

# Webinar LE December 2022

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## SUMMARY KEYWORDS

victim, vra, district attorney's office, law enforcement, victims, crime, case, brochure, complaint, informed, file, request, agency, receive, plea agreement, law enforcement agency, document, responsibilities, notified, violation

## SPEAKERS

Kim Branham

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Hello, my name is Kim Branham and I am the Victim Rights Act specialist in the Office for Victims programs.

Today's training is providing victims with rights throughout the criminal justice system. And we will specifically look at the responsibilities for law enforcement officers. Today's trainings, we're going to talk about the history of the Victim Rights Act. What are the responsibilities for law enforcement, and then the complaint process. So what it will look like if a victim files a complaint, what that looks like for the victim, as well as what it would look like for an agency.

The national background for our Victim Rights Act started back in 1982, when President Reagan had an assassination attempt made upon his life, as he was going through the criminal justice system, he realized that he didn't have very many rights as the victim of a crime. Now when we say that he probably had more rights than you or I would have had, if that had happened to us back then. So he realized that if he wasn't receiving services and information regarding his case, what are other victims of crime not receiving from the system. So what President Reagan did is he created a task force asked for that task force to go out and talk to victims of crime, ask them what they liked about the system, what they didn't like about the system, and what they would like to see change. When that task force came back, they'd report it to the President that we were at a national disgrace on how our victims were being treated, and how they had the opportunity to report the crime. They never would have done it in the first place because of the way that they were treated by our system, and not necessarily by the perpetrator. So this got the ball rolling for our victim rights across our nation. Colorado's We passed our is November 3 of 1992. And it went into effect on January 14 of 1993.

Not all crimes are covered underneath the Victim Rights Act. I do have two slides of these. The easiest way to think about the crimes that are that do fall underneath the VRA are the crimes that impact person so person crimes, there are a few on the next two slides that are highlighted that I do

want to address. And those are because they are added crimes to the VRA over the past two years. So in 2021 or 2022, we have added these crimes. And the first one to talk about is harassment. That is bias motivated. As you will see, harassment by itself is not a VRA crime. But if it has that bias motivated attached to it, it is a VRA crime. That one went into effect on June 28 of 2021. We have also added second degree burglary of a dwelling. And that one went into effect on March of 2022. When we talk about a dwelling, some things to consider and what we're going to look at is to see if somebody is living or the property that they're on if it is intended for somebody to live in, and it was burglarized at that time that would make it a VRA crime. So for example, a homeless camp or a tent if it was burglarized, and somebody was living in it or is intended that somebody had been living in it, maybe they weren't there at that time, but it gets burglarized. We would consider it a VRA crime. The same thing with an inmate cell. We may also look at an apartment, an apartment complex that somebody is living in, maybe a home that it is being remodeled even if nobody is living in it or a model home and nobody's living in it. But it is intended for somebody to live in and it gets burglarized. That would be a VRA crime as well. We have also added elected official to this. So we've had retaliation against victim witness judge, prosecutor and juror in July of 2021. We added elected official to that.

A couple other crimes that we have added to our VRA is first degree arson and invasion of privacy. Both of these were added on May 6 of 2022. And for all of our VRA crimes, it's any criminal attempt conspiracy, solicitation and accessory to any of the crimes as well.

In the VRA, the definition of victim is broken out into three sections. So we consider them a natural person. It's not a corporation, they're considered a victim unless the person is accountable for the crime or the crime arising from the same conduct or plan. So the easiest example that I can give for what that means is your typical bar fight where you have two individuals who are both in a bar, they both assault each other. They're both arrested for assault, and they're both charged with assault, neither of them would be considered victims underneath the definition of victim in our VRA because they were both engaging in a criminal act at that exact same time.

If a person is deceased or incapacitated, the person, spouse, parent legal guardian, multiple individuals can be considered their representative for that victim. So we often need to consider the family dynamics of what that looks like an understanding that we may have multiple people that we're providing information to, and multiple people will have the right to be heard. So if you have a deceased victim, it was a homicide case. You may have siblings, you may have surviving parents, adult children, who then would be the designee for that victim. So just know that it could be multiple people. And we need to take that into consideration. The same thing as when we're going to be heard. The victim has that right to be heard all of those individuals can provide a written statement can possibly provide an oral statement to the court for sentencing. In addition to parole hearings or considerations for Community Corrections hearings, I understand that it could be more than one designee for that deceased victim or if they're incapacitated, we may have more than one.

If at any point a child turns 18 during the course of the case, they can request to be to have all of their information and notification provided directly to them. Or they can request that to go to their designee and to themselves as well. Or one or the other or both parties it is up to them now that they have turned

In dual arrest cases for a domestic violence type case, that might change the way that we look at the definition of a victim. There are many times that law enforcement is on scene to a domestic violence case. And we've got two individuals who may have bruises, they have scratch marks on each other, where law enforcement is not sure if there's a primary aggressor or if we have a true victim in the case, if at any point law enforcement arrest both parties, they're not considered victims underneath the definition of our VRA. However, if at any point, law enforcement or a district attorney's offices make the determination that we have a primary suspect and we have a true victim, they can then at that time make those decisions possibly by dismissing one case against one of the individuals who would be the victim and charging the other one. At that point, then they would become the victim would become a true victim in the case and would start receiving VRA services and information on their case. But up until that point is determined and made, neither party would receive any information they would not be considered victims underneath the definition of our VRA.

When does the reporting party meet the status of victim this is when law enforcement opens up a criminal investigation into any of those VRA crimes that we discussed, the person will remain a victim unless the case has been closed and unfounded. The charges were declined and the victim has been informed that they were inclined, and the defendant is acquitted and the victim is informed that they have been acquitted. Please note that even if the case is unfounded, the victim still may be eligible to receive services such as such as crime victim compensation. So we should always be providing that that CVC brochure and information to the victim so that they can help maybe get some financial assistance through this process.

After law enforcement initiates an investigation, or they are on scene with the victim and it is a very crime, they will provide a brochure to a victim or something that is in writing, all of the information that is on this slide should be included in that brochure. And it should be provided to the victim in the most timely manner. So if they're on scene, or fairly shortly after that, everything that is available on the slide and in that brochure is letting the victim know that this is these are services that are available to them, it is not a guarantee that they're going to receive this in this, these services. We can't guarantee it, but we need to let them know that it's available and they can apply for it. So in each of those law enforcement brochures that are being provided, the victim has the right to understand what their victim rights are, and how to file a VRA complaint if they feel that their rights are being violated. So you're going to often see the Division of Criminal Justice, my contact information included in those brochures, the availability of services and resources. So again, we do ask that all of our law enforcement agencies provide a brochure that's within their community, because we want a victim that is able to apply for services and resources that are accessible to them. So which within their own community, we don't want to have a victim who is a victim in Larimer County, receiving a brochure from let's say, Pablo, the services are not going to be the same. So that is why we ask that each law enforcement have their own brochure that they're handing out with their own local services. The same thing with victim compensation. So we want to be able to let the victim know that they have the option to apply for Victim Compensation, it is not a guarantee that they're going to receive that. And they will have to apply for that within the county that the crime took place. So this is why it is important for each agency, again, to have their own services and their own information on that one brochure. So with that, they're going to have the district attorney's contact information their office, so that they can know where to apply for that victim compensation through that district attorney's office. Also the availability of protection orders, so how to get a protection

order if they want one, how to modify that protection order if it's been put into place. So again, we're going to have the district attorney's office available for them. And then letting victims know that they have the availability to request police reports. This is at the discretion of law enforcement, whether they choose to release those police reports or not. So a victim can request them. But again, it's up to law enforcement if they release them and when they release them to the victim.

There is one document that is the initial incident report that law enforcement will release to a victim because the victim does have the right to receive a copy of that it is not just to know that it's available to them and at the discretion of the agency. It is a copy of that initial incident report that the victim can have. However, it is at the discretion of that law enforcement agency as to when that report is released to the victim. And we did have some changes to the Victim Rights Act and that took place in May of 2020 to where the victim can request that initial incident report and they can get

added with it being unredacted and also free. So the victim of a crime should not have to pay for that for that report, and it should be unredacted. When we talk about it being unredacted, some of the things we're going to want to keep,

keep available to the victim and available in the report to be able to see is the victim's name, the offender's name, the date of the crime, the charges and a summary of the incident. What we were seeing is that victims were requesting copies of this initial incident report, maybe they need it for insurance purposes, they might need it for their employer, to get a protection order possibly, maybe to apply for a U Visa, whatever it may be, they needed this information. And what we were doing is redacting so much of the information out of the incident report that our victims would submit that and it had no identifying information so that our courts, the employers insurance, they didn't even know that this was something that the victim was related to them. So we want to make sure that that piece is on redacted so the victim can get their needs met, there are certain things that we're gonna still request that continue to be redacted. And that's the name of other unrelated victims, and then any personal identifying information. So like social security numbers, driver's license, phone numbers, emails, physical addresses, those will also need to be redacted that includes the victim, unrelated victims or witnesses to the crimes.

There are certain responsibilities that law enforcement also has to provide to victims on that brochure is typically a space for the law enforcement agency to provide the case number for the victim to reference if they ever needed to call law enforcement again, they can give them that case number law enforcement sometimes will also our officers or detectives or sheriff's will put their business card and give that to the victim as well, that'll have the name and contact information for the assigned officer, as well as that case number. So it's all in one place. In those brochures, like I said, we always have the address to the district attorney's office. And that will need to be provided to victim because they need to know what's going to happen next in the process of the case. And if it gets handed over to the district attorney's office, we wanted them to be able to know who to contact at the DHS office. Law enforcement will also inform the victim when the suspect has been taken into custody, and what that jail notification process looks like. So when a suspect is taken into custody, the victim of a VRA crime will be informed automatically by the jail prior to the suspect being released from custody, we find that it as a safety concern to the victim if that suspect is released and the victim is not aware of it. So we want to make sure that they're fully fully in in the no prior to that suspect being released. So

the jail is going to notify the victim of that law enforcement will let the victim know ahead of time when that suspect is taken into custody. And then they will let them know what how they're going to be notified. So is it going to be through a text message is it's going to be through a phone call? What is the victim's preference and ensuring that we have the correct contact information and listed with that jail, so there's no confusion or errors made when they're trying to reach out to the victim?

Also with that, too, is if the suspect is harassing the victim, we need to inform the victim on what steps they can take to help protect themselves. So do they need to get a protection order? Can we work with them on a safety plan to help protect them as well. Other law enforcement responsibility is that's going to be returned to their property when it's no longer needed for evidentiary purposes. This is a crossover between or possibly a dual role between the district attorney's office and law enforcement, because the district attorney's office may not want the victim to have the property returned until they no longer need it for their case. So once law enforcement is says we're the DHS office says we're done with it, they're going to turn it over to law enforcement and then law enforcement can provide that to the victim. Victims have the right to be updated on the status of the case. And what does it mean by status? Basically, it's anything any new step that is taking place with that case? So is the case been open? Is it closed? Has it been filed with the district attorney's office? Is there a warrant submitted a summons it's issued? Are we going to do a no file decision on a misdemeanor case? That's going to be a law enforcement responsibility. If it is a felony case, then that is a responsibility of the district attorney's office to notify the victim of a no foul decision. misdemeanors are a notification through the law enforcement agency. Other status changes, and these are kind of different terms that each agency may use. These are pretty generic, but it may be different for each of different law enforcement agencies, but they're very similar to what these are so investigation open pending administration open pending, the case has been unfounded. It's a cold case status, and

we'll talk a little bit more about cold cases here. Just a little bit are talking about if the case has been reopened or inactive. So again, the best way to kind of keep in mind of what case status is, is anything that has taken place any change within that case, that victim has that right to be informed of what those changes are. So like I mentioned, the victim has the right to be informed on cold case information. This is upon request. So a victim does have to request this information. And this is for crimes with a statute of limitation, which is over three years. So those crimes include homicides, vehicular homicides, failures to stop at an accident vault involving death, sexual assaults, and kidnappings. So if it is over three years, and it is considered a cold case, those victims can opt in to receive an annual notification. So they would get a call or an email, whatever the victim preferred to say, we this case, we looked into it, it is still considered a cold case, there hasn't been any other critical stages. Any other case status changes or anything else with this case, at this time, we're still considering a cold case. If that changes, we will contact you at any point in time. So it's something that the victim can request. But again, it is up to the victim if they would like to have that annual notification or not. The victim will be notified when the suspect, like I said is taken into custody. They will also be informed if there is a warrant for that suspect. So the victim notification of the arrest on the warrant falls on the investigating agency. And the easiest way to notify of who notifies of that warrant who to contact for the victim is if it's your warrant is your notification. So if you are in Jefferson County, and you issued the warrant, they were arrested in Adams County, it is Jefferson County's notification, they're the ones that would have to contact the victim, which is why it's very important for when those warrants are issued that we're putting the victim's information into the arrest Watch program, because the arrest Watch program will be able to notify that victim as well as the original arresting or investigating agency that that suspect has been picked up no matter where

they are arrested at. And it'll let that victim know when they have been picked up. And then it will also put them into the jail notification program so that the victim will be notified once they're released from that custody. There is some crossover between law enforcement and our district attorney's office. Like we've already talked about the return of property when it's no longer needed for evidentiary purposes. One thing that I failed to mention earlier when I was talking about it is that once law enforcement has been informed by the district attorney's office that they can release that property to the victim, law enforcement has five days to get that property to the victim already discussed with and when there's a no file decision that if it's a misdemeanor law enforcement will be informed, if it's a felony, the district attorney's office will notify. And then finally, all correctional officer officials shall keep confidential address telephone number or place of employment information for the victim and their immediate family. So this is also a crossover, both law enforcement and our DHS office will try to protect the victim as much as possible.

Other victims rights are also a crossover with law enforcement and the district attorney's office this protection order information. So victims will be informed on how to access the district attorney's office to get a protection order, they will also be informed of how to modify that protection order. If the defendant is requesting to modify the victim, modify the protection order, the victim does have the right to be heard regarding that. So the victim will be informed at the court date and the victim can address the court before that modification takes place. So a victim can do that through a written statement. Or they can provide their opinion on that or their position on it through the district attorney's office or they can appear in person who does what their comfort level is. The other part in this is something that shall be redacted without the victim having to request any of it. And that is for social security numbers and information for the victim and witnesses. So that should automatically be redacted without the victim having to ask for it.

There's also been an addition in 2022 to our VRA. And that is regarding the forensic medical collection. So this is evidence that has been collected. And it's not resulted in a conviction of a plea of guilty. So upon request, the victim has the right to be notified of certain things so a victim can request this through the law enforcement agency and this is only on the forensic medical collection. So if a victim opts in to receive this information they will receive they will be notified when the evidence is submitted to an accredited crime.

lab for testing. They'll be informed when law enforcement 100 has received the results of the DNA analysis from the crime lab. When the DNA samples were obtained from the analysis, and whether or not there is a matching DNA profile in state or federal databases, they'll be informed 60 days prior to the destruction of the evidence collection. And then they have the right to object to that. So the victim can file that objection prior to the 60 days of that, and they can file that through law enforcement, Colorado Bureau of Investigations or the crime lab before it's been destroyed.

They can receive information of any changes in the status of the case. And they have the right to receive a physical document identifying the rights under the law after the exam has been completed.

Unfortunately, our municipalities do not have responsibilities underneath the VRA, we do encourage them to follow the VRA. And I believe that most municipalities do honor that. And they do try to treat

them to know the truth and I believe that most municipalities do honor that and they do try to treat victims with fairness, respect and dignity and continue to update them on the status of the case. However, if they did not, and they missed a notification to a victim, and a victim wanted to file a complaint, unfortunately, they would not have that opportunity to do so through the VRA complaint process.

So some tips to keep in mind as you're working with victims in the law enforcement realm, is to remember your tone of voice. And the choice of the words matter when you're speaking with a victim. We often think that law enforcement, they have to use authoritative tones when they are working. But it's also they need to slow down and they need to speak to victims in a different tone that they would speak to the offender. So slowing down understanding that taking the time to speak to them taking the time to understand what the victim's needs are not assuming what they might need. Other tips are to document everything, no matter what happens on a case and any sort of communication that you have with the victim needs to be documented into your programs. The reason for this is because if it is not documented, documented, it did not happen as far as our VRA complaint process goes. So, for example, if a victim was not notified that the suspect was released from the jails, what we would do is reach out to the jail to the sheriff's department and ask them you know, find out that documentation show us your proof that you tried to reach out to the victim, was it that maybe you called but the phone number was no longer active? You tried to text it was bounced back, whatever the case may be, we need to show we need to have some sort of documentation, some sort of proof. So no matter what the conversation is with the victim, especially if you're notifying them of a critical stage, and it's over the phone, document your conversation with that victim following that. The other important thing to remember is when we talk about that fairness, respect and dignity is just as much as we believe that our law enforcement needs to treat our victims with fairness, respect and dignity. We also believe that our victims should be treating our criminal justice agencies and our law enforcement agencies with that fairness, respect and dignity as well. They are going through trauma a lot of times and they're not always in a in a safe place they feel or they're not not doing okay, so there's many times that they are going to want to come back and maybe take things out on on an officer yelling, screaming. And you don't deserve that either. If you are on the phone with a victim, and they're yelling, and they're cussing at you that it's okay to tell them I'm going to hang up the phone and you can call me back

to see if it's a better time for that victim. It's also okay to say I'm going to hang up the phone and we will call you back or we will have somebody else within our department call you back so that we can ensure that the victim's needs are getting met. But if they're yelling and screaming and cussing, you don't deserve that either. So my suggestion is if that's taken place that that needs to be documented to make sure that everything that you've done to try to de escalate the such situation and to work with the victim. If you end up hanging up on him document that you hung up on him that you told him you're going to hang up on him and why you chose to do that. Please make sure that you have somebody from the department contact them maybe not right away at a later time or the next day to try to follow up with them to try to resolve that process or that complaint. If a victim is yelling, saying please never call me back again. I don't ever want to hear from you again, please document that that takes place as well. So again, documenting is is key. Working with our victims, especially when it comes to fairness, respect and dignity type complaints and any type of critical stage notifications. We want to make sure it's documented. So we know that the victim was provided that information or not.

Also important to include one sentence or something in your report that says that that VRA brochure

Also important to include one sentence or something in your report that says that that VRA brochure that was handed on scene or that was given to the victim maybe the next day, whatever it is, is put

into the report to say VRA information was provided to victim because there's so much information in that VRA brochure that are critical stages that the victim has the right to be informed, and they have the right to be provided those services and the availability of those services. So by just putting that one line into your reports, is gonna be your form of documentation to say that you've provided that brochure. So we did have a complaint one time where a victim filed the complaint and said they never received the information. The law enforcement agency responded to the complaint. And their response is, we are 99% sure that we gave them that brochure, but we don't have that documented are very so committee found them in violation because they did not have any documentation, even though that officer was 99% sure that they had given it to them. So please make sure that you're documenting everything along the way.

What the VRA does not cover so we again, we don't cover the cases that are filed in municipal court. We do not cover cases that are police misconduct. So it's like a police brutality case, we will not manage those as well, unless it is something where it's a fairness, respect and dignity, then we would look at that we do not cover anything that is the manner in which a case is investigated. So if a victim provided eight witnesses, and law enforcement only contacted five of those witnesses, and now they handed over the case to the District Attorney's Office in the District Attorney's offices, they can't file because they don't have enough probable cause. And they don't have enough information to proceed. It is not under the purview of our VRA on how that law enforcement agency investigated that case. And it came to the conclusion that DHS office was not going to file charges. So again, it's always important to document possibly why you only contacted the five as opposed to the full eight victims that are witnesses that were provided to you. And along the way of why you, you know, investigated the way that you did decision as to whether to file charges or not file, it is not our discretion and where law enforcement or DHS office choose to make that decision to file charges or not files that is on those agencies. And we feel that they are the experts. I always talk about plea agreements, even though that is more of a district attorney's responsibilities. Because it is important, we do have a lot of victims who want to file complaints because they do not agree with the plea agreement. This is something that the victim has the right to be informed right to consult regarding that plea agreement. And they have a right to be heard in front of the court, and they can address why they agree with the plea or do not agree with the plea. Unfortunately, the agreements that the district attorney's office makes with the defendants for plea agreements is not under the discretion. So as long as the victim has been consulted, and they have had that right to be heard in the courtroom, they're still in compliance under the VRA.

Okay, our office gets two types of VRA complaints. So we get the informal VRA complaints, these mostly are received in my office, it's where a victim is called. And maybe they're wanting an update on the status of the case and they can't get a hold of the officer or the detective and nobody's returning their phone calls. What I'm going to do is reach out to that law enforcement agencies, typically the victim, service officers are going to be the first ones that I will reach out to unless I can't get a hold of them. Then they may be escalated up to a manager or somebody else's sergeant, somebody to help out. I will try to resolve everything locally. So what can we do to connect the victim with that law enforcement agency so that they can have contact they can the victim can get their needs met. Most of the time, our very complaints are handled locally, I handle probably 250 phone calls a year that are resolved locally. And then on an average, we do about 45 formal complaints. So



as you can see, the number of informal complaints is quite a bit higher. If a victim wanted to file a formal complaint, they can submit that complaint through me, it does go through a screening process, because I want to make sure that the goals are in line of what our goals are. Our goals are always reaching a resolution preventing future violation and system improvement. We want to make sure that this doesn't happen again to other victims in the future. So if the victims goal was that they want to get somebody fired or something like that, if they want to receive a financial gain from this, that is not something that we are able to do through this process. So screening through that to let the victim know what we can and cannot do is kind of comes forward through before we will do that formal complaint with them.

If a victim files that formal complaint, it will go before our era subcommittee. We have seven members that sit on our various subcommittees. We have a judge we have a chief District Attorney, a DEA victim witness coordinator, a chief of police currently victim or survivor of a crime, a rural representative from a domestic violence or sexual assault.

program and a community representative. All of our various subcommittee members are from around the state of Colorado. So it's not just our Denver metros that are making the decisions. And we meet once a month, our meetings are open to anybody who is interested, they are welcome to listen to them. These are not hearing so people do not have the opportunity. And when I talk about people, I mean, our victims don't or agencies that we are reviewing for violations, they do not have the opportunity to be heard at those all the information and documentation has been provided to our VRA subcommittee before we even meet for the subcommittee to review. So these are just a review process. And anybody our guests that are listening can listen into the review, but they will not have the opportunity to address the various subcommittee.

If an agency has been fined, found in violation, there's a few things that are very subcommittee can request, these are the most popular and most frequent that we use, it is not a set in stone that this is exactly what will happen. But these are the most frequently used. So a VRA training, and this is a mandatory training for the entire department. So it would be we would consider all anybody who has any contact with victim, all of our staff, law enforcement officers, detectives, we're gonna look at, you know, sergeants, captains, anybody who is within, like employed with that department will have to attend, I will also bring my chief of police with me if there is a VRA violation, to help do the training as well. So he will be a part of that process. We can also request policies. So show us a policy on how you update a victim on the status of a case, we'll always do a policy around what that violation was. So policy is pretty big. We may require a victim empathy training, this is if there's been a violation for that fairness, respect and dignity piece. And then if a victim has requested a meeting with that department, we may help facilitate that meeting. However, we would never require a meeting with a victim or an agency without that victims opinion and them requesting for that as a way for them to heal through this process.

As I mentioned before, our goal is system change. This is not a do over process. So unfortunately, we can't go back and change anything that's already been done. So we can't go back and have law enforcement arrest anybody. We can't have them file charges. We can't make the DHS Office file charges. We can't make probation revoked anybody this is we can't make courts hold hearings again, if a victim missed that right to be heard. So again, we're based on system change. We want to move

forward, we want to make sure this doesn't happen again to other victims in the future. Also, as I mentioned, our number one complaint is fairness, respect and dignity. And we talked about that what we look at in that pattern of unresponsiveness. Are we returning their phone calls? Are we answering their emails? Are we responding in a timely manner, we will also look on was this an egregious act. So those are a couple things that we look out for that fairness, respect and dignity.

This is a look at the last 10 years on our VRA complaints that we've received on law enforcement and the district attorney's office received the majority of our VRA complaints. They do have the bulk of the VRA. So they have a lot more responsibilities under the VRA than our post sentencing agencies do so they have a lot greater, more greater chance of receiving a complaint than some of our post sentencing agencies. You will also see in 2021, our district attorney's office probably had the majority of our complaints. They had about 24 I believe that we received from them in 2021.

Can't say it enough, please make sure that if you're working with a victim that you document everything around that, including or your victim rights victim compensation information, getting that brochure to them, any sort of critical stage, everything needs to be documented. And that is the final slide for our training today. If you have any questions, any comments at all, I am happy to help answer those. This is my email address and my direct line. Feel free to reach out to me other than that, thank you for attending the training today. I greatly appreciate it. Hope you have a great rest of your day.