

107(c) supplement those rights and protections provided to victims and witnesses in federal victims' rights legislation as defined in this subpart. The intent of this subpart is to ensure that the protections available under the provisions of federal victims' rights legislation as well as the TVPA are fully provided to victims of severe forms of trafficking in persons, in keeping with their status as victims of severe forms of trafficking in persons. This subpart will ensure that these victims are identified as early as possible in the investigation and prosecution process, so that services and protections available to them under the laws of the United States are provided.

(d) The regulations under this subpart set forth the general procedures to ensure these rights are protected in cases involving victims of severe forms of trafficking in persons. All agencies, bureaus, boards, divisions, programs, and offices in the DOJ and the DOS with specific responsibilities under this subpart shall adopt such regulations and/or operating procedures as may be necessary to ensure compliance with section 107(c) and the requirements of this subpart.

§ 1100.29 The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA).

(a) *Department of Justice officials.* The various agencies, bureaus, boards, divisions, programs, and offices of the DOJ have most of the responsibilities assigned by section 107(c). The goals of section 107(c) are to identify victims of severe forms of trafficking in persons as early as possible in the investigation and prosecution process, to ensure efforts are made to see that such victims are accorded the rights described in 42 U.S.C. 10606, and to provide the protections and services required under 42 U.S.C. 10607 and under the TVPA.

(b) *Department of State officials.* Department of State missions throughout the world are often the initial contact for aliens in foreign countries who wish to come to the United States. Appropriate DOS personnel should be trained in identifying victims of severe forms of trafficking in persons. Furthermore, considering the international nature of

trafficking in persons, appropriate DOS personnel, upon encountering victims of severe forms of trafficking in persons in foreign countries, should consider referrals to local law enforcement or service providers in the host country, but only if the local host country conditions support such actions.

(c) *Federal law enforcement officials.* Federal law enforcement officials who, during the performance of their duties, encounter a person whom they believe may be a victim of a severe form of trafficking in persons as defined by this subpart, are responsible for bringing such an individual to the attention of those federal law enforcement officials primarily responsible for enforcing trafficking laws, specifically INS or FBI. In addition, DOS's Diplomatic Security Service has investigative authority in visa and passport fraud cases that may involve trafficking in persons. Federal law enforcement officials also include federal law enforcement personnel working cooperatively with law enforcement officials who have primary investigative jurisdiction in such trafficking cases. Each federal agency having law enforcement responsibilities should ensure that its officers are trained in identifying victims of severe forms of trafficking in persons, and are familiar with the rights, services, and protections such victims are to be accorded under the TVPA and 42 U.S.C. 10606 and 10607.

§ 1100.31 Procedures for protecting and providing services to victims of severe forms of trafficking in persons in federal custody.

(a) While in federal custody, all victims of severe forms of trafficking in persons must be provided, to the extent practicable, the protections and services outlined in this section in accordance with their status as victims of severe forms of trafficking in persons. Under 42 U.S.C. 10607(a), each agency must designate officials who are responsible for identifying victims of crime and providing services to them. The designations appear in the *Attorney General Guidelines*. This responsibility also extends to those who are responsible for victims of severe forms of trafficking in persons while they are in federal custody.

§ 1100.33

28 CFR Ch. XI (7-1-05 Edition)

(b) To the extent practicable and allowed by law, alternatives to formal detention of victims of severe forms of trafficking in persons should be considered in every case. However, if detention is required, victims of severe forms of trafficking in persons in federal custody, to the extent practicable, shall not be detained in facilities inappropriate to their status as crime victims. The responsible official shall make all efforts, where appropriate and practicable, to house those victims separately from those areas in which criminals are detained. The responsible official must also provide protections and security to those victims as required by federal standards, policies, and procedures. Information on the federal prohibitions against intimidation and harassment, and the remedies available for such actions should routinely be made available to victims.

(c) Victims of severe forms of trafficking in persons in federal custody shall receive necessary medical care and other assistance. This care should include free optional testing for HIV and other sexually transmitted diseases in cases involving sexual assault or trafficking into the sex industry, as well as a counseling session by a medically-trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim. Other forms of mental health counseling or social services also may be appropriate to address the trauma associated with trafficking in persons.

(d) As mandated by 42 U.S.C. 10607, federal officials are responsible for arranging for victims to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender. Federal law enforcement agencies also should protect victims of a severe form of trafficking in persons from harm and intimidation pursuant to section 6 of the Victim and Witness Protection Act of 1982 and 18 U.S.C. 1512 note. It may also be appropriate to discuss with the victims the available remedies described in 18 U.S.C. 1512 and 1513. Federal officials also should employ civil procedures for protecting victims and witnesses, including application for temporary restraining orders

and protective orders, as set out in 18 U.S.C. 1514, if practicable. If the victim's safety is at risk or if there is danger of the victim's recapture by the trafficker, the responsible official should take the following steps under the TVPA:

- (1) Use available practical and legal measures to protect the trafficked victim and family members from intimidation, harm, and threats of harm; and
- (2) Ensure that the names and identifying information pertaining to trafficked victims and family members are not disclosed to the public.

§ 1100.33 Access to information and translation services for victims of severe forms of trafficking in persons.

(a) All federal investigative, prosecutorial, and correctional agencies engaged in the detection, investigation, or prosecution of crime shall use their best efforts to see that victims of severe forms of trafficking in persons are accorded all rights under federal victims' rights legislation. In cases involving severe forms of trafficking in persons, federal officials should provide victims within the United States, as defined by this subpart, information about their rights and applicable services, including:

- (1) Pro bono and low-cost legal services, including immigration services;
- (2) Federal and state benefits and services (victims who are minors and adult victims who are certified by the United States Department of Health and Human Services (HHS) are eligible for assistance that is administered or funded by federal agencies to the same extent as refugees; others may be eligible for certain, more limited, benefits);
- (3) Victim service organizations, including domestic violence and rape crisis centers;
- (4) Protections available, especially against threats and intimidation, and the remedies available as appropriate for the particular individual's circumstances;
- (5) Rights of individual privacy and confidentiality issues;
- (6) Victim compensation and assistance programs;