

Victim and Witness Assistance

336.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that crime victims and witnesses receive appropriate assistance, that they are provided with information from government and private resources, and that the agency meets all related legal mandates.

336.2 POLICY

The Bay Area Rapid Transit Police Department is committed to providing guidance and assistance to the victims and witnesses of crime. The members of the Bay Area Rapid Transit Police Department will show compassion and understanding for victims and witnesses and will make reasonable efforts to provide the support and information identified in this policy.

336.2.1 SUMMARY OF CRIME VICTIM/WITNESS RIGHTS

This is an overview of constitutional and statutory rights provided to victims/witnesses:

- (a) **Right to Keep Address Confidential** - In cases of child abuse, spousal abuse and sex crimes, victims/witnesses have a right to have their addresses kept confidential. Their addresses may be given only to the attorney for the defendant, but will not appear on any forms or public documents. (Penal Code § 293; Government Code § 6254(f) (2) et seq.).
- (b) **Right Not to be Threatened or Intimidated** - If anyone threatens a victim or witness, law enforcement has the responsibility to investigate such threat or intimidation. It is a crime for anyone to attempt to dissuade or prevent a victim or witness from assisting law enforcement agencies or prosecutors or from attending or giving testimony at any trial or proceeding authorized by law. It is a felony if any such efforts involve coercion, threats or force, or are done for financial gain.
- (c) **Right to be Present at Sentencing and Parole Hearings** - Crime victims/witnesses are entitled to appear at the sentencing hearing and to speak on matters concerning the crime, the penalty and the need for restitution.
- (d) **Right to be Informed of the Sentence Recommended by the Probation Officer** - Victims/ witnesses have a right to make a statement at parole hearings.
- (e) **Right to Restitution and Return of Property** - Victims/witnesses have a right to restitution from the person who is convicted of a misdemeanor or felony where the victim/witness suffered economic loss a result of the offender's conduct, as well as the return of their property when no longer needed as evidence in a court proceeding.

336.2.2 VICTIM/WITNESS INDEMNIFICATION

Law Enforcement agencies are charged with the responsibility of notifying victims/witnesses of violent crimes of their right to indemnification. For the purpose of indemnification by the State of California, the definition of victim shall include (Government Code § 13950 et seq.):

- (a) A person who sustains injury or death as a direct result of a crime.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Victim and Witness Assistance

- (b) A person legally dependent for support upon a person who sustains injury or death as a direct result of a crime.
- (c) A family member or any person in close relationship to a victim who was present during the commission of the crime and whose treatment or presence during treatment of the victim is required for successful medical treatment.
- (d) Any individual who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of a death caused by a crime.

336.2.3 THREATS AND/OR INTIMIDATION OF VICTIMS/WITNESSES

- (a) It shall be the policy of the Bay Area Rapid Transit Police Department to provide appropriate assistance to victims/witnesses within our jurisdiction who have been threatened or who express specific, credible reasons for fearing intimidation or further victimization.
- (b) Appropriate assistance may include referral to the local district attorney's office for consideration of protective custody, referral for safety planning by a victim advocate, and/ or offering words of support.
- (c) If an employee of the Bay Area Rapid Transit Police Department becomes aware of danger to a victim or witness, that employee shall promptly notify a supervisor so that appropriate notifications can be made to the victim/witness and the appropriate law enforcement agency.
- (d) When notifying another agency of possible danger to a victim/witness within their jurisdiction, the notifying Bay Area Rapid Transit Police employee shall inform the agency of the danger and request that the agency take reasonable precautions.

336.3 CRIME VICTIM LIAISON

The Chief of Police shall appoint a member of the Department to serve as the crime victim liaison (2 CCR 649.36). The crime victim liaison will be the point of contact for individuals requiring further assistance or information from the Bay Area Rapid Transit Police Department regarding benefits from crime victim resources. This person shall also be responsible for maintaining compliance with all legal mandates related to crime victims and/or witnesses.

336.3.1 CRIME VICTIM LIAISON DUTIES

The crime victim liaison is specifically tasked with the following:

- (a) Developing and implementing written procedures for notifying and providing forms for filing with the California Victim Compensation Board (CalVCB) to crime victims, their dependents, or family. Access to information or an application for victim compensation shall not be denied based on the victim's or derivative victim's designation as a gang member, associate, or affiliate, or on the person's documentation or immigration status (Government Code § 13962; 2 CCR 649.35; 2 CCR 649.36).
- (b) Responding to inquiries concerning the procedures for filing a claim with CalVCB (2 CCR 649.36).

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Victim and Witness Assistance

- (c) Providing copies of crime reports requested by CalVCB or victim witness assistance centers. Disclosure of reports must comply with the Records Maintenance and Release Policy.
- (d) Annually providing CalVCB with the crime victim liaison's contact information (Government Code § 13962).
- (e) Developing in consultation with sexual assault experts a sexual assault victim card explaining the rights of victims under California law (Penal Code § 680.2).
 - 1. Ensuring that sufficient copies of the rights of sexual assault victim card are provided to each provider of medical evidentiary examinations or physical examinations arising out of sexual assault in the Bay Area Rapid Transit Police Department jurisdiction (Penal Code § 680.2).
- (f) Providing information required by Penal Code § 679.09 of a deceased minor to a parent or guardian of the minor whose death is being investigated.
 - 1. In cases where the parent or guardian of the deceased minor cannot be located, information required by Penal Code § 679.09 shall be provided to the victim's immediate family, upon their request.
- (g) Providing notification to victims of human trafficking or abuse of their right to have a human trafficking advocate and a support person that the victim chooses present during an interview by the Department, prosecutor, or the suspect's defense attorney (Penal Code § 236.21).

336.4 CRIME VICTIMS

Officers should provide all victims with the applicable victim information handouts and information about the subsequent steps in the processing of the case.

Officers should never guarantee a victim's safety from future harm but may make practical safety suggestions to victims who express fear of future harm or retaliation. Officers should never guarantee that a person qualifies as a victim for the purpose of compensation or restitution but may direct him/her to the proper written department material or available victim resources.

Members should provide a phone number that the victim may use to report additional information about the case or to obtain information about the status of the case.

336.4.1 FOLLOW-UP INVESTIGATIONS

Members conducting follow-up investigations should explain to victims/witnesses the procedures involved in the prosecution of their cases and their role in those procedures.

The victim/witness should be recontacted within a reasonable period of time to determine whether further assistance is required, if in the opinion of this agency, the impact of a crime on a victim/witness has been unusually severe and has triggered above-average need for victim/witness assistance.

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Victim and Witness Assistance

When feasible, line-ups, interviews, and other required appearances should be scheduled at the convenience of the victim/witness.

336.4.2 VICTIMS OF HUMAN TRAFFICKING

Officers investigating or receiving a report involving a victim of human trafficking shall inform the victim, or the victim's parent or guardian if the victim is a minor, that upon the request of the victim the names and images of the victim and his/her immediate family members may be withheld from becoming a matter of public record until the conclusion of the investigation or prosecution (Penal Code § 293).

336.5 VICTIM INFORMATION

The Support Services Supervisor shall ensure that victim information handouts are available and current. These should include as appropriate:

- (a) Shelters and other community resources for victims of domestic violence.
- (b) Community resources for victims of sexual assault.
- (c) Assurance that sexual assault victims will not incur out-of-pocket expenses for forensic medical exams, and information about evidence collection, storage, and preservation in sexual assault cases (34 USC § 10449; 34 USC § 20109; Penal Code § 13823.95(a)).
- (d) An explanation that victims of sexual assault who seek a standardized medical evidentiary examination shall not be required to participate or agree to participate in the criminal justice system, either prior to the examination or at any other time (Penal Code § 13823.95(b)).
- (e) An advisement that a person who was arrested may be released on bond or some other form of release and that the victim should not rely upon an arrest as a guarantee of safety.
- (f) A clear explanation of relevant court orders and how they can be obtained.
- (g) Information regarding available compensation for qualifying victims of crime (Government Code § 13962).
- (h) VINE® information (Victim Information and Notification Everyday), including the telephone number and whether this free service is available to allow victims to check on an offender's custody status and to register for automatic notification when a person is released from jail.
- (i) Notice regarding U visa and T visa application processes.
- (j) Resources available for victims of identity theft.
- (k) A place for the officer's name, badge number, and any applicable case or incident number.
- (l) The "Victims of Domestic Violence" card containing the names, phone numbers, or local county hotlines of local shelters for battered women and rape victim counseling centers within the county and their 24-hour counseling service telephone numbers (Penal Code § 264.2).

Bay Area Rapid Transit Police Department

BART PD Policy Manual

Victim and Witness Assistance

- (m) The rights of sexual assault victims card with the required information as provided in Penal Code § 680.2.
- (n) Any additional information required by state law (Penal Code § 13701; Penal Code § 679.02; Penal Code § 679.04; Penal Code § 679.05; Penal Code § 679.026).

336.6 WITNESSES

Officers should never guarantee a witness' safety from future harm or that his/her identity will always remain confidential. Officers may make practical safety suggestions to witnesses who express fear of future harm or retaliation.

Officers should investigate allegations of witness intimidation and take enforcement action when lawful and reasonable.

Property taken as evidence from a witness shall be promptly returned, except for contraband, disputed property, and weapons used in the course of the crime, where permitted by law or rules of evidence if feasible.

336.7 NOTIFICATIONS AND RELATIONSHIPS

The Bay Area Rapid Transit Police Department will make every effort to inform the public and media about the agency's victim/witness assistance services. The Department will also maintain a strong relationship with other agencies and organizations versed with victim/witness assistance.

The Bay Area Rapid Transit Police Department maintains an operational agreement for victim/witness assistance with the Alameda County District Attorney's Victim/Witness Assistance Division. Through this cooperative agreement, the Alameda County District Attorney's Victim/Witness Assistance Division will provide appropriate comprehensive services as mandated by law (13835.5 Penal Code) including, but not limited to: crisis intervention, emergency assistance, resource and referral counseling, assistance in filing for State Compensation, property return, orientation to the criminal justice system, court support, case status and disposition. The Alameda County District Attorney's Victim/Witness Assistance Division will deploy the Advocate Crisis Response team upon receiving instructions from the Alameda County District Attorney, Chief of Inspectors, or Assistant Chief of Inspectors if requested by the Bay Area Rapid Transit Police Department to assist victims and families in the immediate aftermath of a crime related or disaster related mass casualty/victimization incident. The Alameda County District Attorney's Victim/Witness Assistance Division may be available to assist with incidents outside of Alameda County if local resources for victim/witness assistance are insufficient or overwhelmed in the event of a major incident. The Watch Commander or Incident Commander may request assistance from the Alameda County District Attorney's Victim/Witness Assistance Division by telephone via the Alameda County Sheriff Office Emergency Services Dispatch Center (510-667-7721).