

Attachment 1

LEXIPOL Policy 428 Immigration Laws

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Santa Rosa Police Department for investigating and enforcing immigration laws.

428.2 POLICY

It is the policy of the Santa Rosa Police Department that all members make professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

Officers will not contact, detain, question or arrest an individual solely based on a suspected undocumented immigration status or seek to discover the immigration status of an individual, except as required by law. Pursuant to Government Code §§ 7282 and 7282.5, no individual who is otherwise ready to be released from custody by this department should continue to be detained for the sole purpose of notifying immigration authorities.

In some circumstances, to preserve public safety it may be necessary for this department to coordinate with, share, or gather intelligence from federal agencies in order to apprehend a violent offender. This coordination will occur only for the purpose of furthering the underlying criminal investigation.

428.3 DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is primarily the jurisdiction of the U.S. Immigration and Customs Enforcement (I.C.E.); United States Code Title 8 § 1304(e).

428.4 REQUESTS FOR ASSISTANCE BY FEDERAL AGENCIES

The Santa Rosa Police Department shall not undertake joint efforts with federal, state or local law enforcement agencies to investigate, detain or arrest individuals solely for violation of federal immigration law.

Nothing in this policy is intended to prevent police officers from responding to requests for assistance in connection with officer safety, traffic control, or peacekeeping efforts to maintain the overall health and safety of the public.

Requests by I.C.E. for assistance from this department shall be directed to a Watch Commander for approval. The department may provide available services where necessary to maintain the overall health and safety of the public.

428.5 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary for this department to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or national origin in any way that would violate the United States or California Constitutions.

428.6 U VISA AND T VISA LAW ENFORCEMENT CERTIFICATION PROCESS

The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 is a federal law that allows for temporary immigration benefits to individuals without immigration status who are victims of specified crimes (8 USC § 1101(a)(15)(U)). Under the VTVPA, an immigrant victim of certain crimes may file a petition for U Nonimmigrant Status (Form I-918 Supplement B), known as a U Visa, with the United States Citizenship Immigration Services (USCIS). Prior to sending the petition to the USCIS, the victim or that person's attorney must submit the completed form to a certifying agency for a law enforcement certification. The form is reviewed by the agency's certifying official to determine if it meets the criteria for an approved certification.

Under Penal Code § 679.10(1), this department is a certifying agency for U Visa petitions. The requirements set forth in this policy in the sections below shall govern this department's certification of the U Visa certification process.

Similar immigration protection, known as a T Visa, is available for certain victims of human trafficking (8 USC § 1101(a)(15)(TU)). T Visa petitions shall be subject to the same certification requirements that govern this department's certification of U Visas.

428.6.1 REVIEW BY CERTIFYING OFFICIAL

Any certification requests this department receives for certification of a U or T Visa petition shall be forwarded in a timely manner to the Domestic Violence Sexual Assault Investigations Team supervisor, whom the Chief of Police has designated as the sole U and T Visa petition certifying official for the department pursuant to Penal Code § 679.10(b)(2). The supervisor shall:

- (a) Be familiar with and understand the instructions for completing certifications, which can be found on the U.S. Department of Homeland Security (DHS) website.
- (b) Review the report of the alleged crime that forms the basis for U or T Visa. If the alleged crime is still being investigated, consult with the assigned investigator to determine the current status of the case and whether further documentation is warranted. While reviewing the incident, the supervisor will determine if the following criteria is met:
 - (1) A qualifying criminal activity has occurred;
 - (2) The victim has/had information about the criminal activity;

- (3) The victim was/is helpful in the detection, investigation, prosecution, conviction, or sentencing of criminal activity, and responded to reasonable requests for assistance by law enforcement.
- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the victim is/was helpful with the prosecutor's office.
- (d) Prepare an attachment to the I-918 Supplement B (for a U Visa) and Form I-914 Supplement B (for a T Visa) that summarizes the incident and any findings related to whether the qualifying criteria has been met. Reasons for refusal to certify must be listed explicitly in the attachment.
- (e) If applicable, approve the certification by signing where indicated and return the form(s) to the victim or that person's attorney.

A current investigation, the filing of charges, a prosecution or conviction is not required for the certifying official to approve the law enforcement certification.

428.6.2 REVIEW AND REPORTING REQUIREMENTS

The certifying official shall review the submitted documents required for U Visa or T Visa applications pursuant to Penal Code §§ 679.10 and 679.11 within ninety (90) days of a request from the victim, or that person's family or attorney. If the victim is in removal proceedings, the certification shall be processed within fourteen (14) days of the request.

Pursuant to Penal Code § 236.5, when this department encounters a victim of human trafficking, the certifying official shall be notified and complete the above process and the documents needed for a T Visa application within fifteen (15) business days of the department's first encounter with the victim, regardless of whether the victim has requested certification of a T Visa application.

428.6.3 ANNUAL REPORTING TO LEGISLATURE

The department's certifying official shall report to the Legislature the number of victims that requested U or T Visa certifications, the number of those certification applications that were approved, and the number that were denied. Pursuant to Penal Code § 679.10(l), this report shall be completed annually, on or before January 1st, and shall comply with Government Code § 9795.