

## Law Enforcement Handbook

### Chapter 5c: Victim Assistance Program – Special Considerations for Vulnerable Victims Date issued: January 15, 2016

#### 5.1 Responsibilities.

- A. General Considerations for Particularly Vulnerable Victims - Special care and more intensive services may be required for certain categories of victims, including children (victims and witnesses), domestic violence, stalking and sexual assault and human trafficking victims, family members of homicide victims, the elderly, those with disabilities, and other victims who are underserved and lack adequate access to resources. DOI LEO, DOI VAP and law enforcement support personnel should also recognize that crime victims often are more likely to be victimized again, and should recognize and assess for poly-victimization, particularly with the most vulnerable populations such as children and people with disabilities, to ensure that they receive all pertinent rights and services.
  1. Restitution – Focus on restitution, particularly for victims with significant losses, should begin early in the investigation and throughout the case. Investigators should, to the extent reasonably practicable, identify all victims and obtain as much information as possible on the extent of victims’ losses.
  
- B. Special Considerations for Child Victims and Witnesses – Federal law contains a number of protections for children involved in the federal criminal justice process as victims and witnesses. During the investigation and prosecution of a case, LEOs, VAP personnel and law enforcement support personnel shall use their best efforts to protect the safety of children and to minimize their exposure to trauma.
  1. Protecting children during the investigation process
    - a. Child safety and well-being – DOI LEOs should ascertain whether children are likely to be present when law enforcement are interviewing family members, such as during an arrest, search warrant execution, or other law enforcement action, and should take appropriate action to minimize their exposure to trauma and address their safety and well-being. DOI LEOs should remain alert to environments in which children are present during the manufacture, distribution or use of illegal or pharmaceutical drugs, as children in these situations are particularly vulnerable to abuse, neglect and polyvictimization. In situations involving child victims

and witnesses, DOI LEOs should coordinate with VAP personnel and child protection workers as appropriate.

- b. Interviewing child victims and witnesses – DOI LEOs should, to the extent possible, coordinate all steps of the investigative process involving child interviews with law enforcement partners, VAP personnel, or other professionals with expertise in working with children. If possible, LEOs should utilize multi-disciplinary child abuse teams and trained child forensic interviewers to conduct interviews of child victims and witnesses. If there is reason to believe that a child has suffered physical or sexual abuse, LEOs and VAP personnel must refer the child immediately for a medical evaluation.

2. Protecting the privacy of child victims and witnesses

- a. Children’s identifying information shall not be disclosed – Federal law requires all government employees connected with a criminal proceeding to keep all documents that disclose the name or any information concerning a child victim or witness in a secure place and to limit disclosure to those who are permitted by statute to have access to the information. 18 U.S.C. § 3509 (d). When issuing press releases, LEOs, LEO support personnel and VAP personnel should under no circumstances, include information that would lead to the identification of a child victim or witness or any other victim who has requested that their name or information not be released to the public.
- b. Sanctions for violating disclosure rules – It is a criminal offense punishable by up to one year in prison and/or a fine, to knowingly or intentionally violate the child privacy protections found in 18 U.S.C. § 3509. See 18 U.S.C. § 403 (2006).

3. Child abuse reporting requirements –

- a. General reporting requirements – All LEOs, law enforcement support personnel and victim assistance personnel must report suspected child abuse. If a DOI employee becomes aware of suspected child abuse, he or she (must) will notify child protective services, and when the situation warrants, contact local law enforcement or the FBI in the location where the abuse is suspected to have occurred. Child abuse reports will be documented in the investigative file. The first LEO responding to a report of child abuse or sexual abuse must refer the child victim for an emergency medical examination.

- b. State mandatory reporting laws – All DOI LEOs, law enforcement support personnel and VAP personnel should consult the child abuse reporting laws in the state in which they work to determine the scope of their obligations to report suspected child abuse under state law. Reports of child abuse required by state or local law shall be made to the agency or entity designated in the state’s law to receive such reports.
  
- c. Federal child abuse reporting laws -- Under 42 US.C § 13031(b) 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) working on federal land or in a federally operated (or contracted) facility to report suspected child abuse to local law enforcement or child protection who has jurisdiction to investigate such reports in the area or facility in question. When no local agency has jurisdiction to investigate such reports, the report will be referred to the FBI. Reports may be made verbally or in writing, and must be documented in the LEO’s incident report.
  - i. *Suspected child abuse reported directly to DOI LEO* – When a DOI\_LEO receives a report of child abuse from any person or entity that involves allegations of sexual abuse, physical injury or life-threatening neglect of a child, the LEO shall immediately refer the report to the bureau/office law enforcement unit with authority to take emergency action to protect the child. Reports should be investigated immediately, and if warranted, the child should be referred for a medical exam by a trained forensic medical professional. (I like the original language in the first policy...let’s discuss...)
  
  - ii. *Child abuse discovered from a confidential source* – When LEO, LEO support personnel or VAP personnel learn of suspected child abuse from information gathered during a confidential 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 significantly compromising the investigation or other confidential source such as classified information, or endangering public safety, LEOs, LEO support personnel and VAP personnel shall obtain guidance from the designated Responsible Official for the BDLEs (or Bureau or Office??) regarding the appropriate course of action. Responsible officials may not delegate this responsibility, and should

consult with child abuse experts when evaluating these situations. DOI responsible officials should be aware of criminal and other penalties that could result from a decision not to report the suspected abuse.

d. Reporting suspected American Indian/Alaska Native (AI/AN) child abuse in Indian Country

(i) *Reporting requirements* - Reporting child abuse in Indian Country is governed by the Indian Child Protection and Family Violence Prevention Act, 18 U.S.C. § 1169 (2006) and 25 U.S.C. § 3203 (2006). Under these laws, certain categories of professionals (such as LEOs, social workers, and teachers) are required to report suspected 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.

(ii) *American Indian/Alaska Native (AI/AN) child victim or suspect* - If the report involves an AI/AN child victim or AI/AN abuse suspect and a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the FBI, shall refer the report immediately to the FBI.

e. Failure to report suspected child abuse is a crime - A mandatory reporter who fails to make a timely report of suspected child abuse while working on a federal land or in a federally operated (or contracted) facility may be guilty of a criminal offense punishable by up to one year in prison and/or a fine.

C. Special Considerations for Victims of Domestic Violence, Sexual Assault and Stalking

1. Referrals for safety planning - DOI LEOs, LEO support personnel and VAP personnel shall assist domestic violence, stalking and sexual assault victims in identifying potential safety risks and developing options to address these risks, such as temporary relocation and emergency housing. If appropriate, LEOs, LEO support personnel and victim assistance personnel should refer victims to community-based victim services programs that can assist the victim in developing a safety plan.

a. Special services and victim safety:

- i. *Provide victim with copy of police report needed to get a civil protection order consistent with DOI FOIA and Privacy Act policies and procedures as set forth in DOI guidance on FOIA and Privacy Act; LEO should not provide contact information of witnesses or other individuals listed in these reports if security concerns are present;*
    - i. *Assist victims who need to identify housing or relocation options when security concerns are present;*
    - ii. *Request “no contact” orders as condition of release. When appropriate, ask prosecutors, probation or parole officers to request no contact orders as conditions of release and to pursue violation of protection order charges if supported by the investigation and as appropriate; and*
    - iii. *Refer undocumented immigrant victims for assistance. Undocumented immigrants who are victims of domestic violence, sexual assault or stalking may be eligible for special immigration relief. LEO, LEO support personnel and victim assistance personnel should refer victims to community organizations that provide support to undocumented immigrant victims*
2. Limited HIV testing of defendants in sexual assault cases (applies to cases charged in state court as well – see 42 U.S.C. Sec. 14011(b) (1) – LEO or VAP personnel should explain to sexual assault victims that a victim of a sexual assault that “poses a risk of transmission” of HIV, may request an order from the federal district court in the jurisdiction in which the offense occurred, for limited HIV testing of a defendant and that the results be shared with the victim. Victims of certain sexual assault crimes for which a defendant is convicted in the Superior Court of the District of Columbia also may seek a court order requiring limited HIV testing of the defendant. LEO and VAP personnel should refer the victim to the United States Attorney’s Office victim coordinator to determine how they can exercise their right to request limited HIV testing of the defendant.

LEO or VAP personnel should advise victims of the risks of transmission of HIV and STDs that may occur as a result of a sexual assault, and encourage them to consult a medical professional for additional information.

3. Payment for sexual assault examinations – The LEO should inform sexual assault victims that, in cases in which DOI is the lead investigative agency, DOI will pay the cost of the victim’s forensic

sexual assault examination directly. In no case shall the victim be held responsible for payment of the examination or required to seek reimbursement from his or her insurer. Victims should not have to pay these costs out of pocket, even if they will be reimbursed at a later date. Further, a victim of sexual assault shall not be required to cooperate with law enforcement or the prosecution in order to be provided with a forensic medical examination at no cost to the victim. DOI LEO bureau/offices are encouraged to assist victims when practicable with payment of sexual assault exams when the lead investigative agency is state, local, or tribal, and there are no available resources.

4. Full Faith and Credit of Protection Orders – In domestic violence cases, LEOs must determine whether the victim has a protection order and whether the jurisdiction in which the crime occurred will honor the protection order through full faith and credit, and advise the prosecuting agency that a suspect/defendant may be in violation of a protection order.

D. Special Considerations for Victims of Human Trafficking - LEOs often are the first to respond to commercial sexual exploitation and sex trafficking cases and occasionally, labor trafficking cases. This means that their ability to identify victims, investigate cases, and make appropriate referrals for services is crucial. LEO and VAP personnel are encouraged to receive training on detecting and responding to victims of human trafficking, particularly in areas that include known transportation routes of traffickers or in locations where higher frequencies of victims have been identified. In addition, LEO and VAP personnel should be aware of resources and tools to assess or support such victims.

1. Special services for victims of human trafficking
  - a. Refer victims to comprehensive and specialized services for victims of human trafficking, often with wrap-around services, such as legal services, housing assistance, and multilingual staff or translation capabilities. LEO and VAP personnel are encouraged to identify and develop contacts with victim services organizations and programs that assist trafficking victims within the local area
2. Detention – To the extent practicable and allowed by law, victims of severe forms of trafficking should not be formally detained. If detention is necessary, the facilities they are held in should be appropriate to their status as crime victims. Separate housing with medical and mental health care and safety measures is preferred.

3. Anti-Human Trafficking Task Forces – many states or regions have task forces that coordinate resources and responses to victims of trafficking, identify trends, and provide training. These task forces often are coordinated through the U.S. Attorneys’ Offices. DOI LEO and VAP personnel are encouraged to attend task force meetings to identify resources and learn about detection efforts and strategies.
  4. President's Interagency Task Force to Monitor and Combat Trafficking in Persons requests annual information to assist in the coordination of anti-trafficking efforts. Information about your efforts to combat human trafficking and to assist victims of human trafficking should be provided to the BVAP program coordinator.
  5. Specialized Training – LEO and VAP personnel are encouraged to attend specialized training on identifying, rescuing, and providing rights and services to victims of human trafficking.
- E. Special Considerations for Victims in a Foreign Country and Foreign Nationality Victims - The VRRRA and CVRA apply to foreign nationals regardless of their legal status (i.e., tourists, students, visitors, and documented or undocumented immigrants) who otherwise qualify as victims under these laws, regardless of whether they live in the United States or abroad.
- F. Victims living in a Foreign Country - When foreign nationals are victimized while visiting the U.S., and otherwise qualify for VRRRA services or CVRA rights, they are entitled to VRRRA services and if applicable, CVRA rights, regardless of whether they return to their home country. Notice related to the investigation or prosecution would be the most likely reason to contact victims abroad. Each country has its own procedures and requirements for contacting persons located in its territory. Many foreign countries do not allow foreign government officials to contact their citizens directly. DOI LEOs, LEO support personnel and victim assistance personnel must coordinate contact with foreign victims with the FBI’s legal attaché for the country where the citizen resides if the FBI is involved in the case, or with the Department of Justice’s Office of International Affairs in all other instances, coordinating with the USAO if the case is in the prosecution phase.
- G. Undocumented Alien Victims - There are various types of immigration relief available to victims or witnesses who assist in the investigation or prosecution of certain criminal activity. Department personnel must not offer victims or witnesses legal advice about immigration relief issues. If a victim or witness is pursuing legal status, Department personnel should provide, when warranted by the circumstances, the supporting law enforcement documentation required for victim petitions for immigration relief. In responding to these requests, DOI LEO and VAP must coordinate with the

FOIA/Privacy Act personnel, and should maintain a record of the victim's request and the documentation provided.

Department personnel should inform the prosecutor immediately about any immigration relief issues in the case as relief may constitute a benefit to the victim and may be subject to disclosure if the victim or witness testifies at trial.

- H. Identity (ID) Theft Victims – Evaluation whether an individual is a victim of identity theft requires a determination of harm. If a victim's personal identifying information (PII) was stolen, it must first be determined whether it was used. If the PII was used, there also must be a determination that the victim was harmed (usually financially and in extraordinary cases, emotionally). For victims of financial harm, LEO and VAP personnel should help victims understand the need to collect loss information, and identify and seize assets when possible. Victims that suffer emotional harm must be advised that mental health counseling may be available through the State's Crime Victims Compensation Program. Services should focus on assisting victims with creditors and restoration and if needed, emotional harm.
- I. Special Considerations for Other Vulnerable Victims –Elderly, disabled and/or hate crime victims may have special needs that require additional support. DOI LEOs and VAP personnel must make appropriate accommodations in various ways, such as arranging transportation to investigative interviews, providing wheelchairs and assistive listening devices if needed, and arranging for a companion to accompany the victim.

Suspected neglect or abuse of an elderly or otherwise vulnerable adult should be reported to the local Adult Protective Services agency. Grounds for reporting such abuse may include: physical evidence of abuse, sudden personality changes, and signs of caregiver neglect. In addition, LEO should identify and provide victims with referrals to appropriate local social service agencies best able to meet the needs of the victim.

DOI LEOs and VAP personnel should make efforts to learn about respectful terminology and language to use with victims with various disabilities. DOI LEOs and VAP personnel should identify local agencies and resources to assist in cases involving victims with disabilities, including intellectual, mental, physical, mobility, cognitive, communication, learning, and developmental disabilities.

- J. Employee Victims of Crime – U.S. Government (USG) employees, who are victims of crime, should receive victim services referrals and access to employee assistance program(s). USG employees and their dependents may be victims of crimes investigated by DOI office and bureau law enforcement. They usually are eligible for certain benefits through their agencies, but they

also are entitled to the VRRRA services and CVRA rights if they qualify as victims under these laws..

1. No Special Treatment - Department personnel working in a law enforcement context must be careful not to provide more or special services to USG employees because of their status as USG employees, and should instead provide the same rights and services that a private citizen in the same situation would be entitled to receive.