

*"Keep Orlando a safe city by reducing crime and maintaining livable neighborhoods."*

## ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

### 1131.9, VICTIM RIGHTS

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#### 1. PURPOSE

The Orlando Police Department supports all victims' rights afforded to them by the Florida Constitution and state statutes.

#### 2. POLICY

It shall be the policy of the Orlando Police Department to provide assistance to victims and witnesses so they may be informed of their rights and obtain services.

#### 3. DEFINITIONS

**Victim:** A person who suffers physical injury or death as a direct result of a crime; a person 18 years old or less who was present at the scene of the crime, saw or heard the crime, and suffered psychiatric/psychological injury because

of crime; or a person against whom a forcible felony was committed, who suffers psychiatric/psychological injury but not physical injury or death.

## 4. PROCEDURES

### 4.1 VICTIMS' RIGHTS AND SERVICES

Victims and witnesses shall be referred to the Victims' Rights brochure for the following information and services:

- a. Availability of crime compensation programs.
- b. Location of community-based victim treatment programs, as well as information about crisis intervention services, supportive or bereavement counseling, and social service support referrals.
- c. Role of the victim in the criminal or juvenile process, including what the victim may expect from the system and what the system may expect from the victim.
- d. Stages of the criminal or juvenile justice process that are of significance to the victim and the manner in which information about such stages may be obtained.
- e. Right of the victim who is not incarcerated, including parent, guardian, or lawful representative of a minor victim, or the next of kin of a homicide victim to be informed, present, and heard, when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent the right does not interfere with the constitutional rights of the accused.
- f. A victim who is incarcerated has the right, upon request, to be informed and submit written statements at all stages of the criminal and juvenile proceedings.
- g. Right of a victim to prompt and timely disposition of the case in order to minimize the period during which the victim must endure the responsibilities and stress involved, to the extent that this right does not interfere with the constitutional rights of the accused.
- h. Advise the victim that the Orlando Police Department's Community Relations Division offers, **free of charge**, the following services:
  1. Residential security surveys.
  2. Commercial security surveys.
  3. Personal safety presentations for businesses, church groups, Neighborhood Watch groups, etc.

Refer all those interested in these services to the Community Relations Division at 407.246.2461.

Note: The Victims' Rights brochure does not replace the use of the Domestic Violence pamphlet.

### 4.2 VICTIMS' RIGHTS BROCHURES

Employees shall be generally aware of the Florida Statutes governing the rights of victims and witnesses in the criminal justice and juvenile justice systems. Employees shall always provide assistance and information to victims and witnesses, whenever feasible, as long as it is not detrimental to the investigation and prosecution of the case. Several brochures detailing victims' rights are available in the Quartermaster Unit in both English and Spanish format. These brochures shall be distributed in accordance with the following procedures:

#### 4.2.1 BROCHURE DISTRIBUTION

- a. Members shall provide every victim of a crime with a Victims' Rights brochure. Members shall complete the first page of the Victims' Rights brochure. Victims include family members who are related to victims of homicides or other serious violent crimes. The brochure may be given to witnesses where the member believes it is appropriate. Members shall indicate in the incident report that the Victims' Rights brochure was provided.

- b. In addition, victims of domestic violence, repeat violence, sexual violence or stalking will also be given a domestic violence brochure: "Notice of Legal Rights and Remedies for Victims of Domestic Violence, Repeat Violence, Sexual Violence, Stalking." [§741.29, Fla. Stat.](#)
- c. Victims of sexual battery will also be given a sexual battery brochure: "Sexual Battery Victim's Rights and Services." [§794.052, Fla. Stat.](#)
- d. Officers are required to give Victim Information and Notification Everyday (VINE) pamphlets (available in the Quartermaster Unit) to victims whenever victims will automatically be registered with VINE for crimes listed in [Section 4.3](#) (when a victim notification card will be turned in).

#### **4.2.2 VICTIMS' RIGHTS BROCHURE**

The Victims' Rights brochure contains detailed information about the rights and obligations of victims and witnesses. Victims and witnesses should be referred to the brochure for details on resources available to them and an explanation of the processing of their case through the criminal justice system.

Generally, in instances when a minor victim, who is not incarcerated, has the right to receive notification, this right also extends to the victim's parent, guardian, or lawful representative.

#### **4.3 VICTIM NOTIFICATION OF ARREST**

Officers must complete a victim notification card (Attachment A) when an arrest is made, when filing at-large paperwork, or when securing an arrest warrant for the following crimes per Florida Statutes:

- a. Homicides, pursuant to Florida Statutes, [Chapter 782](#).
- b. Sexual Offenses, pursuant to Florida Statutes, [Chapter 794](#).
- c. Attempted Murder or Attempted Sexual Battery, pursuant to Florida Statutes, [Chapter 777](#).
- d. Stalking, pursuant to [§784.048, Fla. Stat.](#).
- e. Domestic Violence, pursuant to [§960.001, Fla. Stat.](#) (The victim notification card must be completed in addition to the required domestic violence case handling paperwork and procedures.)

#### **4.3.1 VICTIM NOTIFICATION OF ARREST AND RELEASE OF SUSPECT**

When an arrest is made in a reported case, the arresting agency will make every effort to notify the victim, or parent or guardian of a minor victim (including parent, guardian, lawful representative, or relative of a homicide victim), where those persons have provided current addresses and telephone numbers to OPD. The above will be notified in advance by the appropriate agency when the suspect is released (including community work release).

#### **4.3.2 COMPLETION AND DISTRIBUTION OF VICTIM NOTIFICATION CARD**

It is the responsibility of the officer who is physically making the arrest, completing the paperwork to file at large, or securing the arrest warrant, to complete the victim notification card. These cards are available in the Quartermaster Unit and at the booking facility. The card should be completed according to the instructions on the back of the card. If there is more than one defendant in a case, separate victim notification cards should be completed for each defendant. Separate cards will permit the notification of the victim upon the release of individual defendants.

The officer should encourage the victim, appropriate next of kin, or other designated contact of victim to provide information for completion of the victim notification card. The victim may provide an alternate address and/or telephone number, other than his or her primary residence, if he or she so desires. However, state statute allows victims the option to waive notification. In these instances, the victim, appropriate next of kin, or other designated contact of victim must sign the declination on the completed victim notification card.

Officers shall distribute the victim notification card as follows, even if notification is waived:

- a. When making a physical arrest:
  - 1. Attach the card portion to the arrest affidavit that is to be left at the booking facility.
  - 2. Attach the yellow copy to the filing package to be submitted to the Criminal Intake Unit for submission to the State Attorney's Office.
  - 3. Submit the white (original) copy to the Records/ID Unit for filing.
- b. When submitting at-large paperwork or securing an arrest warrant, the completed three-part victim notification form is to be attached to the filing paperwork.

When making a physical arrest on a warrant or capias that is confirmed through Teletype, officers are not required to submit a victim notification card.

#### **4.3.3 VINE PROGRAM**

The Victim Information and Notification Everyday (VINE) program is a 24-hour service that provides information and notification to victims or others regarding the custody status of offenders. When officers fill out and turn in victim notification cards, victims will be automatically registered with VINE. However, anyone may register with VINE to receive notification when an offender has a change in custody status. The general public may also call the VINE hotline and request information on offender custody status. The VINE hotline number is 1.877.846.3435.

Officers are required to give information pamphlets or flyers on VINE (available in the Quartermaster Unit) to victims whenever victims will automatically be registered with VINE for crimes listed in Section 3 (when a victim notification card is turned in). Victims will continue to receive notifications from VINE until the proper PIN code is entered by the victim for confirmation. Officers may give out the VINE information to other victims or witnesses at the officers' discretion.

#### **4.4. VICTIM CONFIDENTIALITY AND EXEMPTIONS**

##### **VICTIMS:**

Article I, Section 16(5) of the Constitution of the State of Florida, aka: "Marsy's Law," outlines the right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim. The triplicate "Victim Request for Confidentiality" (Attachment B), available in the Quartermaster Unit, shall be completed for a victim requesting the exemption.

Any information (including name, address, photograph, etc.) that reveals the identity of a victim of any sexual offense or child abuse is exempt from public records disclosure as provided in Florida Statutes, Chapter 119. These exemptions are automatic and do not require that the victim request anonymity.

Victims of domestic violence have a statutory right to be informed of the address confidentiality program administered by the Attorney General's Office.

##### **WITNESSES/OTHER PARTIES:**

Florida Statutes 119.071(4)(d) outlines additional exemptions of certain information relating to current and former sworn or civilian law enforcement personnel, correctional and correctional probation officers, prosecutors, and judges by excluding from public inspection: home addresses, personal telephone numbers, dates of birth, and photographs. The same statute exempts certain information relating to family members of such personnel by excluding from public inspection: names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel, and the names and schools and locations of schools and daycare facilities attended by the children of such personnel.

Public records law provides for additional protections for victims and witnesses that are not required to be invoked. While those protections are generally less robust than the protections offered under Marsy's Law, they are available automatically and for witnesses or other individuals who may not qualify for Marsy's Law.

**NARRATIVE:**

If any form is completed regarding the confidentiality of information, the member shall include a statement in the narrative of the Incident Offense Report indicating such. Members shall also check "Non-Disclosure," if applicable, when completing their report. Completed forms shall be routed to the Report Review/Information Unit for entry.

**4.5 VICTIMS' RIGHTS TRAINING**

Victim assistance, education, and training shall be offered to persons taking courses at law enforcement training facilities so that victims may be promptly, properly, and completely assisted. Officers will be provided information regarding victims' rights through in-service training.

**4.6 VICTIMS' REQUEST FOR COMPENSATION**

Victims of crimes who suffer damages such as disability, wage loss, loss of support, expenses, property loss, and relocation expenses may qualify for compensation from the Office of the Attorney General's Bureau of Victim Compensation. When relevant and possible, members should refer victims to [www.myfloridalegal.com](http://www.myfloridalegal.com) to submit a compensation claim form.

In accordance with [Chapter 960.05 \(k\), Fla. Stat.](#), the Bureau of Victim Compensation (BVC) is entitled to receive from the state attorney, or from law enforcement agencies, any data, including confidential records, which enables the BVC to determine if a crime was committed or attempted. BVC has recognized the necessity for a replacement or supplemental form when the incident report is not available due to an active investigation, or if the circumstances of the crime need to be clarified. The Law Enforcement Information Reporting Form (BVC430) was created for those purposes. See Attachment D.

**4.7 U VISA APPLICATIONS**

**4.7.1 PURPOSE**

Congress created the U Visa program to strengthen the law enforcement community's ability to investigate and prosecute cases of domestic violence, sexual assault, human trafficking, and other crimes, while also offering protection to victims.

Under Federal Law, a non-U.S. citizen who has been the victim of certain crimes and is or has been, or is likely to be helpful in the investigation or prosecution of that criminal activity is eligible to apply for a temporary visa allowing them to remain legally in the United States for up to four (4) years.

**4.7.2 REQUIREMENTS TO OBTAIN A U VISA FROM UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS):**

1. Eligibility
  - a. Applicants must be the victim of a qualifying criminal activity that was committed in the United States or violated U.S. law.
  - b. In most cases, applicants must be the direct victim of the crimes. There are limited exceptions for
    - 1) certain indirect victims (family members) when the primary victim was murdered or rendered incapacitated/incompetent and unable to assist police, or
    - 2) bystanders in instances of unusually severe harm (e.g., pregnant women who miscarry as a result of witnessing a crime).
2. Harm

- a. Applicants must have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity. (Note: Police do not have to certify this requirement).

### 3. Helpfulness

- a. Applicants must currently be assisting law enforcement in the detection, investigation, or prosecution of a crime; or
- b. Must have previously assisted law enforcement in the detection, investigation, or prosecution of a crime; or
- c. Must be likely to be helpful in the investigation or prosecution of criminal activity.

### 4. Admissibility

- a. The applicant must also be admissible to the United States under USCIS's requirements (i.e., in good health, with good moral character, and no concerning criminal background or national security concerns). (Note: Police do not have to certify this requirement).

Additional information regarding the law is available on [www.uscis.gov](http://www.uscis.gov).

#### 4.7.3 QUALIFYING CRIMINAL ACTIVITY

Abduction	Abusive Sexual Contact	Rape	Being Held Hostage
Blackmail	Kidnapping	Domestic Violence	Extortion
False Imprisonment	Felonious Assault	Female Genital Mutilation	Fraud in Foreign Labor Contracting
Incest	Involuntary Servitude	Manslaughter	Murder
Obstruction of Justice	Peonage	Perjury	Prostitution
Sexual Assault	Sexual Exploitation	Slave Trade	Stalking
Torture	Trafficking	Unlawful Criminal Restraint	Witness Tampering

Attempt, conspiracy, or solicitation to commit any of the crimes listed above may also count as a "qualifying criminal activity."

Qualifying crimes include any similar activity where the nature and elements of the crime are substantially similar to one of the crimes listed.

#### 4.7.4 CONSIDERATIONS AND BENEFITS

Immigration relief is a tool that law enforcement can use to help fight crime in local communities. One reason why victims may not come forward to work with law enforcement is that foreign victims of human trafficking and other crimes may not have legal status in the United States. Immigration relief provides a way for victims to feel secure and stabilize their status in the United States, which means that is a critical tool in helping victims become strong and active participants in an investigation or prosecution.

The U Visa is especially important for immigration victims of domestic violence, sexual assault, and human trafficking, who comprise the majority of U Visa holders. A successful U Visa program in a police department can build and strengthen relationships with members of the community, immigrant advocates, and legal service providers, who can help build trust between their clients and the police and encourage them to report crimes.

Members are encouraged to consider the benefits of using U Visa-related certifications as an investigative and community policing tool.

#### **4.7.5 INFORM VICTIMS AND COMMUNITY**

Officers should inform community members and make sure they are aware that U Visas are an option available to immigrant crime victims.

When investigating qualifying criminal activity, explain to all immigrant crime victims:

1. Victims of qualifying crimes are eligible to apply for a U Visa.
2. The government created a U Visa so that victims who cooperate with law enforcement do not have to fear deportation for cooperating with the investigation and prosecution, and may enable helpful victims to obtain legal status for four years.
3. One of the requirements for obtaining a U Visa is to be helpful in the investigation and prosecution of the qualifying crime.
4. Point out the U Visa information to the victim when providing the Victim's Rights Pamphlet.
5. The victim can fill out the I-918 Supplement B (<https://www.uscis.gov/I-918>) themselves or call an attorney to assist them in completing the form.
6. The form should be directed to the Orlando Police Legal Advisor's Office.
7. Upon submission of the proper forms to Orlando Police Department Legal Advisor's Office, the Chief will review the application and request for certification, which is one stage of the application process.
8. Officers cannot sign U Visa certifications. If the Chief signs the certification, it will be returned to the victim (or their advocate or attorney), who may submit it to USCIS along with other paperwork and evidence.

Make note of the helpfulness of the victim throughout the investigation and prosecution:

- Did the victim tell you what happened?
- Did the victim fill out a sworn written statement?
- Did the victim agree to prosecute?
- Did the victim provide you with contact information?
- If the victim refuses to cooperate and there are reasonable excuses, specify all the details.

#### **4.7.6 RESPONSE TO REQUESTS FOR U VISA CERTIFICATION**

When a member is presented with a request from a victim to certify a U Visa, the lead officer shall, within 10 days

1. Prepare a memo with the necessary details and provide answers to Parts 3 - 5 of the attached Form I-918, Supplement E;
2. Attach the case reports, victim and witness statements;
3. Describe whether the victim has been helpful, is being helpful, or is likely to be helpful in the investigation (In determining the victim's "helpfulness," take into consideration reasons why a victim may fear retaliation);
4. Attach any additional information about the victim's abuse; and
5. Submit the memo and attachments to the Police Legal Advisor's Office.

#### **4.7.7 LEGAL ADVISOR RESPONSIBILITIES**

The Police Legal Advisor's Office will review the memo and its attachments to determine whether to recommend certification. The Orlando Police Department will determine whether completing a U Visa request is appropriate based on the totality of the circumstances. Applications should be processed timely, with a goal of 30 days from the date of receipt.

The Legal Advisor's office will provide written feedback to attorneys and applicants when the Chief decides not to

sign an I-918 in order to ensure transparency and consistency for the Agency's decisions on certifying an I-918, Supplemental E form.

#### **4.7.8 CERTIFICATION CONSIDERATIONS**

Only the Chief of Police or his/her designee may sign a U Visa certification request. The Chief has complete discretion to complete a declaration or certification. The Chief has no legal obligation to complete the declaration or certification and will not be liable for the future conduct of the victim.

The Chief of Police can provide the declaration or certification even if there is no arrest, no charges filed, no formal investigation, no prosecution, no conviction, or even if the case is closed. Timing is not an issue, as long as the victim was helpful to the investigation. There is no federal statute of limitations on when a crime occurred and when a victim may be eligible for these immigration benefits.

Only USCIS has the authority to grant or deny a person's U Visa application. The declaration and certification form alone does not grant any immigration benefit or legal status in the U.S.

#### **4.7.9 WITHDRAWING A DECLARATION OF CERTIFICATION**

The victim is required to continue to support the investigation or prosecution as long as it is reasonable. Agencies can withdraw the declaration or certification after it has been submitted to USCIS for any reason, including when the victim unreasonably refuses to assist. If a member determines that certification may need to be withdrawn, please notify the Legal Advisor's Office who will prepare written notification for the Chief to send to USCIS. Notification must be in writing and include the victim's name, date of birth, and a file number (if available), along with a description of the reason for the withdrawal.

### **5. FORMS AND APPENDICES**

**ATTACHMENT A-Victim Notification Card**

**ATTACHMENT B-Victim Request for Confidentiality**

**ATTACHMENT C-Exemption from Public Record Disclosure Form**

**ATTACHMENT D-Law Enforcement Information Reporting Form**

**ATTACHMENT E-Petition for U Nonimmigrant Status**