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IN THE SUPREME COURT OF GUAM

RE:) PROMULGATION ORDER NO. 05-002
)
ADOPTION OF THE)
WITNESS AND VICTIM)
WITNESS PROTECTION)
PROGRAM GUIDELINES)

Pursuant to 48 U.S.C. § 1424-1 and Title 7 GCA § 3107 (2004), and Guam Public Law 27-138 (enacted December 30, 2004), the Supreme Court of Guam hereby adopts and promulgates the Witness and Victim Protection Program Guidelines.

These guidelines shall be effective on the date of the filing of this order.

WITNESS AND VICTIM PROTECTION PROGRAM GUIDELINES

PREAMBLE

The Crime Victims' Rights Act ("the Act"), amended by Public Law 27-138 and enacted into law on December 30, 2004, required that the Supreme Court "promulgate witness and victim protection program guidelines within ninety (90) days of the passage of the Act into law." Guam Public Law 27-138 § 160.94 (Dec. 30, 2004). Accordingly, these guidelines were drafted to comply with the legislative mandate that victims and surviving family members "receive protection from threats or harm in accordance with local witness and victim protection program guidelines." Guam Public Law 27-138 § 160.50 (c) (Dec. 30, 2004).

The Witness and Victim Protection Program Guidelines are adopted by, and apply only to, the Judiciary of Guam. They address the function of the Judiciary and its personnel, and the practical application of the Act while criminal cases are processed through the court system. These guidelines shall not be deemed, in any way, as interpreting the content, validity or intent of the Act. These guidelines shall be effective upon promulgation.

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1 **I. Court Proceedings**

2 **A. Marshals' Office**

3 1. The Marshals' Office has primary responsibility regarding security of the Guam
4 Judicial Center.

5 2. Thus, the Marshals' Office is responsible for promoting the protection of crime
6 victims and witnesses while the criminal offenders' cases proceed through the court system.

7 3. The duties and responsibilities under these guidelines do not lie in any one
8 particular deputy marshal; all deputy marshals shall comply with the provisions herein.

9 **B. Security cameras**

10 1. Cameras are an integral aspect of security within the Guam Judicial Center and
11 provide a method of ensuring the protection of crime victims and witnesses while in the court
12 house.

13 2. In accordance with ordinary operating procedure, security cameras shall be used
14 by the Marshals' Office to observe both in-court proceedings, as well as interaction of
15 individuals who are waiting court proceedings, to determine whether there is a threat of harm
16 to victims and witnesses.

17 3. If, after observing through security cameras, the possibility of harm to a victim or
18 witness, deputy marshals shall utilize ordinary operating procedure to assess and address the
19 threat of harm. Appropriate responses may include notifying marshals in the vicinity of the
20 threat of harm, separating the victim or witness from the threat of harm, or notifying the
21 victim/witness advocate or prosecutor.

22 **C. Separate waiting areas**

23 1. Two rooms on each floor of the Guam Judicial Center have been identified as
24 separate waiting victim/witness waiting areas.

25 2. At the request of the victim, witness, victim advocate, probation officer or
26 prosecutor, these areas shall be made available to victims and/or witnesses and their family
27 members before, during and after court proceedings.

28 3. Upon request, deputy marshals and/or courtroom bailiffs may escort victims

1 and/or witnesses and their family members to or from these waiting areas to the courtrooms.

2 4. In order that the deputy marshals have access to these waiting rooms, the Marshals
3 Office shall be provided with keys to these rooms.

4 **D. Security in the Atrium area**

5 1. Deputy marshals are responsible for using reasonable efforts to minimize contact
6 between victims and witnesses, and defendants and defendants' families.

7 2. To this end, reasonable efforts include escorting victims, witnesses and their
8 families between the separate waiting room and the courtroom; observing interaction of
9 individuals in the Atrium area to determine whether victims, witnesses and their families are
10 subjected to harassment or threats of harm by defendants and their families, and physically
11 separating victims and witnesses from defendants and their families where there is
12 harassment or threats of harm.

13 3. Reasonable efforts may include the use of "patrolling" or "roving" marshals in the
14 Atrium area, who would conduct periodic checks or patrols of the area.

15 4. Under ideal circumstances, stationary deputy marshals may be assigned specifically
16 to the Atrium area.

17 **E. Security in the courtroom**

18 1. As part of ordinary operating procedure, deputy marshals in the courtroom are
19 responsible for providing crowd control security in the courtroom. They are responsible for
20 using reasonable efforts to minimize and prevent contact between victims and witnesses and
21 defendants and defendants' families during court proceedings.

22 2. Reasonable efforts may include physically separating victims and witnesses from
23 defendants and defendants' families during court proceedings, as well as preventing verbal
24 contact.

25 **II. Probation Services**

26 **A. Basic Considerations**

27 1. The Probation Services Division of the Unified Judiciary recognizes the plight of
28 crime victims and acknowledges their basic and fundamental right to be included and heard

1 in every phase of the criminal justice process.

2 2. In accordance with Public Law 27-138, the following protocol is hereby
3 established by the Division to more effectively serve and meet the needs of the crime victim.

4 **B. Post Arrest/Pretrial or Preliminary Stage**

5 1. After an individual is arrested, the assigned Probation Officer will obtain victim
6 information or surviving family member information if victim is deceased (i.e. location of
7 victim, relationship to offender, injuries/damages sustained as a result of the defendant's
8 actions, etc.) from the Attorney General's Office, Guam Police Department or other agency
9 directly involved in the case.

10 2. The Basic Bill of Rights for Victims provided for in the Act entitles the victim to
11 be promptly informed by the assigned probation officer when the defendant has violated a
12 criminal restraining order, a court-imposed stay-away order, terms or conditions of release,
13 terms of probation, or terms of a plea agreement.

14 3. Victim information will subsequently be used in the compilation of a
15 presentence/restitution report on the defendant to ensure that the victim or victim's family
16 receives compensation for damages or injuries incurred as a direct result of the defendants
17 actions.

18 4. The Probation Officer will explain the Victim Notification Request Form and
19 obtain the victim's signature should he/she wish to follow the criminal justice process with
20 regard to the defendant.

21 5. Although the victim has specific rights regarding the defendant's status in the
22 criminal justice process, he/she may elect to waive these rights by signing the Victim's
23 Waiver Form.

24 **C. Probationary Period**

25 1. The assigned probation officer will obtain necessary victim information from the
26 Pretrial Section, Attorney General's Office, Guam Police Department or other agency
27 directly involved in the case.

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1 2. The assigned probation officer will verify whether the victim in the case
2 completed the Victim Notification Request Form and wishes to be notified in accordance
3 with the section §160.50 of the Act. If the form was not introduced to the victim the
4 assigned probation officer will make contact with the victim and discuss both the Victim
5 Notification Request Form and the Victim's Waiver Form.

6 3. Should the Victim Notification Request Form be on file, the assigned probation
7 officer will contact the victim to:

- 8 a) provide the victim with the probation officer's name and contact number,
- 9 b) obtain information from the victim, regarding how the victim will receive
10 a copy of probation terms and conditions, probation violations, probation revocation,
11 warrants issued, change of supervision location, termination of probation, death of
12 offender while on supervision.

13 **D. Time Frame for Victim Notification**

14 1. Victims will be notified within a twenty-four (24) hour period when a defendant
15 violates his conditions and such infraction presents an immediate threat of harm to the
16 victim; a seventy-two (72) hour notification period will be provided for all other violations
17 (i.e. nonperformance of community service, non-payment or missed fine payment, missed
18 counseling session, or court-ordered class).

19 **E. Other considerations**

20 1. Framed by legislative intent, this protocol is a starting point for probation to
21 improve services to crime victims. As more is learned about successful ways to assist crime
22 victims, it will be updated.

23 2. Protocols for other aid professionals from all disciplines should be established,
24 reviewed and developed so as to insure the most comprehensive, effective and sensitive
25 response to crime victims is in place on Guam. This collaborative response should be aimed
26 at promoting safety to victims, providing guidance to professionals, and knowledge of safety
27 planning and resource options to both victims and service providers.

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1 **III. Court Records**

2 **A. Victim and Witness Information**

3 1. Section 160.91 of the Act requires that certain contact information (addresses and
4 phone numbers) for victims and witnesses be omitted from “the court file or ordinary court
5 documents.” Exceptions are as follows: the victims’ or witnesses’ address and work address
6 are allowed if contained in a transcript or if identifying the place of the crime, and the
7 victims’ or witnesses’ phone number and work phone number are allowed if contained in a
8 transcript or witness list.

9 2. Specific procedure and protocol regarding section 160.91 continue to be reviewed
10 and considered by the committee members.

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12 **SO ORDERED** this 1st day of April, 2005.

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17 ROBERT J. TORRES
18 Associate Justice

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17 FRANCES M. TYDINGCO-GATEWOOD
18 Associate Justice

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20 F. PHILIP CARBULLIDO
21 Chief Justice

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