

# FREQUENTLY ASKED QUESTIONS (FAQs)

## PROSECUTOR-BASED VICTIM ASSISTANCE PROVIDERS

The following are frequently asked questions from victims and other professionals about the role of prosecutor-based victim service providers. Although titles differ across the state for these positions, the title “victim/witness assistant” (VWA) will be used throughout this document for consistency.

This is an evolving document, with additional FAQs added as issues or questions come to our attention. The Crime Victim Justice Unit prepared it with the support of the Minnesota Office of Justice Programs (OJP) Crime Victim Grants Unit.

### CONFIDENTIALITY

#### **Can VWAs keep their communications with victims confidential?**

Information provided to the VWA cannot be confidential from the prosecutor—what the VWA knows, the prosecutor knows. Also, given prosecutors’ disclosure obligations under their ethical standards and court rules, certain information the victim provides may be shared with the defense. Consequently, victims cannot be promised that their communications with the VWA and others in the prosecutor’s office will be confidential.

To the extent possible and the limits provided by law, prosecutors’ offices should protect information victims provide from disclosure to the public.

#### **How can I explain to victims about the limits to confidentiality?**

Victims should be told at the beginning of their contact with the VWA that their communications may be shared with the prosecutor and the defense. A simple statement can be included in the initial prosecution notice letter that goes to victims, and the VWA can mention it up front in the initial verbal contact with the victim. Victims can then choose what to share with the prosecutor’s office.

*Example: Because I work for the prosecutor’s office, whatever information you share with me is available to the prosecutor. In addition, the law requires that information the victim provides to a prosecutor’s office must in some circumstances be provided to the defense. For example, if you share information relevant to the case or that could be helpful to the defendant’s defense, I would need to share that information with the prosecutor, who would have to share it with the defense.*

## CIVIL PROTECTIVE ORDERS

### **Should VWAs assist with the preparation of Orders for Protection (OFPs) and Harassment Restraining Orders (HROs)?**

VWAs in a prosecutor's office have a different role than community-based victim advocates, and their communications with victims do not have the same confidentiality protections. Because of this, OJP strongly discourages VWAs within prosecutors' offices from assisting with the preparation of orders for protection (OFPs) or harassment restraining orders (HROs) when there is a community-based advocate available to assist with this task. Because of the greater confidentiality with protective order preparation, as well as the other services that can be offered, victims should be referred to a local program if available. If the VWA does assist a victim with preparation of a civil protective order, they should explain the limits to confidentiality and that what is shared with them may be communicated to the prosecutor and defense.

## TYPES OF ASSISTANCE PROVIDED

### **Can VWAs accompany victims for services outside the prosecution process?**

The VWA's role and protections on communications differ greatly from community-based advocates. Because of this, OJP strongly discourages VWAs from accompanying victims for services outside the prosecution process (e.g., attending OFP hearings or accompanying a victim to a forensic medical sexual assault examination). Community-based advocates have greater confidentiality in their communications with victims and typically more training on specific types of victimization. When available, these advocates can more appropriately provide services outside the prosecution process. VWAs should be aware of helpful services and resources available in the community and refer victims to community-based services for assistance.

In those rare localities where there is not a community-based service provider available, VWAs should consult with the prosecutor about the appropriate scope of any services provided outside the prosecution process and the concerns in doing so. Specifically, VWAs face an increased risk of becoming a witness, and victim communications may be shared with the defense attorney.

### **Can VWAs assist victims of violent crime in completing the Minnesota Crime Victims Reimbursement Program application?**

Yes. Working with victims of violent crime on the paperwork or applying through the online portal increases the likelihood that they will apply for reimbursement and is strongly encouraged. In addition, under the general crime program standards, VWAs are expected to assist victims with reimbursement, and VWAs are strongly encouraged to assist with the actual completion of the application.

### **Can VWAs assist victims in cases that have not been charged?**

Yes, VWAs should assist victims, regardless of charging status. This can include providing information about the criminal prosecution process, connecting the victim to the law enforcement professional investigating the case, assisting in completing a reimbursement application, and providing referrals to relevant resources. Providing assistance in uncharged cases is especially helpful in those cases where there may be no local resource with a focus on the crime type involved, for example, homicide, burglary, or financial crimes.

### **Can VWAs assist victims after the defendant has been convicted?**

Yes, VWAs should assist victims throughout the criminal justice process, including the post-conviction phase. Victims must be notified of their post-conviction rights at the conclusion of a case, and VWAs should ensure that the prosecutor's office is meeting their post-conviction notification obligations. In addition, VWAs are a continued resource for victims with their post-conviction questions and can ensure that the victim has taken the necessary steps to get release notification from the jail or DOC facility as well as connect the victim to the agent supervising the offender following release.

### **Should a VWA program staff a 24-hour victim help line?**

For OJP-funded programs, the answer is no. OJP funds a statewide network of community-based victim service organizations to provide 24-hour assistance to victims. OJP does not fund prosecutors' offices to provide 24-hour help lines. However, the reasons why prosecutors' offices should not staff a 24-hour victim help line go beyond funding.

Persons staffing a 24-hour help line typically listen to a victim's story, assess their urgent and long-term needs, provide referrals, and connect the victim with immediately-available resources. Prosecutor-based VWAs are not able to guarantee the confidentiality of these conversations with victims, which are often highly sensitive and personal. Further, VWAs being "on-call" increases the potential for confusion for victims of the roles of prosecutor-based personnel and community-based service providers.

Finally, VWAs have limited need for 24-hour accessibility to victims. While VWAs may on occasion have a need to communicate with victims outside of typical business hours to accommodate a victim's schedule or to alert a victim to a last-minute issue, most VWA activities can be accomplished during regular working hours.

## **RECORD KEEPING**

### **Do VWAs need to keep records of contacts with victims?**

Yes. It is important for VWAs to document the work they do with victims, keeping in mind that some or all of those records may ultimately be shared with the defense. Documentation of communications, assistance provided, and provision of statutory rights notifications and consultation is a best practice. Documentation should be limited to factual information and should not include personal observations, impressions, or opinions.

## ETHICS

### **Do VWAs have ethical responsibilities?**

Yes. A VWA working in a prosecutor's office has the obligation to follow the ethical obligations of the prosecutor. A prosecutor must both inform the VWA of their responsibilities and ensure that they are being followed. VWAs should ask for guidance from the prosecutor about how to handle certain situations, for example, when a victim recants and or discloses additional information about the case, or when a conflict of interest exists.

## WORKING WITH COMMUNITY PARTNERS

### **Why is there an emphasis on good relationships with community partners?**

OJP-funded programs must follow OJP program standards that require them to collaborate with their community partners. This is to ensure that victims' needs are being met to the greatest extent possible and resources devoted to victims are used as efficiently as possible. It is important for programs to understand their respective, complementary roles and the services that each provides for informed and appropriate cross referrals. Rather than competing with each other and working at cross purposes, community-based and prosecutor-based VWAs should engage in efforts to develop and maintain good working relationships to best serve victims.

### **Do we need an MOU with a community partner?**

Prosecutors' offices are strongly encouraged to have a working agreement or memorandum of understanding (MOU) in place with their community-based victim service partners. While informal referral practices may be in place, an MOU-driven agreement clearly demonstrates a shared understanding of the complementary services both programs have to offer victims and a shared commitment to specific protocols and goals. Further, an MOU can help frame the discussion during times of disagreement.

Some prosecutors' offices without OJP funding for VWAs delegate their statutory obligations to a community-based program. It is especially important for these offices to have a formal agreement that clearly identifies roles and responsibilities of both agencies with specifics on time frames for provision of notifications, information sharing, disclosure requirements, record keeping, and limits of confidentiality for victim communications. This is to ensure that the community-based program understands the scope of their role and has access to the information needed to fulfill their role. Correspondingly, the MOU should spell out the prosecutor's responsibilities to ensure that their statutory obligations are being carried out appropriately.

### **Can a community-based program share victim information with a prosecutor's office?**

Community-based programs must adhere to state and federal laws related to client confidentiality. They can only share client information if they have the informed, written consent of the client, and only to the

extent the client indicates. This is true even if there is an MOU in place with the prosecutor's office. VWAs may approach a community-based advocate to get contact information for the victim or to relay case information to a victim. Without a release of information, however, the advocate cannot confirm or deny that the victim is their client (much less provide victim contact information). In such situations, the community-based program will typically listen to any information the VWA provides and follow up directly with the victim to relay any case information or requests from the VWA. It is up to the victim to decide to contact the VWA or to provide consent to the program to communicate with the VWA on their behalf and in what circumstances.

## BEST PRACTICES

### Where can I find best practices regarding prosecutor-based victim witness assistance?

First, be sure to review OJP's [program standards](#) and [best practices guidelines](#) available on the OJP website. Additional guidance can be found in [Model Standards for Serving Victims and Survivors of Crime](#) found on the federal Office for Victims of Crime website. Second, look for the materials provided on the [Professional Resources](#) pages of the OJP website, including sample prosecution letters and advocate guides on cameras in the courtroom and victim impact statements. Third, seek out technical assistance and guidance from established prosecutors' offices, both to develop relationships with your counterparts in other counties and to learn from their experiences. The Minnesota Alliance on Crime provides regular networking and training opportunities for its members, many of whom are VAPs in prosecutors' offices. Finally, contact the CVJU for technical assistance and guidance related to best practices in upholding crime victim rights in Minnesota.

**For further information or to suggest additional questions, contact the CVJU:**

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