

Dynamics of Sexual Assault and the Implications for Immigrant Women¹²

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Introduction

Immigrant³ victims of sexual violence⁴ often confront two burdens: (1) the trauma of the sexual violence they experienced; and (2) legal, economic, community, and other significant pressures that are related to or arise from

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² In this Manual, the term “victim” has been chosen over the term “survivor” because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term “victim” allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act’s (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim’s gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use “he” in this Manual to refer to the perpetrator and “she” is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – “actual or perceived gender-related characteristics.” On June 26,

2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (United States v. Windsor, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child’s immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse’s gender.

³ The term “immigrant,” unless otherwise noted, will be used in this manual as a general term to include both documented and undocumented immigrants, refugees and migrants, and others present in the United States on temporary visas, such as visitors, students, temporary workers, etc. The term “undocumented” refers to people currently living in the United States without permission from the Department of Homeland Security (formerly the Immigration and Naturalization Service). This unauthorized residence could result from a visa violation or an unlawful entry. “Documented” immigrants are those who hold valid visas to live in the United States, and include legal permanent residents (“green card” holders). These documented populations, although they are lawfully

Dynamics of Sexual Assault and the Implications for Immigrant Women

present in the United States, are often uninformed or misinformed about their legal rights. Many battered immigrants, or victims of other crimes, who are currently undocumented immigrants may qualify to attain legal immigration status either through the Violence

Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault

their status as non-citizen victims. These pressures may include the challenges and often fear associated with becoming accustomed to a new culture, overcoming language barriers, and struggling with uncertainty about their rights as victims and as immigrants. An assault may also trigger memories of prior victimization or dislocation, whether in the U.S. or in the immigrant's home country. This chapter uses the terms "survivor" and "victim" to refer to those who have been through a sexual assault. It is important for those who have been through a sexual assault to be able to decide for themselves how they want to refer to the assault and the term they wish to use. Various agencies and organizations may use one or both depending on the way they are discussing sexual assault.

Immigrant women are frequently unaware of, confused about, or face difficulties accessing the services available to them. In part, this is because the social service agencies that serve sexual violence victims (both government and non-government) often are not well equipped to meet the diverse needs of immigrant victims. (For example, these organizations and agencies often lack culturally and linguistically appropriate staff members, program services, materials, and other victim resources.) At the same time, the organizations, programs, and government institutions with experience serving immigrant communities often lack training, experience, or expertise in serving victims of sexual assault. This manual is an effort to rectify these shortcomings, and expand providers' capacity to meet the needs of immigrant victims of sexual assault. Culturally sensitive, culturally appropriate, and well-informed professionals can help immigrant victims of sexual violence confront and overcome the significant legal and personal challenges they may encounter as they heal and recover from an assault.

National Immigrant Women's Advocacy Project believes that the needs of immigrant victims can best be met by educating advocates, attorneys, and community partners (including prosecutors, judges, court personnel, law enforcement agencies, and others), to ensure that they understand the impact of sexual assault and are familiar with immigrant victims' legal rights. The first step to accomplish this is to ensure that individuals working for service agencies be aware of (and reject) stereotypical assumptions about immigrant victims in general, and immigrant sexual assault survivors in particular. This chapter provides a general overview of sexual assault and its impact on immigrant victims. It also addresses the intersection of sexual assault, immigration, and cultural issues. Finally, the chapter identifies specific issues to be aware of when working with immigrant communities, and outlines how to design programs that provide effective and culturally competent services to immigrant victims.

Scope and Definition of Sexual Assault

Sexual assault is one the most underreported crimes.⁵ It is estimated that a person is sexually assaulted in the U.S. every 2.5 minutes. Girls, boys, women and men can all be victims of sexual violence. The overwhelming majority of reported victims in this country, however, are female; the majority of perpetrators are men.⁶ Studies estimate that between one in four and one out of every six women in the U.S. has been the victim of a completed or attempted rape in her lifetime. Native American women are victimized as much as three times the rate of non-Native women.⁷ Nearly 54% of female rape victims in the United States were under the age of 18 at the time of the assault.⁸

Against Women Act (VAWA) or the U-Visa crime victim visa provisions discussed in Chapter 3 of this manual. We are not using the term "immigrant" as narrowly as it is defined in immigration law.

⁴ Although this chapter refers to survivors of violence in the feminine, survivors can be male or female. Perpetrators can also be male or female. Sexual assault can occur in and out of intimate relationships. It can happen to someone regardless of sexual

orientation, class, religion, race, gender, country of origin, culture, or any other part of someone's identity. According to *Rape in*

America: A Report to the Nation. Arlington, VA: National Victim Center (1992), only 16% of rapes are ever reported to the police.

D.G. Kilpatrick, C.N. Edmunds, & A.K. Seymour, *Rape in America: A Report to the Nation*. Arlington, VA:

National Victim Center (1992) [hereinafter *Rape In America*].

⁶ Victims of sexual assault are overwhelmingly female. *Sex Offenses and Offenders*. Bureau of Justice Statistics, U.S. Dep't of Justice (1997).

⁷ *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (2007) at web.amnesty.org/library/index/ENGAMR510352007 citing Tjaden, P., Thoennes, N., *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, U.S. Department of Justice (2000). Violence Against Women and Department of

Dynamics of Sexual Assault and the Implications for Immigrant Women

Justice Reauthorization Act of 2005, Pub. L. no. 109-162, 119 Stat 3077 (2006). Print. See generally Women of Color Network. *Sexual Violence in Communities of Color*, 3-4, (2006). Available at http://womenofcolornetwork.org/Fact_Sheets/SVFactSheet.pdf. See Tjaden, P., Thoennes, N., *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, U.S. Department of Justice, 26 (2000)

⁸ See *Id.* See also, *Prevalence, Incidence and Consequences of Violence Against Women Survey*, National Institute of Justice and Centers for Disease Control and Prevention (1998). The National Violence Against Women Survey found that of the women who reported being raped at some time in their lives, nearly 55% were under the age of 18 at the time of their first rape (21.6% were under the age of 12 and 32.4% were 12-17 years old). An additional 29% were 18-24 years old at the time of their first assault. Although victims of intimate partner violence experience significant rates of sexual violence, most sexual violence victims are assaulted by someone they know, such as a friend, colleague, acquaintance, co-worker, fellow student, care provider, family member, etc., rather than by an intimate partner, spouse or stranger.¹

The Victim Rights Law Center Explains²:

One out of every six American women³ has been the victim of a completed or attempted rape in her lifetime. In the United States, nearly 18 million women have been victims of rape or attempted rape.⁴ The majority of women assaulted were raped when they were under the age of 18. Overall, about 44% of rape victims in the United States are under age 18. And, fifteen (15%) to twenty percent (20%) of all victims are estimated to be under the age 12.⁵ While men are also victims of sexual violence, women are far more likely to be victimized.⁶

Immigrant women may be particularly vulnerable to sexual assault. Being an immigrant confers significant increased vulnerability to recurring sexual assault.⁷ A study conducted among school aged girls found immigrant girls are almost twice as likely as their non-immigrant peers to have experienced recurring incidents of sexual assault. This is true for immigrant girls and young women who have and who have not been sexually active.⁸ Research has found the Latina college students experience the highest incidence of attempted rape as compared to White, African American and Asian women college students.⁹ This increased vulnerability may stem from increased isolation¹⁰ or from younger immigrant girls being actively targeted by sexual assault perpetrators who see them as particularly legally and socially vulnerable.¹¹ Immigrant girls and women particularly those with undocumented or temporary immigration status are afraid to report crime victimization to law enforcement officials out of fear that such reports will lead deportation.¹² Social vulnerability may arise out of fears about the impact that disclosure about sexual activity may have in their relationships in their cultural community or with their family members.¹³

¹ Bureau of Justice Statistics, 1992-2000, <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf>.

² *Beyond the Criminal Justice System: Transforming Our Nation's Response to Rape: A Practical Guide to Representing Sexual Assault Victims*, Victim Rights Law Center. <http://www.victimrights.org/html/7-manual.htm#1>.

³ Victims of sexual assault are overwhelmingly female. Sex Offenses and Offenders.. Bureau of Justice Statistics, U.S. Department of Justice, (1997).

⁴ *Prevalence, Incidence and Consequences of Violence Against Women Survey*, National Institute of Justice and Centers for Disease Control and Prevention (November 1998).

⁵ The National Violence Against Women Survey found that of the women who reported being raped at some time in their lives, 21.6% were under the age of 12 years old, 32.4% were 12-17 years old, and 29% were 18-24 years old when they were first raped. This translates to 54% of women victims who were under 18 at the time of the first rape. *Prevalence, Incidence, and Consequences of Violence Against Women. U.S. Department of Justice, Office of Justice Programs* (November 1998).

⁶ For example, in 2002, nine out of every ten rape victims were female. See National Crime Victimization Study (2003).

⁷ Decker, M., Raj, A. and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 *Violence Against Women* 498, 507 (2007).

⁸ *Id.* at 503.

⁹ Kalof, L., *Ethnic Differences in Female Sexual Victimization*, 4 *Sexuality and Culture* 75-97 (2000).

¹⁰ Blake, S.M., Ledsky, R., Goodenow, C., And O'Donnell, L., *Recency of immigration, substance abuse, and sexual behavior among Massachusetts adolescents*, 91 *American Journal of Public Health* 794-798 (2001).

¹¹ Decker, M., Raj, A., and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13(5) *Violence Against Women* 498, 507 (2007).

¹² *Id.*; See generally, Dutton, M.A., Hass, G.A., and Ammar, N., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 *UCLA Women's L.J.* 43, 89 (2003).

¹³ Decker, M., Raj, A., and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13(5) *Violence Against Women* 498, 507 (2007).

Dynamics of Sexual Assault and the Implications for Immigrant Women

There is no uniform criminal law definition of sexual assault throughout the United States¹⁴: states, tribes, territories, and the federal government each employ their own definition. Typically, however, criminal laws define sexual assault to include non-consensual genital, anal, or oral penetration of the victim by a part of the assailant's body or by an object, or vice versa. The contact may be accomplished with force, threat of force, or without the victim's consent. (A victim may be unable to consent due to her age, mental capacity, intoxication, etc.) Many jurisdictions also criminalize any sexual activity that occurs: between family members; when the victim is a minor; or when the accused is over the age of 17 and is the guardian, supervisor, teacher, babysitter or otherwise in a position of power over and/or has responsibility for the victim.¹⁵

In addition, the law generally assumes that a person does not consent to sexual conduct if he or she is forced, threatened, unconscious, drugged, or a minor. Someone with a developmental disability, who is chronically mentally ill, or undergoing a medical procedure may also be deemed incapable of giving consent, as a matter of law.¹⁶

Examples of criminal sexual assault may include:

- Putting a finger, tongue, mouth, penis or an object in, or on, another person's vagina, penis, or anus when the other person does not want or does not consent to such contact;
- Forcing a person to have oral sex or engaging in oral sex upon a person without that person's consent;
- Touching, fondling, kissing, or making any unwanted sexual contact with another person's body;
- Forcing someone to masturbate or to manually arouse another;
- Compelling someone to look at sexually explicit material or forcing them to pose for or participate in sexually explicit pictures or video;
- A doctor, nurse, or other health care professional conducting an (internal or external) examination for purposes of the provider's sexual arousal or gratification, or touching a patient's sexual organs in an unprofessional, unwarranted and inappropriate manner.¹⁷

Sexual assault refers to rape (including acquaintance rape, rape by stranger(s), rape within a marriage or intimate relationship, rape by a friend, family member, acquaintance, etc.), as well as attempted rape, incest, child sexual abuse, exhibitionism, voyeurism, obscene phone calls, fondling, sexual harassment, and forced prostitution.¹⁸

There is no single profile that can describe a perpetrator (or a victim) of sexual assault. As noted above, although perpetrators can be male or female, statistically the majority of perpetrators are male (89%) and the majority of victims are female (94%).¹⁹ Perpetrators may belong to any age group, race, occupation or economic or social status.

Approximately two-thirds of all rapes and sexual assaults are committed by someone the victim knows.²⁰ Perpetrators include employers,²¹ colleagues, co-workers, acquaintances, classmates, landlords, tenants, as well as dates, intimate partners, spouses, parents, siblings or other relatives. They may also be family or close personal friends, religious or other authority figures, or strangers. Statistically, the majority of sexual assaults (67%) are not domestic violence related – they are committed by friends, neighbors, and co-workers (29%), strangers (22%) and relatives who are not members of the immediate family (16%). Of the 30% of assaults that are domestic in nature, 11% are committed by

¹⁴ It is for this reason that in crafting and implementing U-visa immigration relief for crime victims both Congress and the Department of Homeland Security identified a non-exclusive list of criminal activity that result in a victim being U-visa eligible. INA § 101(a)(15)(U)(iii); 8 C.F.R. 214.14(a)(9).

¹⁵ See e.g., *Definitions of Child Abuse and Neglect, Summary of State Laws*, National Clearinghouse on Child Abuse and Neglect Information, U.S. Department of Health and Human Services.

¹⁶ National Center for Victims of Crime, <http://www.ncvc.org>.

¹⁷ Specific information on jurisdictions' criminal laws is available online at <http://www.ndaa.org/apri/programs/vawa/statutes.html>.

¹⁸ See *id.*

¹⁹ Female victims accounted for 94% of all completed rapes, 91% of all attempted rapes, and 89% of all completed and attempted sexual assaults." Rennison, C.M., Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*. <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf>.

²⁰ In a 2004 BJS study, 70% of female rape or sexual assault victims stated the offender was an intimate, other relative, a friend or an acquaintance. http://www.ojp.usdoj.gov/bjs/cvict_c.htm. See Rennison, C.M., *Hispanic Victims of Violent Crime, 1993-2000*, Bureau of Justice Statistics Special Report, 4, (April 2002)

²¹ Disparity in power in the employer-employee relationship can lead to situations in which supervisors use abuse to repress potential employee non-compliance. Raven, B. *A power/interaction model of interpersonal influence: French and Raven thirty years later*. 7(2) *Journal of Social Behavior and Personality* 217-244 (1992).

Dynamics of Sexual Assault and the Implications for Immigrant Women

fathers or step-fathers, 10% are committed by boyfriends or ex-boyfriends, and 9% are committed by husbands or ex-husbands.²²

Marital and Intimate Partner Sexual Assault

Married women and women in committed relationships may be raped or otherwise sexually assaulted by their partners. It is critical for anyone serving victims from other countries to be sure to convey that, in the U.S., marital rape is an offense in every state. According to one study, approximately 10% to 14 % of married women experience rape in marriage.²³ In another study, intimate partner and marital rape accounted for approximately 25% of rapes.²⁴ In cases of intimate partner or marital sexual assault, women are most vulnerable to continual sexual assaults, often experiencing such victimization 20 or more times before the violence ends.²⁵

Victims of intimate partner and marital sexual assault who live with their perpetrators typically experience a higher number of sexual assaults and are more likely to experience unwanted oral and anal intercourse as compared to women raped by acquaintances.²⁶ In one national study, female victims raped by their intimate partner were raped an average of 4.5 times.²⁷ Evidence also indicates that marital rape victims are more likely to be injured or seriously assaulted than other sexual assault victims, but less likely to seek medical help.²⁸

The experiences of - and legal remedies available to - victims of intimate partner sexual assault may differ significantly from the experiences and remedies of non-intimate partner sexual assault. For example, victims of intimate partner sexual assault are more likely to be able to access civil remedies such as civil protection orders, housing protections (including lease termination, and transfer priority), employment leave, unemployment insurance benefits, and public assistance benefits that often are unavailable to victims of non-intimate partner sexual assault.²⁹

Although a majority of women who have been sexually assaulted by their partners have also been battered by them, it is important not to categorize intimate partner sexual assault as simply another form of domestic violence. The trauma faced by, and subsequent needs of, sexual assault victims are unique and service providers must address these issues specifically. To do otherwise – to treat them as the same or similar offenses - is a great disservice to these victims.³⁰

Marital rape and other forms of sexual violence can occur in all types of marriages regardless of race, class, socioeconomic status or ethnicity. Women who view sex as a marital obligation typically may be less likely to

²² *Rape in America*, *supra* note 2.

²³ See Rennison *supra* note 13. Finkelhor, D., Yllo, K., *License to Rape: Sexual abuse of wives*. New York: Holt, Rinehart, & Winston (1985).

²⁴ The Centers for Disease Control and Prevention and The National Institute of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence* (July 2000).

²⁵ More information about marital rape can be found at http://new.vawnet.org/Assoc_Files_VAWnet/AR_MaritalRapeRevised.pdf. See also, Bergen, R.K., *Wife Rape: Understanding the responses of survivors and service providers*, (1996); Finkelhor, D. and Yllo, K., *License to Rape: Sexual abuse of wives*, The Free Press, New York (1985); Russell, D.E.H., *Rape in Marriage*, Bloomington, IN: Indiana University Press (1990).

²⁶ In one study, approximately half (51.2%) of the women raped by an intimate partner said they were victimized multiple times by that same partner. *Extent, Nature, and Consequences of Intimate Partner Violence*. U.S. Department of Justice, National Institute of Justice (2000).

²⁷ *Id.*

²⁸ Mahoney, P., *High Rape Chronicity and Low Rates of Help-Seeking among Wife Rape Survivors in a Non-clinical Sample*, *Violence Against Women*, 993-1016 (1999).

²⁹ When contemplating services to and remedies for sexual assault victims, service providers often default to a criminal law paradigm, wrongly assuming that the majority of sexual assault cases and remedies are found in the criminal justice system. To the contrary, many of the remedies most suited to meeting sexual assault victims' most urgent needs are found in the civil realm. For a thorough and comprehensive discussion of civil remedies for sexual assault victims, see *BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims A Practical Guide for Attorneys and Advocates*, Jessica E. Mindlin and Susan H. Vickers, Eds. (2008) available online at www.victimrights.org.

³⁰ For a discussion of the mental health consequences of rape and sexual assault, see Chapter 6 (Victims' Mental Health Issues: What They Are and Why They Matter To Providing Effective Victim Advocacy and Legal Representation of the Victim Rights Law Center's national manual, *BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims A Practical Guide for Attorneys and Advocates*, Jessica E. Mindlin and Susan H. Vickers, Eds. (2008).

Dynamics of Sexual Assault and the Implications for Immigrant Women

identify an experience of forced sex as “rape.” Overall, a woman may be less likely to report a sexual assault if the perpetrator is her husband rather than a stranger. This reluctance to report may be out of loyalty to a spouse, fear, economic dependency, or lack of familiarity with the law. Immigrant victims, in particular, may not know that rape or other forms of sexual assault in marriage is a crime in the United States, especially true if they come from a country where marital rape is not a criminal offense (or where such offenses are not pursued or prosecuted).³¹ Reporting a sexual assault may expose an immigrant woman to ostracism or physical danger within her community, even if her allegations are believed. (Victims living in smaller, more insular immigrant communities may be especially vulnerable in this regard.)

Sexual assault survivors who are victims of marital rape may encounter significant barriers to seeking or receiving assistance from law enforcement agencies. For example, although limited in scope, sexual violence research suggests that police are less responsive to victims of marital rape than they are to domestic violence victims who report physical (but not sexual) abuse.⁴⁰ Similarly research among immigrant victims of physical and sexual abuse perpetrated by intimate partners has found that when immigrant victims call the police for help if police do not provide qualified interpreters at the crime scene language barriers effectively preclude limited English proficient victims from receiving law enforcement assistance.⁴¹ In the worst cases police solicit the help of the perpetrator to interpret communications between the victim and law enforcement officials.⁴²

Research on victims among the general population cite evidence that, when the police learn that the perpetrator is the sexual assault victim’s spouse, the police fail to respond to calls, refuse to allow a victim to file a complaint, and/or refuse to accompany the victim to a forensic exam to collect evidence.⁴³ These problems can sometimes be remedied by educating police officers about sexual assault and marital rape, training them to respond to calls related to sexual violence, involving female police officers in sexual assault cases, and promoting partnerships with other community providers such as forensic examiners.⁴⁴

Religious advisors may also need to be educated about the incidence and impact of sexual violence, including marital rape.⁴⁵ Some religious institutions continue to assert or reinforce the notion that women are obligated to have sexual intercourse with their husbands;⁴⁶ they wrongly believe that rape in marriage is not a criminal offense. Religious advisors and communities of faith can play a pivotal role in helping victims achieve a life free of sexual violence by helping to hold perpetrators accountable, by supporting victims who speak out about the sexual violence they have experienced, by hosting trainings about sexual assault, inviting speakers, and adopting congregational policies that condemn sexual violence. Spiritual leaders and congregations can also emphasize that the perpetrator, and not the victim, is responsible for the violence.⁴⁷

Quarterly, 12, pg. 1-24 (1988); Mahoney, P. and Williams, L., *Sexual assault in marriage: Prevalence, consequences and treatment of wife rape*, (1998); Jasinski, J. and Williams, L., *Partner Violence: A comprehensive review of 20 years of research*, Thousand Oaks, CA: Sage Publications.

⁴⁰ Bergen, R.K., *Wife Rape: Understanding the response of survivors and service providers*, Newbury Park, CA: Sage Publications, Inc. (1996). See also Finkelhor, D., and Yllo, K., *License to Rape: Sexual abuse of wives*, The Free Press, New York (1985); Russell, D.E.H., *Rape in Marriage*, Bloomington, IN: Indiana University Press (1990).

⁴¹ Ammar, N., Orloff, L.E., Dutton, M.A., and Hass, G.A., *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7(4) International Journal of Police Science and Management, 230-244 (2005); *Special Issues: Immigrants*, New York City Mayor’s Office to Combat Domestic Violence, (“Immigrant women may be less likely to report abuse than nonimmigrant women due to language barriers, cultural differences, and a fear of deportation if they are not legally documented to live in the U.S. Young, foreign-born women in New York City have been found to be at greater risk of being killed by their partners than any other group of women. Very often, no one knows about the abuse until it is too late.”) available at: <http://www.nyc.gov/html/ocdv/html/issues/immigrants.shtml> (last visited September 4, 2009); Shah, S., and Estrada, *Bridging the Language Divide: Promising Practices for Law Enforcement*, 5 Vera Institute (February 2009).

⁴² Orloff, L.E., Dutton, M.A., Hass, G.A., and Ammar, N., *Battered Immigrant Women’s Willingness to Call for Help and Police Response*, 13(1) UCLA Women’s L.J. 43, 89 (2003).

⁴³ Bergen, *supra* note 31 at 5. Domestic violence and marital rape are particularly prevalent among immigrant women. See Kaguytan, Janice and Orloff, Leslye and Ashtari, Negar, *The Violence Against Women Act of 1994 and 2000: Immigration Protections for Battered Women*, 6 Dom. Viol. Report 33, 34 (Feb./March 2001). Orloff, L.E., Dutton, M.A., Hass, G.A., and Ammar,

³¹ A UNICEF publication noted that, as of 1997, only seventeen countries around the world had explicitly made marital rape a crime. Bunch, C., *The Intolerable Status Quo: Violence Against Women and Girls*, UNICEF, The Progress of Nations, pg. 41, 48 (1997); See also Koss, M.P., *Stranger and Acquaintance rape: Are there differences in victim’s experiences?*, Psychology of Women

Dynamics of Sexual Assault and the Implications for Immigrant Women

N., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43, 89 (2003); Orloff, L.E., Dutton, M.A., and Ammar, N., "Use and Outcome of Civil Protection Orders by Battered Immigrant Women in the U.S." (2008) available at <http://www.legalmomentum.org/site/DocServer/BatteredImmigrantWomenSlidesforWebsiteMB7-11-08.ppt?docID=3361> (noting that only 6% of the study respondents found judge, court personnel, and police very helpful throughout the process of obtaining a civil protection order against an abusive partner).

⁴⁴ Orloff, Dutton, Hass and Amar *supra* note 32.

⁴⁵ Bowker, L., *Beating wife beating*. Lexington, MA, Lexington Books (1983).

⁴⁶ *See id.*

⁴⁷ Additional information about sexual assault and the role of the faith community is available at the website of The FaithTrust Institute, www.faithtrustinstitute.org. (The FaithTrust Institute is an international, multifaith organization working to end sexual and domestic violence.)

Programs for battered women can also improve the resources they offer to victims of marital rape. A 1995 study found that less than one-half (49%) of battered women shelters provided training on marital rape.³² In contrast, nearly 80% of rape crisis centers provided such training.³³ Although outdated, and many domestic violence programs have increased their awareness and understanding of sexual assault in the past thirteen years, sexual violence related services continue to lag behind at these and other dual provider programs.

To help ensure that sexual assault does not remain a crime that is invisible or unspoken, it is important for providers to clearly reference that their resources include services for victims of sexual assault or sexual violence. Using the term "rape," rather than the more inclusive "sexual assault" may inadvertently lead victims to under-identify their victimization. "Rape" may be interpreted narrowly to include only a specific, statutorily defined crime, rather than the broader experience of sexual violence, sexual contact through force or threat or fear of force, coercion, etc. Studies show that, when victims of sexual assault are asked whether they have been "raped," they often fail to identify the sexual violence they experienced as a "rape" or "sexual assault."³⁴ Yet, when asked if they were forced to engage in sexual relations without their consent, over their objections, by force or threat or force, etc., the number of affirmative responses increases dramatically.³⁵ Research among immigrant victims seeking help as victims of intimate partner violence found similarly found a high rate of affirmative responses when immigrant victims were asked if they were forced to have sex (64.5%) or if they had sex because they were afraid of what their abuser would do if they refused (66%).³⁶ Victims of intimate partner sexual assault may be especially reluctant or unlikely to label their unwanted sexual contact as a "rape" in light of the associated stigma and trauma.

In sum, agencies and individuals serving immigrant victims of sexual violence must recognize that:

- (1) sexual violence is not the same as domestic violence;
- (2) sexual violence occurs both within and outside of intimate partner relationships;
- (3) sexual violence cannot remain a private or criminal matter alone if victims are to be provided effective services; and
- (4) there are extensive civil remedies and protections that may be utilized to enhance sexual assault victims' safety, promote their physical, economic and psychological well-being, and address their most urgent legal needs.

Government and non-governmental agencies should ensure that their staff, as well as their community partners, receives training specifically on how best to serve immigrant victims of marital, intimate partner, and non-intimate partner sexual assault. Domestic violence providers, especially, should ensure that their staff understands how best to meet the needs of - and provide medical and legal advocacy to - immigrant victims of sexual assault. Finally, service providers should ensure that they are partnering effectively to raise awareness about sexual violence within the immigrant communities they serve. Sexual assault literature, resource materials, program staff, and other services need to be available in the languages spoken by the community(ies) to be served. Culturally and linguistically appropriate services are especially important when serving immigrant victims in rural, farm worker, and other

³² Bergen, R.K., *Wife Rape: Understanding the response of survivors and service providers*, Newbury Park, CA: Sage Publications, Inc. (1996).

³³ *Id.*

³⁴ Koss, M.P., (1988) *Stranger and Acquaintance rape: Are there differences in the victim's experiences?*, *Psychology of Women Quarterly*, 12, 1-24.

³⁵ Tjaden, P., Thoennes, N., *National Violence Against Women Survey (NVAW)*, "Extent, Nature, and Consequences of Intimate Partner Violence," July 2000, <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

³⁶ Dutton, M.A., Ammar, N., Orloff, L., and Terrell, D., *Use and Outcomes of Protection Orders by Battered Immigrant Women*, Final Revised Technical Report to the National Institutes of Justice, (January 2006).

Dynamics of Sexual Assault and the Implications for Immigrant Women

isolated communities where non-English speaking immigrant victims may otherwise have difficulty accessing services.³⁷

Sexual Assault of Minors

The majority of female rape victims in the United States were raped when they were under the age of 18.⁵⁴ Overall, about 54% of rape victims in the United States were under age 18 when they were first assaulted.⁵⁵ Some victims were infants or young children at the time of their first assault (approximately 20% of rape victims were under the ³⁸age of 12 at the time of their first assault), while others were in their teens.³⁹ Research based upon data from a large representative sample of high school girls in Massachusetts found that immigrant girls were approximately twice as likely as non-immigrant girls to report having experienced recurring sexual assault both in the past year and in their lifetimes.⁴⁰

“Child sexual abuse” is a term often used to refer to sexual acts, sexually motivated behaviors, or sexual exploitation involving minors (especially younger children).⁴¹ Child sexual abuse can encompass a broad range of behaviors, including:

- Oral, anal, or genital penetration;
- Anal or genital, digital or other penetration;
- Genital contact with no intrusion;
- Fondling of a child’s breasts or buttocks;
- Indecent exposure; or
- Use of a child in prostitution, pornography, internet crimes or other sexually exploitative activities.⁴²

Offenses involving direct physical contact (*e.g.*, fondling, grabbing, raping, oral, genital or digital penetration) as well as indirect contact (*e.g.*, exposing a child to pornographic materials, forcing a child to observe sexual acts between others) are both considered child sexual abuse and can entail varying degrees of violence, threats of violence and emotional trauma. The most commonly reported child sexual abuse cases involve incest or sexual abuse occurring among family members, including those in biological, adoptive, and step-families.⁴³ (Sexual abuse may be committed by other relatives or caretakers, too.⁴⁴)

Because of their status as minors, the rights and remedies available to child sexual abuse victims are typically far more proscribed than those available to adult survivors of sexual assault. For example, while a minor may have the right to authorize his or her own emergency medical care, forensic examination, or HIV or pregnancy testing, the fact that the care was provided may not necessarily be kept private. In many jurisdictions, a minor’s (nonassaultive) parent or guardian has the right to the child’s medical, counseling, and other records, even if those records are otherwise confidential. In other states, a minor’s parent must be notified before the minor victim can undergo a forensic exam. (For an overview of minors’ rights in the health care context, *see State Minor Consent Laws: A Summary, Second Edition*, English A, Kenney KE. Chapel Hill, NC: Center for Adolescent Health & the Law, 2003.) Similarly, a minor sexual assault victim may not have legal standing to obtain a civil protection order without the appointment of a guardian or a parent’s consent. Even a minor’s counseling records may not necessarily remain confidential from the child’s parent or guardian. (In contrast, lawyers are bound to represent their clients,

³⁷ *Wife Rape: Understanding the responses of survivors and service providers*, Newbury Park CA: Sage Publications, Inc., (1996); See also, http://new.vawnet.org/Assoc_Files_VAWnet/AR_MaritalRapeRevised.pdf.

³⁸ According to The National Violence Against Women Survey, among women who reported being raped at some time in their lives, 21.6% were under the age of 12 years old, 32.4% were 12-17 years old, and 29% were 18-24 years old when they were first raped. Prevalence, Incidence, and Consequences of Violence Against Women. U.S. Department of Justice, Office of Justice Programs. November 1998.

³⁹ Romero, G.J., Wyatt, G. E., Loeb, T.B., Carmona, J.V., and Solis. B.M., *The Prevalence and Circumstances of Child Sexual Abuse among Latina Women*, *Hispanic Journal of Behavioral Sciences*, 357, (1999)

⁴⁰ Decker, M.R., Raj, A., and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13(5) *Violence Against Women* 498, 503, 504 (2007).

⁴¹ Child Abuse Prevention And Treatment Act (CAPTA), P.L. 93-247, amended by Keeping Children and Families Safe Act of 2003, P.L. 108-36. See <http://www.childwelfare.gov/can/types/sexualabuse/>.

⁴² See *Id.*

⁴³ See Administration for Children and Families Child Maltreatment Annual Report: 1994, Table 5-4 Perpetrators by relationship to Victim: 2.6% of perpetrators were a parent to the victim; 29.7% were another relative; and 6.2% were a foster parent, available at http://www.acf.hhs.gov/programs/cb/stats_research/index.htm.

⁴⁴ *Id.*

Dynamics of Sexual Assault and the Implications for Immigrant Women

and typically may not disclose even a minor's confidential client information without the client's informed consent.⁴⁵)

Effects of sexual assault

Although every victim is unique, it is common for a sexual assault victim to experience some short- and long-term physical and psychological trauma. This is true regardless of who committed the assault and whether the victim was an adult or a minor.⁴⁶

Shorter-term physical effects may include cuts, bruising, or tears. Contrary to how the media portrays it, most sexual assault victims are not left bloodied or battered. Typically, perpetrators use drugs, alcohol, fear, threats of violence, coercion or manipulation - rather than force - to subdue their victims. Research indicates that when force is used, it is instrumental violence; perpetrators use only the amount of force necessary to accomplish the rape or sexual assault.⁴⁷

A sexual assault may also result in pregnancy or sexually transmitted infection(s). For many victims, long-term physical effects of sexual assault may include chronic pelvic pain, pre-menstrual syndrome, gastrointestinal disorders, gynecological and/or pregnancy complications, migraines, back pain, and other physical disabilities, including those interfering with a victim's ability to work.^{48,49}

As with physical trauma, the psychological consequences of a sexual assault may be both short- and long-term. The immediate psychological consequences of sexual assault may include shock, denial, fear, confusion, anxiety, withdrawal, guilt, nervousness, distrust of others, and sleep disturbances. The long-term effects may include Posttraumatic Stress Disorder (PTSD), depression, anxiety, increased substance use, and suicide attempts.⁵⁰ For example, rape victims are three times more likely than non-victims of crime to suffer from depression.⁵¹ Approximately 30% of rape victims have experienced at least one major depressive episode in their lifetime.⁵² Signs of depression can include:

- Feelings of self-blame;
- Feelings of hopelessness, despair, and worthlessness;
- Significant changes in appetite or weight;
- Difficulty participating in everyday activities;
- Disturbed sleep patterns;
- Diminished capacity to concentrate; or
- Thoughts of suicide.

If left untreated, results of severe depression can lead to more serious forms of depression, including PTSD. PTSD is a condition that follows traumatic incidents such as military combat service and violent crime. It is estimated that almost 31% of all rape victims developed PTSD sometime during their lifetimes.⁵³ Rape victims are at least six

⁴⁵ See e.g., *Revealing Confidential Information to Parents of a Juvenile Client*, [Conn.] Informal Opinion 03-07, published in Connecticut Lawyer, October 2004, Vol. 15, No. 2 ("Absent an exception to the prohibitions . . . a [l]awyer is not permitted to provide a copy of the file to the parent without authorization from the juvenile client")

⁴⁶ See generally, *Victimization Within Distinct Communities*, MN Coalition Against Sexual Assault Training Manual,. See Romero, G.J., Wyatt, G.E., Loeb, T.B., Carmona, J.V., and Solis, B.M., *The Prevalence and Circumstances of Child Sexual Abuse Among Latina Women*, Hispanic Journal of Behavioral Sciences, 358-9, (1999); See also, Decker, M.R., Raj, A., and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13(5) Violence Against Women 498, 506 (2007)(Assault timing, perpetrator relationship and severity of the assault influence health related consequences of sexual assault and the risk for revictimization).

⁴⁷ See Lisak D., Miller, P.M., *Repeat Rape and Multiple Offending Among Undetected Rapists*. VIOLENCE AND VICTIMS 2002; 17(1): 73-84.

⁴⁸ Center for Disease Control, <http://www.cdc.gov/ncipc/factsheets/svfacts.htm>. See also J. M. Golding, *Sexual Assault History and Long Term Physical Health Problems: Evidence from Clinical and Population Epidemiology*, 8 CURRENT DIRECTIONS IN PSYCHOL. SCI.

⁴⁹ -194 (1999); M. P. KOSS, & M. R. HARVEY, *THE RAPE VICTIM: CLINICAL AND COMMUNITY INTERVENTIONS* (2d ed. 1991).

⁵⁰ Kilpatrick, D. G., et al., *Violence and Risk of PTSD, Major Depression, Substance Abuse/Dependence, and Comorbidity: Results from the National Survey of Adolescents*, 71 J. OF CONSULTING & CLINICAL PSYCHOL. 692-700 (2003); G. Steketee & E. B. Foa, *Rape Victims: Posttraumatic Stress Responses And Their Treatment: A Review Of The Literature*, 1 J. OF ANXIETY DISORDERS 69-86 (1987).

⁵¹ *Id.*

⁵² *Rape in America*, supra note 2.

⁵³ *Id.*

Dynamics of Sexual Assault and the Implications for Immigrant Women

times more likely than non-crime victims to develop PTSD.⁵⁴ PTSD includes a range of psychological distress: fear, emotional numbness, flashbacks, nightmares, obsessive thoughts and anger.⁵⁵ PTSD can be extremely debilitating. Symptoms may include:

- Re-living the event through recurring nightmares or other intrusive images that occur at any time;
- Extreme emotional or physical reactions such as chills, heart palpitations, or panic when faced with reminders of the event;
- Avoiding reminders of the event, including places, people, thoughts or other activities associated with the trauma;
- Emotional detachment, withdrawing from friends and family, and losing interest in everyday activities;
- Being on guard or being hyper-aroused at all times;
- Heightened irritability or sudden anger;
- Difficulty sleeping or concentrating, or being overly alert or easily startled;
- Depression; and
- Engaging in self-destructive behavior, including: alcohol or drug abuse, suicidal thoughts, or high-risk sexual activity.⁵⁶

The level of trauma is *not* determined by whether penetration occurred, a weapon was used, or the number of times the victim was assaulted. Rather, trauma is related to the extent to which the victim experienced betrayal, extreme fear, blame (including self-blame), or invalidation.⁵⁷

Many factors can influence an individual victim's ability to recovery from a sexual assault. These can include the age of the victim, when the assault(s) occurred, the social support network available to the victim,⁵⁸ the victim's relationship to the perpetrator and level of trust that was violated, the response to the assault by police, medical personnel, and advocates, and the response of the victim's community.⁵⁹ For immigrant victims security of immigration status, isolation language abilities, level of acculturation can also affect recovery. Cumulative trauma makes a victim more vulnerable to future traumatization, eroding victim's ability to protect themselves and cope with abuse.⁷⁶ Sexual violence victims often experience a wide range of feelings following the assault, including self-blame, fear, humiliation, and physical self-loathing. These feelings coincide with complex societal and legal responses to sexual assault. What makes sexual violence different from other crimes is, in part, the onus placed on victims to establish that the assault was perpetrated without his or her consent.⁶⁰ (Victim credibility and consent typically are at the center of every sexual assault case, whether civil or criminal in nature.)

Victim Privacy and Other Barriers to Reporting to Law Enforcement

As noted above, the majority of sexual assaults are not reported to law enforcement.⁷⁸ The reasons for the significant under-reporting of sexual assault are varied and complex. They include shame and embarrassment, guilt, denial, blame (including self-blame), fear of rejection by family, friends, spouse or community, fear of retaliation or physical danger, etc.). Most significantly, many victims decline to report a sexual assault to law enforcement for fear they will lose their privacy.

⁵⁴ *Id.* at 7.

⁵⁵ Illinois Coalition Against Sexual Assault, Manual of Facts and Statistics, *Emotional and Physical Effects of Sexual Assault*, available at http://www.icasa.org/uploads/emotional_&_physical_effects_-_DRAFT-4.doc.

⁵⁶ PTSD Alliance Resource Center, <http://www.ptsdalliance.org>. See also Diagnostic and Statistical manual of Mental Disorders IVText Revision (DSM-IV-TR).

⁵⁷ For an overview of the mental health consequences of sexual assault, see BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims, A Practical Guide for Attorneys and Advocates, 131-154 (Jessica E. Mindlin & Susan H. Vickers, Eds., 2008).

⁵⁸ Social support networks are important to healing and recovery from trauma. Adukovic, D. *Social Contexts of Trauma and Healing*, 20(2) *Medicine, Conflict and Survival*, 120-135 (2004).

⁵⁹ Koss, M., Harvey, M., *The Rape Victim: Clinical and Community Interventions*, Sage Library of Social Research (1991). ⁷⁶ Broomfield, L., Gillingham, P., and Higgins, D., *Cumulative Harm and Chronic Child Maltreatment*, 19 *Developing Practice* 34-42 (2007).

⁶⁰ Hunter, S., *Equal Justice? Not Yet for Victims of Sexual Assault*, Connecticut Sexual Assault Crisis Services, Inc. (2000).

⁷⁸According to a Bureau of Justice Statistics 2002 report, "Most rapes and sexual assaults against females were not reported to the police. Thirty-six percent of rapes, 34% of attempted rapes, and 26% of sexual assaults were reported to police, 1992-2000." Rennison, C.M., Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*. <http://www.opj.usdoj.gov/bjs/pub/pdf/raspr00.pdf>.

Dynamics of Sexual Assault and the Implications for Immigrant Women

Dynamics of Sexual Assault and the Implications for Immigrant Women

Privacy, or more specifically, the fear of loss of privacy, is one of the most significant reasons victims of sexual assault decline to report their assault to the police.⁶¹ Victims' concerns regarding privacy may be exacerbated if they know the perpetrator; this is the case in the majority of sexual assaults. It is estimated that more than 70% of sexual assault victims know their assailant.⁶² Some studies indicate that the closer the relationship between the female victim and the offender, the greater the likelihood that the victim will not report her sexual assault.⁸¹

The likelihood that a victim's privacy will be breached may be especially acute in immigrant communities. For example, a non-English speaking victim who reports her assault to law enforcement will need to share her experience through an interpreter. The interpreter may know, or even be related to, the victim, her family, and/or the perpetrator. In smaller more tightly-knit immigrant communities especially, having to disclose the victimization to another member of the community may impede a victim's ability to seek or secure the services she needs. To address these issues Title VI of the Civil Rights Act governs victims' rights to the assistance of qualified interpreters in communication with law enforcement, prosecutors, courts and other federal government funded programs.⁶³ It is important to use qualified interpreters who are impartial, who do not know any of the persons involved in the sexual assault, and who will not jeopardize the victim's safety.⁶⁴

For victims who are related to their assailants, there may be additional hurdles to reporting, such as the victim being blamed by mutual friends and family members victims for "allowing" or "inviting" the assault, for any punishment accorded to the assailant, for the loss of family financial support the perpetrator may have provided, etc. Community pressures may also inhibit reporting in immigrant communities where women are expected to have only limited, supervised contact with the opposite sex, are blamed for any sexual contact with men that occurs outside of marriage (consensual or otherwise), or if a female's status as a virgin is viewed as central to her worth.

Friends, relatives, partners, the police, or advocates specifically trained in assisting immigrant victims of sexual assault can be very helpful in providing support. Ultimately, it must be the victim's decision whether to report an assault to law enforcement.⁶⁵ Even if a victim chooses to report an assault at the outset, she may later decide she does not want to assist in the criminal prosecution. Because the reporting of the assault (even without a prosecution) may be useful to law enforcement agencies, some jurisdictions have developed a "blind" reporting option that allows a victim to provide information to law enforcement without committing to the prosecution process. (See below for additional discussion of "blind" reporting.) In a related effort to promote both victim autonomy and encourage reporting to law enforcement, the 2005 reauthorization of the Violence Against Women Act ("VAWA") requires states, tribes and territories who receive VAWA STOP funding to certify that they do not require sexual assault victims to participate in the criminal justice system or cooperate with law enforcement as a predicate to a forensic medical exam. The law also forbids these jurisdictions from charging victims for the cost of the forensic examination.⁶⁶

⁶¹ Being blamed by others, their families finding out about the rape, other people findings out, and their names being made public by the news media were cited as the most significant reasons why rape victims did not report to law enforcement. See *Rape in America*, *supra* note 2 at 2.

⁶² Illinois Coalition Against Sexual Assault, *Acquaintance Rape*, http://www.icasa.org/uploads/acquaintance_rape-final.pdf.

⁸¹ Rennison, C.M., Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, www.opj.usdoj.gov/bjs/pub/pdf/raspr00.pdf.

⁶³ See, Federal Interagency Working Group on Limited English Proficiency Website at www.lep.gov; and Chapter 2 of this Manual "Ensuring Language Access to Immigrant Victims of Sexual Assault" for more information.

⁶⁴ For information on how to determine whether an interpreter is qualified see *National Court Interpretation in Protection Order Hearings Judicial Benchcard*, Center for State Courts, (2006).

⁶⁵ The most common exception to this rule is when a victim and a provider are subject to a jurisdiction's mandatory reporting laws. Typically, minors and "vulnerable adults" are the subject of a jurisdiction's mandatory reporting requirements. Health care workers, school personnel, child care providers, social workers, law enforcement officers, and mental health professionals are the most common "mandatory reporters." Some states also mandate individuals such as commercial film or photograph processors, substance abuse counselors, and firefighters to report abuse or neglect. Alaska, Arkansas, Connecticut, and South Dakota include domestic violence workers on the list of mandated reporters. Approximately eighteen States require all citizens to report suspected abuse or neglect regardless of profession. See "Mandatory Reporting of Child Abuse," Rape, Abuse, & Incest National Network (RAINN) (<http://www.rainn.org/public-policy/sexual-assault-issues/mandatory-reporting-child-abuse>).

⁶⁶ Section 2010 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-4) was amended by adding at the end the following:

Dynamics of Sexual Assault and the Implications for Immigrant Women

It is important to note, however, that decision of whether and when to report an assault to law enforcement is not always within a victim's prerogative. A state's or tribe's mandatory reporting laws may require a provider to report the assault of a victim who is a minor or "vulnerable adult" (e.g., an adult who is vulnerable by reason of age, a mental or physical disability, or other reason). For example, every state has some type of law requiring certain professionals and service providers to report an incident of sexual assault to law enforcement if a minor discloses that child abuse has occurred.⁶⁷ The covered professionals or service providers typically include health care providers and health care facilities, mental health providers, teachers and other school personnel, social workers, day care providers and law enforcement personnel.⁶⁸ Some states' laws are even broader, and require "any person" to report.⁶⁹

How much information triggers the reporting obligation varies from state to state.⁷⁰ In some states the duty to report is based on a "reasonable cause to believe" or a "reasonable suspicion," of abuse; other states may require reporting if a provider "knows" or "suspects" a child has been sexually abused.⁷¹ Depending on the jurisdiction, a failure to report may result in criminal and or civil liability for the service provider.⁷² Persons reporting suspected abuse in good faith are typically exempt from liability if a report turns out to be unfounded.

Law Enforcement Procedures and Responses

Depending on local practice, agency expertise, the victim's condition, and the availability of advocate support, it may – or may not – be a long and traumatic process for a victim to file a sexual assault report with a law enforcement agency. (The term "law enforcement agency" refers here to local, state or tribal police or sheriff, campus security, the Federal Bureau of Investigation, or other law enforcement agency).

Once a police report is made, a sexual assault victim typically will be instructed not to: shower, bathe, douche, throw away any clothes worn at the time of the assault, brush or comb her hair, use the restroom, brush her teeth, gargle or otherwise rinse out her mouth, put on makeup, clean, straighten up, or otherwise disrupt the crime scene, or eat or drink anything.⁷³ A victim who reports an assault to law enforcement may be referred for a sexual assault forensic examination for evidence collection purposes. These exams are best conducted by someone specifically trained in medical forensic evidence collection, such as a SANE (Sexual Assault Nurse Examiner) or SAFE (Sexual Assault Forensic Examiner). While the number of SANEs is growing, only a minority of communities have specialized medical forensic nurses. In many jurisdictions, the primary response is by community-based advocates, such as rape crisis centers, or systems-based advocates, such as DA's offices. (See below for additional discussion of the medical forensic examination.)

The ideal time period for the collection of medical and physical evidence is limited depending on when, where and how the assault occurred. Even if it is beyond the ideal evidence collection period or the victim does not want to report the assault to law enforcement, it may nevertheless be helpful for the victim to be seen by a medical provider.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to permit a State, Indian tribal government, or territorial government to require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.

⁶⁷ See *supra* note 16.

⁶⁸ See *Id.*

⁶⁹ *Id.*

⁷⁰ See Child Welfare Information Gateway, <http://www.childwelfare.gov>, and Mandatory Reporting of Child Abuse and Neglect, for state-by-state coverage of mandatory child abuse and neglect reporting laws, http://www.smithlawfirm.com/mandatory_reporting.htm

⁷¹ See *Id.*

⁷² For an overview of states' child abuse reporting laws, see *Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws*: Child Welfare Information Gateway at http://www.childwelfare.gov/systemwide/laws_policies/statutes/mandaall.pdf. For mandatory reporting laws for elder abuse and for adult victims of rape and sexual assault see <http://www.abanet.org/aging/about/elderabuse.shtml> and <http://www.ipba.net/pubs/RapeandSexualAssaultReportingLaws.pdf>, respectively.

⁷³ *Id.* Report of the Office on Violence Against Women, "National Protocol for Sexual Assault Medical Forensic Examinations," (Sept. 2004) (<http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf>).

Dynamics of Sexual Assault and the Implications for Immigrant Women

A medical examination, with or without the collection of evidence, can provide important health and safety opportunities. Further, some victims who are initially reluctant to report an assault may later opt to report, and timely evidence collection may help support a civil or criminal prosecution.⁷⁴

Many local police departments have victim advocates on staff to assist sexual assault victims through the law enforcement and prosecution process. In addition, most states have local rape crisis centers and sexual assault programs with advocates who can also provide support and assistance to sexual assault victims.

Some examples of the type of assistance advocates can provide include:

- Accompaniment to the hospital and with police during the rape exam;
- Information about reporting procedures and what to expect;
- Legal advocacy and accompaniment;
- Emergency crisis intervention, counseling, and referrals;
- Short- or long-term individual and/or group counseling;
- Information about sexually transmitted diseases, pregnancy, and other health risks and concerns;
- Immediate and future safety planning;^{75,76}
- Providing linguistically and culturally competent support to the rape victim;
- Assisting limited English proficient victims in assuring that hospitals, police, prosecutors, courts and other services providers use qualified interpreters in the victim's language when interacting with limited English proficient victims.

It is critical that a victim understand for whom the advocate works and what privilege or confidentiality protections, if any, apply to the victim-advocate communications. To ensure that a victim is giving informed consent, the advocate should explain to the victim the difference between prosecution-based victim assistance and community-based victim advocates, and why those differences matter. For example, information disclosed to prosecution-based advocates typically is not protected by any privilege law, and may have to be disclosed to the defendant. In contrast, in the majority of states a communication to a rape crisis center advocate is afforded some level of statutory privilege. A victim may wish to have an attorney to support her through the investigation process, to ensure that her privacy and other rights are respected and enforced.

Ideally, a victim will have the support of a community based advocate or lawyer before, during, and after the law enforcement interview. An advocate or attorney can help prepare the victim for the personal and/or painful questions that she may be asked to answer during the law enforcement interview (*i.e.*, the specific details of what was done, when, where, by whom, how, and how often). An advocate or attorney may also help the victim decide what information she is and is not willing to provide, and the possible implications of those choices. This may include information about the victim's sexual history, use of alcohol or substance abuse, information about the perpetrator's activities, etc. An advocate may also help ensure that law enforcement fully respect victims' rights. (For example, some law enforcement agencies continue to ask victims to submit to a polygraph exam as part of the investigation process. This practice is heavily disfavored. Indeed, the Violence Against Women Act of 2005 specifically requires that states enact legislation prohibiting law enforcement agencies from requiring a victim to submit to a polygraph as a condition of investigation, charging or prosecuting a sexual assault.⁷⁷) Finally, an advocate may be able to help a victim feel empowered to ask his or her interviewer why certain questions are being asked, or how the questioning makes the victim feel. (In some jurisdictions, a sexual assault (or other crime) victim has a specific statutory right to have a support person present during a law enforcement interview.)

⁷⁴ For a comprehensive discussion of the medical forensic examination, see Chapter 5 ("Understanding Victims' Medical Needs: The Medical And Forensic Examinations") in the Victim Rights Law Center's national manual, *Beyond The Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims A Practical Guide for Attorneys and Advocates*.

⁷⁵ Report of the Office on Violence Against Women, *National Protocol for Sexual Assault Medical Forensic Examinations*, (Sept. 2009) (<http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf>).

⁷⁷ 42 U.S.C. § 3796gg-4(d), provides that states may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred on account of such an exam, or both."

Dynamics of Sexual Assault and the Implications for Immigrant Women

If a victim reports an assault, it is likely that a law enforcement officer will interview her. An interview may be lengthy, emotionally exhausting, and inquire into very private details of a victim's life. Multiple law enforcement officers and agencies may interview a victim on more than one occasion. Child victims, in particular, may be subjected to repeated interviews and examinations, as both law enforcement and child protective service agencies seek information. Because evidentiary and police procedures can be very physically and emotionally invasive, this is an especially important time for a victim to have adequate support.⁹⁶

In addition to the law enforcement / prosecution response to sexual assault, victims should also be made aware of potential civil legal remedies in employment, housing, public benefits, education, safety and immigration law. A civil attorney can help a victim understand (and enforce) his or her rights, help a victim understand who the various players are, their roles within the justice system, and how best to negotiate a potentially confusing and intimidating journey to justice. For example, victims often believe that a prosecutor is their personal attorney and that it is safe to share many private details about their lives, medical histories and past sexual or other relationships. Victim may not fully appreciate the implications of such disclosures, including that the prosecutor has an obligation to turn over to the defense any exculpatory information. Often, victims do not realize that a prosecutor represents the state, and not a victim's interests.

As noted above, VAWA 2005 prohibits a state, tribe or territory from requiring a victim to report a sexual assault to law enforcement as a condition of having a medical forensic examination. In addition, some states offer the option of anonymous reporting if a sexual assault victim does not wish to pursue prosecution of the perpetrator at the time but still wants to report the offense to law enforcement. Such a report, known as "blind" reporting, is an alternative to reporting directly to law enforcement officials. Anonymous reporting allows victims and/or third-party reporters to share critical information about an assault with law enforcement without sacrificing confidentiality or filing a complaint. Sometimes, it can enable investigators to gain information about sex crimes that would otherwise go unreported and unknown. "Blind" reporting is not available everywhere, however, and may not ever lead to a prosecution. If a victim wants a case to be prosecuted, filing an official police report is more likely to yield this outcome.

To develop an anonymous/"blind" reporting system, law enforcement agencies can:

- Establish and uphold a policy of victim confidentiality;
- Allow victims to disclose as little or as much information as they wish;
- Accept the information whenever victims might offer it—a delay in disclosure is not an indicator of the validity of the statement;
- Develop procedures and forms to facilitate anonymous information from third parties (e.g., examiners);
- Clarify options with victims for future contact—where, how, and under what circumstances they may be contacted by the law enforcement agency; and
- Maintain these reports in separate files from official complaints to avoid inappropriate use.⁹⁷

Forensic Medical Examinations

Sexual Assault Nurse Examiner (SANE) programs (sometimes referred to as Sexual Assault Forensic Examiner, or SAFE programs) are designed to provide first-response medical care to sexual assault patients in both hospital and non-hospital settings. According to the International Association of Forensic Nurses, there are more than 530 SANE programs in place today throughout the United States and the U.S. Territories.⁹⁸ As with all programs that receive federal funding, SANE programs are obliged to comply with Title VI of the Civil Rights Act's requirements regarding the provision of assistance victims who are limited English proficient.⁹⁹ Services must be provided in the victim's language, one that she speaks and understands fluently, and must be provided by a competent interpreter.¹⁰⁰

Dynamics of Sexual Assault and the Implications for Immigrant Women

⁹⁶ In 2004, the Office On Violence Against Women published, *A National Protocol for Sexual Assault Medical Forensic Examinations*. The protocol is available online at: <http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf>.

⁹⁷ U.S. Department of Justice, Office on Violence Against Women, *The National Protocol for Sexual Assault Medical Forensic Examinations*, (2004).

⁹⁸ Email from Kim Day, SAFE Technical Assistance Coordinator, International Association of Forensic Nurses (www.iafn.org).

⁹⁹ See Guidance to Federal Financial Assistance Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Notice, 68 Fed. Reg. 70968 (Dec. 19, 2003). For examples of Department of Health and Human Services enforcement activities in health care settings see <http://www.hhs.gov/ocr/civilrights/activities/examples/LEP/complaintcompliance.html>

¹⁰⁰ Section VI (A) of the Guidance to Federal Financial Assistance Regarding Title IV Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 70968 (Dec. 19, 2003).

SANE programs strive to provide medical care from an empowerment-based model that addresses victims' physical and medical needs in an appropriately supportive environment. SANE nurses receive specialized training in how to conduct a forensic medical examination, and how to respond to sexual assault survivors' emotional and physical needs.⁷⁸ SANEs are trained to provide immediate crisis intervention and support for their patients, to minimize the trauma associated with a forensic medical examination and evidence collection, to conduct a thorough medical examination, and to collect forensic evidence.⁷⁹ SANEs are also trained to identify and document injuries, maintain the proper chain of evidence, and provide expert testimony. It is important to note that SANEs are not part of the prosecution team, however. They are independent medical experts. Similarly, although trained to be sensitive to the needs of victims, SANEs are not – and cannot fill the role of – victim advocates.

A forensic sexual assault exam can be traumatic for some victims. (In rape and sexual assault cases, a live victim's body becomes the "scene of the crime" from which evidence is collected.) Forensic medical examinations typically include the collection of internal and external evidence from the victim's clothing, skin, hair, nails, body cavities (genitalia, anus, mouth, etc.), and bodily fluids (e.g., blood and/or urine).⁸⁰ The memory of a prior rape or sexual assault may be triggered by the forensic exam. For immigrant victims who are victims of sex or human trafficking, or torture, the exam may be especially difficult and trigger traumatic memories.

At the same time, the forensic exam can sometimes provide critical evidence for a victim who wants to prosecute the assailant(s) criminally or civilly. Not all post-assault medical examinations are forensic examinations, however. A victim who does not want to report an assault or otherwise participate in a prosecution may decline a forensic examination but may still want medical care. (Some states, however, mandate the reporting of a rape or sexual assault even when the victim is a mentally competent adult.⁸¹) In addition to (or in lieu of) evidence collection, a victim may be concerned about an injury, exposure to sexually transmitted infections (STIs), pregnancy, or other health risks. These risks may prompt a victim to seek medical help. The SANE or other medical examiner can offer a victim a pregnancy test,⁸² emergency contraception, and antibiotic prophylaxis for some STIs, and assess the need for additional medical care.

After securing the victim's written consent, the forensic exam generally includes: gathering pertinent medical information, the assault history, a physical exam for trauma and areas of tenderness collection of sperm and seminal fluid, collection of any foreign matter present, combing of the pubic hair for foreign hair and matter; fingernail scraping, collection of the victim's blood type, a DNA screen, collection of saliva, and collection of any torn or stained clothing.⁸³ Some states have standardized their sexual assault protocol to include a specific time frame for

⁷⁸ Campbell, R., *The Effectiveness of Sexual Assault Nurse Examiner (SANE) Programs*, National Resource Center on Domestic Violence (2004). Available at http://new.vawnet.org/Assoc_Files_VAWnet/AR_Sane.pdf.

⁷⁹ See supra note 74.

⁸⁰ The collection of bodily fluids may also disclose a victim's use of controlled substances. A victim should be advised of how the sample may be used and evidence should be collected only with the victim's informed consent. For a more detailed discussion of informed consent in the context of medical evidence, see Chapters 3 through 5 of the Victim Rights Law Center's national manual, *BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims - A Practical Guide for Attorneys and Advocates*, Jessica E. Mindlin and Susan H. Vickers, Eds. (2008).

⁸¹ For a list of states' reporting laws see http://www.ndaa.org/apri/programs/vawa/state Rape_reportings_requirements.html.

⁸² A pregnancy test may be administered to ensure that certain medications are safe to prescribe immediately following an assault. When care is provided at a later date, the test may help a victim determine whether she became pregnant as a result of the sexual assault.

⁸³ Ledray, L.E., RN, Ph.D, LP, FAAN, *Evidence Collection and Care of the Sexual Assault Survivor, The SANE-SART Response*, Violence Against Women Online Resources (2001).

Dynamics of Sexual Assault and the Implications for Immigrant Women

when certain evidence will be collected pursuant to a forensic exam.⁸⁴ Even outside of these established time frames, however, a forensic exam may yield important evidence. As noted above, federal law now requires that forensic evidence be collected even if the victim is not certain she wants to report the assault to law enforcement.¹⁰⁸

Cultural and Linguistic Barriers Faced By Immigrant Victims of Sexual Assault

Immigrant victims face both personal and systemic barriers that can prevent them from accessing or fully benefiting from the services available to them. Some of these barriers include providers' cultural misconceptions, language barriers, victims' misconceptions about the legal system, fear of law enforcement officials, fear of deportation, and prior trauma or victimization. Each of these issues is addressed separately below to provide a fuller and more accurate picture of the reality immigrant sexual assault victims often confront.

Cultural Issues⁸⁵

Sexual assault is a traumatizing experience, irrespective of a victim's immigration or citizenship status. Individual victims respond differently to a sexual assault depending on a variety of different factors. Some survivors, for example, appear quite calm and not in distress immediately following an assault while others may appear extremely agitated and distressed. Some victims may minimize their experience and look to reassure their friends, family, and providers that the experience was "manageable" and "life goes on." These responses can be short-lived or enduring. Moreover, for some victims the assault may be the most difficult experience in the victim's life while for other immigrant victims it may be one of many traumatic or horrific life events. Research among immigrant women who have experienced domestic abuse in the United States found that immigrant women victims often have experienced high levels of traumatic events in their lives separate from and in addition to the domestic abuse. Many 34.4% experienced sexual assault perpetrated by someone other than their abuser and 22.4% were present when another person was raped, killed or beaten.⁸⁶ In the end, each victim finds her or his own way to integrate the assault experience into the fabric of his or her lives.

In addition to fears related to the victim's immigration status that will be discussed fully below, for immigrant victims, the complexity of living in the United States while trying to maintain cultural connections to one's native country can be difficult. This cultural tension can affect the shape and detail of victims' attitudes toward sexual assault. Pressures to assimilate while struggling to maintain one's own cultural identity, as well as different attitudes about sexual assault, make it difficult to anticipate how any individual immigrant victim will respond to sexual assault. For example, many immigrants believe that certain issues (such as anything pertaining to sex) should be resolved within the household or community, and not in public through the involvement of law enforcement or the criminal justice system.⁸⁷ Other victims feel unsafe disclosing an assault to anyone within the social fabric of their community.

⁸⁴ Generally, a forensic sexual assault exam will be completed within 72 hours after a sexual assault. Even beyond the 72-hour time window, however, it may be possible for the exam to be conducted and valuable evidence to be secured (especially in cases where there are injuries that can be documented or the victim has not changed clothes or showered). See Ledray, L.E., RN, PhD, LP, FAAN, Evidence Collection and Care of the Sexual Assault Survivor, The SANE-SART Response, Violence Against Women Online Resources, 2001 Distinct from the forensic exam, there are compelling reasons for a sexual assault survivor to seek medical care.
¹⁰⁸ 42 U.S.C. § 3796gg-4(d).

⁸⁵ This section is adapted from *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*, Legal Momentum, Leslye E. Orloff, et al., Eds. (2004).

⁸⁶ Dutton, M.A., Hass, G.A., and Ammar, N., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43, 89 (2003); Orloff, L.E., Dutton, M.A., and Ammar, N., *Use and Outcome of Civil Protection Orders by Battered Immigrant Women in the U.S.*, (2008) available at <http://www.legalmomentum.org/site/DocServer/BatteredImmigrantWomenSlidesforWebsiteMB7-11-08.ppt?docID=3361>

⁸⁷ Warrior, S., Culture Handbook, (Family Violence Prevention Fund, 2005); Decker, M.R., Raj, A., and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13(5) Violence Against Women 498, 507 (2007). Erez, E., *Immigration, Culture Conflict and Domestic Violence/Woman Battering*, 12(1) Crime Prevention and Community Safety: An Int'l Journal. 30 (2002).

Dynamics of Sexual Assault and the Implications for Immigrant Women

Recent immigrants may face additional difficulties in coping with a sexual assault.⁸⁸ Like any other sexual assault victim, immigrant victims may need to turn to sources of support outside their immediate family for support and validation. This outside support network may play a fundamental role in victims' first efforts to seek help to address the sexual assault. Immigrant women are most likely to confide in other women, including predominantly women friends, mothers, and perhaps sisters. Confiding in other women serves as a safer outlet for the sometimes-complex emotional responses that sexual assault elicits.⁸⁹ Only after seeking help from this informal network of support do immigrant victims usually turn to the more formal social, legal, and justice systems.

Sexual assault victims who have lived in the United States for some time may be able to piece together this important informal network through a lifetime of connections. However, more recent immigrants may not know many people they can trust and therefore may have a harder time seeking support. This absence of a support network for the recent immigrant may have significant implications for a victim's ability to access timely medical, law enforcement, and legal and mental health assistance. In addition, a delay in reporting may contribute to a cloud of suspicion or distrust when the victim does report, undermine a victim's ability to prosecute an assault, and lead to increased health risks. Immigrant and sexual assault service providers may need to educate their community partners about how the immigrant experience may contribute to such delayed reporting.

In cases of marital rape, an immigrant woman may be more likely not to disclose an assault if she believes that her husband has a right to insist on sexual activity regardless of her consent. Her cultural or religious community may so highly value marriage that she fears being held responsible for breaking up the family if she reports the assaults or tries to escape from the assailant.⁹⁰ The topic of rape or sexual assault may also be considered too taboo to discuss. Community members may not want her to take any action against the perpetrator and may discourage the victim from seeking help outside the community. If the immigrant victim does seek help from formal justice and social service systems, she may feel socially isolated.⁹¹ She risks being ostracized and denied support from the very community that she needs most.

For an immigrant woman experiencing sexual assault within an intimate partner relationship, seeking refuge in a shelter can also be a difficult step. Having to move to a shelter and give up roots within the immigrant community may add to the trauma that a sexual assault victim experiences.⁹² Shelters may not maintain elements of tradition, such as food, language, childcare, sleeping accommodations, and religious observance to which an immigrant woman is accustomed.⁹³ Shelter staff may not fully understand the cultural implications of the sexual violations the victim sustained, or the profound loss of community the victim has endured to achieve some safety.

Providing bilingual staff, options to cook familiar foods, and sleeping arrangements that are more familiar can make the shelter a more welcoming place and more of a healing opportunity for immigrant victims. Some immigrant women will be more comfortable seeking social support from persons in their own cultural community – either in

⁸⁸ For a more detailed discussion on the unique challenges facing immigrant victims of sexual assault and domestic violence, see e.g., Michele R. Decker, Anita Raj and Jay Silverman, "Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation." Vol 13 no 5 *Violence Against Women* 498, 507 (Sage, May 2007). Davis, R.C., Erez, E., National Institute of Justice Research in Brief, *Immigrant Populations as Victims: Towards a Multicultural Criminal Justice System*, (May 1998) (<http://www.ncjrs.gov/pdffiles/167571.pdf>).

⁸⁹ Dutton, M.A., et al., *Characteristics of Help Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 *Geo. J. on Poverty L. & Pol'y* 245, 265 (2000).

⁹⁰ In Asian and Pacific Islander communities many community and church leaders do not recognize domestic and/or sexual violence as a problem. Lai, T.A., *Asian Women Restricting the Violence*, in *The Speaking Profits US: Violence in the Lives of Women of Color*, Maryviolet C. Burns & M. Div., Eds., 10-11 (1986).

⁹¹ Raj, A. & Silverman, J., *Violence Against Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence*, *Violence Against Women*, Vol. 8, No. 3, 384 (2002).

⁹² Rennison, C.M., Welchans, S., *Intimate Partner Violence*, U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics (2000, revised 2002) (<http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf>); National Center for Injury Prevention and Control. *Costs of Intimate Partner Violence Against Women in the United States*. Atlanta (GA): Centers for Disease Control and Prevention; 2003; Orloff, L.E., Dutton, M.A., Hass, G.A., Ammar, N., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, *UCLA Women's Law Journal*, Vol. 13 No. 1 (Fall/Winter 2003).

⁹³ Lai, *supra* note 14, at 10; Perilla, J.L., *Violence en La Familia: An exploration of the Ecology and Dynamics of Domestic Abuse in a Latino Population* 4, presented at National Coalition of Hispanic Health and Human Services Organizations Biennial Conference (September 1996).

Dynamics of Sexual Assault and the Implications for Immigrant Women

the locale or far away from it - while others will prefer obtaining help from persons outside their cultural community.

Language Barriers

Some immigrants whose first language is not English may experience challenges in overcoming language barriers in the United States.⁹⁴ When government programs and government funded programs including health care and victims' services providers do not provide language access through bilingual staff or qualified interpreters limited English language ability (written and/or spoken) may impede a victims' ability to access the resources she needs.⁹⁵ Rape crisis centers, shelters, victim service programs, legal service offices, police departments, prosecutors' offices and courts may not have employees who can speak a victim's native language or may lack qualified interpreters. These linguistic limitations can seriously impede an immigrant victim's ability to seek or receive help following an assault.^{96,97} Such limitations may also constitute a violation of federal law.

Title VI of the Civil Rights Act of 1964 requires organizations receiving federal funding to provide equal benefits to all people, regardless of race, color, or national origin.⁹⁸ These organizations include law enforcement agencies, sexual assault and domestic violence programs, shelters, courts, hospitals and health care providers. Because of their limited English proficiency, however, and a corresponding lack of interpreter services, many immigrant women do not have access to the same benefits, services, information, or rights that others do.

There are several things that organizations can do to ensure Title VI compliance.⁹⁹ The first step in providing meaningful access to Limited English Proficiency (LEP)¹²³ individuals is to learn about the immigrant populations in the relevant area. The latest census statistics can provide information about the demographics of immigrant populations in each community and state.¹⁰⁰ Questions must also be asked regarding the factors that led immigrant women to move to the United States (e.g., work, marriage, war), how different cultures view sexual violence, and whether the women are isolated from the rest of the community. Gathering this information can help agencies build ties with established community based or faith based organizations, which are often trusted by immigrant women.¹⁰¹

After learning about the immigrant communities in the area, the next step is to conduct an intensive review of your agency to see how you can better serve immigrant sexual assault victims. Some questions to consider include: what percentage of your staff is bilingual/bicultural; what materials are available in the community in languages other than English and can your agency use these materials; what interpretation/translation resources are available in your community; and can your agency cross-train with immigrant community-based organizations.

⁹⁴ Many immigrant victims may lack the money, time, or resources to attend English as Second Language classes.

⁹⁵ See Minnesota Advocates for Human Rights. *The Government Response to Domestic Violence Against Refugee and Immigrant in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*, 9-12, (December 2004). See Foo, L.J., *Asian American Woman: Issues, Concerns, and Responsive Human and Civil Rights Advocacy*. Ford Foundation, 107-8, 130-1 (2002). See Murdaugh, C., Hunt, S., Sowell, R., and Santana, I., *Domestic Violence in Hispanics in the Southeastern United States: A Survey and Needs Analysis*, 19(2) *Journal of Family Violence*, 19, 2, 111-13, (2004).

⁹⁶ The Department of Justice recognizes that "[I]n certain circumstances, failure to ensure that LEP [limited English proficient] persons can effectively participate in or benefit from federally assisted programs and activities may violate prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national and origin discrimination." 67 Fed. Reg. ⁹⁷, 21 (2002).

⁹⁸ Civil Rights Act of 1964 Title VI, codified at 42 U.S.C. § 2000d (2008).

⁹⁹ See Chapter 2 of this manual Ensuring Language Access to Immigrant Victims of Sexual Assault for more information. ¹²³ A Limited English Proficient (LEP) individual is one who does not speak English as their primary language and who has limited ability to read, write, or understand English. These individuals may be entitled language assistance with respect to an important type of service, benefit, or encounter; the more important the service, the greater the need for language assistance. An example of such services would include providing information to a sexual assault survivor about their rights.

¹⁰⁰ Demographic and other information about the immigrant communities in a given area can be found at <http://www.census.gov/>.

¹⁰¹ DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN, Deeana L. Jang, et al., Family Violence Prevention Fund, Eds, 2d ed. (1997); Chen, D.B. *"We Just Got Together and We Enjoyed It: An Analysis of the Georgia Coalition for Battered Refugee and Immigrant Women as a Social Movement"* (1998) (unpublished M.A. thesis, Georgia State University) (on file with author); Konrad, A.P., et al., *Rompiendo el Silencio, Manual de Entrenamiento para Activistas, Consejeras y Organizadoras Latinas*, Family Violence Prevention Fund, 35 (October 2003).

Dynamics of Sexual Assault and the Implications for Immigrant Women

Interpreters can provide invaluable assistance to immigrant victims of sexual assault. Even if a staff member is not fluent in the language, his/her language skills may be helpful in outreach and basic conversation to make victims feel more comfortable.¹⁰² Depending on the size of LEP immigrant communities in the given area, some agencies might find it necessary to contract with interpreters to work with the agency.

When contracting with interpreters, it is important to make sure that they are trained in criminal and legal terminology, familiar with colloquial and slang terms for body parts, sexual acts, and sensitive to the needs of the victims for whom they are interpreting. If the case is proceeding in court, the interpreter also needs to be comfortable saying such terms out loud, in front of the judge and in open court. We should also be cognizant as advocates and attorneys that our own comfort level around certain terms is critical to how victims feel when they explain their assaults to us. Interpreter reaction is crucial, but it's a good reminder to advocates and attorneys as well.

It cannot be overemphasized how important confidentiality is for sexual assault victims. It may be an especially significant issue for immigrant victims; the close-knit nature of some immigrant communities may only heighten a victim's fear of loss of privacy. Having to communicate through an interpreter who is also a community member may further exacerbate a victim's privacy concerns, and require special consideration. State courts have developed a Model Code for the standards of professionalism that all interpreters must satisfy.¹⁰³ Although state and interpreter certification may require that the interpreter sign a written confidentiality agreement, an agency may wish to implement their own signed, interpreter confidentiality agreement, too, and review it regularly with both the interpreter and the client. It is essential to have interpreters who are sensitive to and respect issues of victim privacy, confidentiality and privilege. In smaller immigrant communities, it may be difficult to secure an interpreter who does not know or have a connection to the family of a victim and/or a perpetrator. Therefore, on occasion, it may be necessary to hire an interpreter from outside the local immigrant community to ensure victim privacy.

Interpreters who are brought by the victims themselves must be screened to ensure that they are sensitive to sexual violence issues, can remain impartial, and will voluntarily sign a confidentiality agreement. In cases involving sexual violence, it is especially critical that agencies utilize trained and qualified interpreters and not family members who may be available on-site. Friends, family members, and bi-lingual staff who lack specific training in medical, court, and legal terminology are not qualified interpreters for oral communications or translators of written documents. Although well-intentioned, it is poor practice to utilize such untrained interpreters (for oral communications) and translators for written communications. It is especially inappropriate to compel a sexual assault victim to recount the intimate details of her assault through a friend or family member, or other untrained interpreter, from whom she may wish or need to keep private some or all aspects of the assault. The use of untrained interpreters or interpreters may compromise victim trust, victim safety, evidence collection, the criminal prosecution, civil protections, and other legal remedies.

Written materials are one important way to convey information and to conduct community outreach to immigrant communities. Translated materials should be reviewed to confirm that they utilize regionally appropriate terminology. Outreach to victims with limited literacy can also be accomplished through alternative means, such as drawings, comics and comic books, visual ads and radio programs. Another effective method for conveying information about sexual assault is through events and rituals that are already embedded in the community values, but are not associated with sexual violence or violence against women issues. Such events might include community cooking classes, sewing, crocheting, knitting or quilting circles, ESL (English as a Second Language) classes or parenting support groups.

Materials for immigrant victims of sexual assault should include a list of resources where immigrant victims can seek help. Such materials should include brief information about VAWA immigration relief, U Visa relief, and T visa relief, relief offered by courts, and information on health care issues. Healthcare access for immigrant victims

¹⁰² Executive Order 13166 *Limited English Proficiency Resource Document: Tips and Tools from the Field*, U.S. Department of Justice, Civil Rights Division Coordination and Review Section, 2004.

¹⁰³ See *Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques*, available at http://www.ncsconline.org/wc/publications/Res_Ctlnte_ModelGuideChapter5Pub.pdf.

Dynamics of Sexual Assault and the Implications for Immigrant Women

of sexual assault can be improved by enhancing collaborations between the healthcare community, sexual assault advocacy groups, and immigrant groups. Healthcare providers can (and may be required to) provide interpreter services and translated materials for LEP immigrant victims of sexual assault.¹⁰⁴

Misconceptions About The Legal System¹⁰⁵

Language issues, privacy concerns, shame, self-blame, and culture can present significant barriers to an immigrant sexual assault victim's ability to access services.¹⁰⁶ Beyond these factors, immigrant victims of sexual assault may not access services for which they are eligible because of misconceptions about the American legal and social service system. Immigrant victims of sexual assault may see the United States legal system not as a resource to help them address their victimization, but as an entity that will believe and protect the perpetrator. It may be hard for a victim to trust law enforcement, prosecutors, and the American judicial system. Even if a victim is willing to discuss the sexual assault(s) with men and women she does not know, such as law enforcement and prosecution authorities, it may be difficult for her to trust that they will act in her best interest. Indeed, since the prosecution represents the state and not the victim, their goals and priorities may not always be consistent with hers. This is most obviously the case when the state compels a reluctant victim to testify about her assault or subpoenas confidential documents (such as counseling, rape crisis, or medical records) to support the prosecution. Conflicts arise in other contexts, too.

If a victim's country of origin functions on a system in which law enforcement, government officials, and the judiciary all function within a repressive government, she may be understandably skeptical that the United States legal system will be any different, and will offer her protection. Institutional gender bias in victims' home countries can further misconceptions about the way the American legal system will treat their claims. An immigrant victim of sexual assault may come from a legal system where, as a matter of law, a husband's sexual assault of his wife is not unlawful, where a woman's testimony is not considered valid evidence, or her word does not have the evidentiary weight of a man's.¹⁰⁷ She may mistakenly believe that she cannot be granted legal protection if she does not have money or a legal immigration status. Distrust of the legal system may be heightened for sexual assault victims from countries where law enforcement officers and government officials are notoriously known for being participants in and perpetrators of institutionalized violence against women, including trafficking and rape as a means of social control, torture or ethnic genocide.

Finally, a sexual assault victim's misconceptions about the U.S. legal system may be magnified because she maintains a view of the legal system that was shaped by the perpetrator of the assault. Perpetrators will sometimes threaten victims through a variety of means, including threats of physical or legal harm. A perpetrator may threaten an immigrant victim that she will be ignored or even deported if she approaches the authorities. An immigrant victim of intimate partner sexual assault may be especially vulnerable in this regard if the perpetrator controls her access to accurate or outside information. Immigrant sexual assault victims may be cut off from other sources of information by language and cultural barriers, and as a result they may believe this misinformation.¹⁰⁸

¹⁰⁴ See e.g. U.S. Department of Health and Human Services, Office of Civil Rights., Effective Communication in Hospitals at <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/hospitalcommunication/index.html> U.S. Dept. of Health and Human Services, *Bridging Language and Cultural Barriers Between Physicians and Patients*, 112 PUB. HEALTH REP., 410-417 (September/October 1997).

¹⁰⁵ This section is adapted from *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*, Legal Momentum, Orloff, L.E. et al., Eds. (2004).

¹⁰⁶ See Somashekhar, S. *Abuse in the Land of Promise; For Immigrant Women Caught in Violent Relationships, Escape is Especially Difficult*, The Washington Post, October 2005. See Mindlin, J.E., and Vickers, S. H., *The State of Sexual Assault Law in the United States*, Victims Rights Law Center, Inc., 10, (2007). See generally MN Coalition Against Sexual Assault Training Manual, *Victimization Within Distinct Communities*. See Foo, L. J., *Asian American Woman: Issues, Concerns, and Responsive Human and Civil Rights Advocacy*. Ford Foundation, 134-5, (2002). See generally Women of Color Network. *Domestic Violence in Communities of Color*, 5, (2006). Available at http://womenofcolornetwork.org/Fact_Sheets/DVFactSheet.pdf

¹⁰⁷ *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination – A Report of the United States Commission on Civil Rights*, 75 (January 1993). (Referencing Leslye E. Orloff's testimony before the Round Table Forum on Hispanics in the Courts, November 2, 1991.)

¹⁰⁸ Orloff, L.E., et al., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 55

Dynamics of Sexual Assault and the Implications for Immigrant Women

Advocates and attorneys can assist immigrant victims of sexual assault by educating them about sexual violence and their rights, including accessible information and education about how our legal system works. In order to inform immigrant victims of their rights and make them comfortable with the legal system, advocates and attorneys must be familiar with the full range of services and legal options available to immigrant victims of sexual assault.

An advocate or attorney should work to make a client more comfortable with the United States legal system, which will most likely differ from the legal system in her home country. A lawyer or advocate working with an immigrant sexual assault victim who will be testifying in court or filing affidavits in an immigration case should make it especially clear to her that her testimony has value in this country. If a victim of sexual assault chooses to go through the legal system, to alleviate the immigrant victim's fears about testifying and the court process, the advocate or attorney should offer to take her to court to observe the proceedings so she knows what to expect, and so that she can see other women in the roles of judge, juror, lawyer and witness. The victim should also be prepared to discuss the intimate details of the sexual assault in front of a judge or jury. It may also be helpful for a victim to observe other victims successfully securing legal remedies relief from the court. Advocates and interpreters should be available to accompany immigrant women going to court, and lawyers should be present to represent them. Legal representation may be especially important if the perpetrator is represented by counsel, if the victim and the prosecution have conflicting interests, if a victim is seeking to enforce her constitutional or statutory crime victim rights, if a victim's privacy rights are implicated, or if a hearing outcome has significant immigration consequences. Advocates and attorneys can also show sexual assault victims that there is more than the criminal prosecution response to rape. To the contrary, many civil legal responses are available. Often these remedies are not as invasive as the criminal system and can provide real-time accommodations that give victims the time, space and safety they need to focus on other areas. Not surprisingly, victims who are concerned about food, housing, education, employment, and safety and other basic needs cannot adequately focus on being a witness or engaging in more complicated legal battles until those needs are addressed.¹⁰⁹

Fear of Removal (Deportation)¹¹⁰

Fear of deportation is a barrier to immigrant victims seeking any type of aid after experiencing sexual assault. The fear of deportation affects both immigrant victims who are legally present in the United States as well as those who are undocumented or out of status.¹¹¹ In cases of marital rape, many immigrant victims of sexual assault fear deportation because their relationship to the perpetrating spouse may be the basis of their eligibility to reside legally in the United States. If the victim is undocumented and is being sexually assaulted by an abusive spouse who is a citizen or legal permanent resident, he may use his immigration status as a tool for perpetrating sexual assault and for keeping his victim from seeking help. An undocumented immigrant woman who is sexually assaulted by a nonintimate partner may also be afraid to report the rape to police, out of fear of being deported. This is particularly true when the perpetrator is in a position of authority over the victim (e.g. an employer, supervisor, or professor).

Even a victim who is legally present in the United States may have immigration-related fears and vulnerabilities. For example, a victim who is in the U.S. on a work or student visa may face loss of immigration status if she quits her job or school because of an assault, or takes an extended leave of absence.

The fear of being turned over to immigration authorities and being placed in removal (deportation) proceedings deters immigrant sexual assault victims from seeking help from police stations, rape crisis shelters, counseling

(2003); ROBIN L. CAMP, ET AL., *UNTOLD STORIES: CASES DOCUMENTING ABUSE BY U.S. CITIZENS AND LAWFUL RESIDENTS ON IMMIGRANT SPOUSES* (1993).

¹⁰⁹ For a detailed, chapter by chapter discussion of civil remedies for sexual assault victims, see the VRLC manual, *BEYOND THE CRIMINAL JUSTICE SYSTEM: Using the Law to Help Restore the Lives of Sexual Assault Victims A Practical Guide for Attorneys and Advocates*, Jessica E. Mindlin and Susan H. Vickers, Eds. (2008), available online at www.victimrights.org.

¹¹⁰ This section is adapted from *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*, Legal Momentum, Leslye E. Orloff, et al., Eds. (2004).

¹¹¹ Raj, A., Silverman, J., *Violence Against Immigrant Women: Roles of Culture, Context and Legal Immigrant Status on Intimate Partner Violence*, *Violence Against Women*, Vol 8. No. 3, 385-387 (2002)

Dynamics of Sexual Assault and the Implications for Immigrant Women

programs, and the courts.¹¹² Although sexual assault programs (non-profit or government sponsored) and justice system agencies generally have no federal obligation to inquire about the immigration status of sexual assault victims, many victims believe that if they seek help they will be turned in to the immigration authorities by the agency's staff.¹¹³ In some cases, these fears may be well grounded. Thus it is imperative that lawyers and advocates serving immigrant victims be familiar with the practices in their local communities.¹³⁸

Immigrant sexual assault victims who do seek help from justice and social service systems may also be discouraged or frightened if they are asked questions about their immigration status. Word of mouth in immigrant communities can easily spread this information from woman to woman and keep other immigrant women from seeking help.¹³⁹ If a provider questions a victim about immigration issues, it is important to explain (if accurate) that the agency does not discriminate on the basis of immigration status, does not share information with immigration authorities, and why the information is important (e.g., the agency wants to make sure it has accurately assessed the victim's needs in order to provide the most effective and appropriate services possible.)

Although there are now provisions that provide access to legal immigration status for some immigrant victims, many isolated sexual assault victims, and those who serve them, are unaware of these options. These provisions include the crime victim (U) visa, trafficking victim (T) visa, battered spouse waiver for sexual assault victims who are married to the perpetrator, and immigration remedies available through the Violence Against Women Act (VAWA). VAWA allows spouses and children of lawful permanent residents and United States Citizens to file a "self petition" if they can prove that the relationship of good faith, that the petitioner has been abusive, and that the self-petitioner is of good moral character. A Battered Spouse Waiver helps lawful conditional residents who would otherwise have two years, who have suffered abuse, by allowing them to file for full lawful permanent residency then abusers without help or knowledge and without having to wait two years.¹¹⁴

How Service Providers Can Better Aid Immigrant Sexual Assault Victims

While there may be cultural differences between an immigrant victim's culture and American culture as a whole, it is important for service providers not to make any stereotypical assumptions about culture. Service providers should work with clients to help them break their isolation by developing support networks they can trust. One of the best ways to do this is to identify and connect victims with women's groups in their own community.¹¹⁵ This has also led immigrant women to work together on sexual assault issues in their communities, leading to the formation of more immigrant women's groups. Community-based sexual assault crisis services are essential

¹¹² See generally Dutton, M.A., *Battered Women's Strategic Response to Violence: The Role of Context, in Future interventions with Battered Women and their Families*, 105, Edelson, J.L., Eisikovits, C.A., Eds. (1996). Strum, P., and Tarantolo, D., *Women Immigrants in the United States*, Woodrow Wilson International Center for Scholars, Washington D.C, 49-5, (2002). See Mindlin, J.E. and Vickers, S. H., *The State of Sexual Assault Law in the United States*, Victims Rights Law Center, Inc., 6, 11-12, (2007)

¹¹³ Nonprofit non-governmental programs have no obligation to inquire into, or report, victim's immigration status. See also AG Order No. 2170-98. 63 FR 41664 (Aug. 4 1998). Law enforcement officers in virtually all jurisdictions (except Dade County Florida and Alabama at the time of this writing) have no federal obligation to ask about the immigration status of crime victims when the police are called for help. Orloff, L.E., Dutton, M.A., Hass, G.A., Ammar, N., *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 7 13 UCLA WOMEN'S L.J. 43, 89 (2003). The only agency staff required as a matter of federal law to ask about immigration status and report persons known to be in the U.S. unlawfully are the staff of certain public benefits-granting agencies (e.g. TANF, Food Stamps, Medicaid, SSI). Interim Guidance Verification of Citizenship, Qualified Alien Status, and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 62 Fed. Reg. 61344, 61345 (1997).¹³⁸ Advocates and attorneys working with immigrant victims need to know their local police departments practices regarding inquiring into the immigration status of victims so that they can effectively undertake safety planning with immigrant victims. Some jurisdictions have entered into 287(g) agreements with the Department of Homeland Security under which local law enforcement officers are deputized to undertake enforcement of immigration laws. To determine whether any law enforcement agency in your jurisdiction have signed 287(g) memoranda with the Department of Homeland Security see http://www.ice.gov/partners/287g/Section287_g.htm. For information on government benefits granting agency reporting requirements see Chapter 16 of this manual *Access To Programs And Services That Can Help Victims of Sexual Assault*.¹³⁹ See *supra* note 80 at 385.

¹¹⁴ For further discussion of each of these forms of immigration relief see the relevant chapters in this manual. VAWA Selfpetitioning, (Chapter 7); VAWA Cancellation of removal (Chapter 9), U-Visa (Chapter 10) and T-visas (Chapter 11). For a discussion of battered spouse waivers see Chapter 3.5 in Leslye Orloff and Kathleen Sullivan, *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, 2005).

¹¹⁵ Research data (2002) is pending publication, available from Dr. Rachel Rodriguez, University of Wisconsin Madison, School of Nursing.

Dynamics of Sexual Assault and the Implications for Immigrant Women

because they can help lessen the secrecy and shame surrounding sexual violence. Through raising awareness and encouraging openness, they can help respond to and hopefully prevent sexual violence in future generations.¹¹⁶

Community organizations can also encourage victims to talk about their experiences, provide counseling, and offer medical, legal and educational advocacy for victims, as well as provide advocacy and support through the criminal and civil justice process. Support networks for sexual assault victims can serve as a vehicle for emotional support and also establish social relationships with other victims; they can play a critical role in each woman's healing and recovery. Support groups can be an important complement to individual therapy sessions. As noted above, these support groups may meet under the auspices (or guise) of other traditional female-only gatherings, such as ESL lessons, cooking groups, sewing circles, or other family-oriented events.

Often, a sexual assault victim will disclose an assault to one individual or provider only. Depending on the response the victim receives, further disclosure may not be readily forthcoming. The police, religious advisors, domestic violence and rape crisis programs, and medical providers are among the service providers that immigrant victims of sexual assault most often encounter if they are seeking help. Too many of these providers have not yet established the capacity to respond to immigrant victims of sexual assault.

Conclusion

Immigrant victims of sexual violence face a complicated set of challenges. They must endure not only the trauma of the sexual assault, but also the fear and difficulties of working with the American legal, medical and social service systems. Immigrant victims need improved access to these systems that are designed to serve them. Advocates, attorneys, immigrant community-based organizations, rape crisis centers, domestic violence programs, and other service providers are essential to combating sexual violence because of their proximity to both the systems that are designed to improve the lives of sexual assault victims, and to the victims themselves. To make program services most accessible to immigrant victims, collaboration among professionals is essential. By collaborating, organizations can help provide support for allied organizations that may have limited expertise on immigrant victims' legal rights or on sexual violence issues. Immigrant rights organizations need to provide training to rape crisis and other anti-sexual violence agency staff on immigration laws and cultural issues. In turn, sexual assault program staff should educate and train immigrant rights organizations and other community groups about sexual violence. Together, these community partnerships can form the basis for a comprehensive support network that addresses the needs of immigrant sexual assault victims.

¹¹⁶ Minnesota Dept. of Health- *A Place to Start: A Resource Kit for Preventing Sexual Violence*, available at <http://www.health.state.mn.us/injury/pub/kit/Commrefugee.pdf>. ¹¹⁵ Raquel Kennedy Berger, *Marital Rape*, VAWnet, available at http://new.vawnet.org/Assoc_Files_VAWnet/AR_MaritalRapeRevised.pdf (1999).

Dynamics of Sexual Assault and the Implications for Immigrant Women

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