

## VICTIM/WITNESS ASSISTANCE

STANDARD NO(S)

NYSLEAP: 29.4-5

DATE:

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REFER TO:

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### I. OBJECTIVE:

To provide guidelines to insure that victims and other witnesses receive professional handling consistent with their important investigative and prosecutorial role; that crime victims are made aware of the assistance available through the NYS Crime Victim's Compensation Laws and Seneca County's Victim/Witness and Domestic Violence Program; and, that victims of incest or other sexual offenses are treated in accordance with the law.

### II. POLICY:

The SCSO is dedicated to providing effective law enforcement services and to taking all steps to insure that those committing criminal acts are brought to account under the law. Success in this regard is frequently dependent upon securing the wholehearted cooperation from the victim of or the witness to the criminal act. It shall be the policy of the SCSO to treat victims and witnesses with fairness, compassion and dignity; to aid crime victims in availing themselves of financial assistance as provided by law; to be especially sensitive to the needs of victims of incest, other sexual offenses, or domestic violence; and, to develop, implement and continue appropriate victim/witness assistance programs and activities.

### III. DETAILS:

#### **A. DEFINITIONS:**

1. **FINAL DISPOSITION** - An ultimate termination of the case at trial level including, but not limited to dismissal, acquittal, imposition of sentence by the court, or a decision by the district attorney, for whatever reason, to decline prosecution.
2. **VICTIM** - Any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged; or a person alleged to have sustained, upon the record, an offense under Article 130 of the Penal Law, or in the case of a homicide or minor child, the victim's family; or a person alleged to have been the victim of incest as described in Section 255.25 of the Penal Law.

3. As a corollary to the definition of “victim” above, attention is sometimes drawn to the abuse or mistreatment of an elderly person. While perhaps not in retaliation or “as a direct result” of a crime charged, it is often found to be a continual exploitation of or harm to an elder based solely on that person’s vulnerability. The SCSO will vigorously investigate cases of suspected elder abuse.
4. **VICTIM/WITNESS ASSISTANCE PROGRAM** - The fully funded program headed by a Victim/Witness Coordinator who is part of and located in the Seneca County District Attorney's Office.
5. **SEX TRAFFICKING** – Is defined in the Laws of 2007 as advancing or profiting from prostitution by use of one or more of the means contained in Penal Law 230.34 (1)-(5). The prohibited means of promoting prostitution set forth in Penal Law 230.34 are derived from methods that have been used in previous cases of sex trafficking from various jurisdictions. These include, but are not limited to, make false material statements, threatening to invoke deportation proceedings, using or threatening the use of force or coercion and requiring that prostitution be performed to pay off a real or purported debt.
6. **LABOR TRAFFICKING** – Is defined as compelling or inducing another to engage in labor or recruiting, enticing, harboring or transporting the person where labor is being compelled or induced by use of one or more of the means contained in Penal Law 135.35 (1)-(4). The prohibited means are very similar to those set forth in Penal Law 230.34 (1)-(5).
7. **CHILD VICTIMS** - (NYS Executive Law, Section 642-a) Fair treatment of child victims as witnesses. To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims:
8. **FAIR TREATMENT STANDARDS OF CHILD VICTIMS** - SCSO members shall advocate the practice of the following standards.
  - a. To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child.
  - b. Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.

- c. To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.
- d. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.
- e. In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.
- f. In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the "child witness" or "special witness" as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child's testimony.
- g. A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.

**B. RESPONSIBILITY** - Authority and responsibility for administering and coordinating victim/witness matters shall be with Safe Harbors of the Finger Lakes—(SHFL). The SCSO maintains a valued partnership with SHFL and regularly corresponds with said agency. The District Attorney's Office also maintains a Victim's Advocate on staff that may assume some or all of said responsibility.

**C. SCSO INITIAL SERVICES** - Little benefit can be achieved from a victim/witness assistance program if the witness to and especially the victim of a criminal act is not made aware of the help and consideration to which he is entitled. It is, therefore, essential that this information be furnished early in any preliminary investigation, usually during the initial contact. Dependent upon the circumstances, such information to be furnished will include:

- 1. A recitation of available services and an offer to facilitate contact to obtain medical attention, counseling, compensation or emergency financial help
- 2. Assurances of assistance and procedures to obtain help in the event of threats or intimidation from the suspect or persons acting for him;
- 3. Information regarding the steps likely to be followed in the criminal justice process with emphasis on any part which the victim/witness might be expected to play; and,

4. SCSO telephone number (315-220-3250) for calling the responding officer, or if reassignment of the matter is likely, the name of an officer, or if appropriate, the Seneca County Victim/Witness Coordinator (315-539-1607), who will be able to receive or report any developments in the case.

**D. FOLLOW-UP SERVICES** - The following procedures are to be implemented when appropriate to insure the Victim/Witness rights and needs are being met.

1. Where the impact of a crime on a victim/witness has been unusually severe and has resulted in considerable assistance rendered, either by the SCSO or a referral agency, the victim/witness should be recontacted periodically to insure that his/her needs are being met.
2. Where prosecutorial progress depends upon the victim/witness attending line-ups, interviews or other appearances, his/her convenience is considered and, if feasible, transportation is provided. (NYS Executive Law, Section 542(4))
3. Where possible and permitted by law and the rules of evidence, victim's property is promptly returned unless there is a compelling reason for holding it. (NYS Executive Law, Section 642(3)).
4. Victims are entitled to receive a free copy of the police report related to the crime. (NYS Executive Law, Section 646).
  - a. A victim of crime shall be entitled, regardless of physical injury, without charge to a copy of a police report of the crime.
  - b. An individual whose identity was assumed or whose personal identifying information, as defined in section 190.77 of the penal law, was used in violation of section 190.78, 190.79 or 190.80 of the penal law, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section 190.78, 190.79, 190.80 190.82 or 190.83 of the penal law, who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, may make a complaint to the local law enforcement agency of the county in which any part of the offense took place regardless of whether the defendant was actually present in such county, or in the county in which the person who suffered financial loss resided at the time of the commission of the offense, or in the county where the person whose personal identification information was used in the commission of the offense resided at the time of the commission of the offense as provided in paragraph (l) of subdivision four of section 20.40 of the criminal procedure law. Said local law enforcement agency shall take a police report of the matter and provide the complainant with a copy of such report free of charge.
5. Information shall be available 24 hours daily through the SCSO regarding availability of services, both internal and external, and for referral or response.

6. Every member of the SCSO shall respond to and assist a crime victim, whenever requested, with information concerning the status of the case involving such victim provided that information will not jeopardize or interfere with any other on-going investigation.
7. It shall also be the duty of each member to assist the District Attorney, whenever requested under the provisions of CPL Section 440.50, in making notifications to a crime victim regarding the status of a case in which such victim is involved.
9. In addition to other rights, if a crime victim has provided a current address and telephone number to the appropriate official (such as the District Attorney) **including the SCSO** they have a right to be notified by telephone, in person or in writing of the accused's :
  - a. arrest,
  - b. first appearance before a judge
  - c. a defendant has been released from custody or from a detention facility, by use of the VINE system

#### **E. PROTECTION OF VICTIM/WITNESS –**

1. The threat of retaliation against a victim/witness, taken to its extreme, could certainly place a heavy burden of responsibility on any agency, especially if such victimization is a direct outgrowth of an individual's desire to assist law enforcement in its mission. Fortunately, these occurrences are rare, but nevertheless, require a careful evaluation in order to arrive at a determination for appropriate assistance.
  - a. "Appropriate assistance" may range from placing an individual in protective custody (The Federal Witness Protection Program even relocates whole families under new identities) to offering the frightened person words of assurance and encouragement. "Special relationships" between victims/witnesses and this agency should not be established unless absolutely necessary for the protection of human life.
2. The following guidelines should be considered where threats or intimidation is directed against a victim/witness:
  - a. The threat should be evaluated for credibility in the light of its specificity and the opportunity for being carried out.
  - b. The suspect, or persons acting for him/her, should be evaluated as to reputation for violence. In this regard, an investigation may be necessary to determine the circumstances under which the threat was uttered and to secure corroboration if possible.

- c. The findings, as soon as developed, shall be presented to the Chief Deputy or designee and, if there are credible reasons to believe that the victim/witness is in danger, a course of action shall be proposed and approval of the Sheriff be sought for its implementation.
- d. In cases where the victim/witness is unaware of a threat made against him, and subsequent evaluation has tended to discount the likelihood of its being carried out, consideration should be given, nevertheless, to advising the victim/witness. Absent any reason to the contrary, he/she should be told since "forewarned is forearmed."

#### **F. NYS SHERIFF'S VICTIM HOTLINE – (VINE)**

1. The SCSO is a participant in the New York Sheriffs' Victim Hotline, which monitors the custody status of inmates and immediately notifies a registered victim when the victimizer is transferred or released from custody. A person may register to receive such information by calling the National Call Center in Louisville, Kentucky using the toll free number, 1-888-VINE-4-NY, or the Seneca County Sheriff's Office at 315-220-3200, Option # 9, or by registering on the internet at either [www.docs.state.ny.us/vine](http://www.docs.state.ny.us/vine) or the Seneca County Sheriff's Office website at: <http://sheriff.co.seneca.ny.us>
  - a. The National Call Center monitors inmates through a computer connection with the jail's on-site offender records system.
  - b. The caller furnishes the offender's name or booking number.
  - c. The caller may register to receive automatic notification by providing a telephone number and choosing a 4-digit PIN for subsequent identification.
  - d. When an offender is transferred or released, the Sheriffs' Hotline calls each registered person for 48 hours or until that person confirms the call by entering the aforementioned PIN.
2. Officers should be aware that the procedures described in ¶ F above are victim initiated and are only supplemental to the statutory notification requirements.

**G. TRAINING** - Assistance to and concern for the needs of victims and witnesses by law enforcement agencies is a fairly new concept, but one which is demonstrably in the agencies' self-interest. It shall be the responsibility of the victim/witness coordinator to develop and carry out procedures for the dissemination of information, consistent with the confidentiality required in specific cases, within the SCSO and to the community at large, that this agency intends to pay particular attention to the needs of victims and witnesses in order to insure the criminal's accountability.

1. A victim/witness assistance instructional component is included in the Basic Training Course for Police Officers, and is required for certification by the Municipal Police Training Council.

2. The SCSO conducts periodic formal classroom in-service training sessions and disseminates electronic material to all Law Enforcement Division members concerning issues related to Crime Victims Rights and services available.

**H. NYS OFFICE OF VICTIM SERVICES (OVS) – Formerly NYS Crime Victims Board –administered by the Seneca County County Victim/Witness Coordinator -**

1. The mission of the New York State Office of Victim Services is to:
  - a. provide compensation to innocent victims of crime in a timely, efficient and compassionate manner,
  - b. fund direct services to crime victims via a network of community-based programs, and
  - c. advocate for the rights and benefits of all innocent victims of crime.
2. Rights of Crime Victims – (NYS Executive Law, Section 646-a(2). Pursuant to law, crime victims have the following rights:
  - a. To compensation and services;
  - b. To routine notification of judicial proceedings relating to their case as provided in section six hundred forty-one of Executive Law, in section 330.20, and section 440.50 of the Criminal Procedure Law and section one hundred forty-nine-a of the Correction Law;
  - c. To be protected from intimidation and to have the court, where appropriate, issue protective orders as provided in sections 530.12 and 530.13 of the Criminal Procedure Law and sections 215.15, 215.16 and 215.17 of the Penal Law;
  - d. To submit, where appropriate, a victim impact statement for the pre-sentencing report and the parole hearing as provided in section 390.30 of the Criminal Procedure Law and section two hundred fifty-nine-i of the Executive Law;
  - e. Where a defendant is being sentenced for a felony, to request the right to make a statement at the time of sentencing as provided in section 380.50 of the Criminal Procedure Law; and
  - f. To request restitution and have the district attorney present such request to the court and assist the crime victim in the filing and collection of a restitution order in cooperation with the designated agency of the court as provided in section 420.10 of the Criminal Procedure Law and section 60.27 of the Penal Law.

- g. To be aware of the defendant's incarceration status by providing the division of parole's contact information, including the division's toll-free telephone number, as provided for in subdivision two of section two hundred fifty-nine-i Executive Law. Such notice shall advise the crime victim to use the division's toll-free telephone number to update contact information.
3. Crime Victims Compensation - In compliance with the New York State Crime Victim's Compensation Laws, innocent victims of crime, certain relatives, dependents and the guardian can apply to the Office of Victim Services (formerly NYS Crime Victims Board) for compensation of out-of-pocket expenses not covered by insurance or other resources.

One of the most important services that can be provided is financial compensation for the victim's loss, wherein the Seneca County V/WC's office acts as an advocate for the victim in securing funds for out-of-pocket expenses related to medical care, counseling, lost wages, vocational rehabilitation, crime scene clean-up, securing an alarm system, and expenses for transportation to and from court appearances. Other assistance available includes:

- a. Helping the victim in making a written statement and encouraging cooperation in any subsequent investigation;
  - b. Providing an explanation of the criminal justice process;
  - c. Escorting a victim to a court session;
  - d. Advising on the matter of obtaining an Order of Protection; and,
  - e. Insuring that the victim is referred to and secures any other vital services needed by the victim and/or the victim's family.
4. Crime Victim Advocate - Effective October 5, 1998, the New York State Office of Victim Services (formerly the NYS Crime Victims Board) funds a Crime Victim Advocate (CVA), under the supervision of the V/WC. In a division of responsibilities, the CVA will assist in cases within the jurisdiction of the local courts while the V/WC will continue to handle matters involving felonies. Common to both however, is the requirement that unlike a simple larceny, there must have been some contact between the parties, as in a robbery for instance. Other criminal matters that may present an opportunity for victim/witness assistance are those involving domestic dispute, sexual abuse or assault, endangering, harassment, or any case that results in someone being physically injured, including driving while intoxicated.
- a. The New York State Crime Victims Board is located at:

1 Columbia Circle, Suite 200  
Albany, NY 12203-6383  
(518) 457-8727 or 1-800-247-8035  
Website: [www.cvb.state.ny.us](http://www.cvb.state.ny.us)



## I. VICTIMS OF INCEST OR OTHER SEXUAL OFFENSES -

1. Effective April 1, 1992, the State of New York Executive Law, Section 642 (2-a)(a) was amended to require that victims of crimes defined in Penal Law Article 130 (sexual offenses) or Section 255.25 (incest) be provided with a "private setting for interviewing." This means "an enclosed room from which the occupants are not visible or otherwise identifiable, and whose conversations cannot be heard from outside such room." Within the SCSO, certain interview rooms or the Juvenile Aid Section office shall qualify as appropriate locations for these interviews. Except in unusual circumstances (and with prior supervisory approval), no other location shall be used.
2. The law also provides that "only those persons directly and immediately related to the interviewing of a particular victim, the victim, a social worker, rape crisis counselor, psychologist or other professional providing emotional support to the victim, unless the victim objects to the presence of such person ... and where appropriate, the parent or parents of the victim, if requested by the victim, shall be present during the interview of the victim."
3. Members of the SCSO "will provide victims of a crime defined in Article 130 of the Penal Law with the name, address, and telephone of the nearest rape crisis center in writing." (NYS Executive Law Section 642 (2a)(b))

For Seneca County, the funded agency is:

Safe Harbors of the Finger Lakes  
150 Castle Street  
Geneva, New York 14456  
(800) 247-7273  
(315) 568-4200  
[www.safeharborsfl.org](http://www.safeharborsfl.org)

4. Victims of sex offenses as defined in those sections of the Penal Law noted in paragraph one above, have a guaranteed right to privacy under the provisions of Section 50-b of the Civil Rights Law. This law states that the identity of any such victim shall be confidential. "No report, paper, picture, photograph, court file or other documents, in the custody of any public officer or employee, which identifies such a victim, shall be made available for public inspection."

**NOTE:** However, that subdivision 2(a) of NYS Executive Law 642 does not preclude officers charged with the duty of investigating, prosecuting, keeping records relating to the offense, or any other act when done pursuant to the lawful discharge of one's duties, from obtaining such information.

5. A rape or sexual assault victim cannot be asked or required to take a polygraph test or psychological stress evaluator examination.

**J. MEDICAL ASSISTANCE FOR SEXUAL ASSAULT VICTIMS** - DCJS has disseminated information from the Department of Health (NYSDOH) concerning the need for prompt medical and forensic examinations following a sexual assault. NYSDOH notes that “In addition to the physical and emotional trauma associated with sexual violence, there is an added fear that one may have been exposed to HIV during the assault. Hospitals are required to advise sexual offense survivors of the availability of **Post Exposure Prophylaxis (PEP)**. NYSDOH recommends that, ideally, PEP should be initiated within one hour, and no later than 36 hours after exposure. The following is a summary of the recommendations:

1. It is very important that survivors of rape and sexual assault obtain medical care.
2. Timing is crucial. PEP for HIV must be offered within 36 hours of the exposure, and should be offered ASAP after the assault.

NYSDOH also notes that “While it is not the role of the emergency responder to raise the issue of HIV prophylaxis, it is very important to encourage the survivor to obtain medical care.”

**K. EVIDENCE IN A SEXUAL OFFENSE** - All hospitals in New York State use the Sexual Offense Evidence Collection Kit for victims of sexual assault. The kit is supplied by the NYS Division of Criminal Justice Services and assures standardization in evidence collection. In addition, there is the Drug Facilitated Sexual Assault (DFSA) evidence collection kit that allows for the collection of blood and urine from a victim who may have been drugged and then sexually assaulted. The time frame for both types of evidence is 96 hours after the event. However, even if this time frame has passed, or if the victim refuses to undergo an examination for evidence, the victim should be encouraged to go to a hospital for medical attention and for HIV prophylaxis and STD screening, etc.

**L. CRIME VICTIMS’ CIVIL REMEDIES PROJECT** - Legal services pertaining to civil matters can be provided by Legal Assistance of the Finger Lakes (LAFL). Operating in the five county area with priority accorded to domestic violence victims and seniors who are the victims of physical and/or economic abuse LAFL will provide the following assistance:

1. Preparation and filing of compensation claim forms with the Crime Victims Board;
2. Detailed legal advice on civil remedies for crime victims;
3. Advocacy with third parties or other agencies;
4. Assistance with preparation of pleadings for civil orders;
5. Referrals of clients eligible for assigned counsel in proceedings to secure orders of protection;

6. Direct representation for clients who do not qualify for assigned counsel; and,
7. Investigation of civil claims of economic abuse and representation against perpetrators of economic abuse, such as misuse of power of attorney, fraudulent telemarketing or fraudulent home contracts.

Referrals to LAFL should be asked to call (315) 781-1465 and identify oneself as a crime victim seeking services through the Crime Victims' Civil Remedies Project.

**M. MIGRANT FARMWORKER as VICTIM** – Farm worker Legal Services of NY, Inc., The Victim Resource Center of the Finger Lakes, Inc., and the International Institute of Buffalo, Inc. together, have received a grant from the U.S. Department of Justice to provide outreach, advocacy, translation and legal representation for migrant farm workers residing in a ten county area in Upstate NY, who are victims of domestic, sexual or stalking violence. Representatives of these agencies work with county police, magistrates, local domestic and sexual violence entities, migrant health clinics, hospitals and schools, to provide community services to victims and their families.

1. If you encounter a migrant farm worker who is a victim of domestic or sexual violence, instruct that person to call 1-866-348-8808 or 1-800-456-1172 for assistance.

**N. HUMAN TRAFFICKING VICTIMS** – The new Human Trafficking Laws of 2007 provides law enforcement with specific responsibilities assisting victims in obtaining services and with respect to immigration status. Social Services Law Article 10-D, Section 483(cc) requires that as soon as practicable after a first encounter with a person who reasonably appears to be a trafficking victim (see definitions below) the law enforcement agency or district attorney's office shall notify DCJS and the Office of Temporary and Disability Assistance (OTDA). A form has been created for this purpose.

1. Social Services Law Article 10-D, Section 483(dd) requires that the law enforcement agency or district attorney's office shall provide USCIS Form I-914 Supplement B at the request of a trafficking victim or their representative.
2. Copies of these forms can be obtained from a supervisor, or in the Forms Directory, located on the SCSO "G" drive, SCSO FORMS DIRECTORY – Law Enforcement Forms sub-folder.