

# **ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE**



**May 2005**

## FOREWORD

We at the Department of Justice have a duty not only to uphold the rights of individuals who are accused or convicted of a crime but to protect the rights of the victims of crime. Dedicated professionals throughout the Department of Justice work to vindicate the rights of crime victims under law, to offer them aid through the Crime Victims' Fund, and generally to ease their interaction with the criminal justice system. Crime victims deserve no less.

This new edition of the *Attorney General Guidelines for Victim and Witness Assistance* will facilitate our critical work on behalf of crime victims. It incorporates the many provisions for crime victims' rights and remedies, including the Justice for All Act of 2004, that have been enacted since the publication of the last edition. It also includes new guidance on assisting the victims of certain crimes, such as human trafficking and identity theft, that may give rise to unique challenges. These updates and improvements will inform the efforts of victim assistance specialists and other personnel throughout the Department of Justice.

We will never be able to reverse the suffering of crime victims or restore all that they have lost. Nevertheless, the Department of Justice can do a great deal to minimize the frustration and confusion that victims of a crime endure in its wake. These *Guidelines* will help us discharge our obligation to do so.

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Alberto R. Gonzales  
Attorney General of the United States





## **ARTICLE I. VICTIMS' RIGHTS**

### **A. Best Efforts To Accord Rights**

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 below. (18 U.S.C. § 3771(c)(1))

### **B. Rights of Crime Victims**

A crime victim<sup>1</sup> has the following rights under 18 U.S.C. § 3771(a):

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, [or] 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.

### **C. Advice of Attorney**

The prosecutor shall advise the crime victim that the crime victim may seek the advice of an attorney with respect to the rights enumerated above. (18 U.S.C. § 3771(c)(2))

### **D. Enforcement Mechanisms for Victims**

The Justice for All Act of 2004 provides crime victims, as defined in article II.D.1, with two mechanisms for enforcing the rights enumerated above.

1. Judicial Enforcement. Crime victims, or the Government on their behalf, may move in Federal district court for an order enforcing their rights. (18 U.S.C. § 3771(d)(3)) “The district court shall take up and decide any motion asserting a victim’s right forthwith. If

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<sup>1</sup> A “crime victim” for purposes of these rights is a person who satisfies the definition in article II.D.1 of this document.

the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus.” (*Id.*)

2. Administrative Complaint. A crime victim may also file an administrative complaint if Department employees fail to respect the victim’s rights. The Attorney General must take and “investigate complaints relating to the provision or violation of the rights of a crime victim” and provide for disciplinary sanctions for Department employees who “willfully or wantonly fail” to protect those rights. (18 U.S.C. § 3771(f)(2))

## **ARTICLE II. GENERAL CONSIDERATIONS**

### **A. Statement of Purpose**

The purpose of this document, the *Attorney General Guidelines for Victim and Witness Assistance* (the *AG Guidelines*), is to establish guidelines to be followed by officers and employees of Department of Justice investigative, prosecutorial, and correctional components in the treatment of victims of and witnesses to crime.

These *AG Guidelines* supersede the *Attorney General Guidelines for Victim and Witness Assistance* (2000).

### **B. Background**

The first Federal victims' rights legislation was the Victim and Witness Protection Act of 1982 (VWPA). Congress amended and expanded on the provisions of the 1982 Act in subsequent legislation, primarily the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, and the Justice for All Act of 2004.

In VWPA, Congress made findings about the criminal justice system's treatment of crime victims. Congress recognized that without the cooperation of victims and witnesses, the criminal justice system would cease to function. Yet, often those individuals were either ignored by the system or simply viewed as "tools" to use to identify and punish offenders. Congress found that all too often a victim suffers additional hardship as a result of contact with the system. VWPA was enacted "(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; (2) 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 (3) to provide a model for legislation for State and local governments." (Pub. L. No. 97-291, § 2)

In VWPA, Congress instructed the Attorney General to develop and implement guidelines for the Department of Justice consistent with the purposes of the Act. Congress set forth the objectives of the guidelines, which include the provision of services to victims; notification about protection, services, and major case events; consultation with the Government attorney; a separate waiting area at court; the return of property; notification of employers; and training for law enforcement and others. Congress also instructed the Attorney General to assure that all Federal law enforcement agencies outside the Department of Justice adopt guidelines consistent with the purposes of VWPA. (18 U.S.C. § 1512, Historical and Statutory Notes, Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System). In conformance with the congressional directive, the Attorney General promulgated the *Attorney General Guidelines for Victim and Witness Assistance*. Periodically, the *AG Guidelines* have been revised to incorporate new legislative provisions.

Starting with VWPA and continuing through the later legislation, Congress established a list of victims' rights and directed the Justice Department and other departments and agencies of the Federal Government engaged in the detection, investigation, or prosecution of crime to make their "best efforts" to see that crime victims are accorded the rights. The list of rights, commonly referred to as the "victims' bill of rights," is now codified at 18 U.S.C. § 3771(a). Congress also defined a group of services that Federal agencies have the responsibility to provide to crime victims. The basic list of responsibilities appears in 42 U.S.C. § 10607. The Crime Control Act of 1990 later stated that those services "shall" be provided. Specialized provisions dealing with certain types of victims and crimes appear elsewhere in Titles 42 and 18. For example, provisions specifically dealing with child victims and witnesses appear in 18 U.S.C. § 3509.

Subsequent legislation has further expanded victims' rights in a variety of ways. The Violent Crime Control and Law Enforcement Act of 1994 established mandatory restitution for victims of four categories of crime: (1) domestic violence, (2) sexual assault, (3) the exploitation and abuse of children, and (4) telemarketing fraud. The Antiterrorism and Effective Death Penalty Act of 1996 expanded mandatory restitution to virtually all crimes committed in violation of Title 18 of the United States Code. (18 U.S.C. § 3663A) The Victim Rights Clarification Act of 1997 gives victims the right to attend a trial even though they may testify during the sentencing portion of the trial. (18 U.S.C. § 3510) The Victims of Trafficking and Violence Protection Act of 2000 protects immigrant victims of domestic violence, human trafficking, and other crimes from deportation in certain cases. (22 U.S.C. §§ 7101–7110; 8 U.S.C. § 1101(a)(15)(U)) The Justice for All Act of 2004 expanded and recodified the victims' bill of rights and gave victims standing to enforce those rights.

### **C. Construction of These *AG Guidelines***

The foundation for these *AG Guidelines* is the Federal victims' rights laws. The core statutes are 18 U.S.C. § 3771 and 42 U.S.C. § 10607, but additional rights and requirements exist in other statutes and rules of criminal procedure. In the text of these *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 Justice 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.

The *AG Guidelines* use the word "shall" where "shall" appears in a statute. 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," the employee is expected to take the action or provide the service described unless there is an appropriate, articulable reason not to do so. A strong presumption exists in favor of providing rather than withholding assistance and services to victims and witnesses of crime.



serve as a model for guidelines on the fair treatment of crime victims and witnesses for other State and Federal law enforcement agencies.

Department components should encourage non-Department personnel specially assigned or deputized to work with Department components to learn and comply with the victims' rights laws and these *AG Guidelines*.

2. Recipients of Rights and Services. The majority of the rights and services in these *AG Guidelines* are applicable to victims of crime. Some provisions apply to witnesses to crime.

For purposes of determining the applicability of these *AG Guidelines* to any victim, refer to the definitions, *supra*, article II.D.

A person 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 these *AG Guidelines*. (18 U.S.C. § 3771(d)(1)) Nonetheless, a person who may be culpable for violations or crimes other than the crime being investigated or prosecuted may be considered a victim under this policy. For example, victims of involuntary servitude or trafficking may be considered victims for purposes of the prosecution of those crimes despite any legal culpability that the victims may have for ancillary immigration or prostitution offenses. In addition, criminal suspects who are subjected to excessive force by law enforcement officers and 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 these *AG Guidelines* to transport inmates to court to attend hearings relating to crimes against those inmates.

A person whose injuries stem only indirectly from an offense is not entitled to the rights or services described in the *AG Guidelines*. Although bystanders are therefore not generally considered victims, there may be circumstances in which a bystander does suffer an unusually direct injury, and Department personnel have the discretion to treat this bystander as a victim.

## **F. Responsible Officials**

Pursuant to 42 U.S.C. § 10607(a), the Attorney General is required to designate persons in the Department of Justice who will be responsible for identifying the victims of crime and performing the services described in that section. These persons are referred to as "responsible officials" in the statute and throughout these *AG Guidelines*. (42 U.S.C. § 10607(a)) The designation of responsible officials for each component appears below and at the beginning of the sections indicating the stage in the process at which the relevant component operates. Responsible officials may delegate their responsibilities under these *AG*

*Guidelines* to subordinates in appropriate circumstances, but responsible officials remain obliged to ensure that all such delegated responsibilities are discharged.

The Attorney General designates the following responsible officials:

1. Investigators

- a. FBI—the special agent-in-charge of the division having primary responsibility for conducting the investigation.
- b. DEA—the special agent-in-charge of the division having primary responsibility for conducting the investigation.
- c. Bureau of Alcohol, Tobacco, Firearms and Explosives—the special agent-in-charge of the division having primary responsibility for conducting the investigation.
- d. U.S. Marshals Service—the U.S. Marshal in whose district the case is being conducted.
- e. Office of the Inspector General—the Inspector General.

2. Prosecutors

- a. For cases in which charges have been filed—the U.S. Attorney in whose district the prosecution is pending.
- b. For cases in which a litigating division of the Justice Department is solely responsible—the chief of the section having responsibility for the case. The chief of the section is responsible for performing the same duties under these *AG Guidelines* as are required of a U.S. Attorney. By agreement between the litigating division and the Executive Office for United States Attorneys (EOUSA), the responsible official from the litigating division may delegate some responsibilities to the U.S. Attorney in whose district the prosecution is pending.
- c. For cases in which the U.S. Marshals Service is the custodial agency—the U.S. Attorney in whose district the prosecution is pending.

3. Corrections Officials

- a. For cases in which the U.S. Marshals Service is the custodial agency—the U.S. Attorney in whose district the prosecution is pending.

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

#### 4. Parole Officials

- a. For proceedings relating to the revocation of parole or the revocation of supervised release in the District of Columbia—the Chairman of the U.S. Parole Commission.

The responsible official shall designate the individual or individuals who will carry out victim-witness services in each Department of Justice investigating field office, corrections facility, parole office, U.S. Attorney's Office, and Justice Department litigating division. The responsible official shall instruct such designated individuals to comply with these *AG Guidelines* and shall delegate the authority to carry out the activities that are thereby required.

All responsible officials and other employees involved in complying with these regulations must cooperate with other components of the Department of Justice in providing victims with the services required by Federal law and by these *AG Guidelines*. In many instances when certain duties and responsibilities overlap, duplicative provision of services is not required, but responsible officials should promote coordination and interagency teamwork between Department employees and State, local, or tribal officials. At each stage in the provision of services, the transition of responsibility from one component of the Department of Justice to the next must include a sharing of information (in many cases prior to the actual transfer of responsibility). In this way, gaps in notification and other services are eliminated and crime victims receive uniform rather than fragmented treatment, starting from the initial investigation and continuing throughout their entire involvement with the Federal criminal justice system.

Responsible officials and the individuals they have designated should also work with the other Federal agencies that investigate and prosecute violations of Federal law to assist those agencies in providing these services to victims.

### **G. Cases with Large Numbers of Victims**

Individual and personal contact with victims is recommended whenever reasonably feasible. Although implementing these *AG Guidelines* is relatively straightforward in cases in which the number of victims is limited, doing so can present challenges as the number of victims grows into the hundreds and thousands. Department employees should use new technology and be creative in order to provide victims in large cases with the same rights and services as victims in smaller cases. In carrying out their obligations under the *AG Guidelines* in cases with large numbers of victims, responsible officials should use the means, given the circumstances, most likely to achieve notice to the greatest possible number of victims.





























































































































