Law Enforcement-Based Victim Services: 

*Documentation Standards*
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Introduction

Victim-centered responses and services are vital to the safety, stability, and healing of crime victims, as their use can ultimately reduce and prevent future victimization. In 2018, to support the development of law enforcement-based victim services in the United States, to strengthen their capacity, and to support partnerships with community-based programs, the U.S. Department of Justice, Office for Victims of Crime (OVC) launched the Law Enforcement-Based Victim Services & Technical Assistance Program (LEV Program). Providing training and technical assistance for the LEV Program, the International Association of Chiefs of Police (IACP) aims to enhance the capacity of law enforcement-based victim services by providing guidance on promising practices and policies to support victims’ access to their legal rights and the services and responses they need.

This publication series seeks to enhance law enforcement-based victim services, and as a result, the overall field of victim advocacy. Community-based advocates reading these publications may need to account for statutory, legislative, and policy differences.

Prior Publications & Accompanying Webinars

The LEV Program aims to guide agencies to provide high-quality (coordinated, collaborative, culturally responsive, multidisciplinary, and trauma-informed) services that address the broader needs and rights of all crime victims. The following publications can assist in these efforts.

- **Law Enforcement-Based Victim Services: Key Considerations** and the accompanying **Law Enforcement-Based Victim Services: Key Considerations Checklist** provide an overview of foundational topics for law enforcement-based victim services.
- **Victims’ Rights Jurisdiction Profiles** provide state-specific information on the intersections of victims’ rights and communication with victim services personnel.
- **Law Enforcement-Based Victim Services: Advocacy Parameters** discusses the structure of law enforcement-based victim services, personnel supervision, and service delivery.
- **Law Enforcement-Based Victim Services: Effective Partnerships** discusses the benefits of partnerships and encourages agencies to consider both internal and external partners to strengthen community response to victims.
- **Law Enforcement-Based Victim Services: Using Technology to Communicate with Victims** discusses considerations when using virtual technology to communicate with victims.

To assist agencies in establishing or enhancing law enforcement-based victim services, the Template Package series provides sample victim services policies and forms agencies can adapt to state, federal, or

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2 For more information, see the **Models of Service Provision** section of this publication.
tribal jurisdictions and to agency requirements. The template packages should be used in conjunction with the topic-specific resources listed above. The Template Package series includes—

- **Law Enforcement-Based Victim Services: Template Package I – Getting Started** provides job descriptions, interview questions, code of ethics, and foundational policies and protocols.

- **Law Enforcement-Based Victim Services: Template Package II – Next Steps** provides case response protocol templates, scenarios, and documentation samples.

- **Law Enforcement-Based Victim Services: Template Package III – Student Interns & Volunteers** provides templates for recruiting, screening and selection, training, supervision, and other agency considerations for student interns and volunteers.

- **Law Enforcement-Based Victim Services: Template Package IV – Pamphlets** includes sample crime-specific and topic-specific informational pamphlets agencies can customize and disseminate to victims of crime.

- **Law Enforcement-Based Victim Services: Template Package V – Training** includes customizable presentations and activity workbooks agencies can use for victim services personnel training.

IACP developed a virtual training series to supplement the publications. Each topic covered has content intended for sworn and program personnel. This model promotes a thorough understanding of the intricacies of victim services at all levels of a law enforcement agency.

**Definitions**

Throughout this series, the following definitions will apply. They were selected through a review of documents in the field including those from existing law enforcement-based victim services programs:

- **Advocacy**—actions to support a cause, idea, policy, or position.
  - **Individual advocacy**—actions aimed at direct services for victims.
  - **Systemic advocacy**—actions to improve overall system responses and outcomes for all victims.
  - **Community-based advocacy**—actions by those who work for private, autonomous, often nonprofit organizations within the community.
  - **System-based advocacy**—actions by those employed by public agencies such as law enforcement, prosecutor’s office, or some other entity within the city, county, state, tribal, or federal government.

- **Agency**—refers to the police department, sheriff’s office, tribal police or public safety department, campus police department, district attorney’s office, state attorney’s office, or other governmental criminal justice entity that is employing victim services personnel.
• **Community-Based Organization**—a nongovernmental or nonprofit organization that may provide services to victims.

• **Crime Victim Compensation**—a state or federal-based reimbursement program for victims of crime, found in every U.S. state and territory, but with eligibility criteria and specific benefits that are unique to each state or territory.

• **Mandated Reporting**—obligations per state, federal, or tribal law about concerns of abuse, neglect, or exploitation of minors and older or vulnerable adults.

• **Professional Personnel**—non-sworn or civilian law enforcement agency personnel (e.g., victim services, front desk, crime scene, records, communications/dispatch).

• **Spontaneous Disclosure**—situations in which a victim, witness, survivor, or co-victim, unprompted, discloses details about criminal events to victim services personnel that were not previously shared with law enforcement personnel.

• **Student Intern**—someone who serves in an agency for a designated period with or without promise, expectation, or receipt of compensation for services rendered and is affiliated with an institution of higher education.4

• **Trauma-Informed**—an approach involving educating victims, service providers, and the general community about the impact of trauma on the health and well-being of victims; attending to victims’ emotional and physical safety; and using resources, services, and support to increase the ability of victims to recover.5 To fully develop a trauma-informed response, all disciplines must be involved in response efforts (dispatch, patrol, investigators, supervisors, nurses, advocates, prosecutors, legal services, victim services personnel, and others providing services to victims) and acknowledge the impact of historical, intergenerational, and personal trauma.

• **Tribe**—any American Indian/Alaska Native (AI/AN) Tribe, Band, Nation, or other organized group or community (including any Alaska Native Village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ([85 Stat. 688], 43 USC §§ 1601 et seq.) who are recognized as eligible for the special programs and services provided by the United States to AI/AN individuals.

• **Victim-Centered**—an approach placing the victim at the center of all decisions regarding victim recovery and involvement with the criminal justice system, focusing on victim’s choice, safety, and well-being and how the needs of the victim are everyone’s concern.6

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3 There are currently two states, [Arizona](https://www.azleg.gov/) and [Colorado](https://www.colorado.gov/), that administer victim compensation funds using a decentralized system.


6 NIJ, *Notifying Sexual Assault Victims after Testing Evidence*.
• **Victims’ Rights**—language included in constitutions, statutes, rules, and policies that vary by federal, state, or tribal jurisdiction and define legal responsibilities related to victims of crime, affording them independent, participatory status in the criminal justice system.\(^7\)

• **Victim Services Personnel**—personnel (paid or unpaid) designated to provide law enforcement-based program oversight, crisis intervention, criminal justice support, community referrals, and advocacy on behalf of crime victims, witnesses, survivors, and co-victims.

• **Victim Services Unit (VSU)**—the unit within the law enforcement agency that houses the victim services personnel.

• **Victim, Witness, Survivor, Co-victim**—any person (minor or adult) who directly experiences or is impacted by a crime or criminal activity.
  
  o **Victim** is an individual who is an independent participant in the criminal case under federal or state victims’ rights laws or tribal victims’ rights codes, denotes a person’s legal status (unavailable to the general public), and defines the level and extent of participation that the individual is entitled to in the criminal matter.
  
  o **Witness** is an individual who has personal knowledge of information or actions that are relative to the incident being investigated.
  
  o **Survivor** is often used interchangeably with “victim” when conveying context related to resilience and healing.
  
  o **Co-victim** is an individual who has lost a loved one to homicide, including family members, other relatives, and friends of the decedent.

• **Volunteer**—someone who performs a service for an agency without promise, expectation, or receipt of compensation for services rendered.\(^8\)

### Documentation Standards

Victim services personnel (including student interns and volunteers) should be prepared to accurately document activities performed during their assigned responsibilities. Documentation is defined in this publication as the written record of service provision and contact on a case. Documentation is different from data tracking, which involves statistics of service provision (e.g., number of victims served, demographics of victims served, number of referrals provided). Victim services documentation should capture the content and context of interactions with victims, decisions made, and services provided, regardless of how the information is received (e.g., in person, by email, text, or phone).

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\(^8\) IACP Law Enforcement Policy Center, *Concepts & Issues Paper: Volunteers*. 

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Documentation creates a record of contact and provides useful information for others who work with the same victim (when sharing such information is consented to and permissible under the law), including other agency personnel, prosecutors, and crime victim compensation workers. It also provides a way to verify actions taken or services provided if a question or concern is raised. Thorough documentation can also assist victims, witnesses, survivors, and co-victims with qualification processes for services and resources including protection orders, public housing, public assistance, health and life insurance, crime victim compensation, immigration assistance, and landlord-tenant dispute resolution, among others. Accurate, succinct, and trauma-informed documentation can also reduce unintentional harm to victims, witnesses, survivors, and co-victims.

When establishing victim services documentation policies and practices, agencies should determine—

- how interactions with victims are documented,
- what documentation standards are expected,
- where and how documentation is stored,
- who reviews the documentation (e.g., supervisor),
- who has access to documentation,
- when and how requests for information are handled (e.g., from victims, prosecutors, defense attorneys, media), and
- when and how victims will be notified of documentation practices and requests for information.

Agencies should develop documentation policies and practices using a collaborative approach. Consider including the following internal and external partners in policy development and review processes:

- agency records personnel
- agency legal counsel (attorneys who represent the interests of the agency)
- victims’ rights attorneys (attorneys who represent the interests of victims)
- prosecutors (attorneys who represent the interests of the criminal case)
- agency information technology (IT) personnel

**Models of Service Provision**

One of the first steps in determining documentation practices is to identify the agency’s chosen model of service provision. In general, three models exist including—

- **Law enforcement-based victim services**—victim services personnel are employed by or contracted to serve a law enforcement agency (this can include student interns and volunteers)

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9 For more information about state-specific victims’ rights including parameters around privacy, confidentiality, and privilege, see "Victims’ Rights Jurisdiction Profiles." Sample documentation protocols, case scenarios, and documentation can be found in Law Enforcement-Based Victim Services: Template Package II – Next Steps.
and service provision is for victims, witnesses, survivors, and co-victims of crime within the jurisdiction. These personnel are subject to rigorous background check processes and training, receive access to the agency’s record management system (RMS) and Criminal Justice Information Services (CJIS), and are representatives of the law enforcement agency.

- **Hybrid community-based victim services**—victim services personnel are employed by a community-based organization that is engaged in a formal agreement (e.g., contract and/or memorandum of understanding or cooperative agreement) with a law enforcement agency to jointly dictate the role of victim services personnel in serving victims, witnesses, survivors, and co-victims of crime who are engaged with the law enforcement agency. These personnel may have limited (e.g., read-only) access to RMS and CJIS after a proper background check is cleared but are not representatives of the law enforcement agency.

- **Community-based victim services**—victim advocates are employed by a community-based organization and the community-based organization may or may not have an agreement (e.g., memorandum of understanding or cooperative agreement) with a law enforcement agency dictating partnership contributions. These advocates do not have access to RMS or CJIS and are not representatives of the law enforcement agency.

Model of service provision dictates the legal and ethical obligations of victim services personnel regarding privacy, confidentiality, and privilege. As a result, it determines what is documented, where it is documented, and who has access to the documentation.

**Location**

Agencies should determine whether documentation will be kept electronically or if paper records will also be maintained. The availability of both electronic and physical storage space will impact this decision. Agencies should research options and the pros and cons of each, understanding that documentation of

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services and actions by victim services personnel is not optional. Agency technology personnel, facilities personnel, agency legal counsel, and prosecutors can also be helpful in determining the best option for the agency.

Can victim services personnel document in the same system as law enforcement personnel?

Many agencies maintain records management systems (RMS) that allow them to store, retrieve, archive, and view information, records, documents, or files related to agency operations. These systems typically capture written, photographic, and video/audio recorded documentation of calls for service, incident reports, investigative case management, field contacts, internal affairs, and other routine policing activities. Most RMS can be customized to fit the needs of individual agencies, including the addition of victim services documentation.10

When possible, agencies should consider allowing law enforcement-based victim services personnel to document in the agency RMS. Shared access increases transparency and supports collaboration between victim services and sworn personnel. It can reduce time lags due to slow information sharing processes (e.g., requesting information via email or waiting for colleagues to be in the office to discuss a case). It also reduces personnel time and improves efficiency as information is available in real time. Follow-up contact between professionals can focus on clarification or future-focused case planning. Policies should be put in place to ensure documentation practices are consistent and supervisors are routinely reviewing and providing feedback on victim services documentation. Policies should also include how and where student interns and volunteers will document service provision.

Should a separate system be created and maintained for victim services documentation?

When a shared RMS is not feasible, a separate documentation system can be established and maintained for law enforcement-based victim services documentation. These systems should be able to capture statistics, demographics, and case information. There are multiple programs and software available, and many can be customized to assist with grant reporting requirements (e.g., Victims of Crime Act [VOCA] funding). However, most require both start-up and ongoing subscription costs. Cloud-based programs may also require additional data storage costs. Agencies should be aware of requirements for cloud-based storage security and take the necessary steps to ensure information is secure.

For agencies using a hybrid community-based victim services model, these victim services personnel may have limited access to RMS (e.g., read-only), but their documentation should be maintained separately to

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ensure compliance with confidentiality requirements. This could impact transparency and collaboration with sworn personnel. Requirements for releases of information (ROI) signed by victims could also impact information sharing practices.

Both sworn leadership and victim services personnel should have a clear understanding of how their documentation intersects with discovery processes, requests for information, and other ways documentation may be accessible both within and outside the agency.

Community-based victim services have not completed background processes through the law enforcement agency and do not have access to CJIS, RMS, or tribal law enforcement records. Therefore, all documentation will be maintained through their employing organization. Any information shared with law enforcement requires signed releases of information (ROI) by victims.

**Content**

While the roles of victim services and law enforcement personnel differ, the extent to which they document services provided and actions taken should not. It is critical that victim services documentation include only information about actions taken and services provided by victim services personnel.\(^\text{11}\) It should not include a detailed restatement of the facts of the case, actions taken by others, or personal opinions. Additionally, capturing audio, video, or photographs of interactions with victims or other activities that are investigative in nature are outside the scope of the role of victim services personnel and should not occur.\(^\text{12}\) The incident itself should be documented in detail by law enforcement personnel (e.g., patrol officers, investigators, crime scene personnel). This ensures victim services personnel are not acting outside the scope of their role and also eliminates any discrepancies that may cause confusion and impact potential prosecution of the case or cause harm to victims.

\(^{11}\) See **Standard 4.2** in *Achieving Excellence: Model Standards for Serving Victims and Survivors of Crime*.

\(^{12}\) For more information about victim services role clarification, see *Law Enforcement-Based Victim Services: Advocacy Parameters*.
Documentation is a skill that can be developed and improved over time. Documentation that is incomplete or does not meet established standards can have a significant impact on case progression and may even limit the viability of the case for prosecution. All personnel—victim services and sworn, paid and unpaid—should receive regular training and supervision on documentation. Onboarding and ongoing training should include review of agency documentation policies, legal intersections (e.g., *Brady* disclosures and subpoena response), common errors, and requirements for documenting when information is shared due to mandated reporting laws (e.g., when child/adult abuse or neglect is suspected).

*If a victim spontaneously discloses details about criminal events to victim services personnel that were not previously disclosed to law enforcement, are victim services personnel trained on how this disclosure should be handled and documented?*

Due to the nature of the professional relationship and frequency of contact, victims frequently disclose information to victim services personnel that they have not shared with law enforcement personnel. Victim services personnel should be transparent with victims from the earliest possible point of contact about how new information will be documented, with whom it will be shared, and ways the information may be used in the case. To ensure victims remain fully informed, all victim services personnel should review the limitations of confidentiality and documentation practices every time contact is made. It is acceptable to stop victims in the middle of conversations to remind them of these important parameters.

It is important to develop clear policies for documentation of spontaneous disclosures made by victims to victim services personnel. Agencies should include legal counsel, prosecutors, and victims’ rights attorneys in developing these policies to ensure legal requirements are met and victims’ rights are upheld.

Documentation and sharing of spontaneous disclosures will differ based on the chosen model of service provision. **Law enforcement-based victim services** personnel generally do not have confidentiality or privilege with victims, and additional information received must be documented and shared with law enforcement personnel. In most cases, **hybrid community-based victim services** personnel and **community-based victim services** personnel retain confidentiality or privilege with victims, and new information will not be shared with law enforcement personnel unless certain criteria are met (e.g., mandated reporting requirements). They should document new information according to their employing organization’s established policies.

*Has the prosecuting attorney’s office, tribal prosecutor, or U.S. attorney’s office in the agency’s jurisdiction been consulted to review documentation policies?*

In addition to agency legal counsel review, law enforcement agencies are encouraged to develop victim services documentation policies and practices in partnership with prosecutors. There are many complex legal intersections that impact access to victim services documentation, and policies should be established to ensure the highest level of privacy for victims as the law allows.

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13 For an introductory training, see OVC’s Victim Assistance Training Online documentation module.
14 Refer to state statutes, agency policies, and grant funding related to victim services personnel confidentiality or privilege.
Is appropriate language being used in documentation (i.e., victim-centered, inclusive language)?

Victim-centered language should be used in all documentation. Word choice matters, and how information is documented can impact how others interpret events and details. Language used in documentation can also impact victims’ eligibility for victim compensation programs and other resources including some immigration benefits. Common language pitfalls include—

- **Victim-Blaming Language**—Language that objectifies or blames the victim. It is sometimes stated in law enforcement incident reports that the status of a case or lack of investigation are a result of “victim cooperation,” or lack thereof. This use of language in the investigative process places blame on the victim without asking the reasons they decline or are unable to participate in investigations or exploring other investigative techniques.

- **Non-inclusive Language**—Statements and expressions that exclude or minimize the experiences of individuals or groups of people (e.g., “a person who is blind or visually impaired” should be used instead of “a blind person”) or include racist, sexist, or other discriminatory terminology.

- **Linguistic Avoidance**—This occurs when language is used to deflect responsibility away from the perpetrator or diffuse responsibility by documenting in a way where there is no perpetrator (e.g., “Mary said that Dan punched and strangled her” should be used instead of “Mary was punched and strangled”).

- **Language of Consent**—Statements that imply consent without the context of physical, verbal, or emotional force often portray an incomplete and inaccurate picture of what occurred (e.g., “He forcefully penetrated her vagina with his penis” should be used instead of “He had sex with her”).

Another common documentation challenge is deciding whether to directly quote victims in reports. There can be benefits and unintended consequences for this practice. For example, direct quotes can provide clarity. They may also put victims at risk when offenders obtain copies of the report. If victim services personnel include direct quotes from victims in documentation, it is important for this to be done in partnership with the victim. This can include reading the quote back to the victim to ensure accuracy, clarifying details if needed, and explaining to the victim that their words will be documented verbatim and how this information may be used in the case.

**Do victim services supervisors routinely review and provide feedback on victim services personnel’s documentation?**

Supervisors of victim services personnel, including supervisors for student interns and volunteers, should routinely review staff documentation, provide feedback and coaching, and require needed corrections as soon as possible to ensure accuracy of the information. This ongoing supervision is critical. Many victim

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15 For additional information, visit Law Enforcement’s Role in Victim Compensation and U Visa Law Enforcement Resource Guide.
16 For more information, see Raped or “Seduced”? How Language Helps Shape Our Response to Sexual Violence.
services personnel may have practiced documentation in their previous employment (e.g., counseling, community-based advocacy, medical field) that may differ significantly from what is required in their current role in the law enforcement agency.

Access

Access to documentation refers to both who has access to victim services personnel’s documentation (e.g., law enforcement colleagues, prosecutor, defendant, media) and victim services personnel’s access to law enforcement records. Both types of access are directly related to the chosen model of service provision. Regardless of the model used, agencies and community-based organizations should establish policies and conduct cross-training on access to documentation to ensure all personnel understand the processes and limitations involved. The chart below provides general information, and agencies should ensure documentation practices follow federal, state, and tribal statutes, rulings, and agency policies.

<table>
<thead>
<tr>
<th>Access to Victim Services Documentation</th>
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<tbody>
<tr>
<td><strong>Determining victim services access to police records and other professionals’ access to victim services records is generally based on the model of victim services provision.</strong></td>
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<tr>
<td><strong>Law Enforcement-Based Victim Services</strong></td>
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<tr>
<td>Employed by a law enforcement agency</td>
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<tr>
<td><strong>Can victim services access law enforcement records management system (RMS)?</strong></td>
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<tr>
<td><strong>Can law enforcement access victim services records?</strong></td>
</tr>
<tr>
<td><strong>Are victim services records accessible to other parties?</strong></td>
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</tbody>
</table>

If victim services personnel are employed by a law enforcement agency—

Do victim services personnel explain to victims the potentially wide access to documentation?

As government employees, documentation by law enforcement agency personnel will likely be accessible to multiple parties. This applies to all law enforcement agency personnel—including sworn, professional, paid, and unpaid staff; law enforcement-based victim services staff; student interns; and volunteers. While processes for gaining access and the content that is accessible may vary, the parties who could access this documentation may include other law enforcement personnel, victims, prosecutors, defense
attorneys, suspects, media, and the public. It is vitally important for victims to be informed about who may have access to agency documentation both within the agency and externally. These discussions should occur during each contact, and this information should also be provided to victims in writing for future reference.

**Have policies been established to address victim safety concerns related to documentation and information disclosure (e.g., redaction)?**

Because disclosure of documentation may be necessary, agencies should work with agency legal counsel and prosecutors to establish clear redaction policies. In some cases, specific information can be redacted (e.g., removed, obscured) and still meet the legal requirements for disclosure. For example, identifying information such as names, dates of birth, social security numbers, and addresses can be redacted under certain circumstances. In addition, agencies should include victim safety considerations in policies if disclosure of information could put a victim at risk. For example, if a defendant or the media make a request for all records pertaining to the case, the agency may argue to redact information about the victim’s safety plans and alternate living arrangements and location prior to disclosure. Victim services personnel should receive regular training on this topic and develop practices to minimize risk to victims while still meeting the legal and ethical responsibilities of maintaining documentation according to their agency’s established policies and victims’ rights.

**If victim services personnel are employed by a community-based organization—**

**Are they following their employing organization’s guidelines for access to documentation?**

**Hybrid community-based victim services** and **community-based victim services** personnel often retain confidentiality or privilege with victims and access to their documentation is much more limited. These victim services personnel will complete their documentation in a separate system not accessible to their law enforcement partners. They should follow their employing agencies’ policies and related processes (e.g., subpoena response). In a hybrid community-based victim services model, these victim services personnel may have limited access to RMS (e.g., read-only). Community-based victim advocates have not completed background processes through the law enforcement agency and do not have access to CJIS, RMS, or tribal law enforcement records. Therefore, all documentation will be maintained through their employing organization. Any information shared with law enforcement requires signed releases of information (ROI) by victims.

Agencies should conduct cross-training on access to documentation to ensure all personnel understand the processes and limitations involved. It can also be helpful for community-based organization staff to provide training to law enforcement partners to ensure understanding.

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18 Under specific circumstances, victims in some jurisdictions have the right to use pseudonyms. Agencies must be familiar with the parameters in their jurisdictions and their responsibilities to ensure required processes are completed.
Do they explain these guidelines to victims?

**Hybrid community-based victim services** and **community-based victim services** must be clear with victims about reasons confidential documentation may have to be disclosed, including the types of information that trigger mandated reporting (e.g., when a person is thought to be a danger to themselves or others) or in response to a court order. These discussions should occur during each contact, and this information should also be provided to victims in writing for future reference.

**Do they understand that documentation may not be accessible outside the community-based organization, including to law enforcement and that it will not be included in the criminal investigation (unless ordered by a court)?**

In most cases, victim services documentation for hybrid community-based victim services and community-based victim services will be confidential or privileged. This means that the documentation cannot be shared with law enforcement partners without a release of information from the victim. Agencies and community-based organizations working together to provide victim services are encouraged to complete cross-training to ensure all parties understand the responsibilities and limitations for access to victim services documentation. It is critical that all partners have a clear understanding of these parameters so they can provide victims with accurate information. Victims can then make informed decisions about what information they share and with whom.

**Legal Intersections**

Other common documentation considerations include intersections with legal requirements such as **Brady**, Health Information Portability and Accountability Act (HIPAA), Family Educational Rights and Privacy Act (FERPA), Title IX of the Education Amendments of 1972 (Title IX), and Open Records/Freedom of Information Act (FOIA) requests. Some funding sources commonly used to support victim services programs, including Victims of Crime Act (VOCA) and Violence Against Women Act (VAWA) funding, have additional requirements related to documentation. These and other federal, state, tribal, and local legal requirements and rules may impact documentation of and access to victim services documentation.

Documentation should be completed with these intersections in mind, including long-term implications of documentation content. Agencies should work cooperatively with agency legal counsel, prosecutors, and victims’ rights attorneys to understand local, state, tribal, and federal rules that impact access to victim services documentation. Because the legal intersections are often complex and impact victim services personnel to varying degrees, regular training and supervision on these topics and access to legal consultation are critical.

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19 For comprehensive information about federal legal intersections and state-specific laws, statutes, and rules that govern privacy, confidentiality, and privilege, see “Victims’ Rights Jurisdiction Profiles.”
Do victim services personnel understand legal intersections between their documentation and—

Brady v. Maryland?

*Brady v. Maryland*, 373 U.S. 83, 87-88 (1963), (commonly referred to as “Brady” or “Brady disclosures”) is a U.S. Supreme Court case that identifies what information and records must be shared between the prosecution and defense during discovery and disclosure processes. This ruling states that prosecutors must turn over any information that is potentially exculpatory, or indicates the defendant might not be guilty, to the defense. This requirement also extends to others working on behalf of the prosecutor, potentially to include victim services personnel.

The application of *Brady* to law enforcement and victim services personnel can be complex. Depending on whether victim services personnel are system-based (generally considered to be agents of the prosecution) or community-based (generally not considered to be agents of the prosecution), their documentation may have to be shared with the defense in part or in full. Agencies should work closely with agency legal counsel and prosecutors to determine how *Brady* is being interpreted and expectations for turning over information.20

Health Insurance Portability and Accountability Act (HIPAA)?

The Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq. and 45 C.F.R. §164.500 et seq., is a federal law that addresses protected health information (PHI). HIPAA protections may include information about medical conditions, medications, HIV status, mental/behavioral health conditions, and substance use/abuse/treatment. Most law enforcement agencies are not HIPAA-covered entities and are not subject to the HIPAA Privacy Rule.21 However, victims may disclose health information to victim services personnel. Victim services personnel must understand whether and how this information should be documented and under what circumstances the information can, cannot, or must be shared and with whom.

Family Educational Rights and Privacy Act (FERPA)?

The Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, is a federal law that addresses the privacy of student education records maintained by educational agencies and institutions that receive funding under any U.S. Department of Education program and the personally identifiable information contained in these records.

Most law enforcement records are not protected under FERPA. However, victim services personnel may receive or have access to education records during their work. Though records of campus-based law enforcement agencies are not generally considered educational records, some information collected by law enforcement personnel from education records (e.g., personally identifiable information) likely

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20 For more information, see *Law Enforcement-Associated Victim Advocates and Brady Disclosures: Legal Background and Considerations*.


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maintains its protected status. Victim services personnel must understand whether and how this information should be documented and under what circumstances the information can, cannot, or must be shared and with whom.

**Title IX of the Education Amendments of 1972 (Title IX)?**

Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-1688, (Title IX) is a federal civil rights law that prohibits discrimination on the basis of sex at any schools and institutions receiving federal financial assistance. This law extends to primary schools, secondary schools, and higher education institutions. The purpose of Title IX was to extend the Title VII protections of the Civil Rights Act of 1964 to education settings. While Title IX’s ban on sex discrimination has impacted hiring practices and athletics in schools and higher education institutions, interpretation of Title IX has expanded to include the institution’s response to sexual harassment, sexual assault, dating, and domestic violence.

Victim services personnel should have a basic understanding of Title IX and receive ongoing training on this topic. While Title IX investigations and criminal investigations function separately, documentation may be shared. Victim services personnel should learn how and when documentation would or would not have to be shared, the impact on investigations, and be prepared to discuss such processes and impacts with victims. Victim services personnel should also establish partnerships with Title IX coordinators at local schools, school districts, and higher education institutions. Title IX coordinators can provide an overview of options and possible accommodations available to victims who report to the Title IX office.

Victim services personnel employed by a campus law enforcement agency should seek a more thorough understanding of Title IX and Title IX processes at their school, school district, or higher education institution. A strong working relationship between campus law enforcement-based victim services and the Title IX coordinator can enhance overall response to victims.

**Freedom of Information Act (FOIA)/Records requests?**

The federal open records law, known as the Freedom of Information Act (FOIA), 5 U.S.C. §552, was enacted in 1966 and provides for the legally enforceable right of any person to obtain access to federal agency records subject to FOIA, except to the extent that any portion of such records are protected from public disclosure by one of the nine exemptions (e.g., information about child victims). Open records laws—commonly referred to as public records or sunshine laws—allow any person to request government documents and, if the government refuses to turn them over, to file a lawsuit to compel disclosure. Every

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state and the federal government have such laws, and all local, state, and federal government records are presumed open for public inspection unless an exemption applies. Due to tribal sovereignty, victim services personnel serving within federally recognized tribal land are encouraged to learn about open records requests pursuant to tribal law and how they may apply differently based on the investigating law enforcement entity (e.g., tribal police, Federal Bureau of Investigation, Bureau of Indian Affairs). Victim services personnel must understand the open records laws in their jurisdictions, processes related to open records requests in their agencies, and the extent to which their documentation is or is not exempt from such requests.

**Have policies been developed and victim services personnel received training related to these legal intersections?**

In partnership with agency legal counsel and prosecutors, agencies should develop robust policies around legal intersections with victim services documentation, response to requests for disclosure of information and records, processes for victim notification, and when and how legal consultation should occur. Additionally, onboarding and ongoing training for all personnel around these topics and how they apply to individual roles should occur. Differences in application of the above and other federal, tribal, state, and local laws, statutes, and rules should be clearly delineated based on the chosen model of service provision and included in training for both sworn and professional personnel.

**Have policies been developed to notify victims of practices for releasing information (e.g., media requests, FOIA requests, trial-related discovery)? Do these policies include victim notification each time a request for information is received?**

Victims should be informed that the laws, statutes, and rules associated with disclosure requirements may impact the privacy of their information. They should also be informed about when, how, by whom, and to whom this information may be shared. Victim services personnel must have a clear understanding of these parameters to have meaningful discussions with victims about their participation options. Victim services personnel should routinely talk with victims about the limits of confidentiality throughout their involvement, not just at the beginning of their contact.

Agency personnel should notify victims as soon as possible each time a request for information or records is received, ideally before information is released. This includes requests for information by victim services personnel, sworn personnel, prosecutors, suspects, defense attorneys, the media, and other agencies (e.g., state child/adult welfare agencies, U.S. Citizenship and Immigration Services). There may be steps victims can take to further protect their information (e.g., contacting their medical or behavioral health providers to request notification if the provider receives a request for information and to be given time to oppose the request). Timely notification also gives victims the opportunity to consult with a victims’ rights attorney about their options. Policies should be enacted to streamline victim notification and should include requirements for documenting when notifications occur.
Subpoenas

Agencies with victim services personnel often cite subpoena concerns when discussing victim services documentation. It is important to note that any person who may have relevant information about a criminal or civil case is subject to subpoena if they are within the jurisdiction of the court, including tribal courts.

There are two main types of subpoenas victim services personnel may receive:

- **Person subpoena**—requires the individual to appear before the court (or another location) to provide a sworn statement or testimony.

- **Subpoena duces tecum**—requires the individual to appear before the court along with specified documentation, records, or other tangible items.

Have victim services personnel received training on the process for responding to subpoenas?

 regard of subpoena type or the issuing party, subpoena response policies should be developed. This process should be completed in partnership with agency legal counsel and prosecutors. They can provide guidance around what information must be disclosed under the law and appropriate procedures for responding to subpoenas. Victim services personnel may be subpoenaed by the prosecution, defense, and in connection with civil cases that result from contact with the criminal justice system. Subpoena response policies should include instructions for timely legal consultation and response.

As with requests for information or records, victim services personnel should notify victims each time they receive a subpoena related to the case (e.g., subpoena to testify, subpoena for records). Victim services personnel should take this opportunity to review limitations of confidentiality and the potential consequences of the subpoena, disclosure of information, and testimony. Community-based victim services personnel who generally retain confidential communication with victims should also remind victims that there may be legal exceptions that, under certain circumstances, would require the victim services personnel to break confidentiality (e.g., mandated reporting requirements, court order). Timely notification is critical so the victim can choose whether to oppose the subpoena or consult with a victims’ rights attorney about options. Transparency should be prioritized so victims remain fully informed and can make choices regarding their participation.

Documentation policies should be developed with an understanding of subpoena law in the agency’s jurisdiction and how it applies to victim services personnel and their documentation. All victim service personnel should be trained and prepared to testify within these parameters.

Do victim services personnel understand the difference between fact witnesses and expert witnesses?

Another important distinction for victim services personnel to understand is the difference between fact witnesses and expert witnesses:
• **Fact witness**—an individual who has personal knowledge of events pertaining to the case and can testify about what they have personally observed or witnessed or how they personally responded. Fact witnesses may not offer opinions.

• **Expert witness**—an individual who has specialized training and offers opinions that may assist the court in understanding technical knowledge. Expert witnesses do not typically have personal knowledge of the facts of the case but can make statements about aspects of the case in which they have expertise.\(^{23}\)

In most cases, victim services personnel will be providing services in connection to reports of criminal incidents. In these cases, they are considered fact witnesses and testimony will be limited to their personal interactions with victims, the services they provided, and actions they took. Victim services personnel may also be subpoenaed to provide testimony in civil cases that result from contact with the criminal justice system (e.g., child custody proceedings). It is important to understand that victim services personnel are inherently aligned with the desires and needs of the victims they serve and often do not have access to the full set of facts and historical information related to the presenting civil issue. Therefore, victim services personnel involved in the case are not able to provide objective opinions and recommendations about common civil issues for victims they serve, including suitability of parents and decisions related to custody and visitation.

With requisite experience and appropriate training, victim services personnel can be recognized as expert witnesses—often around trauma response. However, expert witness testimony should not be provided by victim services personnel in any case where they personally provided services.

**Have victim services personnel received training on providing court testimony?**

Providing testimony, whether as a fact witness or expert witness, can be complex and challenging. Victim services personnel should be provided with ongoing training on providing testimony, so they are familiar with the processes and expectations involved before they are required to perform this job duty. Effective training can include scenario-based learning and mock direct and cross-examination exercises to increase comfort with answering questions in this setting and support practical competency.

Additionally, providing expert testimony requires extensive knowledge and preparation. Victim services personnel who wish to become expert witnesses should engage in comprehensive training that includes testimony observation, coaching, and ongoing training around current research and evidence-based practices in the subject matters for which they will be providing expert testimony. Agencies should also determine whether providing expert testimony will be considered part of regular job duties for victim services personnel (e.g., can be completed during work hours) or considered outside the scope of their role with the agency and must be done on personal time.

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Complex Documentation

It is the responsibility of victim services personnel to accurately capture service provision and respond to victims’ needs. At times, this may include providing victims with information about how to address outcomes that do not meet their expectations. This might include complaints about the agency or personnel working on a case, but it still must be documented. This information can be received during informal encounters (e.g., during a phone conversation, by email, during an in-person conversation on scene, during an office visit) as well as through formally established grievance procedures (e.g., complaints filed through Internal Affairs). It is important to document this information as victim experiences rather than factual determination of events. Consider the following examples:

- If a victim expresses displeasure to victim services personnel following an interaction with an investigator, victim services personnel should document “Victim reported he felt disrespected by the investigator.” rather than “The investigator disregarded the victim and treated him rudely.”
- If a victim discloses concerns related to language access following an interaction with a victim services student intern, victim services personnel should document “Victim reported that an interpreter was not made available by victim services student intern” rather than “The victim services student intern refused to use an interpreter assuming the victim understood enough of the information.”
- If a victim expresses concerns related to understanding of tribal culture or traditional practices after an interaction with agency personnel, victim services personnel should document “Victim reported that agency personnel were not knowledgeable about tribal cultural practice (specify the practice)” rather than “Agency personnel did not respect tribal cultural practices.”

Complaints from victims can arise due to miscommunication or confusion about what is happening in their cases. All personnel are encouraged to view victim complaints as opportunities for further engagement and one of many ways victims can exercise their rights in the criminal justice system. There should be mutual expectations between victim services personnel and sworn personnel that victim concerns will be addressed transparently, in partnership with one another, and according to agency policy.

Other complex documentation situations may include how to properly document medical or behavioral health information, recantations, or new information disclosed to victim services personnel. Seeking supervision for assistance in navigating challenging situations and documenting this information is strongly encouraged.

Are processes for filing complaints (against sworn or victim services personnel) publicly posted?

To further promote transparency and support victim engagement, information outlining processes that victims can use to provide feedback (positive or negative) should be publicly posted at the agency and on the agency website. This should include opportunities to provide informal feedback (e.g., sending an

25 For more information and samples of complex documentation, see Law Enforcement-Based Victim Services: Template Package II – Next Steps.
email, speaking with a staff member’s supervisor, or completing a victim satisfaction survey) and information about formally established processes such as filing a complaint through Internal Affairs. This information should also be included in writing and provided to victims at the earliest opportunity. It should be made clear that the procedures are applicable to concerns related to all personnel, both sworn and professional.

Are victim services personnel familiar with supervisory structure and complaint or grievance processes for—officers? investigators? other law enforcement personnel? victim services personnel (within the agency and in other organizations)? prosecutors? defense attorneys? court staff? forensic nurses? other involved professionals?

All personnel, sworn and victim services, should have a clear understanding of the supervisory structure, contact options, and established complaint or grievance processes for both internal partners (e.g., sworn personnel at all levels, victim services personnel, communications personnel, crime scene personnel) and external partners (e.g., other system- and community-based victim services personnel, prosecutors, defense attorneys, court staff, forensic nurses). It is not enough for personnel to know that these processes exist, but they must have sufficient knowledge to accurately describe these processes and provide information to victims when needed.

Agencies should train all personnel on policies and expectations for handling and documenting complaints. This topic area can create valuable opportunities to engage in internal and external cross-training and can involve victim intersection mapping to ensure all opportunities for victims to provide feedback throughout the criminal justice system are identified and understood.

Is there a statewide or tribal victims’ rights compliance or enforcement system that victims can access?

Victims are not parties to the criminal case—criminal cases are typically brought by federal, state, or tribal governments against defendants (e.g., State of Texas v. Defendant not Victim v. Defendant), and it is the government and the defendant who are legal parties. Victims’ rights do, however, afford victims a legal status—that of participant. All 50 states, the District of Columbia, most U.S. territories, and the federal government have some combination of constitutional, statutory, and/or rule-based protections for victims of crime. Some tribes also have victims’ rights codes. Victims’ rights are generally personally enforceable by the victim within the criminal case. When a victim seeks enforcement of their rights in the criminal case, accessing a victims’ rights attorney can be beneficial.

The federal government, many states, and some tribes have also established compliance processes or offices. Compliance processes provide recourse to crime victims who feel their legal rights have been violated and provide guidance for federal and state agencies to improve compliance with victims’ rights. The federal victims’ rights compliance office (Crime Victims’ Rights Ombudsman), each state’s compliance programs, and each tribe’s compliance processes are different in scope and in the activities that can be

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26 For more information, see Options for Community Engagement and Dialogue.
undertaken on behalf of victims. For example, some programs focus on taking corrective action against employees of agencies who are found to be out of compliance with victims’ rights laws or rules. Other programs include processes for assessing victims’ rights complaints, taking legal action to remedy complaints, or issuing corrective action recommendations to agencies. Victim services personnel should understand the victims’ rights compliance processes in their jurisdiction, and this information should be provided to all victims as part of standard practice.

**Closing**

Documentation is a professional responsibility and a powerful communication tool. Law enforcement-based victim services documentation supports credibility and professionalization of the role. Learning to document effectively is a skill that should be prioritized, and supervisors should ensure ongoing training and coaching is available. Ethical and legal intersections associated with documentation should be identified and carefully addressed to ensure victims’ rights are upheld.