circumstances, however, either alternative or additional means of victim notification may be necessary or appropriate. For example, during terrorism investigations VNS is not used, and in some locations, like Indian country, victims may not have access to postal or internet service, thereby making VNS impractical.

Responsible officials with access to VNS should enter all necessary information into VNS and shall ensure that the information is complete and accurate before transferring notification responsibilities to the next responsible official. In cases where the identified victim is a child, the child's date of birth should be entered into VNS. For specialized guidance on notifying child victims once they become adults, see Article IV.I.5. Responsible officials shall use their best efforts to provide all Department

personnel with responsibilities related to VNS with adequate training on the proper use of VNS. See Article III.H for information about notifying victims located in foreign countries.

In the event of an emergency or other last-minute hearing or change in the time or date of a hearing, the responsible official should consider providing notice by telephone or expedited means.

2. Cases with Large Numbers of Victims

a. Individual Notice

According the right to notification in cases with a large number of victims can be challenging. When necessary, Department personnel may choose to provide notification solely through electronic means such as via the VNS website, email, and call center capabilities.

b. Publication or Proxy Notice

Where the number of victims is so large as to make individual notice to victims impractical, prosecutors should file a motion seeking the court's permission for alternative notification under 18 U.S.C. § 3771(d)(2). Such alternative notification may include publication of notices through media outlets or on public websites, social media, or proxy notification to a person or entity that can disseminate notice to other victims, such as banks, internet service providers, community organizations, corporate entities, or counsel for a class of victims. Multiple forms of outreach may be appropriate in particular cases, and creativity is encouraged, with the goal of achieving actual notice to the greatest number of victims possible given the resources available. In every case, Department personnel should carefully evaluate the type of information relayed and the method of communication to minimize the risk that investigations are compromised and that victims' privacy interests are inadvertently invaded. Consistent with Article V.C of these guidelines, Department personnel should also carefully evaluate whether any safeguards may be necessary to ensure the victim's privacy in order to protect the victim from the accused when using publication or proxy notice. *See* 18 U.S.C. § 3771(a)(1).

E. CVRA Right Three: Right Not to Be Excluded from Court

A crime victim has the right not to be excluded from any public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding. *See* 18 U.S.C. § 3771(a)(3); *see also* Fed. R. Crim. P. 60(a)(2). Before making this determination, "the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding." *See* 18 U.S.C. § 3771(b)(1); *see also* Fed. R. Crim. P. 60(a)(2). The

reason for any decision denying relief shall be clearly stated on the record. *See* 18 U.S.C. § 3771(b)(1); *see also* Fed. R. Crim. P. 60(a)(2).

1. Victims Who Are Also Witnesses

The crime victim's right not to be excluded provides statutory authorization for an exception to the Federal Rules of Evidence, which mandate that, upon request, the judge exclude witnesses from court so that they cannot hear the testimony of other witnesses. *See* Fed. R. Evid. 615(4).

If a victim is a witness, and there is a potential detrimental impact from the victim hearing other witnesses' testimony, prosecutors should explain any potential detrimental impact so that the victim can make an informed decision whether to exercise this right. If the prosecutor believes that the victim's testimony would be materially altered if the victim heard other testimony at the proceeding, the prosecutor should inform the victim of this potential divergence of interests and remind the victim that they can seek the advice of an attorney in connection with asserting their rights.

Where appropriate, prosecutors should also make courts aware of the provisions of 18 U.S.C. § 3510, which prohibits a court from ordering a victim excluded from a trial based only on the victim's exercise of their right to be heard during the sentencing hearing for both capital and non-capital cases.

2. Facilitating Attendance

The Department is not required to pay a victim's expenses to attend court. Department personnel may, however, help victims to identify resources to assist them with the financial burden of court attendance. In addition, Department personnel are not required to transport inmate victims to court for hearings. The travel expenses of victims who are also witnesses, however, should be handled in accordance with Department policy for witness expenses. *See* Art. VI (Witnesses).

3. Nonpublic Proceedings

Victims do not have rights to notice of, or to attend or participate in, closed official proceedings. *See* 18 U.S.C. § 3771(a)(2)-(3). The government attorney may neither move for nor consent to the closure of a judicial proceeding that is ordinarily open to the public without the express prior authorization of the Deputy Attorney General, based upon a request processed through the Policy and Statutory Enforcement Unit of the Criminal Division's Office of Enforcement Operations. *See* Policy With Regard to Open Judicial Proceedings, 28 C.F.R. § 50.9 (2010); Justice Manual 9-5.150. As an example of the type of ordinarily public proceeding falling in this category, closed proceedings will frequently be necessary when a guilty plea is entered by a cooperator whose safety or investigative usefulness might be compromised if information about the plea were made public. Deputy Attorney General approval to close a hearing is not required for traditionally nonpublic matters, such as grand jury and juvenile

proceedings; to prevent psychological harm to a child witness (*see* 18 U.S.C. § 3509(d), (e); 28 C.F.R. § 50.9(e)(5)); and to protect national security information or classified documents. Victims do not have rights to notice of, or attendance or participation at, these closed hearings.

4. Cases with Large Numbers of Victims

In cases with a large number of victims, it may be impractical for each victim to attend personally all the proceedings they may wish to attend. In such circumstances, prosecutors should seek the court's permission under 18 U.S.C. § 3771(d)(2) for procedures to accord this right to the greatest extent possible given the resources available. Options include the use of closed-circuit television, broadcast of proceedings over a conference call or website, or a lottery and schedule for attendance. If the court changes the trial venue, prosecutors should be aware of the provisions of 34 U.S.C. § 20142, which mandates the court to order closed-circuit televising of the proceedings to the original location to permit victims to watch the trial proceedings.

F. CVRA Right Four: Right to Be Reasonably Heard

A crime victim has the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding. *See* 18 U.S.C. § 3771(a)(4); *see also* Fed. R. Crim. P. 60(a)(3).

If a victim (or a lawful representative appearing on behalf of the victim) is present at a covered proceeding and wishes to be heard, the government attorney or prosecutor should advise the court of this fact at an appropriate point in the proceeding. If the prosecutor is aware that a victim or victims will seek to be heard at an upcoming proceeding that involves release, plea, sentencing, or parole, the prosecutor should provide the court with advance notice in accordance with any local rules of procedure or practice.

If the government is seeking the death penalty, and files the proper notice, the responsible official should notify the victim and appropriate family members of their potential opportunity to address the court during the aggravation portion of the sentencing hearing and of the date, time, and place of the scheduled hearing. *See* 18 U.S.C. § 3593(a).

In cases with a large number of victims, it may be impractical for each victim to speak at each opportunity. In such circumstances, prosecutors should seek the court's permission under 18 U.S.C. § 3771(d)(2) for procedures to accord this right to the greatest extent possible given the resources available. Options may include allowing written submissions, limiting the length of oral presentation, or using a lottery or other method for selecting a limited number of oral statements.

When a defendant is convicted, Department personnel should inform the victims that they have a reasonable right to be heard at sentencing, which may be exercised by submitting a victim impact statement (VIS) in writing, orally, or possibly both. Department personnel should provide victims with information describing the VIS and assist victims with preparation of the VIS, as needed.

Whenever feasible, prosecutors should connect victims with victim assistance personnel in order to help them through the VIS process. In consideration of victims' dignity and privacy, victim impact statements should be safeguarded and not filed as part of the public record. Prosecutors should seek to include VIS in pre-sentence reports, file them under seal, or provide them to defense counsel pursuant to a protective order or nondisclosure agreement. If a VIS will be filed in the public record, Department personnel should redact PII before filing. *See* Art. II.D.1 (Privacy Considerations for Victims and Witnesses). Department personnel should also inform the probation officer about any information in the VIS that concerns the appropriate amount of restitution, if any.

For a discussion on potential opportunities for individuals who do not fall under a statutory definition of crime victim to be heard or otherwise participate in public court proceedings, see Article III.E. (Other Persons or Entities Substantially Harmed by a Crime).

G. CVRA Right Five: Reasonable Right to Confer with the Prosecutor

A crime victim has the reasonable right to confer with the attorney for the government in the case. *See* 18 U.S.C. § 3771(a)(5). However, the victim's right to confer shall not be construed to impair prosecutorial discretion. *See* 18 U.S.C. § 3771(d)(6).

1. General Principles

a. Prosecutors shall make their best efforts to confer with victims in advance of and about major case decisions, such as non-prosecution agreements, deferred prosecution agreements, pretrial diversion agreements, voluntary dismissals, agreements or recommendations in favor of release of the accused pending judicial proceedings (when such release is for non-investigative purposes), and plea agreements (pre- or post-charge).

b. Such conferences should be conducted in coordination with the relevant investigative agency and be consistent with applicable rules governing criminal procedure and professional conduct. Ordinarily, prosecutors should use such conferences to obtain relevant information from the victim and convey appropriate, nonsensitive or public information to the victim. The conference provides victims the opportunity to express their views, keeping in mind that prosecution decisions are within the prosecutor's discretion. Department personnel shall not provide legal advice to victims, either as part of these conferences or otherwise.

c. Unless authorized by court order, prosecutors shall not disclose PII, classified information, information that is reasonably likely to compromise investigative sources or methods, proprietary information, information under seal, or any information otherwise protected by law. *See* Art. II.H (Professional Responsibility Considerations).

COMMENTARY

The reasonable right to confer does not obligate the prosecutor to confer with victims every time a term in a possible agreement with a defendant changes. The conference can take place in person, by telephone, email, or other means.

2. Timing and Scope

Prosecutors shall use their best efforts to confer with victims in advance of a major case decision. Prosecutors should seek to provide victims with a meaningful opportunity to offer their views before a decision or agreement is reached.

There may be limited instances where pre-decision consultation with victims may be unreasonable or need to be limited in scope. Prosecutors, in coordination with the relevant investigative agency, should consider the following factors in determining if the scope of the conference should be limited or whether the circumstances constitute one of the rare exceptions in which conducting the conference would be unreasonable:

a. The impact on public safety and risks to personal safety of victims, witnesses, and cooperators.

b. In cases with large numbers of victims, it may not be practical to consult with each victim on an individual basis. Prosecutors shall determine the best method to convey information to the victims and to address victim concerns as part of the investigation or case. *See* Art. III.K.

c. Time constraints imposed on the investigation or case, such as whether time is of the essence in negotiating or entering a proposed agreement.

d. The need for confidentiality regarding a case decision or agreement with a defendant.

e. The defendant's right to a fair trial.

f. The potential impact on the integrity of the investigation or case. *See* Art. II.B (Protecting the Integrity of Investigations, Ensuring Security of Persons, and Providing for Prosecutorial Discretion).

g. Whether a conference or the disclosure of an imminent case decision may constitute material nonpublic information concerning a company, security, or investment that would negatively affect one or more victims or third-parties.

H. CVRA Right Six: Right to Full and Timely Restitution as Provided in Law

A crime victim has the right to "full and timely restitution as provided in law." *See* 18 U.S.C. § 3771(a)(6).

The Department is responsible not only for ensuring that those who commit crimes are prosecuted to the fullest extent of the law but also for achieving justice

for victims. Crimes can have a devastating financial effect on victims. Congress has recognized and reaffirmed the paramount importance of victim restitution in the federal criminal justice system, and restitution for crime victims is an enduring priority of the Department and its components. Department personnel's obligation to consider restitution begins before charging a case and continues until victims have been paid in full or the liability to pay terminates.

Restitution is mandatory—regardless of the defendant's ability to pay—for most federal crimes, when the statutory criteria are met. *See*, *e.g.*, 18 U.S.C. § 1593 (restitution for human trafficking victims); 18 U.S.C. §§ 2259 and 2429 (restitution for victims of child sexual exploitation); and 18 U.S.C. § 3663A (restitution for crimes of violence, property offenses, and fraud). Even when restitution is not mandatory, the sentencing court may require restitution in accordance with a plea agreement (*see* 18 U.S.C. § 3663A(a)(3)), or pursuant to the court's discretion (*see* 18 U.S.C. § 3663). The court may also require restitution as a condition of probation or supervised release. *See* 18 U.S.C. § 3563(b)(2); 18 U.S.C. § 3583(d).

Restitution to victims is a critical element of a successful prosecution. Department investigators, prosecutors, attorneys, victim-witness personnel, and financial litigation and asset forfeiture personnel all share an important role in ensuring that victims receive full and timely restitution. Department personnel working at each stage of a criminal case—investigating, charging, negotiating plea agreements, advocating for appropriate sentences, and enforcing criminal judgments—must give careful consideration to the need to provide full and timely restitution to the victims of the offenses and should work together to ensure that restitution is ordered and paid.

The responsibility to consider restitution for crime victims begins before charging. To that end, litigating components should have policies and procedures in place to ensure that prosecutors coordinate early in the investigation with financial litigation and asset forfeiture attorneys regarding asset investigations, collection of criminal monetary penalties, and other issues relating to restitution. *See* Justice Manual 9-143.200. Indeed, the best time to recover assets is as early as possible—ideally at the very beginning of the investigation—before a defendant has an opportunity to dissipate their assets. The Department has at its disposal a broad array of statutory provisions and available strategies to maximize recovery from criminal defendants to provide restitution for victims as well as to assure that ill-gotten gains are seized, restrained, or forfeited and later restored to victims of crime where authorized under federal law. *See* *Attorney General's Guidelines on the Asset Forfeiture Program* (July 2018), section II.

1. **Focus on Restitution Early in the Investigation and Throughout the Case**

   Actions taken at each stage of a case—from investigation, to charging, plea negotiations, and sentencing—all affect whether victims will receive full and timely restitution.

   a. **Investigation**

Investigators should, to the extent reasonably practicable, identify victims and gather information on the extent of victims' losses, the nexus between those losses and the defendant's criminal conduct, and whether any assets exist that might be recovered, frozen, forfeited, or otherwise used to pay restitution.

b. Charging

The amount of restitution that a court may order is affected by the crimes charged because restitution is generally only legally required for victims of the conduct of conviction. When exercising their discretion to include or exclude charges in an indictment, prosecutors should give due consideration to the need to provide full restitution to the victims of federal criminal offenses. *See also* Art. III.C.4 & commentary.

COMMENTARY

Restitution can only be imposed as authorized by statute. Accordingly, charging decisions can have an effect on which victims are entitled to restitution as well as the amount of restitution that a court can impose. For most offenses, restitution will be imposed pursuant to the general restitution statute enacted by the Mandatory Victims Restitution Act of 1996, which requires the court to order restitution to each victim in the full amount of each victim's losses. *See* 18 U.S.C. § 3664(f)(1)(A). For purposes of the MVRA, restitution for a victim's losses refers to "actual" losses or what might be considered "out-of-pocket" expenses. *See* 18 U.S.C. § 3663A(b). Other restitution statutes, however, define losses differently. Human trafficking victims are entitled to restitution not only for actual losses but also for the defendant's gains. *See* 18 U.S.C. § 1593(b)(3). As another example, under the MVRA, in order for a victim to recover psychological counseling expenses the victim must also have suffered some type of bodily injury (*see* 18 U.S.C. § 3663A(b)(2)(A)), whereas under 18 U.S.C. § 2259 (sexual exploitation of children offenses), no such bodily injury is required in order to receive restitution for counseling expenses (*see* 18 U.S.C. § 2259(c)(2)(A)). Prosecutors should consider these nuances in the restitution statutes when determining the appropriate charges to file.

c. Prejudgment Restraint of Assets

Defendants may dissipate or hide their ill-gotten gains as time passes. Prosecutors, during investigations, should consider freezing assets under 18 U.S.C. § 1345, or where appropriate, seizing or restraining assets for criminal, civil judicial, or administrative forfeiture. In cases where defendants are cooperative, prosecutors may also ask defendants for voluntary, signed agreements not to dissipate assets.

d. Plea Discussions

In plea negotiations, prosecutors should be mindful that any agreement to drop charges may impact whether victims of the dismissed charges are eligible to receive restitution, unless

restitution for dismissed charges is included in the plea agreement. *See, e.g.*, 18 U.S.C. § 3663A(c)(2). Prosecutors should also consider "requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually plead[s]." Justice Manual 9-16.320. When reasonably possible, plea agreements should identify victims' losses for purposes of restitution. Prosecutors may also consider asking a defendant to pay restitution to victims of uncharged or relevant conduct. Plea agreements should require defendants to agree that any restitution imposed by the Court shall be due and payable immediately. In the event that the Court imposes a schedule for the payment of restitution, the defendant also should agree that such a schedule represents a minimum payment obligation and it does not preclude the government from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation under applicable federal and/or state law.

Defendants who have the ability to pay some or all of their restitution should be required as part of a plea to pay what they reasonably can by the date of sentencing. *See generally* 18 U.S.C. § 3572(d)(1). Under the Sentencing Guidelines, anticipatory payment of restitution is a factor in determining "acceptance of responsibility." U.S.S.G. § 3E1.1, cmt n.1(c).

e. Presentence Investigation

Prosecutors and victim witness personnel should help assure that the probation office receives accurate information about victims' names, addresses, and amounts subject to restitution. *See* 18 U.S.C. § 3664(d)(1) ("[T]he attorney for the government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution."). Additionally, if available, information should be provided to the probation office reflecting the defendant's ability to pay. The presentence investigation report should contain, to the extent reasonably possible, accurate information about the defendant's financial condition. Prosecutors and their staff should review the presentence investigation report for accuracy as to victim information and the defendant's ability to pay, and appropriate objections should be raised in a timely fashion.

f. Addressing Restitution Issues Prior to and at Sentencing

Prosecutors and victim witness personnel should help ensure that the court has accurate information about victims' names, addresses, loss amounts (inaccurate information may prevent the clerk of the court from disbursing restitution even when funds are available), and other information relevant to calculating restitution. Prosecutors should consider filing restitution

pleadings, or including restitution calculations in sentencing memoranda, particularly in cases governed by mandatory restitution provisions. Federal law provides that "[i]f the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing." *See* 18 U.S.C. § 3664(d)(5). In rare cases, restitution may not be ordered "if the court finds, from facts on the record, that – (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process." *See* 18 U.S.C. § 3663A(c)(3). In such cases, where forfeited assets are involved, prosecutors should consult with the Criminal Division's Money Laundering, Narcotics and Forfeiture Section (MNF) to determine the most effective way of returning forfeited assets to victims. In cases with multiple defendants, the court should be asked to address joint and several liability. *See* 18 U.S.C. § 3664(h). Additionally, "[i]n any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution." *See* 18 U.S.C. § 3664(i).

Prosecutors should request that the court order restitution to be due and payable immediately. If the court determines that the interests of justice require a payment schedule be set, prosecutors should request that the order also include language stating that such a schedule represents a minimum payment obligation and it does not preclude the government from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation under applicable federal and/or state law. *See* 18 U.S.C. §§ 3613(f) and 3664(m)(1)(A).

g. Orders of Restitution

To assure that restitution issues are addressed fully and accurately, prosecutors should consider tendering a proposed order of restitution prior to sentencing or with sentencing memoranda. If not filed prior to sentencing, proposed restitution orders may be tendered to the court at the time of sentencing proceedings or subsequent restitution hearings. Any proposed order should identify all victims entitled to restitution; the amount of restitution for each victim; where appropriate, prioritization of payments among victims;

methods and schedules for payment; and issues of joint and several liability.

h. Payment Plans

By law, if a restitution order "permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made." *See* 18 U.S.C. § 3572(d)(2). Payment plans should not be written or construed to prevent enforcement activity post judgment.

COMMENTARY

There are unique restitution issues in tax cases. When the United States seeks restitution in criminal tax cases, prosecutors should avoid compromising the Internal Revenue Service's ability to collect the civil tax liability. In collecting restitution, prosecutors should be aware that there may be competing claims against the defendant's assets, including pre-existing tax liens, which may impact the actual amount available for restitution. Prosecutors should consult additional resources and the National Fraud Enforcement Division regarding restitution in criminal tax cases and cases where defendants have tax liens.

2. Interplay Between Restitution and Asset Forfeiture

Forfeiture and restitution are both mandatory components of a sentence for most federal crimes. They are not mutually exclusive; indeed, the authorizing statutes have different purposes. Forfeiture punishes the wrongdoer, while restitution compensates the victim. Accordingly, courts routinely uphold sentences that require defendants to both forfeit property and pay restitution to victims.

Whenever possible, prosecutors should use civil or criminal asset forfeiture to recover assets to return to victims of crime, as permitted by law. If a defendant has sufficient assets to pay the restitution order in a timely manner without using property forfeitable to the government, the defendant must use those assets (not the forfeitable property) to satisfy the restitution order. If a defendant does not have sufficient assets to pay the restitution order in a timely manner without using forfeitable property, the government may use the procedural provisions of the forfeiture statutes to preserve and recover forfeitable property and to apply such property to the victims of the crime underlying the forfeiture.

There are several methods by which the United States can use assets seized for forfeiture to compensate victims: (i) petitions for remission of forfeited funds; (ii) requests for restoration of forfeited funds; (iii) "hybrid" remission and restoration requests; and (iv) in limited circumstances, termination of forfeiture before entry of a final order of forfeiture. The first method—remission—is available in both criminal and civil cases. The

other methods are intended for use in conjunction with, and to assist in the satisfaction of, a restitution order entered in a criminal case.

a. Petition for Remission

Remission occurs when the Attorney General exercises discretion to transfer forfeited funds to qualified victims, owners, or lienholders of the crime underlying the forfeiture. For judicial forfeitures, this authority has been delegated to MNF. Each individual victim can submit a Petition for Remission of judicially forfeited assets to the prosecuting office. The prosecuting office obtains a report and recommendation from the seizing agency and then forwards the petition to MNF for a final determination. In administrative forfeiture, the authority to decide a petition for remission rests with the seizing agency. Whether a victim may receive remission is governed by the regulations at 28 C.F.R. Part 9.

Remission is particularly useful when there are victims of offenses that underlie civil judicial and administrative forfeitures, but there is no companion criminal case or criminal proceedings terminated prior to conviction, and thus no order of restitution. This option is also useful where there is a criminal judgment and order of forfeiture, but the court has declined to issue an order of restitution; for example, where due to the complexity of the proceedings, entry of a restitution order in the criminal case would unduly prolong the underlying criminal proceedings.

b. Request for Restoration

The restoration policy is set forth in the *Asset Forfeiture Policy Manual*. That policy allows the government to restore assets that have been forfeited judicially or administratively to victims of the offense underlying the forfeiture, who are named in a judicial restitution order. Restoration is based on the losses recognized in a criminal restitution order, provided that all victims named in the restitution order would otherwise qualify for remission under the applicable regulations. The prosecuting office submits the request for restoration to MNF on behalf of victims by certifying that the victims named in the court's restitution order meet the criteria for restoration under the policy. This option is useful when multiple victims have incurred pecuniary losses, when the interest of third-party claimants must be determined, if there are both judicially and administratively forfeited assets, or when the forfeiture involves property that would be best liquidated by using asset forfeiture procedures.

c. Hybrid Process of Remission and Restoration

If a restitution order omits victims and cannot be corrected, a "hybrid" remission and restoration process may be an efficient and just mechanism for compensating the victims. As described in the

Asset Forfeiture Policy Manual, in certain cases, MNF may determine that a hybrid request would be appropriate in light of, among other things, the number of victims listed in the existing restitution order, the number of victims omitted from the restitution order, the reasons why victims were omitted from the restitution order, and the amount of net proceeds available for distribution from the forfeited assets. In those cases, MNF may request that the prosecuting office obtain remission petitions from the omitted victims, and MNF will process a restoration request together with petitions for remission.

d. Termination of Forfeiture Proceedings Before Entry of a Final Order of Forfeiture

At the request of the United States, the district court may order, or the person from whom funds were seized may agree, that funds seized but not finally forfeited to the United States be paid to the clerk of the court toward the satisfaction of the defendant's restitution obligation. As set forth in the *Asset Forfeiture Policy Manual,* (2025), Chap. 14, Sec. IIH, this option is appropriate only in extremely limited circumstances and only if no final order of forfeiture has been entered. This option could be considered, for example, where the victims are entitled to restitution for non-pecuniary losses not compensable under the remission regulations (*e.g.*, physical or emotional injuries) and there are no third-party claimants.

COMMENTARY

There are special considerations for victims of human trafficking cases. The Justice for Trafficking Act (JVTA) directs the Attorney General to pay victim restitution orders in cases where forfeiture occurs pursuant to 18 U.S.C. § 1594. *See* 18 U.S.C. § 1594(f)(1). Accordingly, MNF processes transfer requests from prosecutors in accordance with this statutory language regardless of whether victims' losses are considered "pecuniary" as defined by the relevant remission regulations. If no restitution order exists in cases where forfeiture occurs pursuant to § 1594, MNF will consider petitions for remission that include a labor calculation as the victim's pecuniary loss, along with any other losses permitted by 28 C.F.R. Part 9.

3. Enforcement Post-Sentencing

After judgments are entered, Financial Litigation personnel should prioritize collection activity so that victims may receive full and timely restitution. Financial Litigation personnel should investigate defendants' ability to pay, and should engage in vigorous enforcement methods, which may include filing liens, obtaining writs of execution or garnishment, or adding debtors to the Treasury Offset Program.

Victims shall receive timely notice of hearings involving enforcement activities. *See* 18 U.S.C. § 3771(a)(2).

Prosecutors should be mindful that defendants who knowingly refuse to pay may be resentenced. *See* 18 U.S.C. § 3614(a).

I. CVRA Right Seven: Right to Proceedings Free from Unreasonable Delay

A crime victim has the right to proceedings free from unreasonable delay. *See* 18 U.S.C. § 3771(a)(7).

Prosecutors should be reasonably available to consult with victims regarding significant adversities they may suffer as a result of delays in the prosecution of the case and should, at the appropriate time, inform the court of the reasonable concerns that have been conveyed to the prosecutor. Prosecutors should consider raising the victim's right to proceedings free from unreasonable delay when discussing trial dates and responding to defense motions for continuances. Prosecutors should also consider any victim adversities that may result from prosecution requests for continuances and make reasonable efforts to mitigate the delay where possible and consistent with the best interests of the prosecution.

J. CVRA Right Eight: Right to Fairness and Respect for Dignity and Privacy

A crime victim has the right to be treated with fairness and with respect for the victim's dignity and privacy. *See* 18 U.S.C. § 3771(a)(8). This broad-based right is central to the purpose of the CVRA and should serve as a guiding principle for Department personnel that governs all interactions with crime victims. A victim's right to be treated with fairness and with respect for their dignity and privacy should be considered in conjunction with all of the other CVRA rights. Prosecutors shall continue to consider this right as the case progresses and rely on it to inform decisions made in connection with the provision of other CVRA rights. For example, if a prosecutor is dealing with an issue related to the victim's right to notice, the broader right to be treated with fairness and respect for dignity and privacy should inform their analysis and decision in connection with the more specific right.

Consistent with the purposes of 18 U.S.C. § 3771(a)(8), Department personnel engaged in the investigation or prosecution of a crime shall respect victims' privacy and employ best efforts to protect victims' PII and other sensitive information from unnecessary disclosure to the public. *See* Art. II.D.1. This includes PII and other sensitive information collected by Department personnel via compulsory means (*e.g.*, grand jury subpoena) for the purpose of identifying a victim.

1. Presentation of Government's Case

When responding to motions, arguments, and requests for continuances, Department personnel should consider a victim's right to fairness and to not unreasonably delay the proceedings when developing and presenting the government's position. To the extent possible, Department personnel should inform and prepare victims for what evidence or potential testimony will be presented as well as what evidence may be revealed in proceedings. Prosecutors should aim to present material at trial or in hearings in such a manner that balances the presumption of public access to the courts with

a victim's right to be treated with fairness and with respect for their dignity and privacy. Motions *in limine*, protective orders, and other means should be used to prevent unnecessary disclosure in open court of evidence affecting a victim's dignity and privacy, unless disclosure is necessary for legitimate evidentiary purposes or to ensure compliance with court rules or rulings. Whenever possible, prosecutors should work closely with victim assistance personnel to help prepare victims for the presentation of difficult or sensitive information, which may include providing information to victim assistance personnel so they can appropriately support the victim.

For information about protecting victims' PII and other sensitive information when making information available in open court or otherwise revealing information to the public at large, see Article II.D.3.

2. Press Releases, Media Inquiries, and Public Announcements

Press inquiries and other attention from the media often implicate victim privacy concerns. Department personnel should make best efforts to protect a victim's privacy and dignity when drafting and issuing press releases, responding to media inquiries, or making public announcements. Department personnel should refrain from providing public statements that identify or otherwise allude to the identity of the victim unless warranted for public safety reasons or other appropriate concerns. Department personnel should avoid directly or inadvertently identifying the victim in press releases. This means Department personnel should not only exclude from press releases PII and other sensitive information about a victim, but should also exclude information that may inadvertently identify a victim, such as the defendant's or victim's affiliation with a tribe or group, residence in a community, relationship to the victim or victim's family, or even the defendant's name, where appropriate.

Department personnel should also avoid the inclusion of sensitive information regarding the victim and the victimization in press releases or public announcements. For example, while particulars of victimization may be provided in court filings for legitimate purposes, descriptions of detailed sexual and physical violence need not be described to the same extent in a press release (absent a legitimate law enforcement concern such as a need to inform the public of a particular *modus operandi*).

Department personnel drafting press releases and other public statements should also avoid using language intended to provide the public with information about the defendant's motive, which may be perceived as "victim blaming" or damaging to the victim.

In accordance with the Department's obligations regarding reasonable protection, prosecutors should consider any security-related implications when releasing information to the public. *See* Arts. IV.F, V.C. Barring legitimate law enforcement considerations, and when feasible under the particular circumstances of the case, Department personnel should use their best efforts to attempt to inform victims in advance of or concurrent

with any significant public announcements or statements by the Department concerning the investigation or prosecution of the case. Prosecutors should also consider the effect of the public release of information on an investigation, including whether the public release of the information could interfere with an investigation.

For information about protecting victims' and witnesses' PII and other sensitive information when drafting and issuing press releases, responding to media inquiries, or making public announcements, see Article II.D.3.

3. Victim Impact Statements

In order to protect the dignity and privacy interests of victims, Department personnel should exercise particular care to safeguard victim impact statements. To the extent appropriate and legally permissible, Department personnel should use redaction or other options to avoid public filing of PII and other sensitive information contained in those statements. If victims will be delivering an oral victim impact statement, Department personnel should discuss the public nature of court proceedings to make victims aware of the risks that may be involved in disclosing PII and other sensitive information.

K. CVRA Right Nine: Right to Be Informed in a Timely Manner of Any Plea Bargain or Deferred Prosecution Agreement

A crime victim has the right to be informed in a timely manner of any plea bargain or deferred prosecution agreement. *See* 18 U.S.C. § 3771(a)(9). Prosecutors shall also make best efforts to notify identified victims in a timely manner of any non-prosecution agreement made with a defendant.

Prosecutors shall provide victims with notice of such agreements (except for those entered into pursuant to a leniency agreement or nonpublic cooperation agreement) as soon as possible, and at least with sufficient time to enable victims to exercise any other applicable rights under the CVRA, including the right not to be excluded from public court proceedings and the right to be reasonably heard at any public hearing involving release, plea, sentencing, or parole. *See* Arts. V.E, V.F.

There may be limited instances in which circumstances do not permit notice as described above. For example, maintaining the integrity of an investigation; avoiding premature disclosure of material nonpublic information concerning a company, security, or investment; protecting the safety of a witness or cooperator; or compliance with statute, rule, or regulation prohibiting disclosure of information may require delaying notice. *See also* Art. II.B. In such exceptional circumstances, prosecutors shall inform victims of the non-prosecution agreement, deferred prosecution agreement, pretrial diversion agreement, or plea agreement as soon as practicable. Prosecutors shall reevaluate the conditions giving rise to the delay as necessary with the goal of informing victims of these agreements as soon as possible, and no later than when the agreement

is made public, to enable victims to exercise applicable rights under the CVRA. This delayed notice may still be considered timely under the facts and circumstances of the individual case.

When prosecutors enter into a pre-indictment non-prosecution agreement that provides for prosecution by a state, local, tribal, or foreign authority in lieu of a federal prosecution, prosecutors shall inform victims of such an agreement in a timely manner, along with the contact information of the applicable state, local, tribal, or foreign authority, unless such notice would interfere with the integrity of an investigation or prosecution. *See also* Art. II.B.

COMMENTARY

Prosecutors are reminded that the notification requirements regarding the agreements described above are in addition to, and not in lieu of, a crime victim's right to reasonably confer with the prosecutor regarding such an agreement. Such a conference shall take place, except in limited instances, in advance of any such agreement being finalized. *See* Art. V.G.

Prosecutors are further reminded of the obligation to provide notice to victims of the acceptance of a plea pursuant to 34 U.S.C. § 20141(c)(3)(F). *See* Art. IV.I.

L. CVRA Right Ten: Right to Be Informed of Rights and Services

A crime victim has the right to be informed of the rights under this section and the services described in section 503(c) of the VRRA, 34 U.S.C. § 20141(c), and to be provided with contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice. *See* 18 U.S.C. § 3771(a)(10).

1. Crime Victims' Rights Under the CVRA

Department personnel shall inform crime victims of the rights contained in the CVRA, 18 U.S.C. § 3771(a). Notice of CVRA rights should be provided through VNS, when available to the relevant component, unless an alternative means of notice is appropriate or necessary under the circumstances. *See* Art. V.D (Right to Reasonable, Accurate and Timely Notice).

2. VRRA Services

The VRRA requires Department personnel to provide crime victims with certain mandatory services, as outlined in 34 U.S.C. § 20141(c) and further discussed in Article IV. *See also* Appendix A. The services mandated by the VRRA generally begin upon the opening of a criminal investigation. *See* Arts. III.B.4, IV.C. However, a victim's need for services may change during an investigation and prosecution. In accordance with the Department's presumption in favor of providing assistance and services to crime victims (*see* Art. II.A), when practicable Department personnel are encouraged to periodically review, with crime victims, the mandatory services available to them. For further discussion of the services afforded to crime victims under

the VRRA, and the corresponding responsibilities of Department personnel, see Article IV (Mandatory Services).

3. Victims' Rights Ombudsman

A federal crime victim may file a complaint against Department personnel alleging a violation of, or failure to provide, the rights established under the CVRA. *See* 18 U.S.C. § 3771(f). The Office of the Victims' Rights Ombudsman (Ombudsman) receives and investigates complaints filed by crime victims against Department personnel. For further discussion of the complaint process followed by the Department when victims file complaints with the Ombudsman, see Title 28 C.F.R. § 45.10. *See also* Art. V.B.3.

Department personnel shall provide crime victims with the telephone number, email address, and public website for the Ombudsman. If practicable, this information should be provided as part of the initial written contact with victims. Department components should consider including information about the Ombudsman and a corresponding link to the Ombudsman website on their public internet sites.

M. In-Court Enforcement Mechanisms

Victims' rights under the CVRA may be enforced by motions filed by the government or the victim. *See* 18 U.S.C. § 3771(d)(1); *see also* Fed. R. Crim. P. 60(b)(2). Department prosecutors are encouraged to assert victims' rights when appropriate, taking into consideration the victim's preferences and the interests of the United States. Prosecutors are urged to analyze any potential issues related to victims' rights early in the case in order to be able to assert victims' rights at the first opportunity. When filing a motion in court, prosecutors should give consideration to victim privacy and take steps to protect PII and other sensitive information from unnecessary disclosure. When a victim files a motion that the Department does not support or that the prosecutor believes is not legally warranted, the government may refrain from taking a position or oppose the motion. In such circumstances, and whenever prosecutors have questions about enforcement mechanisms, personnel in the United States Attorneys' Offices are encouraged to consult with the Executive Office for United States Attorneys, and those in the litigating divisions are encouraged to consult with their responsible officials.

If the trial court denies a CVRA rights enforcement motion, the movant may petition the Court of Appeals for an expedited writ of mandamus that must issue within 72 hours. *See* 18 U.S.C. § 3771(d)(3). In addition, on direct appeal, the government may assert as error any denial of victims' rights in the proceeding to which the appeal relates. *See* 18 U.S.C. § 3771(d)(4). A government attorney seeking to file a petition for a writ of mandamus or a direct appeal must obtain written authorization from the Solicitor General, in addition to the approvals required by that attorney's office or section. *See* 28 C.F.R. § 0.20(b). To facilitate the authorization process, the attorney must prepare a written recommendation as to why appeal or mandamus is warranted in the case and transmit that recommendation to the attorney's appellate section for them to prepare their own

recommendation for the Solicitor General. In cases involving appeals or mandamus requests from divisions other than the Criminal Division, the attorney or the division's appellate section should consult with the Criminal Division's Appellate Section. Because the authorization process will generally extend beyond the time period for filing a valid notice of appeal, the attorney should file a protective notice of appeal within the applicable time period even though it has not yet been authorized. If the Solicitor General declines to authorize an appeal, the attorney must then file a motion to voluntarily dismiss the appeal.

Article VI: Witnesses

A. Victims' Services and Rights Laws Do Not Cover Witnesses

A person who has information or evidence concerning a crime—and provides information regarding their knowledge to a law enforcement agency—is a witness. Witnesses who do not fit the CVRA definition of crime victim do not have enforceable victims' rights, and the VRRA does not require Department personnel to provide witnesses with services. Department personnel should use reasonable efforts to do all that is possible within the limits of available resources, without infringing on the defendant's constitutional rights, to assist witnesses to crime during their interaction with the criminal justice system.

B. Witness Security

Department personnel should take reasonable measures to address the security concerns of witnesses. Determining the nature and scope of such measures requires an evaluation of the threat level and identification of reasonable options to address that threat within available resources. Witnesses have the choice whether to accept the reasonable options the Department offers.

Department personnel should consider witness security concerns at every point during the criminal justice process, including during the investigation, prosecution, incarceration, and post-incarceration supervision stages. Department personnel should consult, collaborate, and coordinate with the responsible official of the investigative agency concerning witness security.

Responsible officials from the investigation, prosecution, and corrections components, as well as the Parole Commission, must work together to promptly assess witness security concerns and take appropriate measures. For prosecutors, these measures may include requests for detention or appropriate conditions of release such as stay-away/no-contact orders, heightened supervision, or drug and alcohol testing. See Articles IV.F (Reasonable Protection) and V.C (Right to Reasonable Protection) for a discussion regarding victim security concerns. Prosecutors should, in their discretion, consider using available resources to address witness security concerns, pursuant to existing rules and regulations governing such resources. Department personnel must immediately report articulable witness concerns about safety and reports of threats to the lead case agent.

Department personnel should use their discretion and sound judgment when discussing possible threats and security measures with witnesses. During these

conversations, Department personnel should be mindful of confidentiality and be careful not to reveal any information that would interfere with or compromise the integrity of an investigation or safety of any witness. *See* Art. II.B. Trained personnel should make witnesses aware of the resources that may be available to promote their safety.

Admission into the Federal Witness Security Program is an extreme measure that is only available to crucial witnesses in significant prosecutions who are in life-threatening danger. Admission to the Program must be sponsored by a prosecutor and the final determination of Program availability is made by designated officials in the Criminal Division's Office of Enforcement Operations (OEO). Responsible officials in law enforcement agencies and prosecutor's offices are not authorized to promise witnesses Program admission nor can witnesses rely on such promises absent approval by appropriate OEO officials.

C. Logistical Assistance

Prosecution agencies are responsible for informing witnesses of available assistance for transportation, parking, childcare, translator services, and other logistical matters in connection with court appearances and witness conferences.

The Parole Commission is responsible for informing and assisting witnesses with similar services in connection with parole hearings.

D. Notification of Offender Release

Department personnel may include witnesses in offender release notifications if the situation warrants.

Article VII: Nonlitigability

The AG Guidelines are intended to provide internal Department guidance for the treatment of victims of and witnesses to crime, recognizing that the circumstances presented by each case cannot be adequately predicted in advance. Consequently, decisions regarding the treatment of victims of and witnesses to crime frequently will require assessments, evaluations, and the exercise of independent judgment in light of the circumstances presented. The AG Guidelines are not intended to, do not, and should not be relied upon to create any procedural or substantive rights or to establish procedural or substantive standards of conduct or care enforceable at law in any matter, civil or criminal. No limitations are hereby intended or placed on otherwise lawful prerogatives of the Department.

Appendix A: Victims' Rights and Restitution Act (VRRA), 34 U.S.C. § 20141

34 U.S.C. § 20141

A. Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

B. Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall –

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section; and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c) of this section.

C. Description of services

(1) A responsible official shall –

A. inform a victim of the place where the victim may receive emergency medical and social services;

B. inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;

C. inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

D. assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of –

A. the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

B. the arrest of a suspected offender;

C. the filing of charges against a suspected offender;

D. the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) of this title, is entitled to attend;

E. the release or detention status of an offender or suspected offender;

F. the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

G. the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of –

A. the scheduling of a parole hearing for the offender;

B. the escape, work release, furlough, or any other form of release from custody of the offender; and

C. the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release,

D. No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c) of this section.

E. Definitions

For the purposes of this section –

(1) the term "responsible official" means a person designated pursuant to subsection (a) of this section to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including –

A. in the case of a victim that is an institutional entity, an authorized representative of the entity; and

B. in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

Appendix B: Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771

18 U.S.C. § 3771

A. Rights of crime victims – A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

(10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (34 U.S.C. § 10607(c) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

B. Rights afforded. –

(1) In general. – In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) Habeas corpus proceedings. –

a. In general. – In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

b. Enforcement. –

i. In general. – These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

ii. Multiple victims. – In a case involving multiple victims, subsection (d)(2) shall also apply.

c. Limitation. – This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

d. Definition. – For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

C. Best efforts to accord rights –

(1) Government. – Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) Advice of attorney. – The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) Notice. – Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

D. Enforcement and limitations. –

(1) Rights. – The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) Multiple crime victims. – In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus. – The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue

the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error. – In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief. – In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if –

a. the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

b. the victim petitions the court of appeals for a writ of mandamus within 14 days; and

c. in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action. – Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

E. Definitions. – For the purposes of this chapter:

(1) Court of Appeals: —the term "court of appeals" means—

a. the United States Court of Appeals for the judicial district in which a defendant is being prosecuted; or

b. for a prosecution in the Superior Court of the District of Columbia, the District of Columbia Court of Appeals.

(2) Crime Victim—

a. In general, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

b. Minors and certain other victims.—In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(3) District Court; court.—The terms "district court" and "court" include the Superior Court of the District of Columbia.

F. Procedures to promote compliance. –

(1) Regulations. – Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents. – The regulations promulgated under paragraph (1) shall –

a. designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

b. require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

c. contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

d. provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

Office of the Victims' Rights Ombuds

It is the responsibility of the Victims' Rights Ombuds to receive and investigate complaints against Department of Justice employees who violate or fail to provide one or more of the rights to which federal crime victims are entitled under the Crime Victims' Rights Act (CVRA).

A federal crime victim may file a CVRA complaint against a Department of Justice employee by using the CVRA complaint form found on the U.S. Attorneys | Office of the Victims' Rights Ombudsman website.

Ellen M. FitzGerald
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Office for Victims of Crime

The Office for Victims of Crime is committed to enhancing the Nation's capacity to assist crime victims and to providing leadership in changing attitudes, policies, and practices to promote justice and healing for all victims of crime.

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