

# State of Connecticut

## Police Officer Standards and Training Council Connecticut Police Academy



### GENERAL NOTICE 10-01

To: Chief Law Enforcement Officers  
Training Officers  
Protective Services  
Resident Troopers

From: Thomas E. Flaherty  
Executive Director

Date: June 22, 2010

Subject: Council Action – Adoption of a Uniform Connecticut Law Enforcement Protocol For Treating Victims of Family Violence Whose Immigration Status is Questionable.

At a Regular Meeting of the Police Officer Standards and Training Council on June 17, 2010, the Council adopted the attached document entitled "Uniform Connecticut Law Enforcement Protocol For Treating Victims of Family Violence Whose Immigration Status Is Questionable". This Uniform Protocol applies to all state and local law enforcement agencies in the State of Connecticut pursuant to Connecticut General Statute Sec. 46b-38b(g) as amended by Public Act No. 09-7, September Special Session, Sec. 64.

The Police Officer Standards and Training Council has developed this Protocol pursuant to the Public Act cited and is distributing the Protocol to all agencies within the intent of the Public Act.

Included for your review and implementation are:

The document entitled "Uniform Connecticut Law Enforcement Protocol For Treating Victims of Family Violence Whose Immigration Status Is Questionable" A copy of Section 46b-38b of the General Statutes of Connecticut as amended by Public Act No. 09-7, Sec. 64.

The Uniform Protocol was developed with the assistance and input from the Police Officer Standards and Training Council staff, Basic Training Division, the Connecticut Coalition Against Domestic Violence, The Division of Criminal Justice, Chief State's Attorney's Office, personnel from Immigration Customs Enforcement (ICE), the Department of Public Safety, Division of State Police, the Connecticut Police Chiefs Association, the Connecticut Attorney General's Office and the Stamford Police Department.

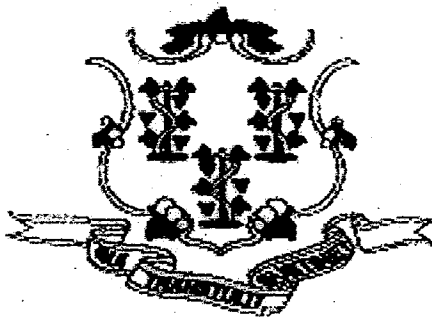
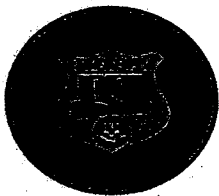
Enclosure



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## **Uniform Connecticut Law Enforcement Protocol For Treating Victims of Family Violence Whose Immigration Status Is Questionable**

### **I. PURPOSE**

The purpose of this protocol is to provide guidance to Connecticut law enforcement agencies 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. DEFINITIONS**

(1) "Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault between family or household members. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur. See Conn. Gen. Stat. § 46b-38a.

(2) "Family or household member" means (A) spouses, former spouses; (B) parents and their children; (C) persons eighteen years of age or older related by blood or marriage; (D) persons sixteen years of age or older other than those persons in subparagraph (C) presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or have recently been in, a dating relationship. See Conn. Gen. Stat. § 46b-38a.

(3) "Family violence crime" means a crime as defined in section 53a-24 which, in addition to its other elements, contains as an element thereof an act of family violence to a family member and shall not include acts by parents or guardians disciplining minor children unless such acts constitute abuse. See Conn. Gen. Stat. § 46b-38a.

(4) "Principal Petitioner" means a victim of a family 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.

(5) "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.

(6) "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.

(7) "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.

(8) "Qualifying criminal activity" means 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).

### **III. BACKGROUND**

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.

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.

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.

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.

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).

#### IV. APPLICABILITY

(a) 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. See Conn. Gen. Stat. § 46b-38b(g) as amended by Public Act No. 09-7, September Special Session, § 64.

(b) 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:

(1) is the victim of criminal activity designated in § 1101(a)(15)(U) of the Immigration and Nationality Act (the Act);

(2) has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;

(3) possesses information concerning the qualifying criminal activity of which he/she was a victim;

(4) 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; and

(5) 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.

(6) 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:

(i) if under the age of 21 years, qualifying family members for whom the Principal Petitioner is filing is/are his/her:

- Spouse;
- Unmarried child(ren) under the age of 21;
- Parent(s) (including step-parents and adoptive parents); or
- Unmarried siblings under the age of 18.

(ii) if over the age of 21 years, qualifying family members for whom the Principal petitioner is filing is/are his/her:

Spouse; or

Unmarried child(ren) under the age of 21.

## V. POLICY

(a) Whenever a peace officer determines upon speedy information that a family violence crime, except a family violence crime involving a dating relationship, 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. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on a request by the victim. Whenever a peace officer determines that a family violence crime has been committed, such officer may seize any firearm or electronic defense weapon, as defined in section 53a-3, at the location where the crime is alleged to have been committed that is in the possession of any person arrested for the commission of such crime or suspected of its commission or that is in plain view. Not later than seven days after any such seizure, the law enforcement agency shall return such firearm or electronic defense weapon in its original condition to the rightful owner thereof unless such person is ineligible to possess such firearm or electronic defense weapon or unless otherwise ordered by the court. See Conn. Gen. Stat. § 46b-38b(a) as amended by Public Act No. 09-7, September Special Session, § 64.

(b) No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party. Where complaints are made by two or more opposing parties, the officer shall evaluate each complaint separately to determine whether such officer should make an arrest or seek a warrant for an arrest. Notwithstanding the provisions of subsection (a) of this section, when a peace officer reasonably believes that a party in an incident of family violence has used force as a means of self defense, such officer is not required to arrest such party under this section. See Conn. Gen. Stat. § 46b-38b(b) as amended by Public Act No. 09-7, September Special Session, § 64.

(c) It shall be the responsibility of the peace officer at the scene of a family violence incident to provide immediate assistance to the victim. Such assistance shall include, but not be limited to: (1) Assisting the victim to obtain medical treatment if such treatment is required; (2) notifying the victim of the right to file an affidavit or warrant for arrest; (3) informing the victim of services available and referring the victim to the Office of Victim Services; and (4) providing assistance in accordance with the uniform protocols for treating victims of family violence whose immigration status is questionable established pursuant to subsection (g) of this section. See Conn. Gen. Stat. § 46b-38b(d) as amended by Public Act No. 09-7, September Special Session, § 64.

(d) No peace 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.

## **VI. RESPONSIBILITY**

(a) Whenever a peace officer determines that a crime has been committed, such officer shall: (1) Render immediate assistance to any crime victim, including obtaining medical assistance for any such crime victim if such assistance is required; (2) present 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; and (3) refer the crime victim to the Office of Victim Services for additional information on rights and services.

(b) Each peace 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 Protocol 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.

(c) 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 B, 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 <http://www.uscis.gov/files/form/I-918instr.pdf>.

(1) 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.

(d) The Connecticut Police Academy, under the auspices of the Police Officer Standards and Training Council (POSTC), Field Services Division, in conjunction with the Division of Criminal Justice, shall establish, on or after July 1, 2010, appropriate training programs for law enforcement officers, police supervisors, and State's attorney personnel on the handling of family violence incidents to include (i) the impact of arrests of multiple parties in a family violence case on the immigration status of the parties; (ii) crime scene investigation and evaluation practices in family violence cases designed by the council to reduce the number of multiple arrests in family violence cases; and (iii) practical considerations in the application of state statutes related to family violence, and (iv) eligibility for federal T-visas for victims of human trafficking and federal U-visas for unauthorized immigrants who are victims of family violence and other crimes.

(e) The Connecticut Police Academy, under the auspices of the Police Officer Standards and Training Council (POSTC), on or after July 1, 2010, shall provide an appropriate training program for police recruits similar to that set forth in subsection VI.(d) above in their basic training domestic violence curriculum.

## **VII. LIMITATION**

(1) Law enforcement agencies 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 Protocol, 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.

#### **VIII. FORMS AND REPORTS**

(a) Form I-918, Petition for U Nonimmigrant Status (available online at <http://asistahelp.org/Uvisa/I-918.pdf>);

(b) Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (available online at <http://asistahelp.org/Uvisa/I-918.pdf>); and

(c) Form I-918 Supplement B, U Nonimmigrant Status Certification (available online at <http://asistahelp.org/Uvisa/I-918.pdf>).

Approved/Revised by POSTC on [DATE]



Sec. 64. Section 46b-38b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010*):

(a) Whenever a peace officer determines upon speedy information that a family violence crime, except a family violence crime involving a dating relationship, 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. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on a request by the victim. Whenever a peace officer determines that a family violence crime has been committed, such officer may seize any firearm or electronic defense weapon, as defined in section 53a-3, at the location where the crime is alleged to have been committed that is in the possession of any person arrested for the commission of such crime or suspected of its commission or that is in plain view. Not later than seven days after any such seizure, the law enforcement agency shall return such firearm or electronic defense weapon in its original condition to the rightful owner thereof unless such person is ineligible to possess such firearm or electronic defense weapon or unless otherwise ordered by the court.

(b) No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party. Where complaints are made by two or more opposing parties, the officer shall evaluate each complaint separately to determine whether such officer should make an arrest or seek a warrant for an arrest. Notwithstanding the provisions of subsection (a) of this section, when a peace officer reasonably believes that a party in an incident of family violence has used force as a means of self defense, such officer is not required to arrest such party under this section.

(c) No peace officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a family violence incident for an arrest based on probable cause or for any conditions of release imposed pursuant to subsection (b) of section 54-63c.

(d) It shall be the responsibility of the peace officer at the scene of a family violence incident to provide immediate assistance to the victim. Such assistance shall include, but not be limited to: (1) Assisting the victim to obtain medical treatment if such treatment is required; (2) notifying the victim of the right to file an affidavit or warrant for arrest; [and] (3) informing the victim of services available and referring the victim to the Office of Victim Services; and (4) providing assistance in accordance with the uniform protocols for treating victims of family violence whose immigration status is questionable established pursuant to subsection (g) of this section. In cases where the officer has determined that no cause exists for an arrest, assistance shall include: (A) Assistance as provided in subdivisions (1) to [(3)] (4), inclusive, of this subsection; and (B) remaining at the scene for a reasonable time until, in the reasonable judgment of the officer, the likelihood of further imminent violence has been eliminated.

(e) (1) Each law enforcement agency shall develop, in conjunction with the Division of Criminal Justice, and implement specific operational guidelines for arrest policies in family violence incidents. Such guidelines shall include, but not be limited to: [(1)] (A) Procedures for the conduct of a criminal investigation; [(2)] (B) procedures for arrest and for victim assistance by peace officers; [(3)] (C) education as to what constitutes speedy information in a family violence incident; [(4)] (D) procedures with respect to the provision of services to victims; and

[(5)] (E) such other criteria or guidelines as may be applicable to carry out the purposes of sections 46b-1, 46b-15, 46b-38a to 46b-38f, inclusive, as amended by this act, and 54-1g. Such procedures shall be duly promulgated by such law enforcement agency.

(2) On and after July 1, 2010, each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (A) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity, and (B) any subsequent certification required by the victim.

(f) The Police Officer Standards and Training Council, in conjunction with the Division of Criminal Justice, shall establish an education and training program for law enforcement officers, supervisors and state's attorneys on the handling of family violence incidents. Training under such program shall: (1) Stress the enforcement of criminal law in family violence cases and the use of community resources, and include training for peace officers at both recruit and in-service levels; and (2) include, but not be limited to: (A) The nature, extent and causes of family violence; (B) legal rights of and remedies available to victims of family violence and persons accused of family violence; (C) services and facilities available to victims and batterers; (D) legal duties imposed on police officers to make arrests and to offer protection and assistance, including applicable probable cause standards; and (E) techniques for handling incidents of family violence that minimize the likelihood of injury to the officer and promote the safety of the victim. On and after July 1, 2010, training under such program shall also include, within available appropriations, information on (i) the impact of arrests of multiple parties in a family violence case on the immigration status of the parties; (ii) crime scene investigation and evaluation practices in family violence cases designed by the council to reduce the number of multiple arrests in family violence cases; and (iii) practical considerations in the application of state statutes related to family violence. On and after July 1, 2010, such training shall also address, within available appropriations, eligibility for federal T Visas for victims of human trafficking and federal U Visas for unauthorized immigrants who are victims of family violence and other crimes.

(g) Not later than July 1, 2010, the Police Officer Standards and Training Council shall establish uniform protocols for treating victims of family violence whose immigration status is questionable, and shall make such protocols available to law enforcement agencies. Each law enforcement agency shall adopt and use such protocols on and after the date they are established by the council.

**State of Connecticut**  
**Police Officer Standards and Training Council**

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