



Chapter 5

Victim/Witness Services

VICTIM/WITNESS SERVICES

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

This chapter – Victim/Witness Service Policy and Protocol - applies to both the Commonwealth and County Attorneys’ Offices. Both offices prosecute domestic violence crimes.

Per KRS 15.725, the Commonwealth's attorney attends Circuit Court and prosecutes all violations by adults or juveniles of the criminal and penal laws which are to be tried in the Circuit Court. In addition, the Commonwealth’s attorney has primary responsibility to present evidence to the grand jury concerning such violations.

The County attorney attends the District Court and prosecutes all violations by adults or juveniles of criminal and penal laws within the jurisdiction of District Court.

According to the Kentucky Court of Justice, Circuit Court is the court of general jurisdiction that hears civil matters involving more than \$5,000, capital offenses and felonies, land dispute title cases and contested probate cases. Circuit Court has the power to issue injunctions, writs of prohibition and writs of mandamus and to hear appeals from District Court and administrative agencies. District Court is the court of limited jurisdiction and handles juvenile matters, city and county ordinances, misdemeanors, violations, traffic offenses, probate of wills, arraignments, felony probable cause hearings, small claims involving \$2,500 or less, civil cases involving \$5,000 or less, voluntary and involuntary mental commitments and cases relating to domestic violence and abuse.

Victim/witness advocates, 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 advocate 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 advocate. Thus, there can be no promise of confidentiality with the victim/witness advocate. Advocates 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 advocates and community advocates have solid working relationships that clarify the distinct and unique role each advocate plays.

POLICY

Victim/witness advocates shall take the following actions aiding victims of domestic violence in criminal cases, using the protocols and training memos that are references in this policy. The advocate will:

1. Inform the victim that any communications with the victim/witness advocate are not confidential and may be communicated to the prosecuting attorney and thus, under certain circumstances, the defense attorney.
2. Take steps to ensure that the victim has had a voice in the decision to charge or decline a case.
3. Participate in efforts to resolve differences between charging attorneys' and investigating law enforcement officers' actions on cases from a victim safety-centered position.
4. Establish a relationship with the victim by making contact as soon as possible after charging and maintaining contact throughout the prosecution phase.
5. Provide required victim notification pursuant to state law and assist victims in exercising their rights under the law.
6. When possible, assist victim with restitution and reparations requests pursuant to state law.
7. Assist the victim in preparing a victim impact statement and ensure that the statement is presented to the court through prosecution in accordance with the victim's wishes.
8. Facilitate the preparation of the victim and other witnesses to testify at trial.
9. Enhance safety by providing post-conviction information and support.

PROTOCOL

A. Charging

1. Upon contact with the victim, inform her or him that any communications with the victim/witness advocate are not confidential and may be communicated to the prosecuting attorney and thus, under certain circumstances, the defense attorney.
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.
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

4. 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
 - Contacting the local advocacy program to see if they have talked with the victim and have received permission to share information that will help you contact the victim.
 - 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.
 - b. Communicate in the appropriate language with the victim. If uncertain of victim's language, send written communication in a variety of languages.
 - c. Offer support, resources, information and opportunities to participate in the process.
 - 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 and other community 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 be enhanced if some contact with the defendant is permitted.
 - 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 the defendant has made implied or direct threats regarding her/his participation in the case, notify the law enforcement investigator and ask the victim to call him or her.
 - i. Be available to address victim concerns and answer questions throughout the pre-trial phase.
5. 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. Make written information available in major languages spoken in the community.
6. 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 and/or juvenile 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.
7. 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.

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. See *Appendix 5A: Training Memo—Victim Impact Statements*.

C. Assistance at Trial

9. 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.
 - Asking witnesses if they know how to find the victim
 - Requesting assistance from law enforcement investigators
10. Communicate with witnesses regarding subpoenas and the trial schedule.
11. When possible and if resources allow, arrange transportation, lodging, 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.
12. Orient victims and other witnesses to the court proceedings.
 - a. 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
 - Taking other steps necessary to minimize her/his discomfort.
 - b. Support the needs of adult victims with disabilities. See *Appendix 5B: Training Memo—Responding to Victims with Disabilities*.
13. When possible, escort victims and other witnesses to the courtroom and remain to provide support.
14. 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

15. 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.
16. Reduce the financial impact of the violence by assisting with restitution and reparations.
17. 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.
18. 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.
19. 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.

APPENDICES TO VICTIM/WITNESS 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 4D: Sample Policy Language—When to Compel a Victim to Testify

Appendix 5A: Training Memo—Victim Impact Statements

Appendix 5B: Training Memo—Responding to Victims with Disabilities

Appendix 5C: Victim Witness Advocacy in Domestic Violence Cases

See the Madison County Blueprint for Safety Appendix for appendices referenced in the policy and protocols.