

# Department of the Interior Departmental Manual

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**Series:** Law Enforcement and Security

**Part 446:** Law Enforcement

**Chapter 5:** Victim and Witness Assistance

**Originating Office:** Office of Managing Risk and Public Safety

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## 446 DM 5

**5.1 Purpose.** This chapter establishes procedures which the Departmental bureaus/offices that have law enforcement responsibilities should follow when responding to the needs of crime victims and witnesses. It combines the requirements of the Victim and Witness Protection Act of 1982 (VWPA), P.L. 97-291 (October 12, 1982), and the victims rights statutes (Title V, Victims' Rights and Restitution Act of 1990 (VRRRA) and Title II, Victims of Child Abuse Act of 1990 (VCAA)) contained in the Crime Control Act of 1990, P.L. 101-647 (November 29, 1990), "Act."

**5.2 Objectives.** The primary purpose of the Departmental program is to ensure that victims and witnesses are assisted and advised of the Federal (Department of Justice(DOJ)) program. This chapter is intended to ensure that responsible officials treat victims and witnesses fairly and with understanding. It also intends to be supportive of those victims and witnesses with the understanding that without their cooperation and assistance the criminal justice system would be unable to function.

**5.3 Reference.** Public Law 97-291 dated October 12, 1982; VWPA; Public Law 101-647 dated November 29, 1990, Crime Control Act of 1990; and the Attorney General's Guidelines for Victim and Witness Assistance dated August 6, 1991.

**5.4 Background.** The VWPA was enacted "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of defendants; and to provide a model for legislation for State and local governments."

According to the Attorney General Guidelines for Victim and Witness Assistance, the "Enactment of the Crime Control Act of 1990, demonstrates the continuing national concern for innocent victims of all crimes and reflects the view that the needs and interest of victims and witnesses had not received appropriate consideration in the Federal criminal justice system under the VWPA." The victims' rights provisions of this law mandate that, "officials of all Federal agencies engaged in the detection, investigation, or prosecution of crime, make their best efforts to ensure that victims of crime are treated with fairness and respect for the victim's dignity and privacy."

The 1990 VRRRA creates, in effect, a Federal Victims of Crime Bill of Rights and codifies services that shall henceforth be available to victims of Federal crime. This Act does not specifically address the treatment of witnesses; however, it reinforces and augments the VWPA in acknowledging the necessary role of witnesses in the criminal justice process and in ensuring their fair treatment by responsible officials.

The 1990 VCAA contains extensive amendments to the criminal code affecting the treatment of child victims and child witnesses by the Federal criminal justice system. The 1990 VCAA provides, inter alia, a mandatory requirement for certain professionals working on Federal land, or in a federally-operated/contracted facility, to report suspected child abuse and child sexual abuse. These guidelines also apply to statutory provisions governing the reporting of child abuse matters in Indian Country, enacted as part of the Indian Child Protection and Family Violence Prevention Act, P.L. 101-630 (November 28, 1990).

Thus, the 1990 victims' rights statutes; i.e., Title V, VRRRA, and Title II, subtitles D and E, VCAA, together with the VWPA, provide the Federal criminal justice system with enhanced statutory responsibility to assist and protect crime victims and witnesses in a comprehensive and uniform manner.

**5.5 Scope and Applicability.** This chapter applies to those components of the Department of the Interior engaged in the detection, investigation and/or the prosecution of crime. It applies in all cases in which individual victims are adversely affected by criminal conduct or in which witnesses provide information regarding criminal activity. While special attention shall be paid to victims of serious, violent crime, all victims and witnesses of Federal crime who have suffered physical, financial, or emotional trauma shall receive the assistance and protection to which they are entitled under the law. The amount and degree of assistance provided will vary according to individual need and circumstance. In some cases, the nature of the victim makes the extension of the full range of victim services inappropriate. Sound judgment will, therefore, be required to make appropriate decisions as to the range of victim services and assistance given. As a general rule, however, Federal law enforcement personnel should always err on the side of providing rather than withholding assistance.

**5.6 Limitation.** This chapter does not set forth an exhaustive, all encompassing program providing for Departmental guarantee of all applicable services and guidelines. Rather, basic service within the Department's means and abilities are set forth, with the intent that victims and witnesses will be brought further into the Federal program as the case in which they are involved progresses.

**5.7 Definitions.** For the purpose of this chapter, the following definitions apply:

A. A "victim" is generally defined as a person that has suffered direct or threatened physical, emotional, or pecuniary harm as a result of the commission of a crime, including:

(1) In the case of a victim that is an institutional entity, an authorized representative of the entity; and

(2) 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): a spouse; a legal guardian; a parent; a child; a sibling; another family member; or another person designated by the court.

(3) It may include any individual present during the commission of a Federal offense, such as a bank teller threatened or injured in the course of a bank robbery.

(4) The term "victim" also includes the immediate family of a minor or homicide victim.

(5) It should be noted that, because of the nature of Federal criminal cases, it may often be difficult to identify the victim or victims of the offense and, in many cases, there may be multiple victims. The provision of assistance in such circumstances must be determined on a case-by-case basis. Victim assistance should not be denied solely because there are multiple victims of an offense.

B. A "witness" is defined as a person who has information or evidence concerning a crime and provides information regarding his/her knowledge to a law enforcement agency. Where the witness is a minor, the term "witness" includes an appropriate family member or legal guardian. The term "witness" does not include defense witnesses or an individual involved in the crime as a perpetrator or accomplice.

C. A "serious crime" (as used in the VWPA of 1982) is defined as a criminal offense that involves personal violence, attempted or threatened personal violence, or significant property loss.

D. The term "financial" or "pecuniary" harm shall not be defined or limited by a dollar amount, thus the degree of assistance must be determined on a case-by-case basis. For example, since victims' means vary, that which constitutes a minimal financial loss for one might represent a devastating loss for another.

E. The term "child" means a person who is under the age of 18, who is alleged to be:

(1) A victim of a crime of physical abuse, sexual abuse, or exploitation; or

(2) A witness to a crime committed against another person.

F. The term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child. It does not include, however, 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.

G. The term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, or serious bodily harm.

H. The term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition.

I. The term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children; or incest with children.

J. The term "exploitation" means child pornography or child prostitution.

K. 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 a child.

L. The term "multidisciplinary child abuse team" means 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.

M. "The earliest opportunity" means one that will not interfere with an investigation or hamper the law enforcement officer in the performance of other responsibilities.

## **5.8 Exceptions.**

A. This chapter does not apply to individuals who have committed or are reasonably believed to have committed a criminal offense.

B. Federal departments and State and local agencies, as entities, shall not be considered "victims" for purposes contained in paragraphs 5.10 and 5.11 of this chapter.

C. In cases where the United States is the victim rather than an identified individual, victim services are obviously inapplicable (e.g., tax evasion and narcotics trafficking); but, in virtually all cases, there will be witnesses who will be entitled to witness services.

## **5.9 Responsibilities.**

A. To the maximum extent possible, all law enforcement bureaus/offices in the Department shall cooperate with each other in providing the services described in "Services to Victims and Witnesses." All law enforcement bureaus/offices shall keep on file a written description of the procedures and materials used to provide assistance to victims and witnesses in individual cases and shall work with appropriate components of other Federal agencies that investigate violations of Federal law to assist them in providing services to victims and witnesses consistent with those described below in "Services to Victims and Witnesses." All Federal agents shall take necessary steps to coordinate their victim and witness service efforts with State

and local law enforcement officials and with the victim and witness program officials in the appropriate U.S. Attorney's office.

B. The Law Enforcement Administrator in each bureau/office with law enforcement responsibilities shall designate one individual as the coordinator for victim/witness services. He/she should develop and maintain accurate resource materials that identify available victim/witness counseling and treatment programs in their jurisdiction.

C. Departmental law enforcement officers responsible for investigating violations of Federal law and the U.S. Attorney or other DOJ attorney who is responsible for prosecuting the perpetrators share the responsibility to decide whether the provisions contained in "Services to Victims and Witnesses" of this chapter should be applied in a particular case.

D. If assistance is needed in carrying out the provisions of this chapter, the Director, Office of Managing Risk and Public Safety, should be contacted for guidance.

**5.10 Crime Victims' Bill of Rights.** The Act provides that officers and employees of Departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the following rights:

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

B. The right to be reasonably protected from the accused offenders.

C. The right to be notified of court proceedings.

D. The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

E. The right to confer with the attorney for the Government in the case.

F. The right to restitution.

G. The right to information about the conviction, sentencing, imprisonment, and release of the offender.

**5.11 Services to Victims and Witnesses.** The law enforcement officer assigned to a criminal investigation should ensure that personal contact is initiated with victims and witnesses whenever possible and that the following services are provided:

A. Identification of Victims. According to 42 U.S.C. 10607, Sec. 503(b), "At the earliest opportunity after the detection of a crime," the responsible official (law enforcement officer) of the investigative agency shall make reasonable and diligent efforts to:

- (1) Identify the victims of a crime;
- (2) Inform the victims of their right to receive, on request, the services described in the Act; and
- (3) Inform each victim of the name, title, business address and telephone number of the responsible official to whom such a request for services should be addressed.
- (4) Provide to the victim(s), as soon as they are identified, a printed brochure, containing general information, brief description of rights and available services, as well as names and telephone numbers of key officials and victim and witness coordinators.

B. Description of Services.

- (1) According to 42 U.S.C. 10607, Sec. 503(c), "At the earliest opportunity after detection of a crime", the responsible official of the investigative agency shall make reasonable and diligent efforts to inform crime victims concerning:
  - (a) the place where the victim may receive emergency medical and/or social services;
  - (b) compensation or restitution for which the victim may be entitled under this or any other applicable law (The 1990 VRRRA provides that victims of Federal crime have a "right to restitution.") and the manner in which such relief may be obtained (see U.S. Department of Justice Attorney General Guidelines for Victim and Witness Assistance, 1991); and
  - (c) the availability of public and private programs which provide counseling, treatment, and other support to the victim. Victim/witness assistance coordinators should develop and maintain accurate resource materials that identify available counseling and treatment programs in their jurisdictions.
- (2) The responsible official shall, to the extent deemed necessary and feasible, assist the victim in contacting the specific person or office which will provide the above services.
- (3) Consistent with the provisions of 18 U.S.C. 3521-3528, the responsible official shall make the necessary and appropriate arrangements to enable victims and witnesses to receive reasonable protection against threat, harm and intimidation from a suspected offender and persons acting in concert with or at the behest of a suspected offender.
- (4) During the investigation and prosecution of a crime (if the victim or witness has provided a current address or telephone number), a responsible official shall make diligent and reasonable efforts to consult with and provide the victim or witness "the earliest possible notice" concerning:
  - (a) the status of investigation of the crime, to the extent that it is appropriate

and will not interfere with the investigation, including the decision not to seek an indictment or otherwise commence a prosecution; or

(b) the arrest or formal charging of a suspected offender. (As a general rule, investigative components will be responsible for providing them with this information.)

(5) At all times, the responsible official shall take appropriate action to ensure that any property of a victim that is being held as evidence is maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes. To this end, investigating officers shall carefully mark and identify evidence obtained in the course of an investigation. If the property is not returned promptly, an explanation should be given to the victim or witness as to the property's significance in any criminal prosecution.

(6) The bureau/office that conducts an investigation of a sexual assault shall establish procedures to pay the cost of the physical examination of the victim and of costs of materials used to obtain evidence. If a victim is billed for such an examination or materials, the victim shall be reimbursed by the appropriate bureau/office component. The bureau/office shall ensure that law enforcement officers are aware of billing procedures in order to assist victims in this regard.

C. Other Services. In addition to the services described above, other appropriate assistance should be extended to victims and witnesses, to the extent feasible, as follows:

(1) Federal prosecutors and law enforcement officers shall resist attempts by the defense to obtain discovery of the names, addresses and phone numbers of victims and witnesses.

(2) Upon request by a victim or witness, the responsible official should assist in notifying:

(a) the employer of the victim or witness if cooperation in the investigation of the crime causes the victim's or witness's absence from work. In interviewing victims or witnesses at their places of employment or other public places, investigating officers should explain to employers and others the individual's status as a victim or witness and the necessity for conducting the interview at that time; and

(b) the creditors of the victim or witness, if the crime or cooperation in its investigation affects the victim's or witness's ability to make timely payments.

(3) Responsible bureau/office officials should establish programs to assist Department of the Interior employees who are victims of crime.

(4) Victims and witnesses should be provided information or assistance, when appropriate, with respect to transportation, parking, translator services, and related services.

**5.12 Victim Impact Statement.** The responsible bureau/office law enforcement officer

assigned to an investigation should ensure that the appropriate U.S. probation officer is fully advised of information in the officer's possession that is pertinent to preparation of the victim impact statement required by Rule 32(c)(2) of the Federal Rules of Criminal Procedure, so that the report will fully reflect the effects of the crime upon victims, as well as the appropriateness and amount of restitution. The victim shall be advised as to how to communicate directly with the probation officer if he or she desires.

### **5.13 The Victims of Child Abuse Act of 1990 (VCAA).**

A. Purpose of the VCAA. The goal of VCAA is intended to assist every Federal law enforcement officer, investigator and prosecutor to take necessary and valid action to reduce the trauma to the child victim caused by the criminal justice system while at the same time increasing the successful prosecution of child abuse offenders.

#### **B. Investigating/Interviewing of Child Victims.**

##### **(1) Reporting and Investigating of Suspected Cases of Child Abuse.**

(a) Pursuant to Sec. 226, subtitle D, VCAA, certain Departmental professionals working on Federal land, or in a Federally-operated or contracted facility, in which children are cared for or reside, are required to report suspected child abuse through the bureau/office law enforcement unit to the DOJ. (Covered professionals are listed in Appendix 1 of this chapter under "Mandated Reporters of Suspected Child Abuse.")

(b) The DOJ shall designate the specific agency to receive and investigate reports of suspected child abuse.

(c) The DOJ shall disseminate a standard reporting form, with instructions, to all mandated reporter groups. Law Enforcement Administrators shall encourage the use of this form; however, its use shall not take the place of immediately making an oral report, telephonically or otherwise, to the law enforcement units, when circumstances dictate.

(d) Bureau/office law enforcement units shall ensure that allegations of sexual abuse, serious physical injury or life threatening neglect of a child are promptly investigated. If warranted, a child victim shall be referred for a medical examination by a physician with expertise in forensic examinations.

##### **(2) Referral to Law Enforcement.**

(a) When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury or life-threatening neglect of a child, there shall be an immediate referral of the report to the bureau/office law enforcement unit with authority to take emergency action to protect the child.

(b) All reports received shall be promptly investigated and, whenever appropriate, investigations shall be conducted jointly by law enforcement and social services



personnel (or multidisciplinary team) with a view toward avoiding multiple interviews with the child.

(3) Reporting in Indian Country.

(a) A separate statute, the Indian Child Protection and Family Violence Act, P.L. 101-630 (November 28, 1990), governs reporting of child abuse in Indian Country. Pursuant to its provisions, certain professionals are required to report suspected child abuse to the "local law enforcement agency." These terms are defined to mean the Federal, State or tribal agency that has the primary responsibility for child protection or the investigation of child abuse within the portion of the Indian Country involved.

(b) Furthermore, where the report indicates the victim or abuser is an Indian and a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, must report the occurrence immediately to the Federal Bureau of Investigation.

(4) The Law Enforcement Administrator should establish procedures to develop and implement multidisciplinary child abuse investigation programs, to include:

(a) A written agreement between local law enforcement, social service, health, and other related agencies to coordinate child abuse investigations;

(b) A joint initial investigative interview of child victims by law enforcement, health, and social service agencies;

(c) A requirement that, to the extent practicable, the same agency representative who conducts an initial interview conduct all subsequent interviews;

(d) Coordination of each step of the investigation process to minimize the number of interviews that a child victim must undergo.

(e) Where multidisciplinary teams are not formally established, Federal investigators should coordinate with existing child protective service agencies to reasonably protect children at risk from further abuse.

**5.14 Mandated Training/Performance Standards.**

A. All Departmental bureaus/offices with law enforcement responsibilities covered by the provisions of this chapter shall provide training to new and existing employees concerning their responsibilities in carrying out the procedures in this chapter and provide written instructions to appropriate subcomponents to ensure that the provisions of this chapter are implemented.

B. The DOJ shall provide training for all mandated reporter groups of covered professionals in their statutory obligation to report and in the identification of abused children.

C. The DOJ shall coordinate training for all Federal investigators on multidisciplinary methods of interviewing victims of child abuse and sexual child abuse.

D. Each bureau/office head will develop performance standards to ensure compliance with this chapter.

**5.15 Sanctions for Failure to Report.** The statute also provides that a covered professional who, while working on Federal land or in a Federally-operated (or contracted) facility in which children are cared for or reside, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, but fails to report, shall be guilty of a Class B misdemeanor. (18 U.S.C. 2258)

**5.16 Obstruction of Justice.** Victims or witnesses should routinely receive information on the prohibition against victim or witness intimidation and harassment and the appropriate remedies thereof. The investigating officer should, if warranted, advise appropriate DOJ officials of instances of intimidation or harassment of any victim or witness.

**5.17 Non-litigability.** This chapter provides only internal guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal. This chapter shall not be construed to create, enlarge, or imply any duty or obligation to any victim, witness or other person for which the United States or its employees could be held liable in damages. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of the Interior. Rather, this chapter is intended to ensure that responsible officials, in the exercise of their discretion, treat victims and witnesses fairly and with understanding in accordance with applicable provisions of law.

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## Appendix 1

### Mandated Reporters of Suspected Child Abuse

A. Certain professionals working on Federal land, or in a Federally-operated or contracted facility in which children are cared for or reside, are required to report suspected child abuse to an investigative agency designated to receive and investigate such reports.

B. Covered Professionals. Persons engaged in the following professions and activities are subject to the requirements of paragraph A:

(1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers,

coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

- (2) Psychologists, psychiatrists, and mental health professionals.
- (3) Social workers, licensed or unlicensed marriage, family, and individual counselors.
- (4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.
- (5) Child care workers and administrators.
- (6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.
- (7) Foster parents.
- (8) Commercial film and photo processors.

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