



## **Sample Agency Policy**

### **For Providing Notification & Support to Crime Victims in Cases Involving Post-Conviction Claims of Innocence & Exonerations**

---

#### **A. General Provisions**

##### **1. Use a Trauma-Informed and Victim-Centered Approach**

The needs and well-being of victims are of utmost concern and addressing them must be a collective effort within the Agency and in coordination with other agencies throughout the entire post-conviction process. The Agency will ensure that all decisions and interactions are victim-centered, trauma-informed, and consist of the following:

- a. Strengthening the victim's capacity to recover from traumatic events by providing timely and ongoing information, resources, services, support, and relevant contacts, at the victim's request.
- b. Acknowledging that earlier notification of changes in case status provides better opportunity for victim choice, preparation, and recovery.
- c. Empowering the victim by providing choices on whether, how, and when they are kept informed and supported.
- d. Ensuring that as many members as possible, and at the bare minimum one member, of every notification and support team is trained in trauma-informed care.
- e. Attending to the victim's emotional and physical safety.
- f. Respecting the victim's confidentiality and privacy.
- g. Validating victim experiences and reassuring them that their experiences are not diminished in any way because of a change in case status.
- h. Providing ongoing information and support for as long as the victim wishes and needs.
- i. Ensuring that victims are aware of all of the rights extended to them post-conviction.
- j. Recognizing that each victim has a unique story, different levels of previous involvement with the case, and distinct physical or psychological needs, and that all communication with them should reflect and respect the cultural diversity and unique needs of populations within a specific jurisdiction.

## 2. Ensure Timely Contact

No victim should first learn about the renewed case activity around a post-conviction claim of innocence or exoneration from an untrained third party, such as the media or a representative of the prisoner. Moreover, no victim should learn about an exoneration and prisoner release at the last minute or after these events have already occurred. As such, the Agency will take every measure possible to make sure that notification is provided in a timely manner by a trained professional.

## 3. Provide Victims with Choice

The Agency recognizes that, in these cases, there should be an initial notification about the renewed case activity, after which individual victims determine for themselves whether and how they want to receive further information. This helps to minimize re-victimization and re-traumatization and also helps to build trust. The Agency will ensure that all victims are provided with an early opportunity to control whether, when, and how they receive future information about their case. The Agency will offer the victim the opportunity to express a notification preference, whether by mail, telephone, email, or in person. The victim shall also be offered the option to designate a third party, such as a family member, victim advocate, or attorney, to receive notice on the victim's behalf.

## 4. Protect Victim Safety and Privacy

When informed that a claim of innocence has been filed or that an exoneration is pending, victims often express fear of retaliation by the person they thought committed the crime as well as fear of the actual offender who committed the crime. The victim advocate assigned to the case will address the safety concerns of the victim by helping them do such things as develop a safety plan, file a protection order, find temporary living arrangements, or make any other reasonable accommodations to ensure their sense of safety. The Agency will also make every attempt to provide notification in a time, place, and manner that provides as much privacy and safety as possible and allows the victim to decide whether to reveal details to others.

## **B. Implementation**

### **1. Convene a Multi-Disciplinary Team**

The Agency will create a Multidisciplinary Notification Team (hereinafter Team) that ideally includes:

- a. A prosecutor or other legal professional who can answer questions relating to the case process and provide neutral and accurate case information,
- b. A systems-based and/or community-based victim advocate who is trained in trauma responses for victims in these cases and who is knowledgeable about available resources and assistance, and
- c. A law enforcement officer who will be involved in any re-investigation.

It is preferable that the individuals on this Team not have been involved in the original trial and conviction, in order to ensure neutrality in decision-making relating to the renewed case activity and to the victim. However, if someone from the original trial and conviction has remained in close contact with the victim, it may be helpful to include that person in the initial outreach to the victim. It may also be helpful to include a Team member who identifies with the same cultural background as the victim, to increase trust and engagement in the process.

### **2. Determine When to Provide Notification**

Notification in these cases is warranted at many different points, as required by state law and/or victims' rights, or in instances where the victim could learn about renewed case activity from an untrained third party, such as the media or representative of the prisoner. These points include:

- a. A prisoner's petition to a court for post-conviction DNA testing;
- b. A court hearing on the petition for or results of post-conviction DNA testing;
- c. A prisoner's petition to a court for a writ of factual innocence (based on DNA or non-DNA evidence) and related hearings;
- d. A prisoner's request for a new trial based on newly-discovered evidence and related hearings;
- e. A court finding of factual innocence;
- f. A hearing and/or decision by a governor's office on a prisoner's factual innocence;
- g. The prisoner's release from prison;
- h. Search for and prosecution of the actual perpetrator.

Every measure possible should be taken to ensure that notification about exoneration and prisoner release occurs at least 30 days prior to the exoneration and release.

### 3. Create an Outreach and Notification Plan

Once established, the Team will meet and consider each case individually to coordinate when, how, and exactly who will make initial contact. As part of each case consideration, the Team will determine whether the victim was previously provided with an opportunity to choose whether, how, and when to receive information specifically relating to a post-conviction claim of innocence and possible exoneration. If the victim was not already provided with such choice, the Team will provide such options at the time of initial outreach.

Also, as part of each case consideration, the Team will actively learn as much as possible about the victim and the case, including the following steps:

- a. Gain a full understanding of the case background, including current case status, possible next steps and future case proceedings, and any relationship between the victim and the person convicted.
- b. Determine a full understanding of the case's statute of limitations status and whether, in the event of exoneration, the case is potentially prosecutable.
- c. Contact other relevant agencies (e.g., court, corrections, parole) to determine whether any provider has had past or continuing contact with the victim or family members. If so, determine whether they should have a role in the notification.
- d. Obtain current contact information for the victim, including name, email, home or cell phone number, and address to ascertain whether the victim is local or out-of-town.
- e. Create a list of support resources ready to share if desired, including specialized support services for members of diverse communities, individuals with disabilities, individuals who are deaf or hard-of-hearing, individuals with limited English proficiency, and members of the LGBTQIA+ community.
- f. Determine if there are any other specialized needs, such as requiring an interpreter or any type of assistive device. It is not appropriate to use a child, spouse, or other family member as an interpreter in these cases.

In the event of a case involving a murder, the Team will carefully analyze the legal definition of "victim" in order to determine which family members should be contacted, and plan to offer each immediate family member the opportunity to receive information individually or simultaneously with other family members. This includes determining whether state law allows significant others or close friends to be designated as surviving victims in the case or if there are no living or available family members to receive notification.

In the event that difficulties arise locating the victim, and if the case involved the sexual assault of a minor who is now an adult, the Team will review the police report to see if a parent is an appropriate contact.

#### 4. Make Initial Contact by Phone or Mail

The Agency recognizes that due to the potential for re-victimization and re-traumatization in these cases, the preferred method of first notification is in person, with general introductory contact by letter or phone in advance to prevent a surprise visit.

Provided that it is not contrary to earlier communication choices that may have been made by the victim, outreach by either letter or phone should provide as much privacy as possible and then build to a more personal and detailed in-person interaction at the time and place of the victim's choosing.<sup>1</sup>

Regardless of whether initial outreach is conducted by mail or phone, details about the purpose of the visit and case status should be reserved for an in-person meeting if possible to allow for the provision of immediate support as needed. This outreach should be conducted early in the work week so there is ample time for the victim to contact the agency in the following business days.

In addition, care should be taken to prevent a delay between this initial contact and any in-person meeting that follows. This will help to minimize concern or worry by the victim between the less detailed initial outreach and the more detailed follow-up, during which more information will be shared and questions answered. The Team should understand the importance of avoiding delays in following up in person.

#### 5. Undertake Reasonable Efforts to Contact the Victim

The Team will make every reasonable effort to contact the victim. Efforts to locate current contact information and contact attempts should be documented. If a victim has relocated out of the area, it may be necessary for the Team to enlist the help of an agency in another jurisdiction to assist with locating and contacting a victim. In these cases the Team will:

1. Reach out to local advocates in that jurisdiction to help determine if there is an experienced investigator or attorney they work well with.
2. Identify the best local person to make contact. It is crucial to ensure that this person is experienced and understands the importance of victim sensitivity.

<sup>1</sup> See Appendix for sample scripts of outreach via mail and phone. The advantage of mail contact is that it allows victims to process information, is less invasive than a phone call, and gives the victim control over if/when to engage. The disadvantage is that it could be intercepted and read by others. For this reason, the wording of the letter will be very vague so as to not violate the victim's privacy and should not include an identifiable organization name on the mailing envelope. The advantage of a phone call is it is less resource intensive and offers the ability to build rapport with victims immediately and answer any questions they may have. The disadvantage of a phone call is the difficulty in finding current phone numbers and in assessing a victim's emotional reaction and the risk of another person intercepting the call and demanding information about the attempted contact. A victim may also experience a phone call as intrusive or unsafe.

## 6. Conduct an In-Person Meeting

In the event the victim agrees to an in-person meeting, this meeting should occur in a place where the victim feels most comfortable and at a time that is convenient for them. Ideally, this in-person meeting will involve at least two people from the Team: a criminal justice practitioner (prosecutor or police investigator) who can answer questions about the case and legal process, and a victim advocate trained in trauma responses who should be responsible for monitoring the victims' reactions and providing follow-up support. Determine ahead of time whether an interpreter will be needed.

1. During the meeting, care should be taken to build trust with the victim and make the victim feel safe, and the following details should be provided:
  - a. Complete, unbiased information about the current status of the case.
  - b. Detailed summary of what to expect and what might happen during the post-conviction process, including how the Team will coordinate information-sharing with the victim.
  - c. Information and guidance on known or possible next steps in the case and possible outcomes.
  - d. A timeline for future steps and proceedings, if possible.
  - e. The victim's options for involvement moving forward and plan for next steps.
  - f. The victim's rights, including the right to receive notice as the case progresses, the right to referrals and assistance, and other statutory rights.
  - g. That confidentiality and privacy considerations may limit what case information can be shared.
  - h. An explanation about possible media coverage of the case and strategies for managing it.
  - i. Access to an automated victim notification system (if one exists in your jurisdiction).
  - j. Contact information for the Team members, including the primary point of contact for the victim.
  - k. A packet of written information (or "leave behind") that answers questions they may have and provides resources for support (See sample agency informational packet for victims.)
  - l. Contact information for Healing Justice, which can put them in touch with other victims who have had similar experiences and can help provide support and validate the emotions and experiences of the victim in the current case.

It is important to ensure that information is provided in multiple formats (orally and in print) and that the language used during notification is easily understandable to a wide range of individuals with differing education levels and language proficiency. The Team should also be prepared to explain the meaning of any complex legal terms such as, for example, exoneration, wrongful conviction, and executive pardon.

This in-person meeting (as well as all continuing communication) should be objective or neutral to avoid causing greater confusion or hardship. There should be no showing of reluctance to review the case or desire to validate the underlying conviction. Care should be taken to be candid about the importance of investigating viable claims of innocence (e.g., to ensure accuracy and justice). Care should also be taken to help the victim feel supported and comfortable engaging with the criminal justice system, especially in cases involving original victim eyewitness identification.

*(a) In the event that re-investigation of the case may involve the victim:*

The Team will explain what that process will be and provide the victim with adequate understanding and support, including reassurance that the victim is in no way to blame. In the event that next steps will involve DNA testing, it may help to explain that the testing may actually confirm the prisoner's guilt and affect future parole or probation options. Under no circumstances will the Agency show up unexpectedly and request a DNA sample and/or re-interview the victim about their original testimony without prior notice, understanding, and consent.

*(b) In the event that this in-person notification relates to an impending exoneration and prisoner release:*

The Team will provide details about how the exoneration and release will take place, including the release date if known. The Team will address any concerns about physical safety, actual or perceived. The Team will also assure the victim that the outcome of the case is a function of the evidence and in no way a reflection on or due to the victim. Cases involving original victim eyewitness identification should be handled with particular care so that the victim is not made to feel responsible for the mistaken conviction. The Team will also prepare the victim for the media coverage that will likely occur around the exoneration and release. The Team will remind victims that they have the right to refuse to talk to the media and suggest they may want to avoid reading blogs, social media comments, or other opinion pieces about the case.

In addition, depending on the facts supporting the exoneration and release, it may be helpful for the Team to explain:

- a. The significant advances in forensic evidence and why evidence available now may not have been available at the time of the trial.
- b. How wrongful convictions occur and the many factors involved.
- c. That DNA databases may contain evidence that may lead to identifying the real offender.
- d. Whether the exoneration will result in the case being re-opened for investigation to find the actual perpetrator. If a new investigation of the case is going to take place, the victim should be informed of next steps and what to expect throughout the process. If the case cannot be re-opened, answer any questions the victim may have and provide resources for support.
- e. That the state may not be able to prosecute the true offender if the statute of limitations has expired.
- f. The option of meeting the exonerated individual, if desired.

## 7. Conduct a Needs Assessment

During this first meeting, or as soon as possible afterwards, the victim advocate should conduct a needs assessment with the victim and provide appropriate referrals and contact information for agencies that can provide support and services. Specific recommendations for support and services should include:

- a. Information and resources concerning mental and emotional health and crisis intervention.
- b. Information for family members on how to support victims in the post-conviction phase, if appropriate.
- c. Planning to address safety concerns (both real and perceived).
- d. Access to peer support.
- e. Assistance on navigating media coverage of the case.
- f. Opportunities for court accompaniment by a trained victim advocate.
- g. Information about additional victim compensation when applicable and available financial assistance programs.
- h. Information about and referrals to legal services.

## 8. Follow-Up After the In-Person Meeting

The Team will allow the victim time to process all new information, as victims often experience a wide range of emotions and needs at this point in time. Some victims will have questions at first contact; some will not have many questions until later interviews or meetings.



The Team will establish one person as a primary contact to whom the victim can reach out at any time, and will ensure that the victim understands that they may contact anyone on the Team and that the victim has contact information for everyone on the Team. The Team should be actively prepared to answer any and all questions by the victim in a timely fashion as they arise.

If the victim consents to further communication, the Team will create a process to ensure that the victim receives continuing timely information, including regular check-ins with the victim to see how they are doing, even when there is no update to the case.

The victim advocate should remain actively involved to continue to provide support and coordination of services. Ideally, the advocate will also actively ensure that the victim's rights continue to be protected throughout the exoneration process, including the right to receive notice as the case progresses, the right to referrals and assistance, and other statutory rights.

A prosecutor or police investigator from the Team should also remain involved to provide timely and accurate information about the case status and legal process. Information should continue to be honest and unbiased, and should prepare the victim for any possible outcome.

The Team will continue to make every effort to notify victims about case information before they learn about it from other sources, particularly the media. The Team should create a plan for continuing trauma-informed support following the exoneration and prisoner release, for as long as the victim may need. In all communications, the Team will demonstrate sensitivity, honesty, and dependability.

## 9. Special Considerations

As part of the notification planning process, as well as the process of timely ongoing notification, the Team will stay informed and knowledgeable about cultural diversity and be sensitive and respectful of different perspectives and traditions. Other special considerations include:

- a. Whether the victim has a cognitive or physical disability that may require a caregiver or other support person to be present.
- b. Whether the victim was under the age of 18 at the time of the original crime. If the victim is now an adult, they may now be the primary point of contact, where it had previously been the parents.
- c. Whether the victim is part of a community with historical distrust in law enforcement. If this is the case, ensure that there is someone on the in-person notification team that the victim can trust.

## 10. Ensure Coordination with Other Key Agencies

In addition to the creation of a multidisciplinary team to create a notification plan and ensure timely ongoing notification, the Agency will coordinate with other key agencies that will be involved in providing information and support. This may include the Department of Corrections to ensure that the victim has sufficient information and resources at the time of the prisoner's release; local victim-witness protection programs to assist with safety planning; the Pardons and Parole Board to provide information and assistance about pardon or parole-based exoneration/release; prosecution-based victim witness coordinators or assistance programs, and community victim service providers to assist with the provision of specialized services and support. This may include organizations or practitioners trained in specialized restorative justice work and facilitation of related dialogues, if the victim expresses interest in at some point meeting the exonerated individual.

## 11. Provide Assistance with Media

Post-conviction claims of innocence, and especially exonerations, tend to attract extensive media attention and coverage. Victims may want guidance on how to handle media attention, including what they can expect and how they may be contacted by the media. As such, at the victim's request, the Agency will assign individuals, ideally a victim advocate and a representative from the prosecutor's public affairs office, to mediate between the victim and the media. Mediation could include: working with the victim to manage how and when the victim's story is shared publicly (if shared at all); arranging for someone to be present at public hearings to advocate and protect victims from the media; and making sure the media knows that the victim is not to be approached, recorded, or videotaped without prior consent.

The Agency will also provide the victim with contact information for an attorney who can help them understand release forms and other legal documents they sign as part of a media interview.

## 12. Monitor and Evaluate Contact with Victims

The Agency will document relevant contacts with the victim within the Agency and across related agencies. The agency will also: monitor their personnel's adherence to protocol in order to assess what did and did not go well during notification (and resolve any issues if necessary); document services offered to or sought by the victim; and keep track of action items or intended dates for follow-up with the victim.

The Agency will also perform an “after-action” review for each case to determine where improvement or change is necessary. Reviews should include a discussion of what tactics have been successful, which have not been successful, opportunities to improve, and special considerations for diverse populations.

The Agency will continue to develop protocols, trainings, and practices based on evidence and feedback from previous notifications. Protocols should be reviewed and updated on an annual basis.

### 13. Train Staff

The Agency will ensure that relevant staff receive training that is dynamic and interactive and covers:

- a. The state’s different exoneration processes and possible steps and timelines.
- b. Victims’ rights.
- c. The system-based causes of wrongful convictions.
- d. Information on the emotional and psychological responses of victims around a possible or impending exoneration, including information about complex trauma.
- e. Information on the potential for vicarious trauma by notifiers and how to practice self-care and seek support.
- f. Key things to say and not to say when communicating with victims, strategies for sensitive information-delivery, and how to minimize blame and responsibility often felt by victims in these cases.
- g. How notifications in these cases are different than parole and other release notifications, and how to prepare for victim responses.
- h. Key support and services that should be provided.
- i. Instruction on working with individuals in crisis.

## Appendix: Conducting Initial Outreach

### Initial Outreach by Phone

The plan for any initial outreach by telephone should first consider which phone number would be best to use, and communication should be one of brief introduction only, to explain that there has been a change in case status (with the details of that status being delivered in person). The notifier chosen by the Team should plan on only minimally introducing the reason for the call and suggest/offer an in-person meeting to discuss the purpose of the call. The victim should be given the immediate choice of how they want to proceed (i.e., continue the conversation by telephone, meet in person, call back at a more convenient time, etc.), making clear to the victim that how and if the conversation proceeds is their choice.

During the call, the notifier chosen by the Team will cover the following:

1. Ask if now is an okay time to talk or if the victim will need to reschedule to a different time.
2. Introduce all individuals on the call and explain the notifier's role.
3. Explain that the call is about an investigation of a crime that happened in (year).
4. Explain any confidential communication privileges.
5. Offer the opportunity to discuss the matter further in person. (The goal is to meet with the victim within 24-48 hours unless the victim proposes a different time.)
6. Set a meeting place where the victim will feel most comfortable and which will preserve privacy and promote safety.
7. Update contact information for the victim, including preferred method of contact, and offer the option to designate a secondary contact.
8. Provide the victim with contact information in case they need to cancel, reschedule, or need something prior to the meeting.
9. Let the victim know exactly who will be present at the in-person meeting and who else is already privy to the information being discussed.

In this initial outreach by telephone, the victim may want to know more during the call rather than set up a later in-person meeting; thus the caller should be prepared to discuss the matter in full, the same as would occur if the initial notification was done in-person. Ensure that a victim advocate is readily available to be part of the phone call if the victim consents to this. If there is no answer by telephone, a brief message should be left on the voicemail which states the following:

*Hello, this is \_\_\_\_\_ from \_\_\_\_\_. I would like the opportunity to provide you with some updated information about a matter the [City] Police Department investigated in \_\_\_\_ (year). If you are interested in receiving this information, please call me at \_\_\_\_\_ for further information. Thank you.*

### Initial Outreach by Letter

The plan for any outreach by letter should also be one of brief introduction only, to explain that there has been a change in case status (with the details of that status being delivered in person). The letter should read as follows:

*I would like the opportunity to provide you with some updated information about a matter the [Jurisdiction] Police Department investigated in \_\_\_\_ (year). If you are interested in receiving this information, please call or email me during [list times if applicable] at \_\_\_\_\_ for further information. Thank you for your assistance in this matter.*

If a letter is sent, the envelope should state "Return Service Requested – Do Not Forward". The US Postal Service will not forward envelopes marked Return Service Requested but will return it with the new forwarding address, if available.

*This Sample Policy was produced by Healing Justice under Cooperative Agreement No. 2017-VF-GX-K032, awarded by the Office for Victims of Crime U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this resource are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*