

Immigrant Victims of Domestic Violence Guide For Advocates



Distributed by:
Domestic Violence Coordinating Council

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The Domestic Violence Coordinating Council

The Domestic Violence Coordinating Council is a state agency legislatively created in 1993 to improve Delaware's response to domestic violence. The Coordinating Council brings together domestic violence service providers and policy level officials to identify and implement improvements in system response through legislation, education, and policy development.

Immigrant victims of domestic violence – whether documented or undocumented – face a number of barriers when seeking help and are less likely to report crimes or seek police assistance because they fear they will be reported to federal immigration authorities and deported. This Immigration Committee is made up of service providers, advocates, survivors of domestic violence and other interested parties, and openly discusses the additional barriers confronting immigrant victims, working to effectuate change. The committee also maintains an open dialogue about the constantly changing laws, service issues and needs of immigrant victims. This Guide is a product of the DVCC's Immigration Committee.

Chair:

Laura Graham, Esq.
At-Large Member

Staff Information:

Aimee String
(302) 424-7238

Aimee.String@state.de.us

Domestic Violence Coordinating Council
Leonard L. Williams Justice Center
500 N. King Street
Wilmington, DE 19801

302-255-0405

<https://dvcc.delaware.gov/>

Immigrant Victims of Domestic Violence

Immigrants to the United States constitute a complex and diversified population of ethnic groups with varied backgrounds and norms. Immigrants can be heterosexual, homosexual, bisexual, poor, wealthy, white or persons of color. Some immigrants have fled difficult situations in their home countries while others have been drawn to the United States by economic opportunities or other family members. The process of immigration



is often a very difficult and traumatic experience that can involve leaving behind familial support and encountering a lot of unknowns, uncertainty and discrimination.

“Despite legislation that has created pathways to immigration status for immigrant victims of intimate partner violence; domestic abuse is still a significant problem for immigrant populations.” VAWA was enacted in 1994, and most recently re-authorized in 2013. The Wilberforce/TVPRA – creating the U and T visas, were enacted in 2000 with U visa regs promulgated in 2007. Immigrant victims often feel trapped in abusive relationships due to immigration laws; language barriers; lack of financial resources; fear; cultural expectations; and social isolation. Abusers often use their partners’ immigration status as a means for control. Dutton, Orloff and Aguilar Hass (2000) found that 72.3% of the battered Latinas surveyed in their study reported that their spouses never filed immigration petitions for their immigrant spouses even though 50.8% of the victims qualified to have petitions filed on their behalf. Those abusers who eventually filed petitions for their spouses took almost four years to do so. Fear of deportation and loss of immigration status are very powerful tools that can be used against immigrant victims of domestic violence to prevent them from seeking help and safety.

Immigrant women often suffer higher rates of domestic violence than United States citizens because they may come from cultures or countries which do not criminalize domestic violence, or offer protections to victims of domestic violence. Immigrant victims may also have less access to legal and social services than U.S. citizens, due to the language barrier, or may believe that the protections of the U.S. legal system do not apply to them because they are not U.S. Citizens.

Dynamics of Domestic Violence in the Immigrant Community

Domestic violence is a pattern of abusive behavior used to gain control over another person, which can include: threats; emotional, sexual or economic abuse; intimidation; deprivation; social isolation; or repeated battering and assault. Immigrant victims may experience the following power and control tactics by the abuser:

Citizenship or Residency Privilege

- Failing to file papers to legalize immigration status, or withdrawing papers that have been filed;

Economic Abuse

- Threatening to report the victim to ICE if s/he is working “under the table” or without valid authorization;
- Keeping the victim from obtaining job training or schooling (This is also a form of isolation);
- Forcing the victim to work when they do not have a work permit;
- Forcing the victim to sign papers (IRS forms, etc.) that they do not understand;

Emotional Abuse

- Demeaning and degrading comments about the victim to the victim directly or to others, seeking to damage the victim’s self-esteem;
- Using the victim’s age, language skills, cultural norms, and/or disabilities to control them;

Intimidation

- Hiding or destroying the victim’s important papers (passport, identification card, Green Card, birth certificates, health insurance card, etc.);
- Destroying the victim’s sentimental personal property;

Isolation

- Keeping the victim from communicating with or seeing their family and friends ;
- Keeping the victim from learning to speak English;

Sexual Abuse

- Calling the victim a prostitute or “mail order bride;”
- Forcing the victim to have sex with others for money;
- Sexually assaulting the victim;

Threats

- Threatening to report the victim to Immigration and Customs Enforcement (ICE) in order to get them deported;
- Threatening to withdraw the petition to legalize the victim’s immigration status;
- Threatening to harm the victim’s family or to stop financial support to the victim’s family; and

Using Children

- Threatening to take the victim’s children away from the United States, file for custody, report children to ICE, or hurt the children

Persons who are abusive in their intimate relationships:

- Use violence as a means of gaining and maintaining power and control over their partners;
- Escalate the severity of the abuse, once the power and control techniques begin to lose effectiveness;
- Manipulate their partners’ desire for family unity and preservation to justify their abusive behavior; and
- Use “cultural norms” as a tool of oppression.

Domestic violence is **NOT** caused by, but may be intensified by:

- Use of alcohol and drugs;
- Stress;
- Immigration status;
- Loss of employment; or
- Mental illness.

Without culturally sensitive intervention, an immigrant victim of domestic violence may feel that they have no choice but to stay in an abusive relationship.

Immigrant victims face many barriers to seeking and receiving assistance. The barriers may be cultural, economic, practical and/or legal. Immigrant victims:

- May be more likely to live in seclusion – far from family and friends, not speak English, work or drive a car;
- May have come from cultures that don't talk about domestic violence, and may believe that the U.S. legal system and its protections do not apply to them;
- May be ostracized by their family or community if they reveal the violence;
- May not be able to utilize available resources because the services are not offered in their language and interpreters are not available;
- May find that services in their community are not culturally appropriate;
- May fear the criminal justice system and its representatives;
- May rely on male family members to interact with the public;
- May fear that their children will be taken from them by “the State;” and/or
- May fear that the person abusing them will be deported if they report the abuse, thereby eliminating their only source of income.



Helping Immigrant Victims of Domestic Violence

ALWAYS consult an Immigration Attorney if the person you are helping is not sure of their immigration status, or has questions about their immigration status.

NEVER contact the Immigration and Customs Enforcement (ICE), Citizenship and Immigration Services (CIS) or Customs and Border Protection (CBP) to verify a person's immigration status. Contact an immigration attorney or ASISTA at www.asistaonline.org so as to not put an individual in jeopardy with the immigration authorities.

Listen to the terms the victim uses to describe the abuse. "Domestic Violence" may not be a familiar term.

Work in partnership with other advocates to develop an action plan that makes "cultural sense" from the individual's perspective. It is best to become aware of the cultural and community strengths and support systems available to the person you are helping. She/he must determine the solutions that work best for her/him.

Provide neutral interpreters and counselors who understand the victim's culture and customs of their native lands. Whenever possible, do not use the individual's children or other relatives as interpreters. This may place an additional burden on them and may increase the level of danger to one or both individuals.

Suggest that the victim keep documents in an accessible location if it is safe to do so. Documents may include but are not limited to:

- Documentation of immigration status for self, their children and, if possible, for the person abusing them;
- Passport/visa;
- Medical/immunization records;
- Work authorization card, paycheck stubs;
- Marriage license and/or divorce decree from the victim's home country;
- Photographs;
- Social Security cards;
- Public Assistance documents or cards;
- Birth certificates, school records, and custody orders; and
- Check books, credit cards, paycheck.

Victims may request assistance from law enforcement for a police escort in order to retrieve personal items. It is important to assist them with language interpretation to facilitate this service.

Accessing the Legal System: Civil and Criminal Remedies

Accessing the court system whether civil or criminal can be difficult for anyone who is not familiar with the legal system. For individuals who have limited English proficiency, it is even more difficult. To help a victim access the legal system you can:

- Help connect them to legal counsel and resources;
- Determine what interpreting services are available;
- Accompany the victim to court;
- Review the various options the victim has in responding to their particular situation;
- Develop safety plans; and
- Help the victim gather relevant information or documents (police records, apologetic or threatening notes from the abuser, relevant medical records, photos, etc.).

Civil Protection From Abuse (PFA) Order

A victim of family violence can ask for protection through a Protection From Abuse (PFA) civil petition. Abuse is defined as any threatening or harmful conduct including serious emotional harm. An order of Protection from Abuse is issued by a Family Court Judicial Officer ordering someone (Respondent) to stop abusing another person (Petitioner). The Order can also be granted by consent.

Relief may include ordering the Respondent to stay away from the Petitioner, payment of rent/mortgage, utilities, food, health insurance, transportation assistance, exclusive use of vehicle (maintaining insurance and registration), awarding temporary custody and providing conditions of visitation, surrendering of firearms, counseling and any other relief that might help prevent future violence.

In addition, the Court can order the Respondent to give the Petitioner important documents, such as: passport/visa, medical/ immunization records, work authorization card, copies of receipt notices from immigration, marriage license and/or divorce decree from the Petitioner's home country, affidavit of support, photographs, social security cards, birth certificates, public assistance documentation, medical cards, custody

orders, school records, etc. The Petitioner should list the documents that they need in the PFA Petition.

Spouses, ex-spouses, family members, persons living together as a couple, with or without a child/children, or persons living separate and apart with a child/children in common, or persons (includes same sex) in a current or former substantive dating relationship may file for an Order of Protection From Abuse.

The Division of Child Protective Services and Adult Protective Services may file on behalf of a child or an adult. Parents/guardians may also file on behalf of an adolescent in an abusive dating relationship.

The following organizations can help immigrant victims file for protection in Family Court:

New Castle County

DVLS: 302-478-8680

Domestic Violence Advocacy Center: 302-255-0420

Kent County

Community Legal Aid Society: 302-674-8500

Domestic Violence Advocacy Center: 302-672-1075

Sussex County

Community Legal Aid Society: 302-856-0038

Domestic Violence Advocacy Center: 302-856-5843

La Esperanza: 302-752-3191

Domestic Violence Advocacy Center

Kent: 302-672-1075 Sussex: 302-856-5843

La Esperanza: 302-752-3191

Refer to the DVCC Website for a list of other State agencies/organizations that can assist immigrant victims with the PFA process: <https://dvcc.delaware.gov/>.

Criminal Remedies

Domestic violence can also be addressed through the Criminal Justice System. An individual may choose to call the police to protect themselves during a domestic violence incident or when the abuser has violated a civil protective order. After an arrest, the State may prosecute the person charged. Possible charges may include assault, violation of a protection order, murder, rape, kidnapping, false imprisonment, stalking and others. Family Court has misdemeanor criminal jurisdiction over persons that meet the definition of family. If a victim is not married to the abuser, does not live with the abuser, and there are no children in common, the misdemeanor charges will be heard in the Court of Common Pleas. All felony charges are heard in Superior Court.



Victims of domestic violence can be granted a Criminal No-Contact Order pending a court hearing.

See Appendix A (pages 17-18) for an explanation of civil vs. criminal remedies for domestic violence victims.

Helping Immigrant Victims – Children

If the person you are helping reports that their partner is threatening to take their children away or to take them to his/her home country, you can:

- Recommend that they apply for custody in Family Court. A custody order can include prohibiting their partner from removing children from the State. If their children are U.S. citizens, a copy of the order should be sent to the partner's home country embassy, and a copy should be sent to the U.S. Department of State to prevent the issuance of passports and visas for the children.
- Recommend that a copy of the custody order be given to their child's school. The school should be instructed not to release their child to anyone but them.
- Suggest that the person you are helping have recent photos, passports and birth certificates for their children

- Suggest that the victim keep a list of addresses/phone numbers of their partner's friends and relatives in their home country

Organizations that can help immigrant victims file for custody in conjunction with a Protection From Abuse Petition:

Domestic Violence Legal Services

302-478-8680

Community Legal Aid Society

Kent: 302-674-8500
Sussex: 302-856-0038



Rights and Services for Immigrant Victims

Although a victim's immigration status may present certain challenges, victims do have rights:

- They do not need to be a citizen or have documentation to file a petition for Protection From Abuse
- They have the right to keep their immigration status private if they reach out for shelter and/or advocacy services
- Injured immigrant victims may seek emergency treatment at the nearest medical facility
- As a crime victim, they are not required to report their immigration status to law enforcement

When providing an outreach service to the community, it is very important to mention the services available to all victims, especially to immigrants who may believe they do not have rights.

Current immigration status affects a victim's eligibility for government assistance and means-tested public benefits. However, immigrant victims of domestic violence can receive many other services including:

- Shelters and other services for victims of domestic violence;
- Protection orders from the Court;
- Child custody and support;
- Police assistance;
- Medical emergency assistance;
- Public benefits for their U.S. citizen children; and
- Victim's Compensation Assistance Program (VCAP) assistance. VCAP may assist with paying medical/dental bills, counseling, relocating costs, funeral expenses and other services depending on the incident and cooperation from the victim



Immigration Status Protections

There are three types of immigration status protections for victims of domestic violence. The Violence Against Women Act (VAWA) Self-Petitioning Process, U-Visa and T-Visa processes are three forms of relief available to victims, and involve very complex petitions and procedures. Every case is different and only an immigration attorney should give legal advice. If you are not an immigration attorney, make that clear to the victim and help connect him/her to someone who has specialized knowledge of immigration law.

VAWA Self-Petitioning Process

The Violence Against Women Act (VAWA) provides the possibility of legal immigration status to a victim who is lawfully married or believes themselves to be married to an American citizen or lawful permanent resident spouse who abuses them, regardless of whether the victim is in the U.S. with documents. Victims may be male or female. It is important that a person petitioning for a VAWA Self-Petition work with an attorney or immigration counselor/advocate that is familiar with the VAWA Self-Petitioning process.

The following is a list of documents that a lawyer or immigration counselor can use to prove that a survivor of domestic violence meets the VAWA requirements to petition for permanent residency:

- Proof of abuse and/or extreme cruelty;
- Proof of identity and current immigration status;
- Proof of spouse's status;
- Proof of the marriage;
- Proof that the petitioner is currently residing in the United States;
- Proof of having lived with spouse for a period of time (doesn't matter if in the U.S. or elsewhere); and
- Proof of termination of previous marriages.

U-Visa

The "U" Visa allows an injured victim of domestic abuse, rape, sexual assault, abduction, trafficking and many other serious crimes to request a U Visa if the crime is reported to authorities and the survivor is being, or has been, helpful with the investigation of the criminal activity. Victims may be male or female. The victim does not have to be married to the abuser, and further, the abuser does not have to have lawful immigration status in order for the victim to qualify for a U visa.

It is important that a person petitioning for a “U” Visa work with an attorney or immigration counselor/advocate familiar with “U” Visas. A “U” Visa Certification Form must be submitted to the Department of Homeland Security (DHS) and signed by a law enforcement officer, prosecutor, judicial officer or another investigating authority verifying that the “U” Visa applicant is being or has been helpful in the investigation of the crime for which they were a victim. If prosecution does not occur, the “U” Visa may still be applied for and granted. After three years with an approved “U” Visa, she/he may request lawful permanent residency. This Visa is helpful to victims who are being abused or have been abused by someone who is not a U.S. citizen or legal permanent resident, and who themselves are not documented in this country.

T-Visa

A “T” Visa is available to victims of trafficking. This visa allows the victim to remain in the U.S. to assist authorities in the investigation and prosecution of trafficking cases. It is important that a person petitioning for a “T” Visa work with an attorney or immigration counselor/advocate familiar with “T” Visas.

Appendix A: Legal Remedies for Domestic Violence Victims

	Protection From Abuse	Criminal No-Contact Order
<p>Civil vs. Criminal</p> <p>Note: Having one of these in place does not preclude the victim from getting the other. The victim may have both a PFA and a criminal no-contact order.</p>	<p>This is a Civil remedy. In a civil case the victim brings the action against the abuser. The victim is asking the court to protect him/her from the abuser. The victim is not asking the court to send that person to jail for committing a crime. There can be criminal sanctions against the abuser if he/she violates the order.</p>	<p>A criminal no-contact order is often generated when the abuser is charged with a crime by law enforcement. In this case, it is the State that has brought the case against the abuser. The abuser is ordered to stay away from the victim as a condition of their release from custody and due to the pending criminal charges. Additionally, if the defendant is sentenced for this crime, the no contact order may become part of the offender's sentence.</p>
<p>How to obtain</p>	<p>The victim can file for a PFA by filing in the Family Court in his/her county. There are advocates available at the Court to assist the victim.</p>	<p>This process is initiated by filing a police report with law enforcement.</p>
<p>What does it do?</p>	<p>Depending on the circumstances, a PFA can order the abuser to do all or some of the following:</p> <ul style="list-style-type: none"> • Stay away and/or stop contacting the victim; • Stop threatening/abusing the victim (or his or her minor children); • Pay child and/or spousal support; • Pay other expenses; • Surrender any and all firearms; • Attend counseling; and/or • Not destroy, sell or conceal joint property. 	<p>In a criminal no contact order, the abuser is precluded from having any contact or communication with the victim.</p>

	<p>A commissioner or judge may also grant:</p> <ul style="list-style-type: none"> • Exclusive use of the home and/or certain possessions (like a vehicle); or • Temporary custody/visitation of children. 	
How long does it last?	<p>Most long-term orders are issued after a court hearing, for up to one year. However, if it is necessary to prevent further acts of Domestic Violence, an order may be issued for 2 years, and where there are aggravating circumstances, a permanent order can be issued.</p>	<p>The no contact order will be in place as long as the charges are still pending against the defendant. If the defendant is convicted and sentenced and the no contact order is made a part of the offender's sentence, the no contact order will be in place as long as the offender is still serving the sentence, whether that is incarceration or parole/probation.</p>
Is there a fee?	No.	No.
For Additional Information	<p>Domestic Violence Advocacy Centers</p> <p><u>New Castle County:</u> 302-255-0420</p> <p><u>Kent County:</u> 302-672-1075</p> <p><u>Sussex County:</u> 302-856-5843</p>	<p>Victim Witness Services Unit/Case Notification</p> <p><u>New Castle County:</u> 302-577-8500</p> <p><u>Kent County:</u> 302-739-4211</p> <p><u>Sussex County:</u> 302-856-5353</p>

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