



# BRAINTREE POLICE DEPARTMENT

## Policy and Procedure

### Victim/Witness Assistance

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Chief Mark Dubois

Certification Standards: **55.2.2; 55.2.6**

Accreditation Standards: **55.1.1; 55.1.3 a, b; 55.2.3 a, b, c, d; 55.2.4 a, b, c, d**

Optional Accreditation Standards: **55.2.1 a, b; 55.2.5**

## GENERAL CONSIDERATIONS

In its own best interest, a police agency plays a significant role in victim/witness assistance, a role that no other component of the criminal justice system can effectively duplicate. Victim/witness assistance activities provided by prosecutors usually only affect victims and witnesses in cases that have been accepted for prosecution.

Accreditation standards related to this policy are designed to ensure that victims and other witnesses receive professional handling consistent with their important investigative and prosecutorial role. Police agencies must make every effort to assure that the personal rights and safety of victims and witnesses are protected and work to assure victims and witnesses that they will be heard, and that the confidentiality of records and files, in so far as Massachusetts Law permits, will be upheld.

## POLICY

It is the policy of the Braintree Police Department that:

- 1) All employees of the police department treat any victim or witness of a crime with fairness, compassion and dignity; and
- 2) The department shall work in partnership with the Norfolk County District Attorney's Office and its Victim/Witness Assistance Program.

## PROCEDURES

### 1) Summary of Victim Bill of Rights

a) Generally: In 1984, the Massachusetts Victim Bill of Rights, M.G.L c. 258B, was enacted into law, creating, at that time, the most comprehensive rights for victims of crime in any state in the United States. The bill applies to victims of crimes or, if a victim is deceased, to family members. Portions of the bill apply to witnesses of crimes as well. Except where noted, the rights are provided by the prosecutor. **[55.1.1]**

b) Victims and witnesses of crimes, or family members, including family members of homicide victims and parents/guardians of minor aged victims, have the following rights, as indicated: **[55.1.1]**

i) For Victims (including family members of homicide victims and parents/guardians of minor-aged victims):

(1) Right to Information on the Criminal Justice System:

(a) How a criminal case progresses through the system and the role of the victim/witness.

(b) Rights and services for victims in the court process.

(2) Right to Information on the Criminal Case in which the victim/witness is involved. Upon request, the right to be updated on significant developments in the case.

(3) Right to Confer at Key Stages in the Court Process:

(a) With the prosecutor before the start of the case, before a case is dismissed, and before a sentence recommendation is made, and whenever a defense motion is made to obtain victim's psychiatric records or other confidential information.

(b) With the probation officer about the impact of the crime on the victim before the officer files a full present tense report on the offender with the court.

(4) Right to Financial Assistance:

(a) Victims of Violent Crime Compensation ( M.G.L. c. 258C);

(b) Restitution;

(c) Notification by the probation officer whenever an offender seeks to change a restitution order; and

(d) Civil Lawsuit for damages caused as a result of the crime by consulting a private attorney.

- (5) Right to Information on Social Services Available to Victims. Right to be Heard and Present at Court Proceedings:
- (a) The victim and family members have the Right to be Present at all court proceedings unless sequestered at the time of testimony.
  - (b) Timely Notification of Time and Place of Sentencing:
    - (i) In felony cases and any crime against the person or crime where physical injury to a person results, the victim, family members of a homicide victim, or parents/guardians of a minor-aged victim have the right to be heard through an oral and written Victim Impact Statement at sentencing or the disposition of the case against the defendant about the, physical, emotional and financial impact of the crime and as to a recommended sentence, pursuant to M.G.L. c. 279 § 4B.
  - (c) The victim has the Right to be heard at any other time deemed appropriate by the judge.
- (6) Prompt Return of Property: To have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned within ten days of its taking or recovery if it is not needed for law enforcement purposes or as expeditiously as possible when said property is no longer needed for law enforcement or prosecution purposes.

c) Victim and Witnesses **[55.1.1]**

- i) Right to request Confidentiality for victims, witnesses and family members during the court proceedings for personal information, including home address, telephone number including cell number, school and place of employment. In addition, confidentiality in their role in case development to the extent consistent with applicable law. **[55.1.3 b]**
- ii) Right to protection by law enforcement from harm or threats of harm as a result of cooperation with the court process.
- iii) Right to timely notification of court appearances, continuances and final disposition of the case.
- iv) Right to a prompt disposition of the case.
- v) Safe waiting area during court proceedings.
- vi) Right to witness fee.
- vii) Employer and Creditor Intercession:
  - (1) Assistance by the Prosecutor/Advocate to seek employer cooperation in minimizing employees' loss of pay and other benefits, and to be free from discharge or penalty by employer resulting from their participation in the

criminal justice system or by reason of attendance as a witness at a criminal proceeding.

- (2) Assistance by the Prosecutor/Advocate to seek consideration from creditors if the victim is unable, temporarily, to make payments.
- viii) Right to decline or agree to submit to any defense interview before trial, or to set reasonable conditions on the conduct of any such interview.
- ix) Right to be notified of an offender's release (upon request):
  - (1) If an offender is moved to a less secure facility, if the offender receives a temporary, provisional or final release from custody, or if offender escapes. See also M.G.L. c. 6, §172C which mandates that any person who reasonably believes that his/her physical safety is at risk by an inmate shall, upon request, be notified, in advance, of an offender's release under a *Citizen's Initiated Petition*.
  - (2) Information from the Parole Board of the offender's parole eligibility and status.
- x) Right to additional record information: Victims, witnesses and family members may be eligible to get additional record information about the offender, such as a criminal record or the offender's compliance with the terms of a sentence (M.G.L. c. 6, §178A).

## 2) Police Department Role **[55.1.3]**

### a) Police Liaison:

- i) The Chief of Police shall designate the Police Court Prosecutor and or Supervisor of the Families Service Unit to act as a liaison with the District Attorney's Office Domestic Violence Unit. It shall be the responsibility of this officer to act as liaison between victims and witnesses of crime and the Victim/Witness Assistance Unit of the Norfolk County District Attorney's Office so that all victims and witnesses are notified of their rights. **[55.1.3 a]**
- ii) Ensure that records and files of victims and witnesses are held in confidential files, subject to release only under the requirements of Massachusetts Public Records Law Chapter 4, Section 7(26). **[55.1.3 b]**
- iii) If the liaison is not the prosecutor, advise the prosecutor of the need to have a victim/witness advocate from the Victim/Witness Service Bureau of the

Court/County District Attorney's office assigned to the case and to maintain contact with the court advocate during the course of events that follow.

b) Services Provided **[55.2.1]**

i) 24 Hour Access to Victim/Witness Services

(1) A victim or witness of a crime may call the police department dispatcher at any time for twenty-four hour information/referral purposes. The dispatcher should make available to a witness or victim information regarding assistance that the police department provides. In most cases, the dispatcher will refer the caller to the Court Prosecutor or if there is an immediate need to the on duty Shift Commander. **[55.2.1 a]**

(2) When the dispatcher is contacted by a victim or witness for assistance or services beyond the scope of those the police provide, [s]he shall refer to Page 8 and 9 Section d *Services and Resources Provided by Other Agencies* in this policy and provide the name and telephone number of agencies within the county or regional service area that can provide the needed service. **[55.2.1 b]**

(3) For incidents involving domestic violence, see the department policy on ***Domestic Abuse/Violence***

ii) Status of Suspect/Arrestee: Upon the request of a victim or witness, or when, in the opinion of the investigating officer or supervisor, a victim or witness should be notified, officers who arrest a suspect for the commission of the crime should notify the victim or witnesses on the following: **[55.2.5]**

(1) An arrest being made;

(2) The charges being brought against the arrestee; and

(3) The arrestee's status (out on bail or incarcerated).

(4) Should the arrestee's status change, the involved officers should keep the victim or witness informed of such a change.

(5) The District Attorney's victim witness advocate, with assistance from the department court prosecutor, shall also be responsible for keeping a victim informed regarding the post arrest processing of the suspect.

iii) Interviewing Victims and Witnesses

(1) The interviewing of a victim or witness (including field interviews) is a vital part of the police criminal investigation procedure as it can lead directly to

the identification, subsequent apprehension and conviction of the offender. If the person being interviewed becomes a suspect in the officer's mind and the situation is custodial in nature, the interview becomes an interrogation and further questioning must be preceded by administration of the Miranda warning.

- (2) It is important to not only listen to what is said, but also to how it is said. Emotional outbursts and inflections of the voice may give a clue to sensitive areas of the interview. Sudden silence, uncertainty or confusion, or the shifting of conversation to an unrelated subject may indicate that information is being withheld. Nervous bodily reaction or facial characteristics may also signal that a sensitive area has been reached. By noting these things, an officer should know what portions of the statement may require further probing or clarification.
- (3) An interview should be ended in a courteous manner. When possible do not terminate the interview abruptly or dismiss the witness in a curt manner. This helps to assure further cooperation particularly if the witnesses may be needed to testify at a later date.

iv) Preliminary Investigations **[55.2.3]**

- (1) Patrol officers and detectives conducting preliminary investigations should be prepared to render assistance, including the following:
  - (a) Provide information to victim/witness regarding services available through the police department, such as medical attention and referrals for counseling. **[55.2.3 a]**
  - (b) Advise that additional resources are available through the District Attorney's Office, such as victim advocacy and financial assistance. **[55.2.3 a]**
  - (c) Advise the victim/witness on procedures to follow should the suspect, companions of suspect, or family of suspect, threaten or intimidate the victim/witness. **[55.2.3 b]**
  - (d) Inform the victim/witness of the case number assigned to the complaint and the steps that will follow the preliminary investigation. **[55.2.3 c]**
  - (e) Provide victim/witness with a business card or telephone number to call should the victim or witness have additional information to report or wish to check on the status of the investigation. **[55.2.3 d]**

- (2) Officers assigned to domestic violence cases shall give the victim a copy of the notice of domestic violence rights form. A copy of the signed domestic violence rights form shall be attached to the officer's original case report and attached in the external reference file. The rights shall be provided in the victim's native language whenever possible.<sup>i</sup> See department policy ***Domestic Abuse/Violence***.
- v) Follow-Up Investigations: Investigators or patrol officers assigned to conduct the follow-up investigation should be prepared to offer the victim or witness assistance during the course of their involvement with the case.
- (1) If the impact of the crime has been unusually severe and has resulted in providing victim or witness assistance beyond the standard, the investigator should check with the victim or witness to determine if his/her needs are being met. A second contact should be conducted as necessary. **[55.2.4 a]**
  - (2) The investigator should explain to the victim or witness the procedures involved in the prosecution of the case and his/her role in that process. **[55.2.4 b]**
  - (3) If feasible, investigators should schedule all line-ups, interviews or other required appearances of the victim or witness at such person's convenience and, if necessary, provide transportation to and from the site of such appearance. **[55.2.4 c]**
  - (4) Whenever possible, the investigator should arrange for the prompt return of the property of the victim or witness as permitted by law or rule of evidence. Property may be held if it is: **[55.2.4 d]**
    - (a) Contraband;
    - (b) Weapons used in the course of the crime;
    - (c) Evidence needed for prosecution; or
    - (d) Property with ownership in dispute.
- c) Threats and Intimidation **[55.2.2]**
- i) Evaluation
    - (1) In the event that a police officer becomes aware that a victim of or a witness to a crime has been threatened or intimidated by the suspect or suspect's friends, family, attorney or other associates:

- (a) The investigating officer should be notified; and
- (b) The officer should consider the nature of the threat and potential for its being acted upon.
- (c) If, in the opinion of the investigating officer or supervisor, the threat appears credible, it should be further investigated.
- (d) If, in the opinion of the investigating officer or supervisor, there exists an express specific, credible reason for fearing intimidation or further intimidation, appropriate action should be taken to include a referral to one, but not limited to one of the following:

ii) Police Response

- (1) Police response should be appropriate given the circumstances known at the time and may include:
  - (a) Immediate arrest for appropriate charge;
  - (b) Application for an arrest warrant;
  - (c) Summons (may request an expedited hearing date);
  - (d) Show cause hearing; and
  - (e) Conferring with District Attorney's Office regarding appropriate action, including:
    - (i) Arrest or prosecution of appropriate person(s);
    - (ii) Security for victim or witness; and
    - (iii) Relocation of victim or witness.
- (2) In cases of an immediate, credible threat, a supervisor may confer with the liaison and court prosecutor regarding emergency measures to provide protection for the victim or witness.
- (3) In the event that a victim or witness is located outside of the department's jurisdiction, the agency having jurisdiction where the victim or witness is located should be notified.

d) Services provided by other agencies **[55.2.1 b]**:

- i) Additional victim and witness services that are available from outside sources and agencies.
  - (1) Norfolk County District Attorney's Office 781-830-4800;
  - (2) Massachusetts Office for Victim Assistance (MOVA) 617-586-1340;
  - (3) Attorney General Criminal Bureau 617-727-2200;
  - (4) Office of Attorney General, Victim Compensation and Assistance Division, 617-727-2200 x 2160;
  - (5) US Attorney's Office; Victims or Witnesses Assistance Program for a Federal Crime 617-748-3100;
  - (6) Department of Criminal Justice Information Services (DCJIS), Victim Service Unit 617-660-4690 or 617-660-4604 TTY;
  - (7) Massachusetts Department of Correction, Victim Service Unit; 978 369 3618 or toll free 866-684-2846;
  - (8) Massachusetts Parole Board, Victim Service Unit; 508-650-4500 or 888-298-6267;
  - (9) Sex Offender Registry Board, Victim Service Unit; 978-740-6440 or 800-963-3246;
  - (10) Department of Youth Services, Victim Service Unit 617-727-7575;
  - (11) For additional services/resources see department policy **Domestic Abuse/Violence**, Abused Person Rights, Brochure Plaintiff and Insert and Brochure Defendant and Insert in department forms file.
  
- e) In cases of seriously ill, seriously injured or deceased persons the following procedures should be followed. **[55.2.6]**
  - i) A police department supervisor may notify family members or next of kin;
  - ii) The police department may notify another appropriate department to contact family or next of kin;
  - iii) Emergency messages may be delivered by police department personnel in person. If the person intended for the message is not found, police will leave a written message and/or business card at a place where it will likely be found. Every effort will be made to make contact.
  
- f) Training of Department Personnel
  - i) Upon hiring, as part of initial in-house training and the FTO Program, all employees shall receive a copy of and training regarding the Victim Bill of Rights. Employees shall be trained in regard to department and other programs and procedures designed to offer assistance to victims and witnesses of a crime, as specified in this policy.

- ii) Officers should read and be familiar with General Law Chapter 258B; Rights of Victims and Witnesses of Crimes and Chapter 258C; Compensation of Victims of Violent Crimes.

### 3) U Visa

- a) The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, tracking of aliens and other crimes, while also protecting victims of crime who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.
- b) Eligibility - To be eligible for a U-Visa, victims must have suffered substantial physical or mental abuse due to a qualifying criminal activity, possess information concerning the qualifying criminal activity and be able to demonstrate they have been helpful, are being helpful or are likely to be helpful to law enforcement, prosecutors or other authorities in the investigation and that the crime occurred in the United States or violated the laws of the United States.
- c) A family member of a U-Visa applicant cannot apply for a U-Visa on his or her own behalf. However, the U-Visa applicant can file a petition on behalf of family members:
  - i) If the U-Visa applicant is less than 21 years of age, the applicant can file for or her spouse, children, unmarried siblings under 18, and parents.
  - ii) If the U-Visa applicant is 21 or older, he or she can file for his or her spouse and the applicant's children.
  - iii) The applicant must file Form I-918, Supplement A, for qualifying family members.
- d) Immigrants, who are victims of a qualifying crime, and their family members, can apply for a U-Visa either from outside the United States, as long as the qualifying crime was committed either:

- i) While the immigrant was in the United States, or
- ii) By a United States citizen.

The immigrant and family members will file for the U-Visa with the U.S. Embassy or Consulate in the immigrant's country.

- e) A person may be eligible for a U nonimmigrant visa if:
  - i) He or she is the victim of a qualifying criminal activity. A qualifying criminal activity includes rape, torture, incest, human trafficking, domestic violence, abusive sexual assault, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, perjury, involuntary servitude, slavery, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, fraud in foreign labor contracting, stalking, and other related crimes which include any similar activity where the elements of the crime is substantially similar to the above specified offenses.
- f) Form I-918
  - i) One of the documents a person must complete and submit as part of the U visa process is Form I-918, Supplement B, U Nonimmigrant Status Certification. The Form I-918, Supplement B, must be signed by an authorized official of the certifying law enforcement agency; The Chief of Police, or his or her designee. The designee will be the Commander of Detectives. The official must confirm that the U visa applicant was helpful, and currently being helpful, or will likely be helpful in the investigation or prosecution of the case.
  - ii) When the department receives a request for a certifying signature, the application should be forwarded to the Commander of Detectives who will be responsible for researching records to determine if the applicant is a cooperating victim of a qualifying crime that meets the criteria for a U Visa.
  - iii) Applications which meet the established guidelines and are determined to be under the under the police department's jurisdiction may be signed by the Chief of Police, or his or her designee, and returned to the requesting party for submission. Recommendations will be based on whether:
    - (1) The applicant's victim status meets the criteria, spirit and intent of the U visa program;
    - (2) The applicant cooperates at all stages of the investigation;
    - (3) The applicant follows instructions to facilitate prosecution;
    - (4) Other criteria described in the U visa program.

- iv) When a U visa applicant's case has been prosecuted, the U visa application will be forwarded to the prosecutor's office that handled the prosecution. The department will request that the prosecutor make the decision on whether to sign the application, based on the applicant's cooperativeness with the prosecution and other U Visa criteria.

#### 4) T Visa

- a) In October 2000, Congress created the "T" nonimmigrant status by passing the Victims of Trafficking and Violence Protection Act (VTVPA). The legislation strengthens the ability of law enforcement agencies to investigate and prosecute human trafficking, and also offer protection to victims. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life. Traffickers often take advantage of poor, unemployed individuals who lack access to social services. The T Nonimmigrant Status (T visa) is set aside for those who are or have been victims of human trafficking, protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.
- b) Eligibility - A person may be eligible for a T visa if:
  - i) He or she is the victim of trafficking, as defined by law;
  - ii) He or she is in the United States [et al] due to trafficking;
  - iii) He or she complies with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or is under the age of 18, is unable to cooperate due to physical or psychological trauma);
  - iv) He or she demonstrates that he or she would suffer extreme hardship involving unusual and severe harm if he or she was removed from the United States; and
  - v) The person is admissible to the United States. If not admissible, a person may apply for a waiver.
- c) Form I-914
  - i) An applicant is encouraged to submit Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, to show law enforcement agency support. Form I-914, Supplement B serves as the primary evidence that a person is a victim of trafficking and that he or she has

complied with reasonable requests from law enforcement. Form I-914, Supplement B, is required to be signed by the officer who is identified on the form as the “certifying officer”. The certifying officer’s supervisor is also required to sign the form.

- i) When the department receives a request for a certifying signature, the application should be forwarded to the Commander of Detectives. The Detective Division is responsible for researching records to determine if the applicant meets the criteria for a T Visa.

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<sup>i</sup> M.G.L. c. 209A, §6.