

The Law, Policy and Politics of Protecting Immigrant Victims of Domestic Violence

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Why Is VAWA Important

- Historically bipartisan support
 - Prosecute perpetrators
 - Improve community/ police safety
 - Protect victims
- Example where advocates, attorneys, grassroots
 - Work together to make a difference

What VAWA has done?

- VAWA self-petitions approved = 68,461
- U-visas approved = 35,250
 - Children included in U-visa applications
 - 19,755

Pre-Violence Against Women Act 1994

- Little access to court and victim services
- Limited practical ability to attain criminal justice system help
- No independent access to legal immigration status
- Few programs nationally helping immigrant victims
- No language access to services or government help
- Few programs serving immigrant victims

Bipartisan Bill

Designed to Help All Victims

- Underserved populations
 - Communities of color
 - Disabled
 - Aliens
 - Limited English Proficient
 - Rural communities
- Immigration relief key component of legislation
- All parts of VAWA included all populations

Reason VAWA Works for Immigrant Victims

- Removes deportation barrier
- Improves victim safety
- Brings legal work authorization
 - path to economic independence
- Help victims maintain custody of children
- Increases access to victim services
- Increases willingness to call police
- Increases victim's ability provide assistance in the detection, investigation and/or prosecution of crimes

Key Role of the DHS VAWA Unit

- For Immigrant Victims Addressing Deportation Risks
Critical First Step
- VAWA funding led to development of model justice system programs that effectively serve victims
- In developing the VAWA Unit – DHS followed this enlightened model
- Successful VAWA unit meets dual goals
 - Granting VAWA immigration protection to abuse victims who qualify
 - Denying fraudulent applications
- Model for responsiveness to the needs of victims – good working relationships with victim advocates

*How VAWA's Immigration
Protections Became Law–
Documentation of the
Problems Faced by Battered
Immigrants*

Key Role of the National Network 1992-2011

- Founded by:
 - Ayuda/Legal Momentum/NOW Legal Defense
 - Family Violence Prevention Fund
 - National Immigration Project of the National Lawyer's Guild
 - Asian Law Caucus
- Grown from 15 groups in 1992,
to 25 groups in 1994, to over 3000

Collaborative Legislative Advocacy

- Battered Spouse Waiver – 1990
- Violence Against Women Act – 1994
- Carve outs and benefits access for battered immigrants in the 1996 Welfare and Immigration Reforms
- Access to Legal Services for Battered Immigrants-1997
- Violence Against Women Act 2000
- Victims of Trafficking Protection Act 2000
- Funding for INS processing of domestic violence crime victim and trafficking cases 2001
- Violence Against Women Act of 2005
- International Marriage Broker Regulation Act of 2005
- Trafficking Victims Protection Reauthorization Act of 2008
- Health Care Reform – Lawful Presence

Keys to Success

- History providing direct services
- Developing trust – honesty
- Drafting for staffers
- Developing coalitions
 - National Network on Behalf of Battered Immigrant Women
 - Freedom Network
 - Researchers, advocates, attorneys
 - Community based and Faith based
- Documentation of Need

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those married to citizens and lawful permanent residents – 50.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for victims:
 - 72.3% never file immigration papers.
 - The 27.7% who did file had a mean delay of **3.97 years**.
- 65% of immigrant victims report some form of immigration related abuse (NIJ)

Immigration Related Abuse as a Lethality Factor

- **10 times higher** in relationships with physical/sexual abuse as opposed to psychological abuse
- Lethality factor can predict abuse escalation
- Corroborates existence of physical and sexual abuse

Lobbying Approach

- Collaboration
- First meeting with staffers
- Domestic violence groups take the lead
- Immigrant rights groups provide technical support
- Documenting the need
 - Stories
 - Research
 - Technical assistance
 - Training
- Countering anti-immigrant sentiment
- Grassroots role
- Remaining in the work after passage

Similar Approach Led to Agency Policy Success

- VAWA regulations
- Creation of the VAWA Unit
- U-visa regulations
- T and U adjustment rule
- Waivers of Fees
- DHS/ICE VAWA Confidentiality Implementation

VAWA Confidentiality

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

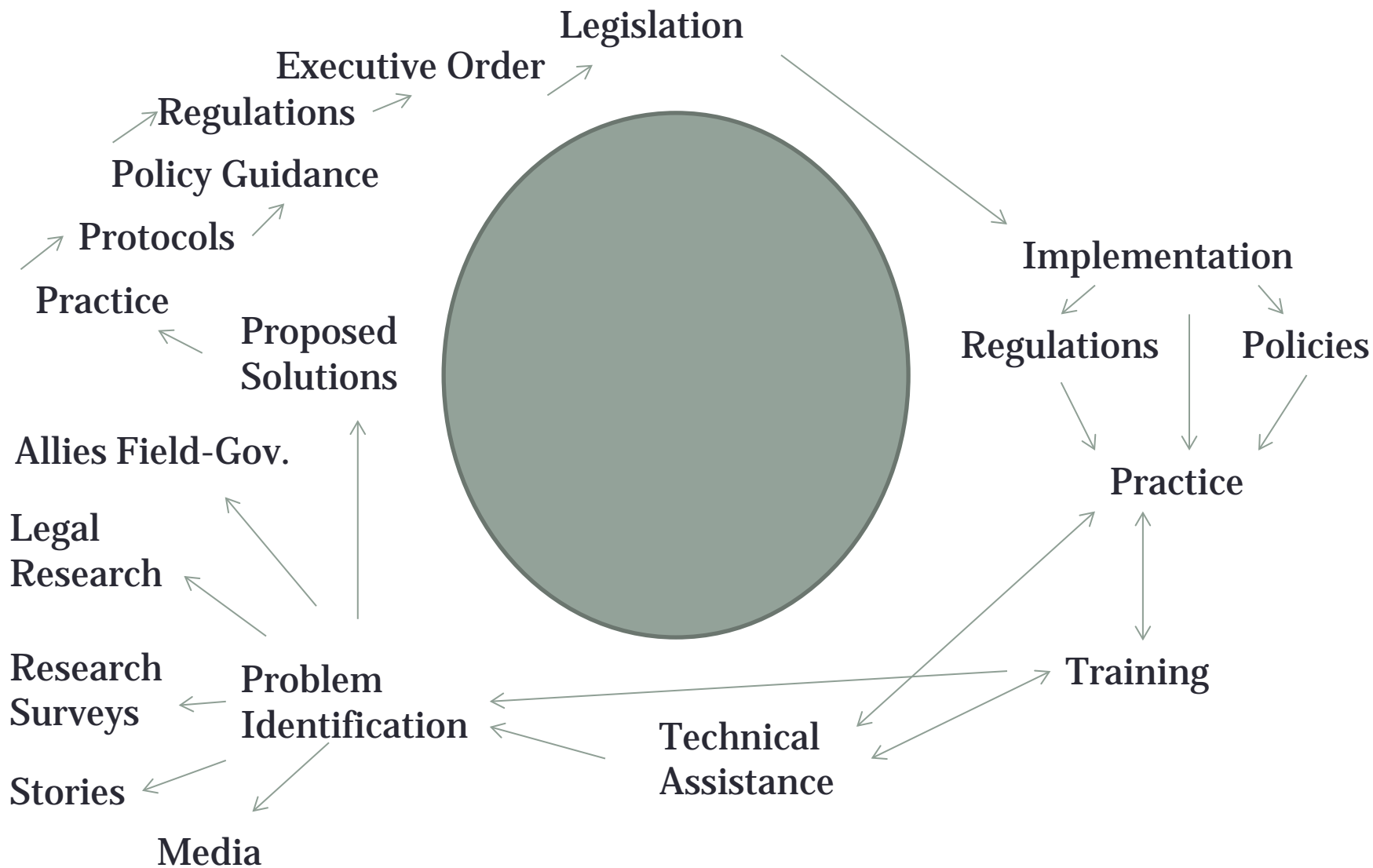
Location Prohibitions:

Immigration judge to dismiss case if any part of an enforcement action occurs at:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking

Policy Guidance Success

- Programs necessary to protect life and safety 1996
- Access to shelter and transitional housing for up to 2 years 2001
- Access to HHS funded health care 2001
- Post secondary educational grants and loans for VAWA self-petitioners 2010



DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement may have on the willingness and ability of
 - Victims of crime
 - Witnesses to crime
 - Individuals pursuing legitimate civil rights complaints
 - To call the police and pursue justice
- Designed to stop immigration officials from acting
 - When local police make dual arrests
 - Leading to victims being arrested and having their fingerprints turned over to DHS



DHS Memos

- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.2010)
 - Prosecutorial discretion for crime victims (6.17.2011)
- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.2011)
 - Protections for immigrants who came to US as children (6.15.2012)
- Humanitarian Release (2007-2008)
 - Breastfeeding mothers
 - Sole/primary caregivers of children

Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: US high school/college
- Person/close family, veteran/military particularly combat*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness*

Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long time lawful permanent residents
- Likely to be granted immigration relief as
 - spouse, child of a citizen of lawful permanent resident
 - Domestic violence, trafficking or victim of other serious crime
 - Crime victim
 - Asylee/refugee
- **Victims and Witnesses** cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

Negative Factors to Consider

- Clear risk to national security*
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind*
- Known gang members or other individuals who pose a clear danger to public safety*
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud*
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
- Whether the person poses a national security or public safety concern

Temporary protections for immigrants who entered US as children

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

VAWA IV – Both Bills

- Age-out protection children included in U-visa applications
- VAWA confidentiality national security exception
 - Limits disclosure for law enforcement or national security purposes to release in a manner that keeps information confidential
 - DHS and DOJ guidance on VAWA confidentiality for T-visa victims
 - Senate also State Department
- Children of self-petitioners who died included in Widow fix
- Public charge fix
- Battered spouse waiver for bigamy
- Many IMBRA improvements
- Various reports to Congress and/or GAO

VAWA IV

Senate

House

- Authorizes DHS to consider perpetrator submitted information
 - DHS cannot contact perpetrator
- Mandates district office in person interview for VAWA self-petitioners
 - Credibility decided by local office
 - VAWA Unit may make final decision
 - Require consultation
- Mandates consideration of prior filed petitions, but only with regard to denials

Senate Bill VAWA IV

- Adds stalking
- U-visa recapture
 - Up to 15,000
 - Visa lottery fee - paygo

VAWA IV- House VAWA Self- Petitions

- Authorizes DHS to consider any credible evidence the perpetrator submitted
 - DHS cannot contact perpetrator
- Mandates district office in person interview for VAWA self-petitioners
 - Credibility decided by local office
 - VAWA Unit may make final decision
 - Require consultation
- Mandates consideration of prior filed petitions, but only with regard to denials
- Requires final written decision and findings *with particularity* for approval
- Preponderance of the evidence (current law)
- DHS must seek out information about any criminal investigation or prosecution undertaken
 - Consider whether no investigation or prosecution
 - Stay adjudication if case ongoing
- Denial of VAWA self-petition cancels affidavits of support

VAWA IV – House- U-Visas

- No certification allowed unless
 - The there is an active criminal investigation or prosecution
 - Victim has provided information that will assist in identification of the perpetrator *or* the identify of the perpetrator is already known
- U-visa amendments of VAWA IV immediately apply to all pending cases
- Ends access to lawful permanent residency for U-visa victims starting at enactment
 - Except when perpetrator & victims have same home country
- Allows immigration judges in DV removal cases to
 - Not be bound by state criminal court decisions
 - Allowed to consider police reports and other types of evidence of domestic violence
 - Reducing plea bargaining options for perpetrators