

<p style="text-align: center;">East Haven Police Department</p> 	Type of Directive: Policies & Procedures		No. 440.2
	Subject/Title: Victims of Domestic Violence Whose Immigration Status is Questionable	Issue date: January 29, 2019	
		Effective Date: February 12, 2019	
	Issuing Authority: Honorable Board of Police Commissioners	Review Date: Annually	
References/Attachments: Connecticut General Statutes § 46b-38b Policies and Procedures 415 and 428		Rescinds: 440.1	Amends: N/A

I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding the legal requirements and approved procedures associated with the investigation of domestic violence incidents in which persons of questionable immigration status may be victims, and where the continued presence and availability of such persons may be necessary to the successful investigation and prosecution of one or more alleged criminal perpetrators.

II. POLICY

- A. Whenever an officer determines that a family violence crime has been committed within such officer's jurisdiction, such officer shall arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime.
- B. No officer investigating an incident of family violence shall discourage a victim of family violence from making or pursuing a criminal complaint against an alleged perpetrator of qualifying criminal activity, or from participating in the prosecution of an alleged offender because of the immigration status of the victim or the offender.

III. DEFINITIONS

- A. Advocacy: Refers to collaboratively working with, and in support of, a survivor that keeps with a survivor-centered, empowerment-based, and self-determined approach. Both in person or phone advocacy and support are provided by the program's qualified staff and volunteers to family violence clients.

- B. Child and Family Advocate: A person who is employed by and under the control of a direct service supervisor of a domestic violence agency whose primary role is to provide services, support and advocacy services to sheltered and non-sheltered child, adolescent and teen victims of family violence and their families.
- C. Dominant Aggressor: The person who poses the most serious ongoing threat in a situation involving the suspected commission of a family violence crime.
- D. Family or household member: Any of the following persons regardless of the age of such person.
1. Spouses or former spouses.
 2. Parents or their children.
 3. Persons related by blood or marriage.
 4. Persons presently residing together or who have resided together, i.e. roommates. However, this does not apply to persons who are attending an institution of higher education and presently residing together in on-campus housing, provided such persons are not in a dating relationship, (Connecticut General Statute §46b-38a(j) as amended by PA 18-5).
 5. Persons who have a child in common regardless of whether they have been married or have lived together at any time.
 6. Persons in, or have recently been, in a dating relationship – Connecticut General Statute (CGS) § 46b-38a(2).
- E. Domestic Violence: An incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical injury, bodily injury or assault, including, but not limited to stalking or a pattern of threatening, between family or household members. The term “domestic violence” and “family violence” are synonymous and shall be deemed to mean the same thing when the terms are referenced in any of the Department’s policies and procedures and/or Connecticut General Statutes.
1. Verbal abuse or argument does not constitute domestic violence unless there is present danger and the likelihood that physical violence will occur in accordance with CGS § 46b-38a(1).
 2. A domestic violence crime refers to a crime as defined in CGS § 53a-24, other than a delinquent act as defined in CGS § 46b-120, which, in addition to its other elements, contains an element thereof an act of domestic violence to a family or household member. A domestic violence crime does not include acts by parents or guardians disciplining minor children unless such acts constitute abuse in accordance with CGS § 46b-38a(3).
- F. Family Violence Victim Advocate - FVVA: A person who is employed by and under the control of a direct service supervisor of a domestic violence agency; who has undergone a minimum of twenty (20) hours of training which shall include, but not be limited to, the

dynamics of domestic violence, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice and civil family court systems and information about state and community resources for victims of domestic violence; who is certified as a counselor by the domestic violence agency that provided such training; and whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, victims of domestic violence.

- G. Possess: To have physical possession or otherwise to exercise dominion or control over tangible property CGS § (53a-3(2)).
- H. Principal Petitioner: A victim of a domestic violence crime whose immigration status is questionable, and who is filing for a T Nonimmigrant Visa or a U Nonimmigrant Visa on behalf of himself or herself or a qualifying family member.
- I. Safety Plan: A plan developed between an advocate/counselor or a police officer and a victim that contains specific activities for a victim to be safe from an offender. Safety planning is an essential step to be completed with all survivors of domestic violence. It allows individualized planning for situations the survivor and children or family may encounter regardless of what the survivor decides to do about the relationship with the abuser. Appropriate Safety Planning is also important for child survivors/witnesses of domestic violence.
 - 1. A Short-Term Safety Plan is an immediate plan developed at the time of the report. A responding police officer should remain on scene and assist the victim with this plan. Some of these steps could include but are not limited to the following.
 - a. Ensuring that the victim and any children have the ability to call 9-1-1.
 - b. Ensuring that the victim can get to a safe location.
 - c. Calling a friend, family member or advocate for support.
 - d. Going to a safe place for the night.
 - e. Creating a plan as to what to do next.
 - 2. A Long-Term Safety Plan is a plan developed with an advocate which allows individualized planning for situations the survivor and children or family may encounter regardless of what the survivor decides to do about the relationship with the abuser.
- J. Self-Defense: The State of Connecticut recognizes the use of physical force upon another person which would otherwise constitute a criminal offense is justifiable and therefore not criminal in certain circumstances. CGS § 53a-19 is applicable in the context of domestic violence crime and addresses such circumstances.
 - 1. This statute provides in part that a person is justified in using reasonable physical force upon another person to defend himself or a third person from what he/she reasonably believes to be the imminent use of physical force, and he/she may use

such degree of force which he/she reasonably believes to be necessary for such purpose.

2. There are, of course, exceptions to the use of such physical force in defense of a person. For example, “a person is not justified in using physical force when he or she knows that he or she can avoid the necessity of using such force with complete safety (1) by retreating, except that the actor shall not be required to retreat if he or she is in his or her dwelling . . .”
 - a. Essentially, the statute requires that, before a person uses physical force in self-defense or to defend a third person, he or she must have two "reasonable beliefs."
 - 1) The first is a reasonable belief that physical force is being used or about to be used upon themselves or another.
 - 2) The second is a reasonable belief that the degree of force they are using to defend themselves is necessary for that purpose.
- K. "T" Nonimmigrant Visa: Victims of Trafficking, also known as the "T-visa," provides immigration protection to victims of a severe form of trafficking in persons. The T-visa allows victims to remain in the United States and assist federal authorities in the investigation and prosecution of human trafficking cases.
- L. Trauma Informed Care: Pursuant to CGS § 46b-38b(d), police officers and domestic violence intervention unit counselors must inform domestic violence victims of services available, including providing the victims with contact information for a regional family violence organization that employs, or provides referrals to, counselors who are trained to provide trauma-informed care. Existing law describes this as services directed by a thorough understanding of the neurological, biological, psychological, and social effects of trauma and violence on a person. The Act adds that the services be delivered by a regional family violence organization that employs or provides referrals to counselors who:
1. Make available to domestic violence resources on trauma exposure and its impact on treatment.
 2. Engage in efforts to strengthen the resilience and protective factors of victims of family violence who are affected by and vulnerable to trauma.
 3. Emphasize continuity of care and collaboration among organizations that provide services to children.
 4. Maintain professional relationships for referrals and consultations with programs and people with expertise in trauma-informed care.
- M. "U" Nonimmigrant Visa - Victims of Criminal Activity, also known as the "U-visa," provides temporary. Immigration benefits to aliens and their qualifying family members who are victims of qualifying criminal activity, who have suffered mental or physical abuse as a result, and who are willing to assist law enforcement and government officials in the investigation of criminal activity.

- N. Questionable immigration status: means any individual who cannot reasonably satisfy the investigating officer that he/she is a U.S. citizen, a lawful permanent resident of the United States, a documented permanent or temporary worker, a student or exchange visitor, a member of the U.S. Armed Forces, or otherwise lawfully present in the United States, or whose visa will likely expire before the case in which the individual is a victim can be fully prosecuted.
- O. Qualifying criminal activity: Criminal activity that involves one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. See Title 8 U.S.C. § 1101(a)(15)(U)(iii).

IV. GENERAL GUIDELINES AND CONSIDERATIONS

- A. Generally speaking, U.S. immigration law gives citizens and lawful permanent residents the right to petition for their spouses to be granted a permanent resident visa, which is the necessary prerequisite for immigrating to the United States. In the vast majority of cases, granting the right to seek the visa to the citizen or lawful permanent resident spouse makes sense, since the purpose of family immigration visas is to allow U.S. citizens or lawful permanent residents to live here with their spouses and children. But in the unusual case of the abusive relationship, an abusive citizen or lawful permanent resident can use control over his or her spouse's visa as a means to blackmail and control the spouse. The abusive spouse does this by withholding a promised visa petition and then threatening to turn the abused spouse in to the immigration authorities if the abused spouse sought to leave the abuser or report the abuse. The Violence Against Women Act of 1994 (VAWA 1994), Public Law 103-322 (September 13, 1994), changed this by allowing immigrants who demonstrate that they have been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouses to file their own petitions for visas without the cooperation of their abusive spouse. VAWA 1994 also allowed abused spouses placed in removal proceedings to seek "cancellation of removal," a form of discretionary relief from removal available to individuals in unlawful immigration status with strong equities, after three years rather than the seven ordinarily required. Finally, VAWA 1994 granted similar rights to minor children abused by their citizen or lawful permanent resident parent, whose immigration status, like that of the abused spouse, would otherwise be dependent on the abusive parent.
- B. The Violence Against Women Act of 2000 (VAWA 2000), Section 1001 et seq. of The Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386 (October 28, 2000), addresses residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law. Section 1501 of VAWA 2000, cited as the "Battered Immigrant Women Protection Act of 2000," further enhanced the goal of the immigration protections for battered immigrants included in the

Violence Against Women Act of 1994 to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships by (1) providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation, (2) allowing them to obtain protection orders against their abusers, and (3) freeing them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control.

- C. The Victims of Trafficking and Violence Protection Act of 2000 created two new nonimmigrant visas for non-citizen victims of crimes, the T-visa and the U-visa. Both visas are designed to provide immigration status to non-citizens that are assisting or are willing to assist authorities investigating crimes. The visas are available not only to the victims of domestic violence, but also to victims of trafficking in persons, as defined in Title 22 U.S.C. § 7102, as set forth in Section 1101(a)(15)(T and U) of the Immigration and Nationality Act, Title 8 U.S.C. § 1101 et seq.
- D. The T-visa was created to provide immigration protection to victims of a severe form of trafficking in persons. The T-visa also allows victims to remain in the United States and assist federal authorities in the investigation and prosecution of human trafficking cases. Those who have been granted T-1 nonimmigrant status may file for permanent residency upon meeting certain requirements. There is also a process for qualifying family members of a T-1 principal applicant to apply for permanent residence.
- E. The purpose of the U-visa is to give victims of identified crimes temporary legal status and work eligibility in the United States for up to 4 years. Only 10,000 U visas may be issued every fiscal year. Family members may also be included on the petition including spouses, children, unmarried sisters and brothers under 18; mothers, fathers, as well as step-parents and adoptive parents. An approved U-visa petition will automatically grant the applicant work eligibility in the United States. An Employment Authorization Document will be included with all approved petitions, which can be shown to any employer to obtain a Social Security Number to start work legally. Currently all U-visa applications are filed at the Vermont Service Center of the U.S. Customs and Immigration Service (USCIS).
- F. Applicability
 - 1. The Uniform Connecticut Law Enforcement Protocol For Treating Victims of Family Violence Whose Immigration Status Is Questionable applies to all state and local law enforcement agencies in the State of Connecticut.
 - 2. The requirements of the Uniform Connecticut Law Enforcement Protocol For Treating Victims of Family Violence Whose Immigration Status Is Questionable shall be implemented whenever it reasonably appears that a victim of family violence, whose immigration status is questionable:
 - a. Is the victim of criminal activity designated in § 1101(a)(15)(U) of the Immigration and Nationality Act.
 - b. Has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity.

- c. Possesses information concerning the qualifying criminal activity of which he/she was a victim.
- d. Will meet the certification requirements that he/she has been, is being or is likely to be helpful to a state or local government official in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim.
- e. The qualifying criminal activity of which he/she is a victim violated the laws of the United States or occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States.
- f. In addition, a Principal Petitioner filing for a qualifying family member, or currently holding U-1 status and filing for a qualifying family member, must also demonstrate that:
 - 1) If under the age of 21 years, qualifying family members for whom the Principal Petitioner is filing is/are his/her:
 - a) Spouse.
 - b) Unmarried children under the age of 21.
 - c) Parent(s) (including step-parents and adoptive parents.
 - d) Unmarried siblings under the age of 18.
 - 2) If over the age of 21 years, qualifying family members for whom the Principal petitioner is filing is/are his/her:
 - a) Spouse or Unmarried children under the age of 21.

V. PROCEDURES

A. Responsibility

1. Whenever an officer determines a domestic violence crime has been committed, such officer shall perform his/her duties as outlined in Policies and Procedures # 415 – Domestic Violence to include the following.
 - a. Rendering immediate assistance to any crime victim, including obtaining medical assistance for any such crime victim if such assistance is required.
 - b. Presenting a Victim's Rights Card prepared by the Office of the Chief Court Administrator to the crime victim informing the crime victim of services available and the rights of crime victims in this state.
 - c. Referring the crime victim to the Office of Victim Services for additional information on rights and services.
2. Each officer at the scene of a family violence incident involving one or more persons of questionable immigration status who appears to meet the requirements of this directive shall, in addition to the above, explain to the victim his/her right to petition

for a U-visa and shall, if requested, refer such victim to the appropriate supervisory officer designated to assist such victims with processing the necessary forms.

3. The head of each law enforcement agency in the State of Connecticut, and each supervisory officer so designated, shall be responsible for providing such assistance as may be necessary to facilitate the expeditious processing of Form I-918, Petition for U Nonimmigrant Status, Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, and Form I-918 Supplement 8, U Nonimmigrant Status Certification, upon request of a victim of family violence. See Form I-918 Instructions, Petition for U Nonimmigrant Status, available online at <https://www.uscis.gov/files/form/I-918instr.pdf> .
 - a. Reasonable efforts shall be made to obtain the services of a qualified interpreter whenever it appears that there exists a language barrier which may impede the expeditious processing of a petition for issuance of a U-visa.

B. Limitations

1. Officers shall not render legal advice to applicants concerning matters of immigration law, but shall merely assist applicants in filling out and processing the necessary forms upon request. Whenever possible, law enforcement agencies shall refer applicants to available pro bono legal services or local legal aid agencies which may provide competent legal advice to applicants.
2. Victims of family violence whose immigration status is questionable, and who appear to require practical assistance beyond that which is permitted by this directive, may also be referred to one or more of the following agencies:
 - a. The Connecticut Coalition Against Domestic Violence at telephone (888) 774-2900;
 - b. The State of Connecticut Office of Victim Advocate at telephone (800) 822-8428; and/or
 - c. The Connecticut State's Attorney's Office at the local courthouse at which the qualifying criminal activity is most likely to be prosecuted.

C. Forms and Reports

1. Form I-918, Petition for U Nonimmigrant Status (available online at <https://www.uscis.gov/i-918>).
2. Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (available online at <https://www.uscis.gov/i-918>).
3. Form I-918 Supplement B, U Nonimmigrant Status Certification (available online at <https://www.uscis.gov/i-918>).