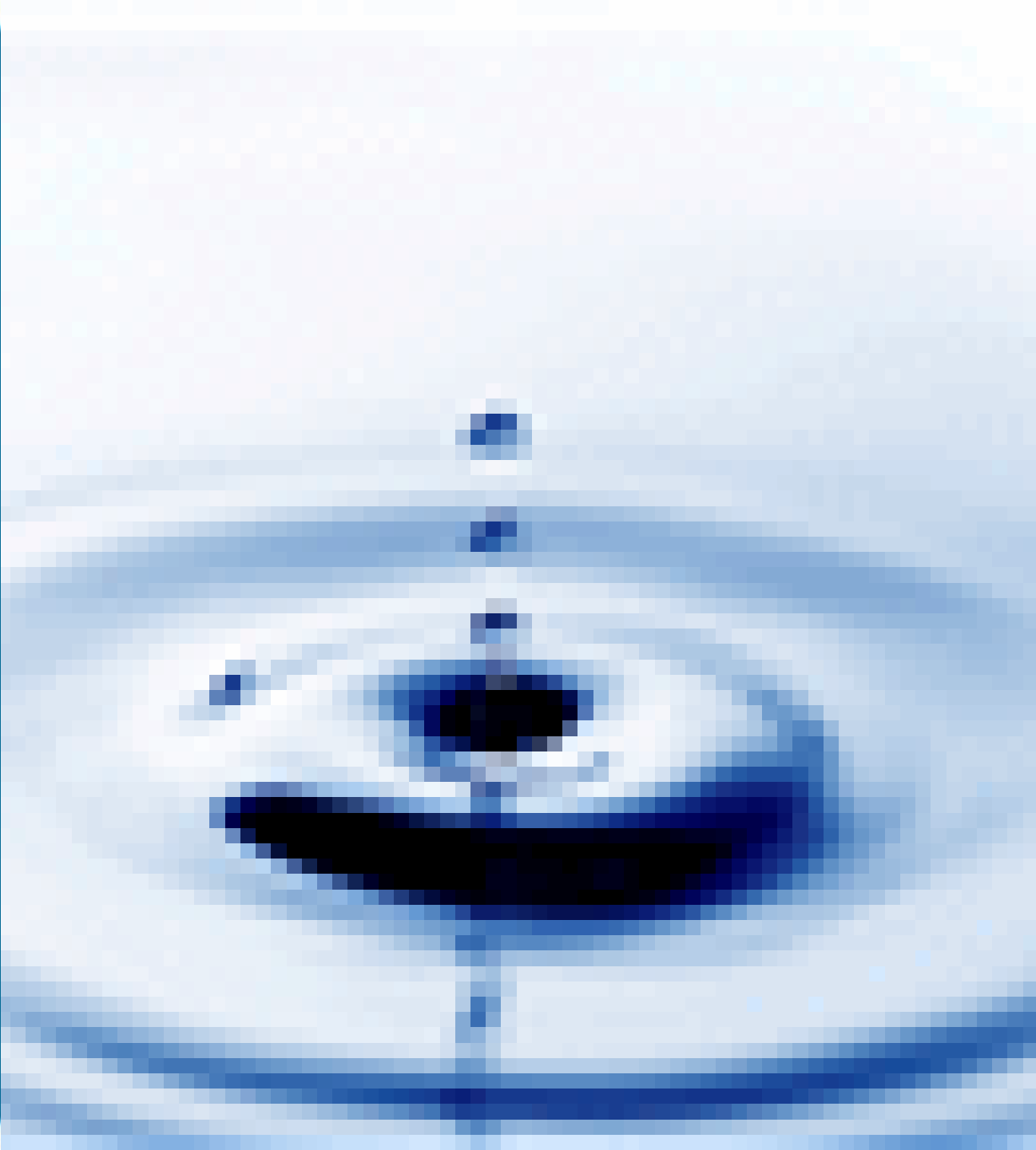




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Justice Is More than Jail

Why (& How) Lawyers and Advocates Can Use Existing Civil Laws to Meet Immigrant Sexual Assault Survivors' Most Critical Needs

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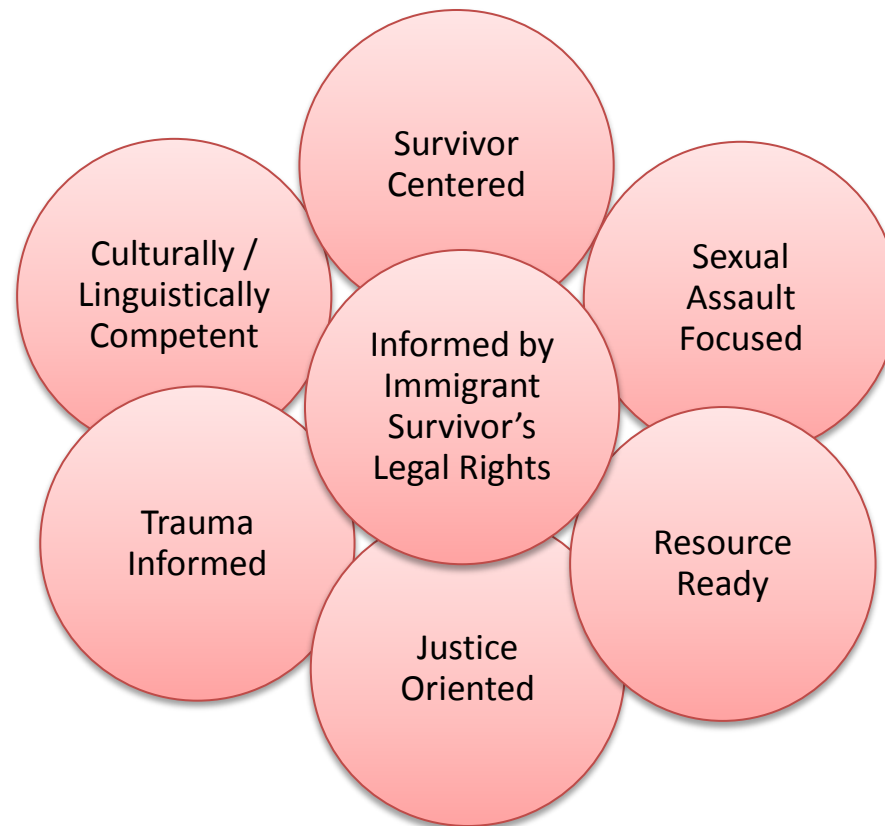
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Presentation Objectives

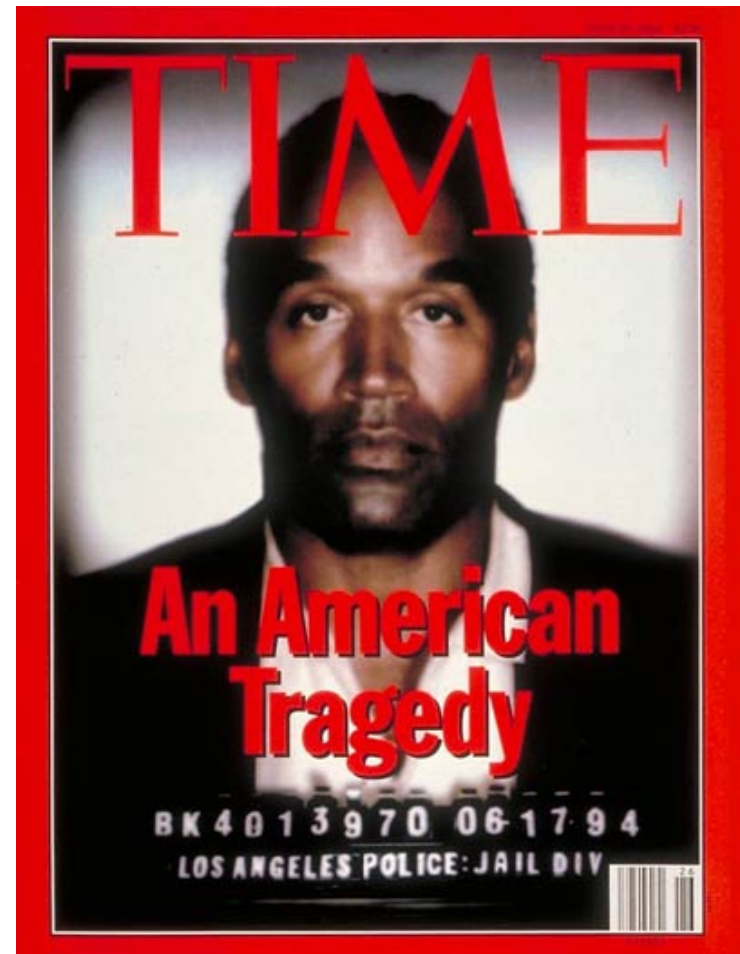
Participants will be able to:

- Identify 2 differences between the needs of DV victims and the needs of SA survivors
- List 3 reasons the criminal justice system *alone* cannot meet SA survivors' needs
- Identify at least 4 laws that can be used to meet SA survivors' needs.

Providing Holistic Services to Immigrant Sexual Assault Survivors Means Being:



SA ≠ DV





- Ent

““Following ten unsolved sexual assaults in the area since March, officers have started stopping women on the street to chat about their wardrobe choices. . . . [A]n officer, ‘pointed at my outfit and said, “Don't you think your shorts are a little short?””

Judge:“When you went out with this boy, did you have on tight jeans and a midriff top?”

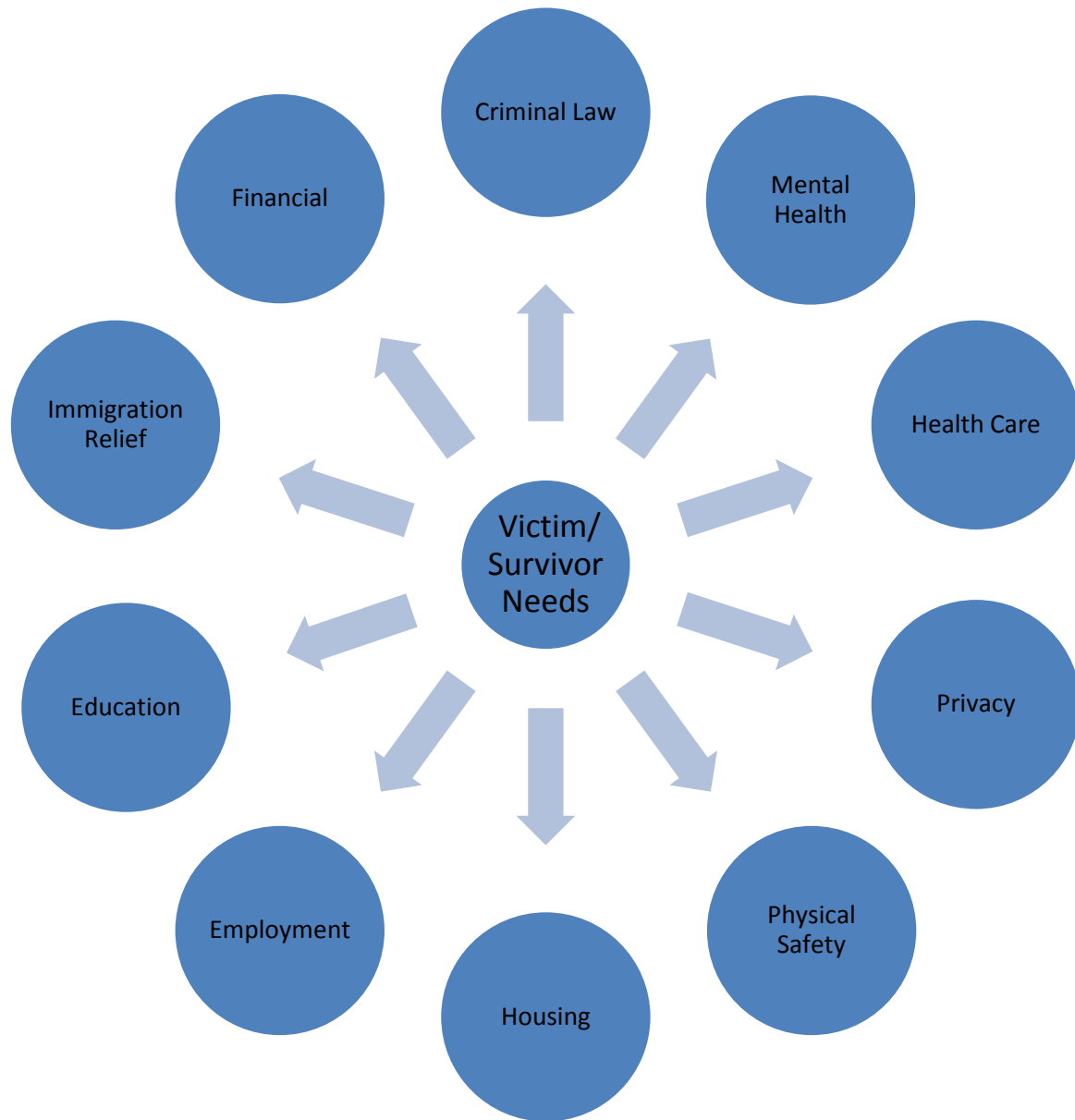
“It wouldn't have happened if he'd just gone and paid for a prostitute.”



What Do Immigrant Sexual Assault Survivors Need?

How Can the Law Help Meet Those Needs?





SA and the Criminal Justice System

- Most rape victims don't report the crime
- Why might immigrant victims, in particular, not report?

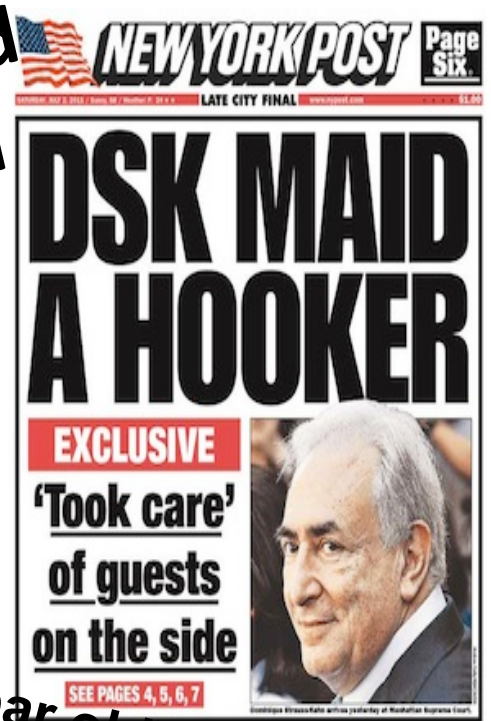


Most SA Victims Don't Report



Houston cop handcuffed and raped immigrant in police cruiser.

Phoenix police said the [8-year old] victim's parents, who are refugees . . . said the girl brought shame to their family.



Only 16% to 25% of rape victims report the crime to law enforcement.

Even When Victims Do Report . . .



- A rape prosecution is more than twice as likely as a murder prosecution to be dismissed
- $\frac{1}{4}$ of convicted rapists serve no prison time
- $\frac{1}{4}$ serve 11 months or less in jail
- A convicted rapist is 50% more likely to receive probation than a convicted robber

What Else is There?

WHAT ELSE
IS THERE
TO DO?



**Beyond
The
Criminal
Justice
System**



Spot the Issue

**Offer / Help
Pursue Solutions**



SCENARIOS



Identify Privacy Concerns



PRIVACY QUESTIONS

Who knows about the sexual assault?

Are there some people it's safe for you to tell?

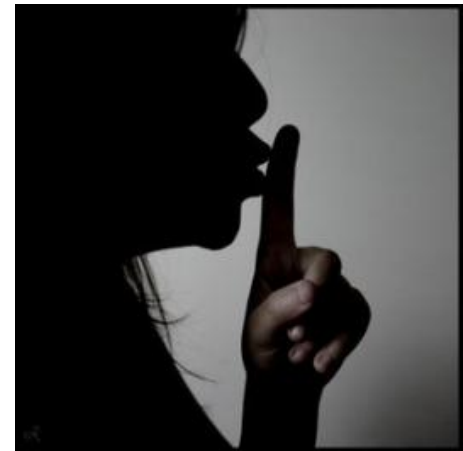
Are there certain individuals you want to make sure do not find out?

What information are you most concerned about keeping private?

Cultural, linguistic or religious communities can have an impact.



Protecting Victim Privacy: What an Advocate Can Do



- Identify what information survivor wants to keep private.
 - Discuss electronic communications (Face Book, 4square, texting, etc.)

- Discuss (*before* disclosures):
 - Privileges (attorney, therapist, advocate, doctor, etc.)
 - Limits on survivor's privacy rights
 - Confidentiality of records
 - VAWA Confidentiality in immigration cases

- Be familiar with your own reporting obligations!



Protecting Victim Privacy



■ Be Proactive!

- Accompany/support victim through defense interviews
- Ask court to seal the court record during and after case
- Ask to have confidential documents returned at close of case;
- Exhibits sealed;
- Courtroom be closed/witnesses excluded (if allowed);
- Permission to file with initials or pseudonym;
- Review records before release is executed for additional review
- Request notice from 3rd party (such as a medical provider) if subpoena received

■ Remember your obligations under VAWA

Discretionary reporters are not allowed to breach privacy under VAWA

Privacy-Related Laws

- VAWA (incl some immigrant-specific)
- HIPAA
- FVPSA, VOCA, etc.
- FERPA
- State Specific
 - Privileges (under federal law, too)
 - Landlord
 - Employment
 - Health care





Identify Physical Safety Concerns



SAFETY QUESTIONS

Do you know the perpetrator? If yes, how?

Are you afraid that the perpetrator will attempt to harm you again?

Has the perpetrator attempted to contact you or your family since the assault?

Promoting Victims' Safety: What Can An Advocate Do?

- Safety Planning (include Interpreter/safety issues)
- CPOs DV, Stalking, SAPO, Vulnerable Adult)
- School, housing or landlord NCOs
- General no trespass order
- Federal & State Laws
 - Housing, employment, education, medical/forensic care access





Workplace Safety

- Practical Safety Accommodations
- What does the victim want/need?
- Title VII or state law remedies?
- ADA
- Leave laws
- Practical Safety Accommodations
- Safety & other issues for H-2 Visa Immigrants





Examples of Relevant State Laws

- **Workplace Leave:**
 - Oregon ORS 659A.290 Employees who are victims may not be discriminated against in the workplace; requires employers to provide victims reasonable workplace safety accommodations and reasonable time off from work to address safety matters.
- **Workplace Safety/Stay-away Orders**
 - Colo. Rev. Stat. 13-14-102(4)(B): Upon finding that imminent danger exists to the employees of a business entity, [a court] may issue a civil restraining order in the name of the business for the protection of the employees.



Additional Factors to Consider

- What if anything does survivor know about the perpetrator? Vice versa?
- Where does the survivor feel unsafe/vulnerable?
- Address emotional safety
- “Walk” through the survivor’s day
- Don’t overlook practical solutions
 - Schedule / route change
 - Relocation

Identify Immigration Concerns



IMMIGRATION QUESTIONS

Undocumented or victims with temporary status (e.g. student visa):
Have you reported the assault to law enforcement?

Would you like more information about immigration remedies that might be available to victims of domestic and sexual violence?

Victims with legal status

Would you like to speak to an immigration attorney to understand how the sexual assault may impact your immigration status in the United States?

Addressing Immigration Concerns: What an Advocate can Do

- Use tools from NIWAP to screen for immigration relief:
 - T and U visa remedies
 - Deferred action
 - VAWA Self petitions
 - Special immigrant Juvenile Status
 - Use red flag list to decide if attorney is needed
- Assist with collecting documentation for applications
- Assist with law enforcement certification
- Identify free and low-bono attorneys in your state with immigrant survivor expertise who can help clients who require attorney assistance



Identify Financial Loss Issues



FINANCIAL STABILITY QUESTIONS

How / Has the assault impacted you financially?

Were you working before the assault and are you working now?

Did you suffer out of pocket costs because of the assault (such as medical care, counseling, lost financial aid, lost wages, etc.)?

Can you access the medical & other assault-related care you need?

Help Mitigate Financial Losses

- General Public Benefits
- Victim-specific benefits:
 - Restitution
 - Crime Victim Comp (available except in NV and AL)
 - UI (or workplace)-specific laws.



E.g., Montana 39-51-2111: An individual may not be denied unemployment benefits because the individual left work or was discharged because of circumstances resulting from the individual - or his/her child - being a victim of domestic violence, a sexual assault, or stalking.

Identify Housing Concerns



Housing Questions

Do you feel safe at your home?

Do you want to relocate (or would you rather remain where you live now with added safety precautions)?

Do you want/need to move for other reasons?

How are housing options affected by immigration status?

Protecting Housing: What a Lawyer or Advocate Can Do

- **Gather information: In what kind of housing does the survivor live?**
 - Owned or rented? House, apartment?
 - Public or private? Gov't subsidized?
 - Homeless? Couch surfing? Shelter? Transitional housing?
- Educate tenants/landlords about sexual assault protections
- Negotiate with landlords
 - Additional security (locks, lighting, parking, service animals)
 - Early lease termination
 - Housing transfers
 - May be a “reasonable accommodation” for a person with disabilities
 - Move on or off campus
 - Move to another unit owned by landlord
 - Evict perpetrator
 - Particularly important with immigrant survivors





Protecting Housing, cont.

- Victim-specific protections
 - Break the lease
 - Change the locks

- Fair Housing laws

- VAWA & Federal Housing \$

- Undocumented immigrant access to
 - Emergency shelter -- risk of homelessness
 - Transitional housing for up to 2 years

SA IMPACTS EDUCATION



EDUCATION QUESTIONS

Is the perpetrator a fellow student or faculty member?

If you have disclosed the assault to any school authorities, what was the response?

Have you had any difficulties at school since the assault? Do you feel safe there?

Effect of leaving school on student visa?

Access to post secondary educational grants and loans

What We Often See in the Educational Context:

- School Absences
- Dropping Grades
- Drop out/Fail out—long term effects
- Class schedule, elective choices, clubs, extra-curricular activities
- Financial Aid/ Tuition Loss
- Interference with academic, social and cultural experience
- Housing / Safety Issues
- Post Academic Career
- Risk losing student visa



EDUCATION LAWS WE USE THE MOST

- Title IX
- NCLB
- Disability-related Accommodations
 - IDEA
 - Section 504
- DOE policy on post secondary educational grants and loans for immigrant survivors and their children



Advocating for V's Education Rights



- Request accommodations
- Identify / monitor compliance with school's policy
- Assist with disciplinary hearing process
- Help with OCR Complaint if school response was not prompt and equitable
- Screen for VAWA or U visa immigration relief which could lead to permanent legal status and access to post secondary educational grants and loans

Some Tips for School Advocacy

- School may not suspend its own investigation pending outcome in criminal case without protecting the victim
- If defendant has right to counsel at the school hearing then victim must be afforded same right.
- Victim has right to know outcome of the hearing. Victim cannot be required to keep outcome confidential.
- Is student eligible for services under IDEA or Section 504?
 - Request copy of IEP if one in place
 - Determine whether to request if none exists
 - (If offender is on IEP consider whether to request Interim Alternative Education Setting – 45 day max)

Identify Employment Concerns



EMPLOYMENT QUESTIONS

Is the assailant a coworker or supervisor, or someone who comes to your workplace?

If you reported the assault to your employer, what was the response?

Do you want to take time off? Do you want to stay at work? Do you want to relocate to a different office, change your schedule, etc.?

Is your immigration status tied to your employer?
How does lack of legal work authorization play a role?

Useful Employment Laws

- Title VII / State equivalent
 - EEOC Complaint
 - EEOC's help for immigrant victims
 - Case list
 - Private cause of action
- FMLA / State equivalent
- ADA



Protecting Employment Rights: What an Advocate Can Do

Screen for:

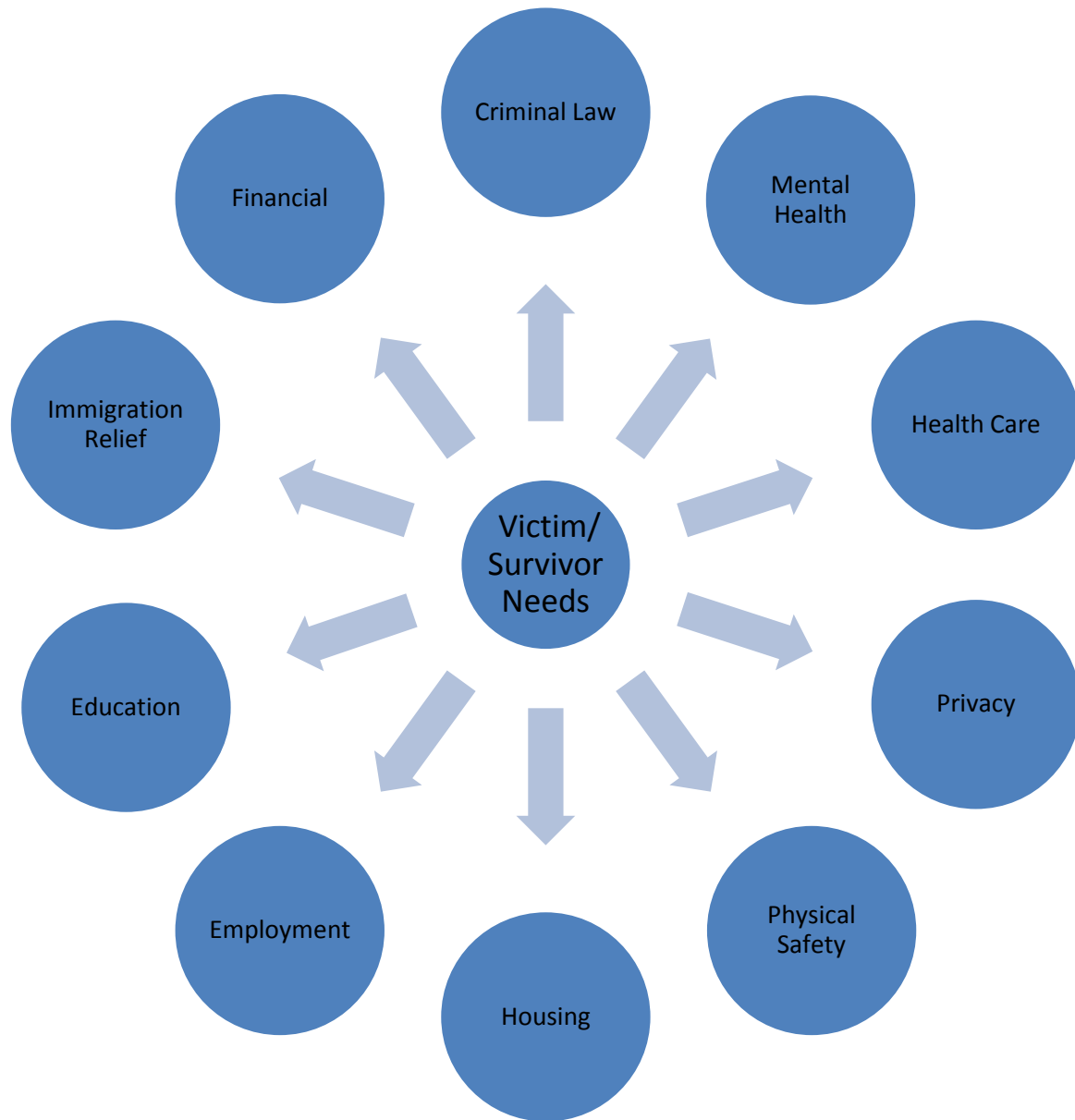
- Employment-related sexual assault (perpetrator is a co-worker, supervisor, customer, etc.)
- Job performance is suffering because of impact of sexual assault
- Survivor needs time off to obtain services related to the sexual assault (civil or criminal legal issues, mental health, medical, safety planning, etc.)
- Screen and apply immigration remedies early
 - Brings access to legal work authorization
- Gather information—find the employer’s policies, employment file, union policies if applicable
- Safety plan at work

Protecting Employment Rights, Cont.

IF THE ASSAULT IS WORKPLACE-RELATED:

- ❖ Refer survivor to an employment attorney to file a discrimination charge/lawsuit (Federal Title VII) with EEOC or state with Bureau of Labor & Industry (BOLI) in order to:
 - Transfer perpetrator
 - Fire perpetrator
 - Address workplace retaliation
 - Create safer work environment/sexual harassment training
 - Compensate survivor for emotional suffering \$\$

- ❖ IF THE SURVIVOR'S JOB PERFORMANCE IS SUFFERING, ADVOCATE FOR:
 - Disability leave
 - Unemployment insurance
 - federal public benefit qualified immigrants receive
 - Vacation / Sick time / Personal leave
 - Reasonable accommodations





**Thank you
for the work
you do!**



VRLC IS THE PLACE FOR RESOURCES!

- Issue spotting intake forms and instructions
- Letter to a landlord, to an employer, etc. requesting accommodations
- Sample motions to Quash a Subpoena
- Training materials (powerpoints, “quizzes,” etc.)
- Mandatory reporting flow chart
- Safety Plans for Farmworker victims
- Sample Candor script
- Demand letter re: Consumer issues

* *We also provide free legal services throughout Mass. and in the Portland, Oregon, area. Contact us!

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Contact NIWAP

- Technical Assistance
 - Call 202.274.4393
 - Email questions [@niwap.org](mailto:niwap@wcl.american.edu)
- Materials on U-visa and Immigrant Victims Legal Rights
 - Visit <http://wcl.american.edu/niwap>