

Crucial Role of Advocates Countering Bias: Making the Justice System Work for Immigrant Survivors

Virginia Sexual and Domestic Violence
Alliance

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Virginia Demographics

Virginia - Demographics

- 10.2% of Virginia's population foreign born
 - 43.3% naturalized citizens
 - 32.3% lawful permanent residents
 - 25.4% temporary legal status or undocumented
- 41.3% rise in immigrant pop 2000-2009
- High proportion of new immigrants
 - 29.4% entered in the 1990s
 - 37.8% entered 2000 or after
- 18.6% of Virginia children have 1 or more immigrant parents
- 84.4% of children with immigrant parents in Virginia are U.S. citizens

Virginia– Countries/Regions of Origin

- South America – 10.9%
- El Salvador – 9.4%
- Europe – 8.3%
- Africa – 8.7%
- India – 7.6%
- Mexico -- 6.8%
- Other Central America – 6.3%
- Korea – 6.2%
- Other South Central Asia – 5.6%
- Philippines – 5.4%
- Vietnam – 4.6%
- China/Taiwan – 4.3%
- Caribbean – 2.5%
- Middle East – 2.4%
- **Canada – 2%**

Gender, Racial, and Ethnic Bias Against Women of Color and Immigrant Women in the Courts

1990's Gender, Race, and Ethnic Bias Reports Findings

- Women of color encounter dual barriers of racism and sexism in the justice system
- Overt bias of courts against women of color litigants
 - Gender and race/ethnicity
- For battered women of color this resulted in courts acting on beliefs that the victim's cultures
 - Were naturally violent and violence was culturally accepted
 - Domination of women is culturally accepted
 - Therefore violence against women of color and immigrant women was less serious
- Sentences for rape of women of color were shorter than rape of a white woman

Working to help immigrants is the new frontier in anti-racism work

- Immigrant survivors experiences in the justice system are influenced by multiple biases:
 - Gender
 - Race/ethnicity
 - Anti-immigrant sentiment
 - Cultural bias
 - Language abilities
 - All are compounded by
 - victimization
 - Lack of knowledge of legal rights
 - Coercive control of the perpetrator

Justice System Obstacles Immigrant Survivors Encounter Today

- Courts
 - Language access
 - Attorney General Courts Letter
 - Anti-Immigrant bias influences
 - Protection order proceedings (LA and WA examples)
 - Child custody cases abuser raised immigration and is able to shift court's attention away from his violence
 - Termination of parental rights proceedings against immigrant parents
- Law enforcement
 - Language access
 - Results in bad or no police reports undermining prosecutions and U-visa certifications
 - Dual arrest or arrest of the victim

Primary ways abusers raise immigration to gain custody

- Chooses not to file immigration papers for the victim;
- Argues better placement because abuser can work lawfully and drive and the immigrant victim cannot, also cannot access public benefits
- Threatens or takes steps to have the victim deported;
- Misrepresents to the court that immigration status has an impact on the child's citizenship opportunities;
- Argues that the victim's immigration status places the children at risk of parental kidnapping and undermines the child's stability

Termination of Parental Rights of Immigrant

Parents Who End Up in DHS Detention

- Abusers/crime perpetrators report them
- Employers or co-workers report them
- Traffic stops
- Immigration enforcement at the worksite
- Reports by CPS
- Reports by welfare worker
- Reports by health care providers
- Reports by others
- Victims call the police for help and police
 - Make a dual arrest
 - Arrest the victim
 - Language access issues

Maria Luis Story

Immigrant Parents' Constitutional Right to Custody of Their Children

- Constitution right to custody absent finding of unfitness
- Overriding presumption that parent child relationship is constitutionally protected and
- In child's best interest to stay with/be reunited with their parent
- Applies to all families without regard to
 - Immigration status; and
 - Whether or not the parent is in immigration detention or deported
 - Child's best interests not comparison of natural vs. adoptive parent's
 - cultures, countries, or financial means

A Family Reunited



NIJ funded research on protection orders and immigrant survivors found

- With advocates support immigrant victims will use and benefit from protection orders
 - 60.9% *first* learned about protection orders from their advocates/legal services attorneys
 - 81% chose to seek and got a protection order with help from advocate/attorney
 - Evidence of benefits of safety planning
 - Strong correlation between severity of violence and undocumented immigrant victims' willingness to seek a protection order
 - 96% found them helpful
 - Protection orders reduced violence but –
 - 68.3% of violations immigrant related abuse

Advocates are key for immigrant survivors access to services

- Once immigrant survivors with advocate support seek protection orders
- Factors in Immigrant victims calling police for help
- Positive Factors:
 - Length of time in the United States
 - She had spoken to 2 or more persons about the violence
 - (46% know other women victims)
 - Her children witnessed the abuse
 - She had a protection order
- Negative Factor:
 - Victim's immigration status

New DHS policies provide more opportunity for advocacy

Screening and Safety Planning In the Context of Immigration Enforcement

Immigrant Victim Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Must be aware of local law enforcement practices regarding immigrant
- Transportation issues for victims
 - To courts
 - To services
- Secure communities and the dangers of dual arrest

DHS Memos

- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.11)
 - Protections for immigrants who came to US as children (6.15.12)
- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.10)
 - Prosecutorial discretion for crime victims (6.17.2011)

DHS Humanitarian Release

2007 expanded in 2008

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done
 - In English/Spanish
 - Oral and writing
- Release as
 - Order of recognizance
 - Order of supervision
 - Alternatives to Detention

Potential Immigration Remedies

- Applications filed with DHS
 - VAWA self petition
 - Battered spouse waivers (spouses of USCs with conditional permanent residency)
 - U visa
 - T visa (victims of trafficking)
 - Asylum (persecution based on protected classes)
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation

Temporary protections for immigrants who entered US as children (6.15.12)

- Came to the United States under the age of sixteen;
- Has resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- Is currently in school, has graduated from high school or GED, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- Has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is not above the age of thirty

Safety Planning and Action Steps for Immigrant Survivor Mothers

- Timing of immigration and family court cases
- New safety planning flow chart
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children
- Safety planning
 - Developing plan to ensure care of children if detained
 - Power of Attorney appointing guardianship
- Give client number for consular notification

Early Victim Identification, Certification & VAWA/U-Visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure
 - Protection from deportation
 - Release from detention
 - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator

U-visa Opportunity to Build Relationships that Benefits Immigrant Survivors

- Review of grant reports to learn about best practices related to U-visa certification
- Long term relationships with law enforcement and prosecutors – KEY
- Role of advocates

Systemic barriers that prevent immigrant victims from coming forward, proceeding and/or following through

Language
Access

Psychological
Factors

Justice
System

Economic
Factors

Immigration
Enforcement

PSYCHOLOGICAL STATE

Psychological toll of abuse
Frustration with process intrusive and lengthy

Fears:
About retaliation, feeling they have to
choose between, abuse v. streets, abuse v.
children, protection v. community, fleeing
abuse v. deportation

Relationships Key

Law Enforcement

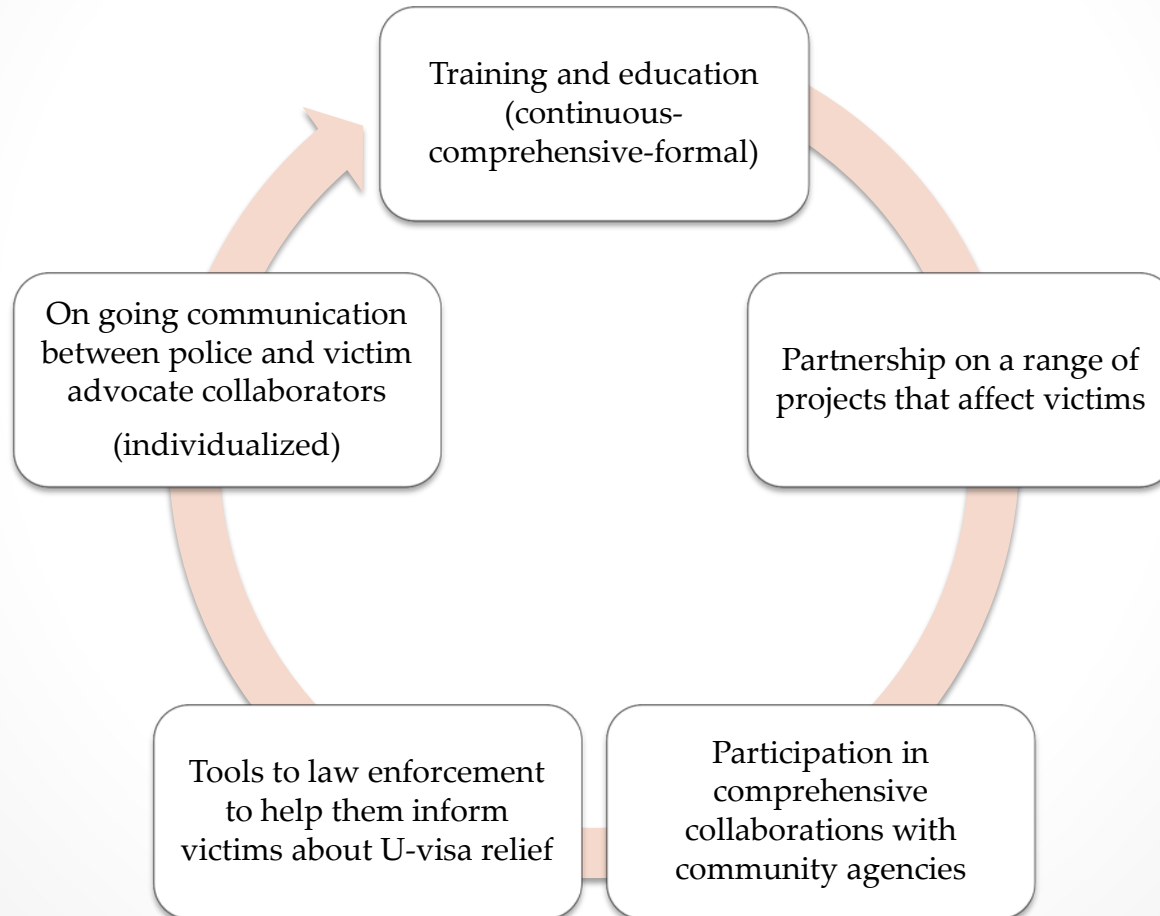
Success

- Aware and sensitive about DV
- Coordinated with advocates and other first responders
- Call advocates when there is a case
- Educated about U visas
- Lack anti-immigrant attitude

Challenges

- Not aware of DV dynamics
- Not coordinating with others
- Not educated about U visas
- Anti-immigrant attitude

Building Advocate-Law Enforcement Relationships Result in U-Visa Certification



Technical Assistance and Materials

- PowerPoint Presentations and Materials for This Conference At--
- http://iwp.legalmomentum.org/reference/additional-materials/iwp-training-powerpoints/june-22-2012-richmond-va/folder_contents
- NIWAP Technical Assistance
- call (202) 274-4457 or
- e-mail niwap@wcl.american.edu
- Website: www.wcl.american.edu/niwap