

# Philadelphia DAO Policy on Improving Assistant District Attorney Communication with Victims of Crime



Effective Date: 1/31/2019

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One of the most important responsibilities you have as an Assistant District Attorney is timely communication with victims about the criminal court process and potential outcomes of the case. Principles of procedural justice (fairness in the process) must guide your interactions with victims because fairness in the process improves public perception and trust. Research shows that a criminal justice system that grants victims representation and a sense of accuracy in the process creates a higher level of satisfaction for a victim.<sup>1</sup>

## **Procedural Justice has several key components:**

- (1) Voice: The victim's opportunity to be heard.**
- (2) Respect: The preservation of dignity in interactions with victims and defendants.**
- (3) Trust and Neutrality: A decision-making process that is unbiased and consistent.**
- (4) Understanding: Making sure the victim has an understanding of the court process throughout the case.**
- (5) Helpfulness: Re-assuring the victim that the justice system has an interest in the needs of victims, witnesses, communities, and defendants.**

Incorporating procedural justice principles by applying these key components into your communication with victims makes prosecutions more effective and increases victim satisfaction in your decisions and outcome of the case.

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<sup>1</sup> For a comprehensive discussion about Procedural Justice as it relates to stakeholders in the criminal justice system see FJP "Issues at a Glance: Procedural Justice: Enhancing the Legitimacy of the Justice System" brief at <https://fairandjustprosecution.org>. See also "Procedural Justice is for Victims Too" at [www.proceduralfairness.org](http://www.proceduralfairness.org).

## Pennsylvania Crime Victims Act

In addition to the principles of procedural justice, your interactions with victims must also be guided by the PA Crime Victims Act (18 P.S. § 11.102).<sup>2</sup> You as a member of the District Attorney's Office are to honor the following victims' rights:

- (1) To be notified of significant actions and proceedings within the criminal justice system pertaining to the victim's case. § 11.201(2)
- (2) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office in the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.201(4)
- (3) To have an opportunity to offer prior comment on the sentencing of a defendant, to include the submission of written and oral victim impact statements detailing the physical, psychological, and economic effects of the crime on the victim and the victim's family. § 11.201(5)
- (4) To be restored, to the extent possible, to the pre-crime economic status through the provision of restitution. § 11.201(6)

The PA Crime Victims Act § 11.213 further lays out the responsibilities of a Prosecutor's Office including, but not limited to:

- (1) PLEADING: In cases involving a personal injury crime or burglary, the prosecutor's office shall provide notice of and offer the opportunity to submit prior comment on the potential reduction or dropping of any charge or changing of a plea in a criminal proceeding or diversion of any case. § 11.213(b)
- (2) SENTENCING: The prosecutor's office shall provide notice of the opportunity to offer prior comment on the sentencing of an adult which includes the submission of oral and written impact statements. § 11.213(c)

**Ultimately, the responsibility of victim communication falls on you as the assigned Assistant District Attorney. You and your supervisor(s) will be accountable for making reasonable efforts to comply with the Pennsylvania Office of Victim Advocate.** Following the polices outlined in this memo will ensure that you have honored victim' rights and applied these rights to the principles of procedural justice.

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<sup>2</sup> For the complete text of the Crime Victims Act, refer to the PA crimes code 18. P.S. §11.201-216.

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*I. Documentation of conversations with the victim in the contact log*

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The trial file is the most important place to find all information pertaining to the history of your case. Every trial file has a contact log fastened to the flap. This log provides a history of all interactions with victims.

**YOU MUST:**

- (1) Use this contact log to document all victim/witness communication and attempts at communication, including the following:
  - The date on which the call is made, email sent, letter mailed out, or in person conversation took place.
  - Phone number you called from and the number you called.
  - Purpose of your call to the victim.
  - Name of the person you spoke with.
  - Result of the call (e.g. will attend court).
  - Additional action taken, if any (e.g. CW will email ADA photos of injury).
  - CMS address updates.
  
- (2) Sign your name next to the entry in the contact log so that anyone reviewing the file knows you spoke with the victim.
  
- (3) Document all in-court appearances on the outside of the file in the disposition box including:
  - Name of witness who appeared for court (e.g. NAME - P)
  - Name of witness who testified (e.g. NAME - P+T)
  - Name of witness who failed to appear (e.g. NAME - FTA)

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## II. *Notifying the victim of upcoming court listings*

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The Case Management System (CMS) will automatically generate a subpoena and mail it to the victim's address listed on the PARS (Preliminary Arraignment Reporting System) arrest paperwork. This occurs in every case except for cases in the Homicide Unit and cases in the Investigations Division Units (Special Investigations, Economic Crime, Insurance Fraud). CMS tracks all documents sent out from the office in the section titled "*output history*." Output history shows you the case specific date when the witness subpoena was generated, how it was delivered, and the exact address to which the subpoena was delivered.

### **YOU MUST:**

- (1) Call the victim prior to an upcoming court listing to discuss:  What to expect at the next court listing,
  - Victim impact statement where the case is set for trial and  Any input the victim may offer.
- (2) Confirm that the victim has the same phone number and address.
  - If the victim's contact information has changed, update CMS with the new information.
- (3) Ask for alternative contact information for the victim.
  - Email address
  - Work phone number and address
  - Family or friend's phone number and address
  - Any phone number and address that the victim believes will not change in the near future
- (4) Document all conversations with the victim on the contact log and any follow up actions you take.
- (5) Check your voicemail for messages from a victim and provide a summary of that message on the contact log including date, time, and the call back number that the victim left.

Prior to the first court listing, the victim will receive an initial contact letter from the Victim Witness Services Unit. This letter outlines the victim's rights, including directions to a safe witness waiting room at the Criminal Justice Center, financial reimbursement, transportation to and from court, changes in defendant's custody status, and a phone number/email to Victim Witness Services for all other concerns. Accompanying the letter is a separate restitution form

and victim impact statement that the victim can complete and return to the Victim Services Unit. CMS output history tracks the sent date and the address where the letter is mailed.

Victim Witness Coordinators are responsible for making sure that information, including the returned restitution/victim impact statement, from any victim in response to this initial letter reaches the case file.

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### *III. Victim information gathering and documentation at the preliminary hearing*

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In a felony case, the preliminary hearing listing is the **only in-person opportunity you have to gather input for a plea bargain** that will be made in the Court of Common Pleas.

#### **YOU MUST:**

- (1) Ask the victim for input on the case in an open-ended way.
  - Allow the victim to express themselves without steering or directing the input.
  - Specifically inquire about physical consequences and restitution requests.
  - Specifically advise on their right to give a victim impact statement.
- (2) Confirm with the victim that the contact information has not changed.
  - If changed, update CMS and notate this action on the contact log.

**YOU MUST NOT:** Decide what the offer will be on *felony cases listed for preliminary hearing*. If asked about this, explain to the victim that the exact terms of the offer will be decided at a later point in the case.

#### **EXCEPTION:**

- (1) You make a pre-preliminary hearing offer with supervisor approval
- (2) Vertical assignments where the preliminary hearing ADA is making the SMART offer

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*IV. Filling out the BIF form to include the victim's input*

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There will be one uniform Municipal Court Unit Bills of Information (BIF) sheet that you will fill out for each held for court case following a preliminary hearing.

**YOU MUST:**

- (1) Document your conversation with the victim in the top section of the BIF sheet.
- (2) Include all information gathered.

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*V. Conveying an offer in the SMART room after considering victim input*

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The initial offer on a felony case is made in the pre-trial SMART<sup>3</sup> room within three weeks after the held for court date.

**YOU MUST:**

- (1) Consider victim input when formulating a plea offer in a case, referring to the following:
  - BIF sheet for this information.
  - Contact log for this information.
  - Information mailed or emailed to the office.
  - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap by a Victim Witness Coordinator (VWC) or Trial Listing Clerk (TLC).
- (2) Call the victim to notify them of the terms of the offer.
- (3) Ask if the victim would like to give a victim impact statement at sentencing.  The victim can submit via written statement or in-person testimony.

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<sup>3</sup> In all Common Pleas Court cases except Homicide and Indicting Grand Jury cases, pre-trial offers are extended to defense counsel prior to the pre-trial conference listing in the SMART rooms. SMART stands for Strategic Management Advance Review and Consolidation, Readiness, and Trial. SMART rooms are staffed by attorneys in the Pre-Trial Unit.

- (4) Document this conversation and all attempts at victim contact on the contact log.
- (5) Send a “no contact letter” where you cannot reach a victim via phone or email. □ You can generate this letter in CMS and mail to the victim.

Prior to the first SMART listing, the victim will receive an arraignment contact letter from the Victim Witness Services Unit. This letter states that a plea offer will be made in the case and reminds the victim of their right to provide comment and request restitution prior to the offer being made.

CMS output history tracks the date that this arraignment letter is mailed out and the address where it is mailed. Victim Witness Coordinators are responsible for making sure that any information from a victim in response to this letter reaches the case file.

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*VI. Ongoing duty of the trial attorney to notify the victim and allow for prior comment*

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Where the offer is rejected in the SMART room, the case is spun out for a waivers trial or a majors scheduling conference to pick a trial date. All future victim interaction is with the trial attorney.

**YOU MUST:**

- (1) Call victims prior to court listings and update them on the status of the case.
- (2) Familiarize yourself with the victim’s input.
  - BIF Sheet
  - Contact log
  - Information mailed or emailed to the office
  - Information that is input into CMS following phone contact with a victim - a copy of this entry will be placed in the file on the left flap
- (3) Notify the victim when there is a change in the plea offer.
  - If you cannot reach the victim, you must mail the victim a no contact letter that you generate by CMS.

- (4) Provide the victim a chance to give a victim impact statement and request restitution on their behalf at the sentencing where your case is a guilty plea or conviction.
- (5) Document all victim conversations on the contact log in proper format.

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*VII. Common Pleas Court Case disposition notification to the victim*

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**YOU MUST:**

- (1) Mail a disposition letter to the victim upon completion of a CP case.
  - Generate this letter via CMS by going to “participants” and clicking the drop down box next to the victim and selecting from the disposition templates
  - Template options are Nolle Prose, Not Guilty, Probation, and State Custody
- (2) Put a copy of the disposition letter in the file after you send the original to the victim
- (3) Document the contact log that a disposition letter has been sent

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*VIII. Victim Witness Coordinators will assist attorneys with victim communication*

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Every unit has victim witness coordinators available to assist you in carrying out the policies and tasks in this memo. On the H drive is a list of Victim Witness Coordinators in each unit and their assigned courtrooms. When you designate a Victim Witness Coordinator to perform any of the above tasks there are a few things to keep in mind.

**YOU MUST:**

- (1) Clearly state the task and the timeline in which you need it accomplished.
- (2) Document on the contact log that you designated the VWC to complete the task.

- (3) Give the file to the VWC to complete the task and update the contact log.
- (4) Confirm that the VWC updated the contact log when the file is returned.
- (5) Remember that you gave the file to the VWC.