

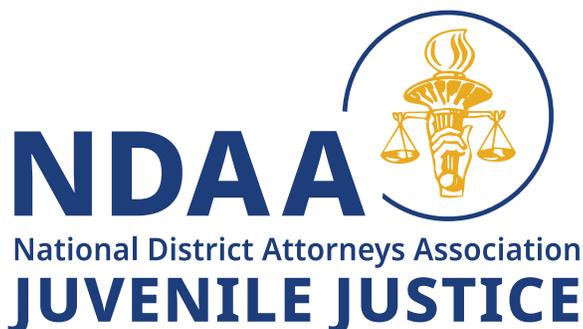


# Working with Victims During the Early Stages of a Case

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Among the most important working relationships for juvenile court prosecutors is the relationship with victims. (Victims may also be referred to as survivors or persons harmed). Establishing a positive relationship from the start of the case will positively impact the prosecutor and victim. Your office may have policies and procedures regarding victim outreach, contact, notifications, and interviews and it is important to follow those policies and procedures.

Outreach to the victim as soon as possible is crucial for several reasons. The prosecutor has a wealth of information about what will happen next in the process and will be able to share that information with the victim who may or may not be familiar with the juvenile justice system. The victim may have questions/concerns related to their immediate safety, and what will happen to the youth who has been accused of the offense(s) (hereinafter “youth”). Additionally, the incident is fresh in the victim’s mind and the victim may have or know of evidence that needs to be preserved and/or obtained by the prosecutor.

If a victim does not respond to the initial outreach, check your office’s policy on acceptable methods to contact victims, including sending letters, text messages, and/or emails, as well as asking for assistance from law enforcement and/or investigators to locate or visit a victim. There are various resources that can be used to locate a victim, and your office may have access to specific resources for this purpose. Resources include search engines, people locators, social media, legal databases, reverse phone searches, property databases, and postal verifications for government agencies.<sup>1</sup> Be mindful of victims’ privacy concerns when trying to locate a victim; a victim may not want others, including family members, school personnel/classmates, and/or coworkers to know about the incident.

Prosecutors should ascertain whether the victim needs an interpreter and if so, make every effort to have one available during conversations with the prosecutor. Wherever possible, use an official interpreter and avoid having a family member or friend serve in this capacity to ensure it is done accurately, to avoid having someone interpret who may have emotional involvement in the case, and to maintain confidentiality. Be mindful of any laws in your jurisdiction that address interpretation and/or translation issues, including laws that address admissibility of statements and/or other evidence.

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<sup>1</sup> See [libguides.law.rutgers.edu/c.php?g=812592&p=5797768](http://libguides.law.rutgers.edu/c.php?g=812592&p=5797768).

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## The Initial Meeting/Interview

The initial conversation or one soon thereafter should cover where practicable and to the extent allowed by the juvenile confidentiality laws in your jurisdiction:

### Introductory Questions/Information

- Whether the current time is a good time for them to speak.
- If the conversation is being recorded, inform the victim of why that is (e.g., law or office policy) and any rights the victim has in conjunction with the recording, such as the right to refuse being recorded, the right to have a copy of the recording, etc.
- Introduce others at the meeting and why they are there (if, for instance, your office requires a victim advocate or third party to be present during meetings with victim).
- How the victim is doing.
- Whether they need anything to make them comfortable during the interview/meeting. (Victims with disabilities may be entitled to an accommodation; be mindful that not all disabilities are visible.)
- The prosecutor's role in the case.
- How the victim can contact the prosecutor, and who they should contact in the future if that person is not the prosecutor making the initial contact.

### Information About the Court System

- Whether the youth is being charged as a juvenile or as an adult, and how the transfer process between adult court and juvenile court works if applicable.
- The purpose of your jurisdiction's statute, e.g., including whether it is rehabilitative.
- What options there are at this stage of this case, including what could happen at the next court appearance.
- Whether the youth is at liberty, in custody, and whether s/he is subject to any type of supervision (to the extent the law allows you to share this information).
- How to find out if a detained youth has been released (where permitted by law).
- Confidentiality laws that pertain to the case.

### Questions About the Incident

See section below entitled "Areas to Explore Regarding the Incident" for additional information.

### Information Regarding the Rights of the Victim and Services Available

- Provide/refer to pamphlets or other written material (including on internet), regarding the rights of victims, how the process works, resources available to them, etc.
- The legal rights of victims in your jurisdiction.

- Whether the victim has any immediate safety concerns, including the need for an order of protection, getting locks changed, relocating, etc.
- Crime victims' reimbursement services and/or availability of restitution.
- Referrals to a victim's service agency or prosecutors' office victim unit and how that agency/unit assists victims. Include where/how to get counseling, crisis intervention, safety planning assistance, and court accompaniment services, to the extent available.
- How to get property back, if applicable.
- How many times they will have to meet with the prosecutor and/or attend court, including for trial and trial preparation.
- Whether they are entitled to witness fees and/or transportation to and from meetings/court.
- Whether a plea will be offered, and why/why not. (Include when that determination will be made).
- Explain that the victim may be contacted by the defense attorney, defense investigator, etc. and your jurisdiction's law on whether they have any obligation to speak to that person(s).
- Explain the extent to which their name, address and other personal information is confidential.

## **Victim Contact Information**

- How the victim would like to be contacted in the future, what their mailing address is, and the name and contact information of a person who will always know how to contact them.
- Complete all information on the Victim Contact Sheet if your jurisdiction uses one.
- Ascertain whether it is okay to contact them at work.

If an in-person interview is set up, the victim should be interviewed in a private setting or private office area. Ensure that employees and others nearby know that you are doing a victim interview and keep interruptions to a minimum. Additionally, if the interview is being recorded, ensure that it is being done in a manner that will not record others who are nearby. Explain in advance if you are expecting to be interrupted by an unavoidable call, visit, etc. In-person interviews are important for rapport building, maintaining confidentiality, and assessing credibility so it is important to minimize interruptions.

If there is a delay during the time the victim is waiting for the prosecutor or for a court proceeding, the victim should be given updates throughout the delay period. Victims should always be kept separate from a youth and the youth's family/friends for safety reasons and to avoid the possibility of tainted identifications.

When asking victims questions about themselves, their history, potential impeachment information, etc. it is important to explain that those questions are asked of all victims of that crime, so that the victim does not feel they are being asked questions in an unfair manner. Using a one-page pedigree document, such as a Victim Contact Sheet for this purpose may be helpful. Be mindful that some or all of it may be discoverable in your jurisdiction. (See Appendix A, page 101.)

To the extent consistent with the laws in your jurisdiction, victim input should be sought at the relevant stages of the case, including what they would like to see happen in the case, whether they want to attend the court proceedings, whether they want to speak at the proceeding and whether they want to prepare a victim impact statement (these should be obtainable from your victim services agency or victim unit and tailored to your jurisdiction's statute). To the extent consistent with confidentiality and other laws, victim input should be sought with regards to all significant decisions and aspects of a case, including but not limited to, charging/diversion decisions (including a decision not to charge or to dismiss charges), plea offers, and sentencing/disposition recommendations. Victims should also be informed about each court date prior to the date in case they want to appear and should be informed about what transpired after each court date. In each conversation you have with the victim, be sure to ask if they have any questions.

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## **Areas to Explore Regarding the Incident**

These are general questions and not an exhaustive list; interview questions must always be tailored specifically for each case and each victim.

### **Questions Regarding the Time and Place of the Incident**

- The date, time, and location of the incident(s).
- Victim's familiarity if any regarding location of the incident.
- How long the incident lasted.

### **Questions Regarding Whether the Victim and Youth Are Known to Each Other**

- Whether the youth is known to the victim and if so, how. Explore how well they know each other and how many times the victim has seen the youth previously.

### **General Questions Pertaining to the Chronology of the Incident**

- What the victim was doing before, during and after the incident.
- How the police got involved, including whether the victim knows if 911 was called.
- How many police officers responded, and which ones/how many the victim had conversations with.
- What the youth said before, during and after the incident.

### **Questions Pertaining to the Victim's Ability to Identify the Youth**

- Opportunity to observe the youth, especially if they are not known to each other.
- The length of time the victim observed the youth before, during and after the incident.
- The weather and lighting conditions.
- The distance between the victim and the youth before, during and after the incident.
- Whether the victim's observation of the youth was face to face.
- Whether anything was blocking the victim's view of the youth at any point.

## Questions Regarding Identification Procedures Conducted by Law Enforcement

- Whether the victim identified the youth to the police.
- The circumstances of that identification (show-up, line-up, yearbook identification, social media identification, etc.).
- The victim's discussions with the police prior to, during and after the identification procedure, including whether the victim was shown any pictures, video recordings, etc.
- Whether the victim was provided with any information by the police (or others) regarding the youth.
- How sure the victim is about his/her identification of the youth.

## Questions Regarding Harm to the Victim or Victim's Property

- The extent of harm to the victim and/or victim's property and whether medical attention was sought.
- Whether the injuries or pain are still present. (If injuries are still present, take pictures each time you meet with the victim so that you have pictures in various stages of healing to help prove injury at trial.)
- If medical attention was sought, where and when (including follow-up appointments).
- Whether they are willing to sign a release for you to obtain the medical records. (See NY State's uniform form as an example at [www.nycourts.gov/forms/hipaa\\_fillable.pdf](http://www.nycourts.gov/forms/hipaa_fillable.pdf).)
- If there was damage to the victim's property, whether the victim has estimates or receipts for the repair or replacement.

## Questions Regarding the Existence of Any Additional Evidence

- Whether the victim knows of any available evidence such as video footage or other recordings, photos, text messages, social media, etc.
- Whether anyone else witnessed the incident and any information the victim has about that witness(es).

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## Special Considerations Regarding Benefits to Victims

Be mindful that some jurisdictions require that prosecutors turn over to defense counsel information regarding any benefit given to a victim. While this is not an exhaustive list, here are some things that may constitute a benefit:

- Transportation to and from court or the prosecutor's office, or funds for transportation
- Stuffed animals
- Food/meals/snacks
- Assistance with housing/relocation
- Immigration documentation (e.g., U-VISA assistance)

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## Special Considerations in School Cases

Although research indicates that rates of violent crime and theft in school and away from school declined substantially between 1992 and 2019, in 2019 more nonfatal victimizations (theft and violent crime) were committed against students ages 12–18 at school than away from school.<sup>2</sup> When interviewing victims of school crime, it is important to explore, where appropriate:

- Whether the victim is amenable to any school-based interventions including restorative justice programs that are available in your jurisdiction.
- How much contact s/he has with the youth at school, to and from school, and in any afterschool programs, sports, etc. so that you can ask the court for specific terms and conditions of an order of protection. It is also important to share with the victim any official information you have about how the school districts in your jurisdiction enforce orders of protection.
- The existence of any videos or photographs of the incident belonging to the school.<sup>3</sup>

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## Conclusion

For additional information on victims, please see NDAA's *Handbook for Juvenile Court Prosecutors* ([Publications-Juvenile-Prosecutors-Handbook-1.pdf](#)): *NDAA National Prosecution Standards*, Fourth Edition (2023), Section V, Juvenile Justice (Chapter 1); *NDAA Juvenile Prosecution Principles and Guidelines* (2023) (Chapter 2); NDAA's Case Assessment material (Chapter 4); and NDAA's material for juvenile court prosecutors on Trial Preparation (Chapter 6).

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<sup>2</sup> Charles Puzzanchera, Sarah Hockenberry, and Melissa Sickmund, *Youth and the Juvenile Justice System: 2022 Annual Report* (Pittsburgh, PA: National Center for Juvenile Justice, December 2022), [ojjdp.ojp.gov/library/publications/youth-and-juvenile-justice-system-2022-national-report](https://ojjdp.ojp.gov/library/publications/youth-and-juvenile-justice-system-2022-national-report).

<sup>3</sup> This evidence may be protected by the Family Educational Rights and Privacy Act (FERPA). The U.S. Department of Education provides guidance on topics such as when a photograph or video constitutes an educational record for FERPA purposes; under what circumstances law enforcement can obtain educational records, and when juvenile justice systems can obtain such records. See U.S. Department of Education's Student Privacy Policy Office, "FERPA," accessed January 5, 2023, [studentprivacy.ed.gov/ferpa](https://studentprivacy.ed.gov/ferpa).

