

U.S. Department of Justice
Office of the Attorney General



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Attorney General Guidelines for Domestic Violence and Witness Assistance

FOREWORD

Millions of Americans are victimized by crime every year, but recognition of crime victims' "rights" is a recent phenomenon. Until recently, the protection of offenders' rights took precedence over those of the innocent victims of crime.

Fortunately, legislation, both at the Federal and state level, has been enacted in recent years to protect and maintain the rights of crime victims. The passage of the Crime Control Act of 1990, which includes the landmark Federal Crime Victims Bill of Rights, demonstrates our national concern for victims of crime. The Act mandates that certain services are to be provided for victims of Federal crime and amends criminal codes affecting the treatment of child victims in Federal courts.

In addition to seeking this important legislation, the United States Department of Justice followed it up by issuing Guidelines for Victim and Witness Assistance. The Guidelines reflect the genuine commitment of my Office to ensure that all investigative, prosecutorial and correctional agencies treat victims of Federal crime with compassion, fairness and respect.

All components of the United States Department of Justice will take the lead in setting in motion a nationwide, unified Federal effort to ensure full implementation of not only the letter, but the spirit of the new law protecting crime victims' rights.



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136499

**U.S. Department of Justice
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ATTORNEY GENERAL GUIDELINES

FOR VICTIM AND WITNESS ASSISTANCE

ACQUISITIONS

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ATTORNEY GENERAL GUIDELINES
FOR VICTIM AND WITNESS ASSISTANCE

ARTICLE I. GENERAL CONSIDERATIONS

A. Statement of Purpose

The purpose of these Guidelines is to establish procedures to be followed by the Federal criminal justice system in responding to the needs of crime victims and witnesses. These Guidelines combine the requirements of the *Victim and Witness Protection Act of 1982* (VWPA), P. L. 97-291 (October 12, 1982), and the victims rights statutes¹ contained in the *Crime Control Act of 1990*, P. L. 101-647 (November 29, 1990), "the Act." Consistent with the like purposes of these statutes, the present Guidelines shall provide definitive guidance on implementation of the 1990 Act as well as continued guidance on the protection of witnesses under the VWPA; and shall serve as a single resource for Department of Justice (investigative, prosecutorial, and correctional) agencies in the treatment and protection of victims and witnesses of Federal crimes.

These Guidelines supersede the 1983 Attorney General Guidelines For Victim and Witness Assistance.

B. Background

The *Victim and Witness Protection Act of 1982* 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."

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 interests 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 the Department of Justice, and other 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.

¹ Title V, *Victims' Rights and Restitution Act of 1990*; and Title II, Subtitles D and E, *Victims of Child Abuse Act of 1990*.

The 1990 *Victims' Rights and Restitution Act* (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 Victims of Child Abuse Act (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.²

Thus, the 1990 victims' rights statutes, i.e. Title V, *Victims' Rights and Restitution Act*, and Title II, Subtitles D and E, *Victims of Child Abuse Act*, together with the *Victim and Witness Protection Act of 1982*, provide the Federal criminal justice system with enhanced statutory responsibility to assist and protect crime victims and witnesses in a comprehensive and uniform manner.

C. Application

These Guidelines apply to those components of the Department of Justice engaged in the detection, investigation or prosecution of all Federal crimes, and in the detention and incarceration of Federal defendants. They are intended to apply 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.

It should be noted that because of the nature of Federal criminal cases it will often be difficult to identify the victims of the offense and, in many cases, there will be multiple victims. Sound judgment will, therefore, be required to make appropriate

²These Guidelines also apply to new 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). The reporting requirement is set forth at 18 U.S.C. Section 1169, and related provisions are found at 25 U.S.C. Sections 3201-3206.

decisions as to the range of victim services and assistance given. However, Department of Justice personnel should err on the side of providing rather than withholding assistance. For example, in a large-scale Federal fraud scheme case, it may be possible to extend victim services and assistance to a representative of the many victims of the fraud.

D. Definitions

For purposes of these Guidelines --

(1) the term "victim" means a person that has suffered direct, or threatened, physical, emotional, or pecuniary harm as a result of the commission of a crime, including

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

(b) 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.

(2) Federal departments and State and local agencies, as entities, shall not be considered "victims" for purposes of Articles III and IV of these Guidelines.

(3) The term "witness" means 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 a defense witness or an individual involved in the crime as a perpetrator or accomplice.

(4) The term "serious crime" (as used in the VWPA of 1982), means a criminal offense that involves personal violence, attempted or threatened personal violence or significant property loss.

(5) 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.

(6) The term "adult attendant" means an adult who accompanies a child witness throughout the judicial process for the purpose of providing emotional support.

(7) The term "child" means a person who is under the age of 18, who is alleged to be --

- (a) a victim of a crime of physical abuse, sexual abuse, or exploitation; or
- (b) a witness to a crime committed against another person.

(8) The term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

The term "child abuse" 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.

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

(10) 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.

(11) 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.

(12) The term "sexually explicit conduct" means actual or simulated--(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person; (B) bestiality; (C) masturbation; (D) lascivious exhibition of the genitals or pubic area of a person or animal; or (E) sadistic or masochistic abuse.

(13) The term "exploitation" means child pornography or child prostitution.

(14) 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.

(15) 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.

ARTICLE II. CRIME VICTIMS' BILL OF RIGHTS

A. Victims' Rights (Sec. 502(a))

BEST EFFORTS TO ACCORD RIGHTS. The Act provides that 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 victims of crime are accorded the rights described in the Act.

[BILL OF] RIGHTS OF CRIME VICTIMS (Sec. 502(b))

A crime victim has the following rights:

- (1) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (2) The right to be reasonably protected from the accused offender.
- (3) The right to be notified of court proceedings.
- (4) 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.
- (5) The right to confer with attorney for the Government in the case.
- (6) The right to restitution.
- (7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

B. Mandatory Reporting of "Best Efforts"

In the spirit of full compliance with these Guidelines, each United States Attorney, Department chief of litigation, F.B.I. Special Agent-in-Charge (through the Director, F.B.I.) as well as each responsible official of the Department's investigating field offices and correctional facilities, shall report annually to the Attorney General, through the Director, Office for Victims of Crime, by November 1st of each year, on the "Best Efforts"

they have made during the preceding fiscal year, in ensuring that victims of crime are accorded the rights set out in the Act.³

The responsible official, in preparing the annual "Best Efforts" Report, shall include an account of practices and procedures which have been adopted (and are in actual use in each of their respective offices), during the preceding fiscal year, to provide the services to victims mandated under the Act.

C. Performance Appraisal

The Attorney General strongly recommends that the annual performance appraisal of each Federal law enforcement officer, investigator, prosecutor, and corrections officer (and appropriate staff of those agencies) include, as a required activity, implementation of and compliance with the victims' rights and victims and witnesses services provisions set forth in these Guidelines. Institution of this recommendation should be included in the annual "Best Efforts" Report.

ARTICLE III. SERVICES TO VICTIMS AND WITNESSES

As a general rule, for purposes of this Article, investigative components will be responsible for C(1), (2), and (3), D(1), (2), (3)(a)(b), (5) and (6); prosecutorial components will be responsible for D(3)(c)-(h), and (4); and correctional components will be responsible for D(7) and (8).

Accordingly, at each stage in the performance of services, the transition of responsibility from one component of the Department of Justice to the next must, of necessity, include a sharing of information (in many cases prior to the actual turning over 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.

A. Designation of Responsible Officials (Sec. 503(a))

For purposes of these Guidelines, the Attorney General makes the following designations of persons who will be responsible for identifying the victims of crime and performing the services

³U. S. Attorneys may comply with this requirement by the filing of their annual report on victim and witness assistance with the Executive Office for U. S. Attorneys, including therein their "Best Efforts" implementation of the VRRRA and VCAA of 1990.

described in the VRRRA, section 503(c), at each stage of a criminal case:⁴

Investigation

For cases under investigation, and in which no charges have yet been instituted, application of this section will be the responsibility of the following officials:

1. With respect to offenses under investigation by the Federal Bureau of Investigation, the responsible official shall be the Special Agent-in-Charge of the division having primary responsibility for conducting the investigation;
2. With respect to offenses under investigation by the Drug Enforcement Administration, the responsible official shall be the Special Agent-in-Charge of the office having primary responsibility for conducting the investigation; and
3. With respect to offenses under investigation by the Immigration and Naturalization Service, the responsible official shall be the District Director or Chief Patrol Agent of the office having primary responsibility for conducting the investigation.
4. With respect to offenses under investigation by the U. S. Marshals Service, the responsible official shall be the U. S. Marshal in whose district the case is being conducted.

Prosecution

For cases in which charges have been instituted, the responsible official shall be the U. S. Attorney in whose district the prosecution is pending.

For cases in which a litigating division of the Department of Justice is solely responsible, the responsible official shall be the chief of the section having responsibility for the case. The Department attorney handling the case shall perform the same duties under these Guidelines as are required of an Assistant U. S. Attorney.

⁴ In cases where the United States or the public generally are the victims (e.g. tax evasion and narcotics trafficking), victim services will be inappropriate; but in virtually all cases, there will be witnesses who will be entitled to witness services.

Custodial and Corrections

For cases in which the U. S. Marshals Service is the custodial agency, housing Federal pretrial detainees (at the same time the offender is being concurrently prosecuted by the U. S. Attorney's Office), the responsible official shall be the U. S. Attorney in whose district the prosecution is pending.

For cases in which the Bureau of Prisons has become involved, the responsible official shall be the Director or Warden of each Bureau of Prisons facility where the defendant is incarcerated.

B. Delegation and Coordination

In order to implement the requirements of the Act, there must be one individual who shall be designated specifically to carry out victim-witness services in each Department of Justice investigating field office and correctional facility, U. S. Attorney's Office, and Justice Department litigating division. This person shall be delegated authority by the responsible official to carry out the activities enumerated in these Guidelines.

It is incumbent upon responsible officials to ensure that all components of the Department of Justice cooperate with each other to the maximum extent possible in providing victims the services to which they are legally entitled. In many instances where certain duties and responsibilities overlap, the responsible officials must take all steps necessary to require coordination and inter-agency teamwork.

Moreover, all components shall work with appropriate components of other Federal agencies that investigate and prosecute violations of Federal law to assist them in providing these services to victims; and shall coordinate their victim-witness service efforts with State and local law enforcement officials, including tribal police officials in Indian Country and victim assistance and compensation service providers.

C. Identification of Victims (Sec. 503. (b))

"At the earliest opportunity after the detection of a crime", the responsible official 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.

Within the meaning of this Article, "the earliest opportunity" means one that will not interfere with an investigation or hamper the responsible official in the performance of other law enforcement responsibilities.

In order to comply with the above informational requirements, it is recommended that a printed brochure⁵, containing general information, brief description of rights and available services, as well as the names and phone numbers of key officials and victim-witness coordinator, be given to victims as soon as identified. Whenever possible, personal contact should be initiated with victims. Institution of this recommendation should be included in the annual "Best Efforts" Report.

D. Description of Services (Sec. 503 (c))

(1) "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 restitution⁶ for which the victim may be entitled under this or any other applicable law; and the manner in which such relief may be obtained (see Article VI, "Restitution"; see also Appendix, under "Compensation");
- (c) the availability of public and private programs which provide counseling, treatment, and other support to the victim.
- (d) 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.

(2) Consistent with the provisions of 18 U.S.C. 3521-3528, the responsible official *shall* make the necessary and appropriate

⁵Models for such brochures are available through the Office for Victims of Crime.

⁶ See, 18 U.S.C. 3663.

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.

Moreover, information on the prohibition against intimidation and harassment and the remedies therefor shall routinely be made available to victims and witnesses. The responsible official shall, if warranted, advise the component of the Justice Department having the enforcement responsibilities, (e. g. the U. S. Marshals Service), of instances involving intimidation or harassment of any victim or witness.⁷

(3) 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;
- (b) the arrest of a suspected offender;
- (c) the release or detention status of an offender or suspected offender pending judicial proceedings; or the placement of the offender in a pretrial diversion program; and the conditions thereof;
- (d) the filing of charges against a suspected offender, or the proposed dismissal of any or all charges, including dismissal in favor of State prosecution;
- (e) the scheduling, including scheduling changes and/or continuances, of each court proceeding that the victim or witness is either required to attend or entitled to attend under Sec. 502(b)(4) of the Act;
- (f) the terms of any negotiated plea, including the acceptance of a plea of guilty or *nolo contendere* or the rendering of a verdict after trial;

⁷Civil procedures for protecting victims and witnesses against such harm and intimidation, including application for temporary restraining orders and protective orders, are set out in the VWPA, 18 U.S.C. 1512-1515, and appear in the Appendix of these Guidelines, under "Civil Remedies - Protection."

- (g) the opportunity to present to the court in the presentence report, pursuant to the VWPA, a Victim Impact Statement containing information concerning any harm, including financial, social, psychological and physical harm, done to or loss suffered by the victim of the crime (see Article V, and Appendix under "Victim Impact Statement"); and
 - (h) the date set for sentencing if the offender is found guilty; and the sentence imposed including the date on which the offender will be eligible for parole.
- (4) During court proceedings, responsible officials *shall make their best efforts to ensure* that a victim is provided a waiting area removed from and out of the sight and hearing of the offender and defense witnesses.
- (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.
- (6) The Department of Justice-designated responsible official, or the head of another department or agency that conducts an investigation of a sexual assault *shall pay*, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim and of costs of materials used to obtain evidence.⁸
- (7) General information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each *shall* be made available to the victim.
- (8) After trial, the responsible official in the Bureau of Prisons *shall* make reasonable and diligent efforts to provide a victim "the earliest possible notice of":
- (a) the scheduling of a parole hearing for the offender;
 - (b) the escape, work release, furlough, or any other form of release from custody of the offender; and
 - (c) the death of the offender, if the offender dies while in custody.

⁸An agency determination will have to be made regarding the funds which will be utilized to pay these costs. Recommended options include investigative component funds, e.g. forensic examinations, or state crime victims compensation funds.

ARTICLE IV. 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:

A. Federal prosecutors *shall resist* attempts by the defense to obtain discovery of the names, addresses and phone numbers of victims and witnesses. Responsible officials and employees *should also avoid* disclosing the names, addresses and phone numbers of victims and witnesses.

In cases involving a witness who has been promised anonymity or who operated in an undercover capacity, Federal prosecutors should consult with such witness, and the primary law enforcement agency involved in the case, before disclosing the identity, address, or location of any such witness, and shall not make such disclosure without the consent of the witness and the law enforcement agency.

B. Upon request by a victim or witness, the responsible official should assist in notifying:

- the employer of the victim or witness if cooperation in the investigation or prosecution of the crime causes his/her absence from work; and
- the creditors of the victim or witness, where appropriate, if the crime or cooperation in its investigation or prosecution affects his/her ability to make timely payments.

C. Responsible officials should establish programs to assist Department of Justice employees who are victims of crime.

D. Victims and witnesses should be provided information or assistance with respect to transportation, parking, translator services, and related services.

ARTICLE V. VICTIM IMPACT STATEMENT

The victim shall be apprised by the Federal prosecutor that the U. S. Probation Officer is required to prepare a Victim Impact Statement which includes a provision on restitution. The victim shall also be advised as to how to communicate directly with the Probation Officer if he or she so desires.

The responsible official shall advise of or make available to the appropriate U. S. Probation Officer the information in the responsible official's possession 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.

Consistent with available resources and their other responsibilities, Federal prosecutors shall advocate the interests of victims, including child victims, at the time of sentencing.

ARTICLE VI. RESTITUTION

The 1990 VRRRA provides that victims of Federal crime have a "right to restitution." Therefore, consistent with their other responsibilities, Federal prosecutors shall advocate fully to the court the rights of victims, including child victims, on the issue of restitution.

The actual Order of restitution is a function of the court pursuant to Chapter 232, 18 U.S.C. 3663-3664:

The court, when sentencing a defendant convicted of an offense under this title...may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense. 18 U.S.C. 3663(a)(1)

It should be noted, however, that Section 3553(c) provides that if the court does not order restitution, or orders only partial restitution, the court must state on the record the reasons therefor. Moreover, if a dispute arises as to the proper amount of restitution, the burden of demonstrating the amount of the loss sustained by a victim, as a result of the offense, shall be on the attorney for the Government, Section 3664(d).

Federal prosecutors should also be aware that Title XXV, Section 2509, of the *Crime Control Act of 1990*, amends 18 U.S.C. 3663(a), to enhance a court's ability to order restitution to victims of an offense involving, as an element, a scheme, conspiracy, or pattern of criminal activity, by adding to coverage "any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern."

Another provision added to 18 U.S.C. 3663(a), by the 1990 *Crime Control Act*, states:

"(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement."

Finally, the 1990 Crime Control Act also amends the Bankruptcy Code to provide that a criminal's (including a convicted drunk driver's) debt to pay court-ordered restitution, already nondischargeable under Chapter 7, is now also nondischargeable under Chapter 13 of the Bankruptcy Code. See 11 U.S.C. Sections 523(a)(9), and 1328(3).

[For a discussion of the implications of the 1990 *Crime Control Act* amendments on orders of restitution, see the Appendix of these Guidelines under "Restitution." References to the applicable portions of the criminal code, Chapter 232 of Title 18 U.S.C. 3553(c), and 3663-3664 also appear in the Appendix.]

ARTICLE VII. CHILD VICTIMS' AND CHILD WITNESSES' RIGHTS

A. Statement of Purpose

The Victims of Child Abuse Act of 1990 (VCAA) was enacted in response to the alarming increase of suspected child abuse cases made each year (over 2 million reports each year). In such cases, because the investigation and prosecution of child abuse is extremely complex, too often the system had not paid sufficient attention to the needs and welfare of the child victim, thus aggravating the trauma that the child had already experienced. Therefore, in order to address this nationwide emergency, the 1990 VCAA provides, *inter alia*, authorization for training and technical assistance to judges, attorneys and others involved in State and Federal court child abuse cases; requires certain professionals to report suspected cases of child abuse under Federal jurisdiction; and amends the United States criminal code to ensure protection of children's rights in court and throughout the criminal justice system.

The new landmark procedures codify specific "rights" for children, never before legally recognized in Federal court, and allow other important accommodations for children, including: the right of a child to have an adult attendant accompany the child during court testimony; allowance of the use of closed-circuit television and videotaped depositions of children, as alternatives to live, in-court testimony; stringent procedures which protect a child witness' privacy as well as sanctions for violating such procedures; and a requirement disallowing routine competency examinations, except upon written motion that compelling reasons exist, and ruling out age as a compelling reason.

The goal of this Article 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.

These Guidelines shall serve to ensure full implementation of the VCAA by all investigative, prosecutorial and correctional components of the Department of Justice.

B. Investigation/Interviewing of Child Victims

1. Reporting and Investigation of Suspected Cases of Child Abuse.

(a) Pursuant to Sec. 226, Subtitle D, VCAA, certain professionals⁹ 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. The statute provides further that the Attorney General shall designate the agency to receive and investigate these reports of suspected child abuse. By formal written agreement, the designated agency may be a non-Federal agency.

Standard Reporting Form. In every Federally-operated (or contracted) facility and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

Referral to Law Enforcement. 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 a law enforcement agency with authority to take emergency action to protect the child. 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. In

⁹Covered professionals are listed in the Appendix, under "Mandated Reporters of Suspected Child abuse."

addition, it is important that a child victim be referred for a medical examination, if warranted, by a physician with expertise in forensic examinations.

Reporting in Indian Country. As noted earlier (fn. 2, p. 2), a separate statute, the *Indian Child Protection and Family Violence Prevention 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." 18 U.S.C. Section 1169. These terms are defined in section 1169 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 Indian Country involved. 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.

2. Mandatory Training for all Reporter Groups.

(a) The responsible official of the designated investigative agency, shall provide to all mandated reporter groups of covered professionals training in their statutory obligation to report and in the identification of abused children.

(b) 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

3. Interviewing Procedures to Reduce Trauma to Child.

The responsible official, in coordination with the U. S. Attorney, shall provide training to all Federal investigators on multidisciplinary methods of interviewing victims of child abuse and sexual child abuse. The responsible official may follow the criteria, set out in Sec. 212(b), Subtitle A, VCAA, recommended for State grant recipients to develop and implement multidisciplinary child abuse investigation programs, including:

- a written agreement between local law enforcement, social service, health, and other related agencies to coordinate child abuse investigation;
- joint initial investigative interviews of child victims by law enforcement, health, and social service agencies;
- a requirement that, to the extent practicable, the same agency representative who conducts an initial interview conduct all subsequent interviews;
- coordination of each step of the investigation process to minimize the number of interviews that a child victim must attend.

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

C. Prosecution of Child Abuse Cases

The Act, at Subtitle D, Sec. 225, amends Chapter 223 of the criminal code on Criminal Procedure, at 18 U.S.C., "Witnesses and Evidence", by adding a new section, Sec. 3509, which includes, *inter alia*, the following provisions:

1. Consultation With Multidisciplinary Teams.

Subsection (g) provides that the court and the attorney for the Government shall work with established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and shall consult with such multidisciplinary child abuse teams as appropriate.

The multidisciplinary child abuse team professionals shall be used when it is feasible to do so and shall provide expert consultation with the attorney for the Government concerning the following services, according to their individual expertise:

- medical evaluations related to abuse or neglect;
- psychological and psychiatric diagnoses and evaluations for the child, parent, or other caregiver;
- expert medical, psychological and related professional testimony.

Where multidisciplinary teams are not yet formally established, Federal prosecutors should coordinate with

existing child protective service agencies to reasonably protect children at risk from further abuse.

The official responsible for prosecuting cases involving offenses against children shall provide to all Federal prosecutors training in implementation of the new multidisciplinary procedures mandated and/or permitted by the 1990 VCAA.

2. Alternatives To Live, In-Court Testimony.

Title 18 U.S.C. 3509, Subsection (b) allows Federal prosecutors to utilize certain alternatives (i.e. closed-circuit television and videotape depositions) to live, in-court testimony in cases involving offenses against children, where the court finds that the child is unable to testify in open court for any of the following reasons ((b)(1)(B), and (b)(2)(B)(i)):

- The child is unable to testify because of fear.
- There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.
- The child suffers a mental or other infirmity.
- Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child (of one or more of the above factors) is so substantial as to justify an order allowing testimony by closed-circuit television, the court may question the child in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time, with the child attendant, the prosecutor, the child's attorney, the guardian *ad litem* and the defense counsel present.

Section 3509(b)(1)- Child's Live Testimony By 2-Way Closed-Circuit Television.

The attorney for the Government, the child's attorney, or a guardian *ad litem* may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed-circuit television. The person seeking such an order shall apply for the order at least 5 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

Section 3509(b)(1)(D)- If the court finds that the child is unable to testify in open court in the presence of the defendant for any of the reasons set forth above, and orders the taking of the child's testimony by closed-circuit

television, the attorney for the Government and the attorney for the defendant (not including a defendant appearing *pro se*) shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are:

- (i) the child's attorney or guardian *ad litem*;
- (ii) persons necessary to operate the closed-circuit television equipment;
- (iii) a judicial officer, appointed by the court; and
- (iv) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant, as described in 18 U.S.C. 3509(i).

The child's testimony (together with the image of the adult attendant, if present) shall be transmitted by closed-circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed-circuit television transmission shall relay into the room in which the child is testifying, the defendant's image, so that it is visible to the child, and the voice of the judge and the voice of the defendant if appearing *pro se*, so that they are audible to the child.

Section 3509(b)(2)- Videotape Deposition of Child.

In a proceeding involving an alleged offense against a child, the attorney for the government, the child's attorney, the child's parent or legal guardian, or the guardian *ad litem* may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

Upon receipt of such application, the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the reasons set out in subsection (b)(2)(B)(i).

If the court finds that the child is likely to be unable to testify in open court for any of these reasons, the court shall order that the child's deposition be taken and preserved by videotape. The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are--

- (I) the attorney for the Government;
- (II) the attorney for the defendant;
- (III) the child's attorney or guardian *ad litem*;
- (IV) persons necessary to operate the videotape equipment;
- (V) the defendant, subject to clause (iv), subsection (b)(2)(B); and
- (VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

Section 3509(b)(2)(B)(iv) - If the preliminary finding of inability under clause (i), subsection (b)(2)(B), is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented *pro se*, be excluded from the room in which the deposition is conducted.

If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed-circuit television equipment relay the defendant's image into the room in which the child is testifying, so that the image is visible to the child, and relay the child's testimony (together with the image of the adult attendant, if present) into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition. In the case of a defendant appearing *pro se* the voice of the defendant must be relayed into the room in which the child is testifying, so that the voice is audible to the child.

[Procedures for securing, handling and preserving the child's videotape deposition are listed in the Appendix of these guidelines, under "Videotape - Handling, Procedures."]

3. Competency Examinations.

A child is presumed to be competent. (See, Rule 601, *Federal Rules of Evidence*). Therefore, a competency examination regarding a child witness may not, pursuant to the VCAA, be routinely conducted by the court but may only be conducted upon written motion and offer of proof of incompetency by a party.

Moreover, a competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason. Psychological and psychiatric examinations to assess the competency of a child witness shall also not be ordered without a showing of compelling need.

A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury. Direct examination of the child shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant, including a party appearing *pro se*. The court may permit an attorney but not a party appearing *pro se* to examine a child directly on competency, if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

The only persons who may be permitted to be present at a competency examination are: the judge; the attorney for the Government; the attorney for the defendant; a court reporter; and persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian *ad litem*, or adult attendant.

4. Privacy Protection of Child Witnesses and Child Victims.

Stringent procedures for protecting the privacy of a child victim or witness and ensuring the confidentiality of information received concerning a child victim or witness, include, *inter alia*: filing under seal all documents which disclose the names of, or identifying information concerning, child victims and child witnesses, and redacting such names and identifying information from any publicly disclosed documents.

Sanctions for Violation of Rule Regarding Disclosure. A knowing or intentional violation of the privacy protection accorded children pursuant to Sec. 3509 of Title 18 U.S.C., is a criminal contempt punishable by not more than one year's imprisonment, or fine, or both. 18 U.S.C. Section 403.

5. Closing The Courtroom.

When a child testifies, the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines, on the record, that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate.

An order to close the courtroom shall be narrowly tailored to serve the government's specific compelling interest.

6. Victim Impact Statement.

Pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, the U. S. Probation Officer, in preparing the presentence report, shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected.

As with adult victims, child victims (through a parent or other appropriate legal guardian) shall be apprised that the Probation Officer is required to prepare a Victim Impact Statement which includes a provision on restitution; and shall also be advised how to communicate directly with the Probation Officer if he or she so desires.

The guardian *ad litem* shall make every effort to obtain and report accurate information concerning the child's victimization. The guardian *ad litem* shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

Consistent with available resources and their other responsibilities, Federal prosecutors shall advocate fully the interests of child victims at the time of sentencing.

7. Guardian *ad litem*.

The court may appoint a guardian *ad litem* for a child who was a victim of, or a witness to, a crime involving abuse or exploitation, to protect the best interests of the child.

The court-appointed guardian *ad litem* may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child.

The guardian *ad litem* may have access to all reports, evaluations, and records, except attorney's work product, necessary to effectively advocate for the child. (The

extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.)

The guardian *ad litem* shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian *ad litem*.

8. Adult Attendant.

A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child.

The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. The adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child.

The image of the adult attendant, for the time the child is testifying by closed-circuit television or being deposed, shall be recorded on videotape contemporaneously with the image of the child.

9. Speedy Trial.

In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government, or a guardian *ad litem*, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall expedite the proceeding and ensure that it takes precedence over any other.

The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process.

When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

10. Extension of Child Statute of Limitations.

The statute of limitations for offenses involving the sexual

or physical abuse of a child under the age of 18 years, is extended until the child reaches the age of 25 years.

If, at any time that a civil cause of action for child abuse exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action; and any mention of the civil action during the criminal proceeding is prohibited.

11. Testimonial Aids.

The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

ARTICLE VIII. MANDATORY TRAINING - VICTIMS'/CHILD VICTIMS'
AND WITNESSES' RIGHTS

It shall be mandatory for all components of the Department of Justice covered by these Guidelines to provide training to all presently-employed and new attorneys, investigators, law enforcement, and corrections officers concerning their responsibilities in carrying out the provisions of the *Victim and Witness Protection Act of 1982*, *Victims Rights and Restitution Act of 1990*, and the *Victims of Child Abuse Act of 1990*, and to provide written instructions to appropriate subcomponents to ensure that these laws are implemented.

In addition, all training units conducted or supported by the Department of Justice shall develop programs which address victim assistance from the perspective of the personnel they train. These units include the F.B.I Academy at Quantico, the Attorney General's Advocacy Institute, the Federal Law Enforcement Training Center at Glynco, Georgia (through agreement with the U. S. Department of Treasury), and field training conducted by the F.B.I. and D.E.A.

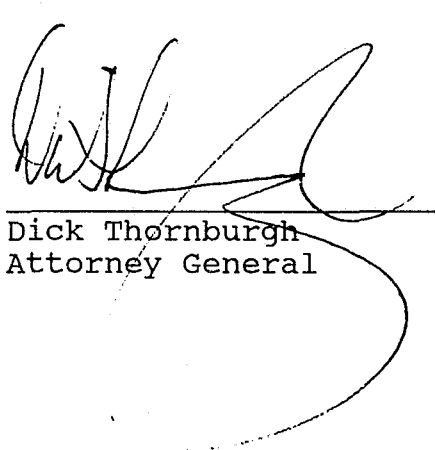
Compliance with this training requirement shall be included in the agency's annual "Best Efforts" Report.

The Office for Victims of Crime shall be responsible for coordinating training programs, in conjunction with all components of the Department of Justice, with respect to victims and witnesses of Federal crime, including child witnesses and victims of child abuse.

ARTICLE IX. NON-LITIGABILITY

These Guidelines provide only internal Department of Justice guidance. They are not intended to, do 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. These Guidelines 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 Justice.

APPROVED: this 6th day of August, 1991



Dick Thornburgh
Attorney General

18 U.S.C. §1512-1514 (1990)

Civil Remedies-Protection, (See 18 U.S.C. §1514)

§ 1512. Tampering with a witness, victim, or an informant

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (2).

(2) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112 of this title; and

(B) in the case of an attempt, imprisonment for not more than twenty years.

(b) Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be fined not more than \$250,000 or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined not more than \$25,000 or imprisoned not more than one year, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(e) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(f) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.

(As amended Pub.L. 99-646, § 61, Nov. 10, 1986, 100 Stat. 3614; Pub.L. 100-690, Title VII,

§ 1513. Retaliating against a witness, victim, or an informant

(a) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined not more than \$250,000 or imprisoned not more than ten years, or both.

(b) There is extraterritorial Federal jurisdiction over an offense under this section.

(Added Pub.L. 97-291, § 4(a), Oct. 12, 1982, 96 Stat. 1250.)

§ 1514. Civil action to restrain harassment of a victim or witness

(a) (1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2) (A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

(B) A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

(C) A temporary restraining order issued under this section shall expire at such time, not to exceed 10 days from issuance, as the court directs; the court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 10 days or for such longer period agreed to by the adverse party.

(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when such motion comes on for hearing, if the attorney for the Government does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

(E) If on two days notice to the attorney for the Government or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

(b) (1) A United States district court, upon motion of the attorney for the Government, shall issue a protective order prohibiting harassment of a victim or witness in a Federal criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

(2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

(3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The attorney for the Government may, at any time within ninety days before the expiration of such order, apply for a new protective order under this section.

(c) As used in this section—

(1) the term "harassment" means a course of conduct directed at a specific person that—

(A) causes substantial emotional distress in such person; and

(B) serves no legitimate purpose; and

(2) the term "course of conduct" means a series of acts over a period of time, however short, indicating a continuity of purpose.

(Added Pub.L. 97-291, § 4(a), Oct. 12, 1982, 96 Stat. 1250.)

Mandated Reporters of Suspected Child Abuse

(a) In General.-A person who, while engaged in a professional capacity or activity described in subsection (b) on Federal land or in a federally-operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated ...(to receive such reports).

(b) Covered Professionals.-Persons engaged in the following professions and activities are subject to the requirements of subsection (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.

Section 226(b), (d), Victims of Child Abuse Act of 1990.



U.S. Department of Justice

APPENDIX C

Office of Justice Programs

Office for Victims of Crime

CRIME VICTIMS COMPENSATION

Crime victims compensation programs, administered by the states, provide financial assistance to victims and survivors of victims of criminal violence. Payments are made for medical expenses, including expenses for mental health counseling and care; lost wages attributable to a physical injury and funeral expenses attributable to a death resulting from a compensable crime. Some other compensable expenses are also included such as eyeglasses or other corrective lenses, dental services and devices and prosthetic devices. Each state establishes its own procedures for making application for crime victim compensation including establishing minimum and maximum award amounts, and criteria for approving claims.

In order to qualify for a crime victim compensation grant award, the State must meet prescribed eligibility requirements which are specified in the Victims of Crime Act (VOCA). In 1988, amendments to VOCA which were included in the Anti-Drug Abuse Act of 1988 (P.L. No. 100-690, Title VII, Subtitle D), added new requirements which require states to expand efforts to assist victims of violent crimes. State compensation programs must provide assurance that the state will offer compensation to victims and survivors of drunk driving and domestic violence, and provide compensation to residents of the state who are victims of crimes occurring in States which do not have crime victims compensation for which the victim is eligible. The original deadline for meeting the new requirements was October 1, 1990 as provided in Section 7129 (Transition Rule) of VOCA. However, an amendment to this Section by the Crime Control Act of 1990, Public Law 101-647 (Signed 11/29/90) extended the deadline to October 1, 1991.

For additional information contact the State Compensation and Assistance Division, Office for Victims of Crime, 633 Indiana Avenue, N.W., Washington, D.C. 20531, at telephone number (202) 307-5947.

Restitution - Implications of 1990 Amendments

The 1990 *Crime Control Act* amendments of the restitution provisions of 18 U.S.C. 3663(a), may be judicially interpreted to mean all victims harmed during the criminal episode of fraud, i.e., not only victims of charged crimes but also victims (named in the indictment) of crimes for which the defendant was not charged. Therefore, a prosecutor should give careful consideration to including a count in the indictment, such as a conspiracy count, which encompasses all of the conduct that affects the victims. A conviction or plea on this one count may permit full restitution.

In addition, if there are plea negotiations (even for crimes not covered under subsection (2), i.e. crimes not involving a scheme, conspiracy or pattern), a prosecutor should attempt to obtain the defendant's consent to an order of restitution for all victims of the offense, not just for the victims involved in the counts to which he or she is pleading guilty.

Restitution Orders Nondischargeable in Bankruptcy

The 1990 amendments relative to the dischargeability of restitution debts in bankruptcy, were enacted in order to prevent misuse of the Bankruptcy Code by closing loopholes which allowed criminals to avoid court judgment for restitution by filing Chapter 13 reorganizations. Also, the new law appears to resolve legislatively the issue concerning specific exceptions to discharge under Chapter 13, raised in *Pennsylvania v. Davenport*, 110 S.Ct. 2126 (1990).

Restitution

18 U.S.C. § 3663-3664 (1990)

§ 3663. Order of restitution

(a)(1) The court, when sentencing a defendant convicted of an offense under this title or under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense.

(2) For the purposes of restitution, a victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(d) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(e)(1) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of restitution shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

(2) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of that State.

(f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

(2) The end of such period or the last such installment shall not be later than—

(A) the end of the period of probation, if probation is ordered;

(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and

(C) five years after the date of sentencing in any other case.

(3) If not otherwise provided by the court under this subsection, restitution shall be made immediately.

(4) The order of restitution shall require the defendant to make restitution directly to the victim or other person eligible under this section, or to deliver the amount or property due as restitution to the Attorney General or the person designated under section 604(a)(18) of title 28 for transfer to such victim or person.

(g) If such defendant is placed on probation or sentenced to a term of supervised release under this title, any restitution ordered under this section shall be a condition of such probation or supervised release. The court may revoke probation or a term of supervised release, or modify the term or conditions of probation or a term of supervised release, or hold a defendant in contempt pursuant to section 3583(e) if the defendant fails to comply with such order. In determining whether to revoke probation or a term of supervised release, modify the term or conditions of probation or supervised release, or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(h) An order of restitution may be enforced—

(1) by the United States—

(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

(B) in the same manner as a judgment in a civil action; and

(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

§ 3664. Procedure for issuing order of restitution

(a) The court, in determining whether to order restitution under section 3663 of this title and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(b) The court may order the probation service of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

(c) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(d) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(e) A conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(Added Pub.L. 97-291, § 5(a), Oct. 12, 1982, 96 Stat. 1255.
§ 3580, renumbered Pub.L. 98-473, Title II, § 212(a)(1).
Oct. 12, 1984; 98 Stat. 1987; Pub.L. 101-647, Title XXXV,
§ 3596, Nov. 29, 1990, 104 Stat. 4931.)

Victim Impact Statement

Rule 32(c) - Federal Rules of Criminal Procedure

(c) Presentence Investigation.

(1) **When Made.** A probation officer shall make a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553, and the court explains this finding on the record.

Except with the written consent of the defendant, the report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) **Report.** The report of the presentence investigation shall contain—

(A) information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant.¹

(B) the classification of the offense and of the defendant under the categories established by the Sentencing Commission pursuant to section 994(a) of title 28, that the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1); and an explanation by the probation officer of any factors that may indicate that a sentence of a different kind or of a different length from one within the applicable guideline would be more appropriate under all the circumstances;

(C) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2);

(D) verified information stated in a nonargumentative style containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed;

(E) unless the court orders otherwise, information concerning the nature and extent of nonprison programs and resources available for the defendant; and

(F) such other information as may be required by the court.

3) Disclosure.

(A) At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence investigation, including the information required by subdivision (c)(2) but not including any final recommendation as to sentence, and not to the extent that in the opinion of the court the report contains diagnostic opinions,² which if disclosed, might seriously disrupt a program of rehabilitation; or sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The court shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant and the defendant's counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material which may be disclosed to the defendant and the defendant's counsel shall be disclosed to the attorney for the government.

(D) If the comments of the defendant and the defendant's counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons.

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3552(b) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(F) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3552(b) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

Rule Applicable to Offenses Committed Prior to Nov. 1, 1987

This rule as in effect prior to amendment by
Pub.L. 98-473 read as follows:

Rule 32. Sentence and Judgment

(c) Presentence Investigation.

(1) When Made. The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(2) Report. The presentence report shall contain—

(A) any prior criminal record of the defendant;

(B) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior;

(C) information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense; and

(D) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense.

(3) Disclosure.

(A) At a reasonable time before imposing sentence the court shall permit the defendant and the defendant's counsel to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinions which, if disclosed, might seriously disrupt a program of rehabilitation; or sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The court shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant and the defendant's

counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material which may be disclosed to the defendant and the defendant's counsel shall be disclosed to the attorney for the government.

(D) If the comments of the defendant and the defendant's counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons or the Parole Commission.

(E) Any copies of the presentence investigation report made available to the defendant and the defendant's counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(F) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Parole Commission pursuant to 18 U.S.C. §§ 4205(c), 4252, 5010(e), or 5037(c) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

Videotape-Handling, Procedures 18 U.S.C. 3509(b)(2)

(B)(v) Handling of Videotape.-The complete record of the examination of the child, including the images and voices of all persons who in any way participate in the examination, shall be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of the trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during the trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.