

VAWA Confidentiality- A Key to Safety Planning

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Introduction

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Learning Objectives

By the end of this training you will be better able to:

1. Understand how screening and applying early for immigration relief improve victims safety
2. Use VAWA Confidentiality to protect victims from immigration enforcement
3. Advocate when violations occur



Quiz on VAWA Confidentiality (True or False)

- It violates VAWA confidentiality for a DHS enforcement officer to arrest a victim who has come to court
 - Seeking a protection order
 - In a custody case



Quiz on VAWA Confidentiality (True or False)

- The following is discoverable in a family law case
 - The U visa or VAWA self-petition case file
 - The fact that the victim has filed a VAWA self-petition or U visa case



Quiz on VAWA Confidentiality

- At which of the following locations can DHS conduct enforcement activities?
 - A shelter
 - A mosque
 - A courthouse
 - Supervised visitation center
 - School
 - Hospital
 - Wedding ceremony
 - Thanksgiving Day parade

Brief History of the Evolution of VAWA Confidentiality

Immigration Act of 1990

“The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child”

VAWA I (1994)

- Barred from disclosing information about victims served
- Mandated postal confidentiality of address information of domestic violence survivors and domestic violence shelter programs
- Studies on
 - Survivors address information disclosure protection
 - Confidentiality of communications between domestic violence survivors and counselors
 - Recordkeeping

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)

- VAWA confidentiality
 - Prohibited reliance on abuser/family member provided information in any case without regard to whether the victim immigration relief eligible
 - Prohibited on use and disclosure of information in VAWA immigration case
 - Disciplinary sanctions and fines
- Access to public benefits for battered immigrants
- VAWA cancellation of removal

VAWA 2000

Expanded VAWA confidentiality protections to
U visa crime survivors

VAWA III (2005)

- Extended VAWA confidentiality to include full range of survivors protected
 - All VAWA self-petitioners, VAWA cancellation, T and U visa applicants
 - VAWA Unit can make referrals to victim and legal services
- Applies to DOJ, DHS, and State
- Protects drivers license information for crime victims whose confidential address is critical for their safety

VAWA IV (2013)

- Limited disclosure in narrow circumstances
 - Disclosure to law enforcement or national security officials solely for a legitimate law enforcement or national security purpose.
 - VAWA 2013 amendment: such a disclosure must be done in a manner that “protects the confidentiality of such information.”

Other exceptions to disclosure

- Statistical data collection
- Benefit granting or public benefits purposes
- Judicial review of the victim's immigration case (*Hawke v. U.S. Dep't of Homeland Security*)
- The chairman and ranking member of the judiciary committees of the House and Senate, for the exercise of Congressional oversight functions, can review only closed cases and in a manner that omits personal identifying information and protects victim confidentiality

When does confidentiality protection end?

- Limitation to disclosure ends when application for relief is denied based on **substantive grounds** and all opportunities for appeals have been exhausted.

VAWA Confidentiality and Enforcement at Sensitive Locations

Prohibition of enforcement at any of the following sensitive locations:

- Domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking.
- If any part of an enforcement action took place at any of these locations, DHS must disclose this fact in the Notice to Appear and immigration court can dismiss the proceedings.

VAWA Confidentiality and Enforcement at Sensitive Locations

DHS also prohibits enforcement actions “near sensitive community locations such as schools, places of worship, and funerals or other religious ceremonies.” (*DHS Field Guidance on Enforcement Activities in and Around Sensitive Locations*, 2008)

Congressional Intent

- DHS should proceed cautiously when making an arrest at a sensitive location without objective evidence of violation of immigration laws
- Survivors of battery, abuse, trafficking, and extreme cruelty should be protected
- Should verify information through all databases

VAWA Confidentiality Prongs

- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
 - Survivors with VAWA confidentiality protected cases filed
- **Abuser-Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
 - All survivors
- **Location Prohibitions:** Enforcement locational prohibitions
 - All persons

Prong 1: Protecting Immigration Files

- Prohibits disclosure of any information about an immigration case for someone who is a survivor of a battery or extreme cruelty, trafficking, or any of the U visa qualifying crimes
- To anyone, not just crime perpetrator
- Information provided solely by prohibited sources must be independently corroborated
- DHS would not violate § 1367 if according to standard operating procedures there is independent corroboration
- DHS has prosecutorial discretion and should consider sources of information (crime perpetrator or family)

Prong 2: Relying on Information Provided by Abuser

- The government cannot gathering and/or use information provided by an abuser, trafficker, crime perpetrator, or family member of any victim to an enforcement action or make any adverse determination
- The survivor does not have to have filed the qualifying application to be eligible

Prong 3: Locational Prohibitions

- Enforcement actions are not to be taken against survivors at shelters, rape crisis centers, victim services programs, community based organizations, courthouses, supervised visitation center or family justice centers
- Courthouse protections apply if in connection with any protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking

Prong 3: Locational Prohibitions Continued

- DHS must certify and, if necessary, prove to the immigration judge that VAWA confidentiality was not violated by, for example, relying upon abuser-provided information

Sensitive Location Certificate of Compliance

- INA § 239(e)
- Certificate of compliance must be filed with removal action when any part of the (post February 5, 2006) enforcement action occurred at:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking
- Immigration Judge to dismiss a case if there is a locational violation

VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen
- Violations also include making a false certifications in a Notice to Appear

VAWA Confidentiality and Enforcement Case Strategies

DHS VAWA Confidentiality Computer System

- Directs use of new “384” computer system to identify victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivors

Preventative Strategies

- File skeletal immigration applications
- Provide victims with proof of filed VAWA, T or U case
- Object to discovery of information contained in or about the immigration case in family court proceedings
- Have copies of DHS policies to advocate when violations happen

Relying on Information, Locational Prohibitions: Preventative Strategies

- Provide victims with proof of victimization
- Work with DHS and local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Train personnel who work at prohibited locations
- File skeletal immigration applications
- Advise victim and everyone working with the victim about these protections...they may need to advocate on the spot
- Distribute copies of DHS policies
 - 384 Computer system
 - Pending applications

VAWA Confidentiality Violations (Case Examples)

- Enforcement actions occurred at
 - Courthouse
 - Shelter
- Release of protected information
 - DHS officer gave abuser victim's "A" number and allowed him to make copies of the victim's U visa case file
 - VAWA cancellation case information was given on court's taped information system allowing abuser to track down the victim at court
 - Tapes from victims' VAWA cancellation case released to abuser's attorney

Examples Continued

- Use of abuser provided information
 - DHS officer relied upon information provided by a USC batterer and child abuser to issue an Notice To Appear and seek arrest of his immigrant spouse who was in hiding with their children at a shelter.
 - Abuser repeatedly went to DHS office to report his wife as an overstay. DHS arrested his abused wife who was ultimately released granted legal immigration status.

Examples Continued

- During contested custody case abuser repeatedly reported his wife to border patrol and succeeded in getting them to show up with the police when his wife called for help during a DV incident.
- Border patrol agent told survivor that she would never see her children again.

Scenario I

Undocumented survivor abused by her lawful permanent resident spouse goes to court seeking a protection order. Immigration enforcement officer enters the courtroom confirms with the abuser the identity of the survivor, her child and a witness and arrests all three in the protection order courtroom. The survivor does not obtain her protection order. All three are detained by DHS.

When Violations Happen

- **Advocate on the spot! Provide -**
 - Proof of victimization,
 - Copy of the statute
 - DHS policy
 - DHS complaint system
 - DHS 384 system
- **Collect information about the violating officer**
 - Name
 - Agency
 - Badge Number

When Violations Happen

- **Work it up the chain to a supervisor**
- **File a formal complaint-**
 - Penalties of up to \$5000 per incident against the violating officer individually
 - Also disciplinary actions
- **Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief**

Group Activity on Enforcement

- You (as a table) are either a) a DHS agent or b) a victim advocate as assigned. The scene takes place in a courtroom where a judge is hearing custody cases. The DHS agent comes in the courtroom to arrest the victim who is with the victim advocate. Argue that you are entitled to arrest the victim (DHS agent) or that the victim should not be arrested (victim advocate).

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!