



## Chapter 6

### Victim/Witness Services



## VICTIM/WITNESS SERVICES

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### **FRAMEWORK: VICTIM/WITNESS SERVICES RESPONSE TO DOMESTIC VIOLENCE-RELATED CRIMES**

Victim/witness specialists, by virtue of being located within the prosecutor's office, are uniquely situated to facilitate the victim's access to the prosecutor and to the legal system. Their extensive knowledge of the legal process and their relationships with prosecutors position them to help move cases forward, ensure that victim's safety needs are accounted for in the resolution of cases, and promote victim engagement with the legal system.

This proximity to prosecutors, however, presents particular issues for victims. Because the victim witness specialist is connected to the prosecutor's office, the prosecutor's legal requirement to disclose information to the defense can be extended to conversations between the victim and the victim/witness staff person. Thus, there can be no promise of confidentiality with the victim/witness specialist. Victim/witness must be clear with victims about this and should develop relationships with community advocates who can provide assurance of confidentiality. The safety and well-being of victims is best served when victim/witness specialists and community advocates have solid working relationships that clarify the distinct and unique role each advocate plays.

Every agency within the criminal justice system, including victim/witness services, should have a comprehensive, robust, and effective language access plan that is widely distributed throughout the agency along with regular training and oversight.

## POLICY

Victim/witness specialists shall take the following actions when assisting victims of domestic violence in criminal cases, using the protocols and training memos that are referenced in this policy.

The victim/witness specialist will:

1. Determine whether the victim has Limited English Proficiency (LEP), is Deaf/Hard of Hearing (HOH) or prefers communicating in a language other than English; and, if so, arrange for and utilize a qualified interpreter and the victim's preferred method of communication in accordance with agency language access policy and *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*.
2. Inform the victim that any communications with victim/witness personnel are not confidential and may be communicated to the prosecuting attorney and thus, under certain circumstances, the defense attorney.
3. Take steps to ensure that the victim has had a voice in the decision to charge or decline a case.
4. Participate in efforts to resolve differences between charging attorneys' and investigating law enforcement officers' actions on cases from a victim safety-centered position.
5. Establish a relationship with the victim by making contact as soon as possible after charging, and maintaining contact throughout the pre-trial phase to ensure that the victim's wishes and safety needs are made central to case management.
6. Provide required victim notification pursuant to state law and assist victims in exercising their rights under the law. Ensure that written materials used to communicate information and resources are available in the most common languages spoken in the community. Provide written materials in the victim's preferred language. Provide sight translation to those with LEP if translated versions are not available in the victim's preferred language. Do not assume Deaf/HOH individuals are fluent in written English.
7. Assist the victim with restitution and reparations requests.

- 8.** Assist the victim in preparing a victim impact statement and ensure that the statement is presented to the court in accordance with the victim's wishes. Use a translator when preparing a written statement with a victim who is LEP. Recognize that Deaf/HOH individuals may not be fluent in the written English language and be prepared to use a qualified interpreter to assist in presenting an oral statement to the court. See *Appendix 6A: Training Memo—Victim Impact Statements* and *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*.
- 9.** Facilitate the preparation of the victim and other witnesses to testify at trial.
- 10.** Enhance safety by providing post-conviction information and support.
- 11.** Meet quarterly with representatives from prosecution, probation, court administration, and community-based advocates to discuss and review randomly selected cases to assess compliance with policy and protocol.

The following appendices are included as part of this policy:

- *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*
- *Appendix 1B: Training Memo—Risk and Dangerousness*
- *Appendix 1C: Training Memo—Intervention with Victims of Battering as Suspects or Defendants*
- *Appendix 1G: Training Memo: Enhancing a Coordinated Response to the Intersection of Domestic Violence Crimes and Access to Firearms*
- *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*
- *Appendix 5D: Sample Policy Language—When to Compel a Victim to Testify*
- *Appendix 6A: Training Memo—Victim Impact Statements*
- *Appendix 6B: Training Memo—Responding to Victims with Disabilities*
- *Appendix 6C: Victim Witness Advocacy in Domestic Violence Cases*

See the Blueprint Supplement for appendices referenced in the policy and

protocols. All training memos are based on Minnesota law. Other jurisdictions should make modifications as necessary.

## **Protocol 1**

### **A. Charging**

1. Upon contacting the victim, inform her or him that any communications with the victim/witness specialist are not confidential and may be communicated to the prosecuting attorney and thus, under certain circumstances, the defense attorney. Refer the victim to community-based advocacy services to ensure the victim has access to a confidential advocate.
2. Ensure that the victim has had a voice in the decision to charge or decline a case.
  - a. If the victim desires, meet with her/him and the prosecutor to ensure that the victim's concerns are thoroughly considered and that she/he understands the basis for the prosecutor's decision. Communicate in the victim's preferred language and method of communication.
3. Participate in efforts to resolve differences between charging attorneys' and investigating law enforcement officers' actions on cases from a victim safety-centered position.
  - a. Attend regular interagency meetings with prosecutors and the head of the agency investigating domestic violence crimes to review problematic cases and discuss how to resolve differences.

### **B. Pre-trial support and information**

1. Establish a relationship with the victim by making contact as soon as possible after charging and maintaining contact throughout the pre-trial phase to ensure that the victim's wishes and safety needs are made central to case management.
  - a. Be diligent in efforts to contact the victim by:
    - Calling all numbers provided in the law enforcement report.
    - Using text or email if the victim has indicated a preference for using one or more of these methods of communication.
    - Checking the location of the family through school records.

- Contacting the local community-based advocacy program to see if they have talked with the victim and have permission to share information to help you connect.
  - Sending a letter to the victim's last known address with information about charges, the defendant's custody status, the conditions of release, the defendant's next appearance, the rights of crime victims, how to reach the advocate, and how the advocate can assist the victim. Provide written materials in the victim's preferred language. Offer sight translation to those with LEP if translated versions are not available in the victim's preferred language. Do not assume Deaf/HOH individuals are fluent in written English. See *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*.
- b. Communicate in the victim's preferred language and method of communication. If uncertain of victim's preferred language, send written communication in a variety of languages. When assisting a victim who is Deaf/HOH, do not assume English fluency. Arrange for a qualified interpreter to communicate the necessary information to the victim, using the victim's preferred method of communication, i.e., text messaging, email, audio or video remote services.
  - c. Offer support, resources, information and opportunities to participate in the process. Refer to culturally relevant resources in the community if they exist.
  - d. Orient the victim to the criminal justice system by answering her/his questions about:
    - Bail, conditional release and no-contact orders
    - The charges and what they mean
    - The criminal process and the role of the various players
  - e. Emphasize the state's responsibility in carrying the case forward and how and where the victim can affect the prosecutor's decision-making.
  - f. Explore the victim's concerns about safety and problem solve regarding the use of bail, no-contact orders and conditions of release to enhance safety.
    - Refer to shelter, local legal advocates, culturally relevant services and other community resources.

- Discuss with the victim whether the defendant has access to and experience with firearms, as well as any fears she or he might have related to this. If the victim is reluctant to discuss this, arrange for her or him to consult with a confidential community-based advocate before continuing the conversation. (See *Appendix 1G: Training Memo: Enhancing a Coordinated Response to the Intersection of Domestic Violence Crimes and Access to Firearms* for more information and resources.)
  - Discuss with the victim what information she/he wants brought to the attention of the court.
- g. In cases where the victim does not want a no-contact order, explore her/his concerns about the impact of an order.
- Explore whether the victim's safety might actually be enhanced if some contact with the defendant is permitted, including exploring with the victim, if desired, what community support and strengths exist that can enhance safety and minimize risk of harm.
  - Try to determine if the victim is being intimidated by the defendant or others; if so, do safety problem solving.
  - Talk with the victim about specific safety concerns. See *Appendix 1A: Practitioners' Guide to Risk and Danger in Domestic Violence Cases*.
  - Communicate the victim's wishes and concerns as well as crucial information regarding risk and danger to the prosecutor.
- h. If the victim indicates to the victim/witness specialist that the defendant has made implied or direct threats regarding her/his participation in the case, discuss the requirement to notify the law enforcement investigator and the likely related follow up. Arrange for her or him to consult with a confidential community-based advocate. Notify the law enforcement investigator and request that he or she follow up with the victim.
- i. Be available to address victim concerns and answer questions throughout the pre-trial phase.
2. Provide required victim notification pursuant to state law and assist victims in exercising their rights under the law.
- a. Notify verbally and send copies of pertinent documents, including:
- No-contact and pre-trial release orders



- Notification of court hearings
  - Notice of victim's rights and victim/witness services (check state law for specific rights of crime victims)
  - Financial assistance available to crime victims in the form of restitution and reparations
  - How to access VINE (Victim Information and Notification Everyday) for information about changes in the defendant's custody status
- b. Ensure that written materials used to communicate information and resources are available in the most common languages spoken in the community. Provide written materials in the victim's preferred language. Provide sight translation to those with LEP if translated versions are not available in the victim's preferred language. Do not assume Deaf/HOH individuals are fluent in written English.
3. Seek input from the victim on case resolution and explore its impact on her/his life.
- a. Explore the victim's wishes concerning any proposed negotiation, including:
- Incarceration
  - Batterers' groups
  - Evaluation, treatment, and level and frequency of monitoring of the defendant's alcohol/drug use
  - Mental health evaluation, treatment or requirement that the defendant be compliant with medications or other treatment
  - Offender contact with the victim and/or children
  - Potential impact of the criminal case outcome on family, juvenile, housing, immigration and/or other court cases
- b. Forward this information to the prosecutor.
- c. If the victim disagrees with a proposed negotiation, ensure that the victim's arguments are thoroughly considered and that she/he understands the prosecutor's reasoning.
- d. If disagreements cannot be resolved and the victim wishes to state her/his opposition on the record, ensure that the judge is made aware of the victim's stance.

4. Assist the victim with restitution and reparations requests.
  - a. Make necessary forms and procedural information available, and help complete forms and gather information to substantiate the victim's financial losses.
5. Assist the victim in preparing a victim impact statement and ensure that the statement is presented to the court in accordance with the victim's wishes. Use a translator when preparing a written statement with a victim who is LEP. Recognize that individuals who are Deaf/HOH may not be fluent in the written English language and be prepared to use an interpreter to assist in presenting an oral statement to the court. See *Appendix 6A: Training Memo—Victim Impact Statements* and *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*.

**C. Assistance at Trial**

1. Facilitate the preparation of the victim and other witnesses to testify at trial.
  - a. Use all avenues to locate victims and other witnesses, including:
    - Contacting shelters or advocacy programs.
    - Leave messages requesting that the victim call the victim/witness advocate.
    - Checking the location of the family through school records
    - Asking witnesses if they know how to find the victim
    - Requesting assistance from law enforcement investigators
2. Communicate with witnesses regarding subpoenas and the trial schedule.
3. Arrange accessible transportation, lodging, certified interpreter services or other logistical support for victims and other witnesses.
  - a. Intercede with employers to secure witness availability.
  - b. Arrange for the payment of witness fees, childcare expenses and lost wages as allowed by state statute and office resources.
  - c. Arrange for safe waiting space as requested by the victim or witnesses.
4. Orient victims and other witnesses to the court proceedings.

- a. Prepare victims and other witnesses for working with an interpreter and address any concerns about appearing in court, particularly for immigrant victims.
  - b. Give particular attention to the needs of child witnesses by:
    - Meeting with them in a child-friendly setting
    - Talking with them about what to expect
    - Taking them on a tour of the courtroom
    - When using an interpreter, explore the child's level of comfort with the interpreter.
    - Taking other steps necessary to minimize her/his discomfort.
  - c. Support the needs of adult victims with disabilities. Consider using pictorial guides when assisting victims who are Deaf/HOH. See *Appendix 6B: Training Memo—Responding to Victims with Disabilities* and *Appendix 1H: Training Memo: Building Language Access for the Deaf Community into the Criminal Legal System Response to Domestic Violence*.
5. Escort victims and other witnesses to the courtroom and remain to provide support.
  6. Wait with or maintain contact with the victim while the jury deliberates and prepare to assist and support the victim following the verdict.
    - a. Communicate the case outcome, answer questions and explain options.
    - b. Be particularly attentive to victim safety in the case of an acquittal.

**D. Post-Conviction Assistance**

1. Enhance safety by providing post-conviction information and support.
  - a. Facilitate victim connection to probation following a guilty plea or verdict.
    - Notify the PSI writer supervisor of updated contact information for the victim, unless the victim has requested otherwise.
    - Provide the number of the probation supervisor if the victim is unsuccessful in making a connection with the PSI writer.
  - b. Contact victim prior to sentencing to discuss the sentencing hearing. Determine whether the victim has talked to the PSI writer or plans to attend the sentencing hearing.

- c. Attend the sentencing hearing.
  - Provide support if the victim is present.
  - Ensure that the victim impact statement is presented to the court in accordance with her/his wishes.
  - Call the victim to discuss the sentence if she/he does not attend.
2. Reduce the financial impact of the violence by assisting with restitution and reparations.
3. Make sure the victim has contact information for the probation supervisor to report violations. Work with the probation officer and prosecutor to address violations promptly.
4. When the sentence involves jail or prison time, inform the victim how to request notification of inmate release. Help the victim prepare for release by assisting with obtaining a restraining order, providing referrals to shelter or community advocacy, providing information about how to legally relocate and other safety measures.
5. Notify the victim of any post-conviction motions filed by the defense for appeal or expungement of the record. Talk with the victim about the process and assist her or him in communicating any concerns to the court.

## CHAPTER 6 ENDNOTES

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[no endnotes]